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Transcript of the Testimony of Brandon Waddell

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
BRANDON WADDELL

taken pursuant to Notice by Brett Steele, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health and Safety Academy, 1301 Airport Road, Room C-123, Beaver, West Virginia, on Saturday, May 22, 2010, beginning at 2:58 p.m.

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

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

BETH SPENCE
West Virginia Independent Investigation



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

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

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

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is May
5 22nd, 2010. I'm with the Office of the Solicitor,
6 U.S. Department of Labor. With me is Jasey Maggard,
7 an accident investigator with the Mine Safety and
8 Health Administration, MSHA, an agency of the United
9 States Department of Labor. Also present are several
10 people from the State of West Virginia. I ask that
11 they state their appearance for the record.

12 MS. SPENCE:

13 Beth Spence, with Davitt McAteer's
14 independent team.

15 MR. FARLEY:

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

18 MR. BUCKER:

19 Bill Tucker, with the Office of Miners'
20 Health, Safety and Training.

21 ATTORNEY BAXTER:

22 And there are also several other members
23 of the investigation teams present in the room. And
24 Jasey and Terry Farley will be conducting the
25 questioning today.

1 All members of the Mine Safety and Health
2 Accident Investigation Team and all members of the
3 State of West Virginia Accident Investigation Team
4 participating in the investigation of the Upper Big
5 Branch Mine explosion shall keep confidential all
6 information that's gathered from each witness who
7 voluntarily provides a statement until the witness
8 statements are officially released. MSHA and the
9 State of West Virginia shall keep this information
10 confidential so that other ongoing enforcement
11 activities are not prejudiced or jeopardized by a
12 premature release of information.

13 This confidentiality requirement shall
14 not preclude investigation team members from sharing
15 information with each other or with other law
16 enforcement officials. Your participation in this
17 interview constitutes your agreement to keep this
18 information confidential.

19 Government investigators and specialists
20 have been assigned to investigate the conditions,
21 events and circumstances surrounding the fatalities
22 that occurred at the Upper Big Branch Mine-South on
23 April 5th, 2010. The investigation is being conducted
24 by MSHA under Section 103(a) of the Federal Mine
25 Safety and Health Act and the West Virginia Office of

1 Miners' Health, Safety and Training. We appreciate
2 your assistance in this investigation.
3 You may have your personal attorney
4 present during the taking of this statement, or
5 another personal representative, if MSHA has permitted
6 it, and may consult with your attorney or the
7 representative at any time. Your statement is
8 completely voluntary. You may refuse to answer any
9 question and you may terminate your interview at any
10 time or request a break at any time.

11 Since this is not an adversarial
12 proceeding, formal Cross Examination will not be
13 permitted. However, your personal legal
14 representative may ask clarifying questions as
15 appropriate. And do you have a personal
16 representative here today?

17 MR. WADDELL:

18 No, sir.

19 ATTORNEY BAXTER:

20 Your identity and the content of this
21 conversation will be made public at the conclusion of
22 the interview process and may be included in a public
23 report of the accident, unless you request that your
24 identity remain confidential or your information would
25 otherwise jeopardize a potential criminal

1 investigation. If you request us to keep your
2 identity confidential, we'll do so to the extent
3 permitted by law. That means if a Judge orders us to
4 reveal your name or if another law requires us to
5 reveal your name or if we need to reveal your name for
6 other law enforcement purposes, we may do so.

7 We request that you refrain from
8 discussing your statement with others who may be
9 interviewed. Also, there may be a need to use the
10 information you provide to us or other information we
11 may ask you to provide in the future in other
12 investigations into and hearings about the explosion.
13 Do you understand this or have any other questions?

14 MR. WADDELL:

15 No, sir.

16 ATTORNEY BAXTER:

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

1 representative or counsel.

2 A court reporter will record your

3 interview. Please speak loudly and clearly. If you

4 don't understand a question asked, please ask us to

5 rephrase it. Please answer each question as fully as

6 you can, including any information you've learned from

7 someone else. I would like to thank you in advance

8 for your appearance here. We appreciate your

9 assistance in this investigation. Your cooperation is

10 critical in making the nation's mines safer.

11 After we've finished asking questions,

12 you will have an opportunity to make a statement and

13 provide us with any other information that you believe

14 to be important. If at any time after the interview

15 you recall any additional information that you believe

16 might be useful, please contact Norman Page at the

17 telephone number or e-mail address provided to you.

18 And finally, any statements given by

19 miner witnesses to MSHA are considered to be an

20 exercise of statutory rights and protected activity

21 under Section 105(c) of the Mine Act. If you believe

22 any discharge, discrimination or other adverse action

23 taken against you is as a result of your cooperation

24 with this investigation, you're encouraged to

25 immediately contact MSHA and file a complaint under

1 Section 105(c) of the Act. Remedies under the Mine
2 Act include back wages and immediate temporary
3 reinstatement to your most recent position with the
4 company, pending a complete investigation of your
5 complaint. Please swear in the witness.

6 -----

7 BRANDON WADDELL, HAVING FIRST BEEN DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 -----

10 EXAMINATION

11 BY MR. MAGGARD:

12 Q. Okay. Could you please state your full name and
13 spell your last name, please?

14 A. Brandon Scott Waddell, W-A-D-D-E-L-L.

15 Q. Could you please state your address and telephone
16 number?

17 A. [REDACTED]

18 [REDACTED]

19 Q. Brandon, are you appearing here voluntarily today?

20 A. Yes, sir.

21 Q. How many years of mining experience do you have?

22 A. Six.

23 Q. Could you tell us a little bit about your mining
24 experience?

25 A. For four of the six, I was belt man.

1 Q. And where was this at?

2 A. Performance.

3 Q. So all of your mining experience has been in
4 Performance?

5 A. Well, besides two weeks. I worked for a
6 contractor at Josephine Mine.

7 Q. Is that a Massey mine?

8 A. No, sir.

9 Q. In the last two years, what have you done?

10 A. Well, it's probably been two-and-a-half years. I
11 was a trainee electrician and then I got certified.

12 Q. When did you become certified?

13 A. Sometime in '08, so it was a little longer
14 than ---.

15 Q. Could you kind of provide us a little bit of
16 background of how you was trained as far as becoming
17 an electrician, what you had to do to get your card
18 and ---?

19 A. Training for electrician is very good. We had to
20 go through class and then experience at the mines.

21 Q. Who was the person in charge of training you at
22 Performance?

23 A. Lucas Pugely.

24 Q. Does he still work for Performance?

25 A. No, sir.

1 Q. At what areas of the mine did you --- have you
2 worked at?

3 A. About ---.

4 Q. Which sections?

5 A. I've been working recently or ---?

6 Q. Since you've been there.

7 A. I've been all over. Mostly --- I was mostly outby
8 and I'd just go up and move a belt every now and then
9 on a section when somebody would call in or something.
10 But recently I've worked on Two Section and One
11 Section.

12 Q. And when you say Two Section ---

13 A. That's ---.

14 Q. --- you're referring, probably, to the tailgate
15 section?

16 A. Yeah. Yes, sir.

17 Q. And how long did you work on the tailgate section?

18 A. Well, I worked on it as soon as they started
19 driving it. I've been on Two Section mainly the whole
20 time I've been an electrician. But then I think in
21 September of '08 or '09 they transferred me to Marfork
22 for about two months. I think that was around
23 September. Besides that I've been on Two Section or
24 the tailgate.

25 Q. Have they recently transferred you to the ---

1 before the accident had you been working on the
2 headgate section?

3 A. Not very often. I was mainly on the tailgate
4 section.

5 Q. Okay. Let me get the bigger map. We got several
6 maps here, Brandon. And here. When you said the
7 headgate section, you're referring to what is shown on
8 this map as MMU-029?

9 A. Correct. I mainly work on MMU-040.

10 Q. Why was you moved over and why was you working on
11 MMU-029, headgate section?

12 A. Well, when I was working on MMU-040, they run the
13 One Section seven days a week and they needed another
14 crew of men to work on that section on the hoot owl.
15 So they transfer me over there and there was two crews
16 that worked six days on, three days off. That's how
17 the schedule was and that's how they did that. I was
18 only up on One Section for approximately five days
19 before the explosion.

20 Q. During --- could you kind of explain on a normal
21 midnight shift ---? I assume you've always worked
22 midnight shift; is that right?

23 A. Yes.

24 Q. Could you kind of explain what time you normally
25 arrived at the mine and what you normally did before

1 you entered the mine and how you traveled and so
2 forth?

3 A. I normally got there about 10:30 and went and seen
4 what our work project was for the night and went and
5 gathered tool and supplies we needed. And then about
6 11:25 to 11:30 we loaded up on the mantrip and headed
7 underground.

8 Q. And where was you portaling from?

9 A. UBB side, until I went to One Section, then I went
10 in at the Ellis side.

11 Q. What was the last day you worked at the headgate
12 section ---

13 A. Thursday.

14 Q. --- before the accident?

15 A. Thursday night, which would've been, I guess, Good
16 Friday.

17 Q. Could you explain how you traveled ---? There's a
18 map behind us here, Brandon. Could you explain how
19 you traveled up to the headgate section?

20 A. Starting at Ellis?

21 Q. You can come back here, if you want to and ---. I
22 want --- kind of show us your route of travel.

23 A. I was here (indicating), come up. This would be
24 the Ellis, what they called Ellis Switch. Am I in the
25 right place here?

1 Q. Yeah.

2 A. Yeah. Okay. Travel down this way.

3 Q. And you're traveling the track ---?

4 A. The main line. Right here you come up to the main
5 line.

6 Q. Okay.

7 A. And then you travel the track all the way down. I
8 believe this is 78 Break right here. You come up.
9 You go through a set of --- two sets of doors here.

10 Q. Okay.

11 A. There should be doors around 79, like, 78, 79
12 Break somewhere up here.

13 Q. Well, it looks like it's between Break 83 and 84.

14 A. Okay. Yeah. Right.

15 Q. And this is on the Six North belt?

16 A. Correct.

17 Q. Okay.

18 A. There should've been another set of doors, too.
19 There were two sets of doors that you went through.
20 They were five, six breaks apart, I believe.

21 Q. But this was the ---. What is that?

22 A. That's your track ---. And when you went through
23 the doors, if I'm not mistaken, your intake track come
24 across right here (indicating).

25 Q. Okay.

1 A. In the ---.

2 Q. And you're pointing ---? You're looking at a set
3 of double doors that ---. I might be able to see it
4 on the spad over here. Let's see. I'm having a hard
5 time seeing.

6 A. We're down here.

7 Q. We're way down here; right?

8 A. Yeah. Right here (indicating).

9 Q. Okay.

10 A. The intake come across the track right here.

11 Q. Okay. So these doors are at spad 198 --- or
12 19659. Okay.

13 A. Yeah. And then we continued to go up towards the
14 Glory Hole. There's a switch here. We cut right ---
15 as soon as the switch, you --- one break inby the
16 switch, you went through another set of doors and went
17 on to the section.

18 Q. As you travel that route, how many ---? Who all's
19 traveling with you normally? How many --- how many
20 men?

21 A. Normally seven.

22 Q. Do you have certain areas you stop at that ---?

23 A. Normally ---.

24 Q. Are you communicating any with ---?

25 A. With dispatch or ---.

1 Q. At what areas do you communicate with the
2 dispatch?

3 A. From, we call it the portal. And they normally
4 give us the road down through Ellis Switch, and that's
5 from both directions, in most --- in most cases.
6 At Ellis Switch you normally had to wait for the
7 evening shift, most of the time. Sometimes he'd let
8 you go on up to 78. And that was the main switch-out
9 point, was 78, with other crews.

10 Q. Is that the last time you communicate with the
11 dispatcher?

12 A. No.

13 Q. Okay.

14 A. No, once we get up past 78 and clear up the road
15 to the section, once we get on the section, we call to
16 tell him we're on the section.

17 Q. And who is the dispatcher, normally, on third
18 shift?

19 A. They switch all the time. I can't remember his
20 name.

21 Q. Can you remember the one that dispatched the last
22 day you was there on April 1st?

23 A. I really don't recall.

24 MR. MAGGARD:

25 Okay. You can come back over here.

1 ATTORNEY BAXTER:

2 And Brandon, when you're talking about
3 your normal day like this, is this --- in terms of the
4 time frame, is this pretty much how it was after you
5 were transferred back from Marfork?

6 A. Yes, sir.

7 BY MR. MAGGARD:

8 Q. And how many people was working with you on your
9 third shift crew from headgate section?

10 A. The last shift?

11 Q. The last shift. Just an estimate.

12 A. I'd say there was six of us.

13 Q. And who was ---?

14 A. You mean, just working with me particularly
15 or ---?

16 Q. Yeah, just up on this section.

17 A. The whole --- the whole --- everybody that was up
18 there?

19 Q. Yeah.

20 A. Ten of us.

21 Q. How many electricians?

22 A. There was six, about six electricians the
23 last ---.

24 Q. Six electricians. And who's in charge of ---?

25 A. Billy Graham was in charge of that at that time.

1 Q. Was he with you that day?

2 A. Uh-huh (yes).

3 Q. As far as the management structure, is Billy
4 Graham normally your boss or ---?

5 A. He was the third shift main chief. They have two
6 of them, I believe how they had it. It was Billy
7 Graham and Greg Shrewsberry, but they kind of worked
8 together on that.

9 Q. And who did they report to?

10 A. Paul Thompson.

11 Q. Do you perform any electrical examinations ---

12 A. Yes, sir.

13 Q. --- at this mine? Could you kind of --- how often
14 do you do electrical examination?

15 A. Every week.

16 Q. So you're normally doing 'em every week?

17 A. Uh-huh (yes).

18 Q. Could you tell us the types --- what equipment
19 you're responsible for right now, or before the
20 accident occurred?

21 A. The hoot owl's normally responsible for the
22 miners, the maintenance scoop, the center shuttle car,
23 I believe the bonder that stays on the surface car,
24 power center, normally the pressure pump, and feeder.

25 Q. And feeder? Which pieces did you --- of equipment

1 have you examined recently on the headgate and the
2 tailgate sections?

3 A. The equipment I examined, I examined the power
4 center on the headgate section.

5 Q. And what do you normally check when you check the
6 power center?

7 A. As far as we examine that ---.

8 Q. Was this a weekly exam or a monthly exam?

9 A. Yes, sir, weekly. And I also did a monthly just
10 to make sure everything was right.

11 Q. What do you normally check on the power center?

12 A. As far as weekly, make sure you have your fire
13 extinguisher and mat signs. Make sure all breaker
14 settings are correct. I normally just go ahead and
15 check all the, you know, ground fault buttons and
16 everything ,too, just when I'm doing my weekly.

17 Q. Have you ever done an exam on the continuous
18 miners on this section recently?

19 A. I believe the other electrician did that one.
20 That's when we was up there. That was on the hoot
21 owl.

22 Q. And who would that have been?

23 A. Dave Covey. I can't remember if I've done it or
24 he done it.

25 Q. Have you ever calibrated the methane monitors?

1 A. Yes, sir. On that section?

2 Q. Yes.

3 A. Yeah, we calibrated 'em.

4 Q. When do you recall the last time that you
5 calibrated the methane monitors? Was it recently?

6 A. That was probably ---. I can't remember if it was
7 that --- it was early in that week when we did it,
8 like Monday, probably.

9 ATTORNEY BAXTER:

10 The Monday before the accident?

11 A. Yes, sir.

12 ATTORNEY BAXTER:

13 The prior week?

14 A. I'm pretty sure that's when we done it. I can't
15 remember because of where they transferred us so
16 quick. We just got done with the equipment on Two
17 Section and ---.

18 BY MR. MAGGARD:

19 Q. Could you explain your calibration procedures that
20 you do for calibrating the methane monitors and tell
21 us a little bit about 'em, what type they are and ---?

22 A. Well, we have our sniffers and you have your
23 readout. When we calibrate it, we'll go up and we'll
24 apply zero air for at least one minute. Once zero
25 air, you apply your magnet back to your readout. And

1 the AC will come up and flash. When it stops
2 flashing, you apply 2.5 percent methane and it'll say,
3 CP.

4 As it's calibrating, you --- when it's done
5 calibrating it'll say, CC. You take your gas off, let
6 everything --- let it reset itself. Then I gas the
7 miner off, make sure it'll shut the machine off at 2
8 percent and won't read any higher than 2.5.

9 Q. Could you tell us a little bit about what kind of
10 gas, what kind of flow rates you have and how you ---
11 when you're at the sniffer, what you do before you ---
12 while you're calibrating? How do you do that?

13 A. As far as ---?

14 Q. As far as placing the calibration equipment, the
15 cap on the sniffer head. How do you do it, normally?

16 A. We always just keep the cap on the sniffer and
17 just slide the cap over. There's a hose comes off of
18 it and you slide that over your cap on your sniffer.

19 Q. Do you ever see the calibrations out of
20 calibration, and how much, if it ever is?

21 A. Most of the time if it's out calibration it'll be
22 reading like a percent over 2.5 when you shut the ---
23 when you apply the gas. That's the worst that I've
24 --- you know.

25 Q. You've never seen it below or ---?

1 A. No, no. Most of the time it's normally --- it'll
2 read like 2.6 instead of 2.5, you know.

3 Q. Have you ever, since you've been working at UBB,
4 ever --- when you're doing the calibration, have you
5 ever seen a methane monitor that wasn't working or was
6 possibly ---?

7 A. No, sir.

8 Q. Do you carry your own methane detector?

9 A. Normally, yes, I did, as of March.

10 Q. Do you still have that detector that you was
11 carrying?

12 A. No, sir. I gave it to --- back to UBB. I think I
13 even gave it to the inspectors, I believe. I'm pretty
14 sure.

15 Q. When you used your detector, what was the highest
16 concentration of methane you found in the mine?

17 A. When I used it, it was three-tenths and that was
18 up on Headgate 22. And I can't recall where I was at
19 up there, but that was the most, was three --- about
20 three-tenths.

21 Q. And where did you --- where do you remember ---
22 recall finding three-tenths at? Was that in the ---

23 A. I'm thinking ---.

24 Q. --- face area or ---?

25 A. I was outby, I think, two breaks or so in the

1 return, I'm thinking.

2 Q. Was the methane --- how high was the entry that
3 you were ---?

4 A. It was approximately seven foot.

5 Q. Was it near the top of the entry or at the bottom
6 or where did you find that?

7 A. It was just midways.

8 Q. Midways. Was it in the return entry or was it in
9 the belt entry or ---?

10 A. Return. I'm pretty sure I was in the return at
11 that time.

12 Q. Did you all have any problems maintaining the
13 right quantity of air on the section or ---?

14 A. I really don't ---.

15 Q. Do you know of any problems with ventilation up
16 there?

17 A. I mean, as far as with the violations we got over
18 there, I don't know of any problems that we had, you
19 know. I really don't know much about --- that's the
20 type of stuff determined all the bosses take care of.

21 Q. And who normally takes care of the ventilation
22 while you're there?

23 A. While I'm there? The boss was --- I can't think
24 of that one section guy's --- boss's name. I'll tell
25 you here in a second. When I was on Two Section, it

1 was --- they called him Jaybird. His name was Jason.
2 I can't remember his last name. His name was Jason,
3 though. And I can't remember the boss's name on that
4 headgate side.

5 Q. What about on the tailgate side?

6 A. That was the Jason I was telling you about.

7 Q. Okay. But you don't remember who the boss was on
8 the headgate side, workshift boss?

9 A. I can't remember his name.

10 Q. Have you ever walked the intake or traveled the
11 intake?

12 A. Several times.

13 Q. Several times? When was the last time you did
14 that?

15 A. Oh, I think it was around July of --- no,
16 Christmas vacation.

17 Q. Well, why was you traveling the intake?

18 A. We had to walk out. I think that was due to
19 walkout.

20 Q. And tell us about that day. Why was you having to
21 walk out? What was going on? Was you being trained
22 or ---?

23 A. Yeah, it was just the --- we had a procedure, you
24 know, a make-believe procedure, you know. And then we
25 took off in the intake and I can't remember if I was

1 on --- where I was at that ---. I was on Two Section.

2 Q. And when you say Two Section, you're talking about
3 the tailgate section ---

4 A. Yes, sir.

5 Q. --- MMU-040?

6 A. Uh-huh (yes). And I think was driving this
7 (indicating) at that time.

8 ATTORNEY BAXTER:

9 And what's this part that you're
10 referring to?

11 MR. MAGGARD:

12 The crossover.

13 A. The crossover.

14 BY MR. MAGGARD:

15 Q. Okay. And who was giving --- who was the ---? I
16 guess this is what you'd call your firefight and
17 evacuation drill.

18 A. Yeah. Yeah.

19 Q. And who was giving that? Who was leading that,
20 giving you the training?

21 A. It was either Kenny Farmer or that Jason I was
22 telling you about.

23 Q. All right. Can you tell us a little bit about
24 roof conditions since you've been on tailgate --- the
25 tailgate section and the headgate sections? Tell us a

1 little bit about what you know about roof conditions,
2 bottom conditions, anything you've seen.

3 A. The top wasn't too bad, or bottom on the tailgate
4 side. Now, the bottom was busting up real bad and
5 stuff on the headgate side.

6 Q. Do you remember some ---? Could you point out
7 some places that you think it might've been busting
8 out? Was it, like, in the intake, the return or ---?

9 A. It was in the power entry, which was the intake.

10 Q. And when you say it's busting out, how --- well,
11 was you seeing cracks or how big?

12 A. Just, just the bottom busting out, just as far as
13 just it was hard to even scoop because you'd bring up
14 big chunks of rock and stuff.

15 Q. Was there any concerns with the guys you work
16 with, any of 'em ever express any concerns about the
17 bottom busting up or any concerns about methane?

18 A. No, I've never heard that. Just as far as the
19 only complaint I've ever heard, just them say was, you
20 know, wish they'd scoop it, you know. But I've never
21 heard any concern about methane or nothing.

22 Q. What about --- could you tell us --- when you
23 entered the mine, you got to go through, I guess,
24 three sets of doors.

25 A. Well, from Ellis side you do, but from UBB side,

1 you got two more sets you go through.

2 Q. Okay. Could you tell us about those doors? Have
3 you ever seen 'em left open or ---?

4 A. I have seen 'em left open coming in before.

5 Q. How often have you seen 'em left open?

6 A. It wasn't very often, but I have seen 'em left
7 open, just one set, you know, just like one door would
8 be.

9 Q. Yeah. Well, when you found the one door open, I
10 guess you was with the crew men on the mantrip?

11 A. Uh-huh (yes).

12 Q. What did you normally do?

13 A. If we found one open?

14 Q. Yeah.

15 A. Normally we just traveled through it and did the
16 right thing by shutting it back and then going through
17 the other set.

18 Q. Have you ever been going outby and see a set that
19 was closed and you opened it and you found that the
20 other set was open, the next outby door?

21 A. No. Normally you can hear the pressure from the
22 air before you open the door. So we generally waited
23 for another person to shut the door.

24 Q. Had you ever seen the doors damaged?

25 A. Yeah, I have seen 'em damaged.

1 Q. And I mean would they not close? Just kind of
2 explain ---.

3 A. Just bent up.

4 Q. Bent up?

5 A. Just bent up.

6 Q. And how quickly did they get fixed when they was
7 bent up? Would it take a while? Would they have to
8 get material and ---?

9 A. It generally took two or three days.

10 Q. Two or three days. And just could you give us,
11 like, how many be --- how many times do you think you
12 seen 'em damaged, do you know, since you've been
13 there?

14 A. Oh, man.

15 Q. Several, many times, just --- just a guess?

16 A. Probably three or four, just a guess.

17 Q. Had you ever been on the longwall section?

18 A. I've never been on the longwall. We've actually
19 walked up there, but I've never been --- never been on
20 that part of the ---.

21 Q. Had you heard anything from any of the guys that
22 you worked with saying that maybe there were some
23 ventilation problems on the longwall or any air
24 reversals, anything mentioned?

25 A. No, sir. I really didn't see them guys much and

1 didn't talk to 'em much.

2 Q. You used to work on the belts. Could you kind
3 of ---? How did you feel that the belts were
4 maintained in the mine and how did you feel about the
5 company's rock dust and was it adequate or ---?

6 A. I think they could've rock dust the belts better,
7 my opinion.

8 Q. Did they normally do rock dusting after they were
9 sided or did they try to be proactive or ---?

10 A. They normally tried to dust, you know --- you
11 know, pretty often. But I guess where the mines are
12 so big, it was just hard for one crew to keep up with.

13 Q. How many people did they usually have keeping up
14 with the belts?

15 A. I think there was two guys, as far as dusting
16 goes.

17 Q. For the whole mine?

18 A. Uh-huh (yes). I think they ---. I'm pretty sure
19 --- to the best of my knowledge, it was two guys.

20 Q. How did you feel that the equipment was maintained
21 on the sections, as far as permissibility goes?

22 A. I thought it was maintained real well.

23 Q. When you do a permissibility check, what all did
24 you --- just kind of go over the stuff that ---. I
25 mean, did you check like how the equipment was

1 operating? Just what all did you look for?

2 A. You looked for combustible oil and, you know,
3 stuff like that all over the machine, or you checked
4 all your panels to make sure they were sealed, make
5 sure there was no damage to your trees or conduits on
6 the machine. Make sure all your lights were properly
7 --- sealed properly, make sure all your backup ground
8 fault or your backup --- battery backup would work.
9 Check your fire suppression, stuff like that on the
10 miners.

11 Q. Did you every have any problems? Did you ever
12 have to shut down a piece of equipment after an
13 examination?

14 A. I don't recall actually shutting it --- I've
15 actually not had to shut it down, because I was on the
16 hoot owl, but I've had to replace the battery backup
17 before because it wasn't working properly, or a light
18 tree or something like that as far as --- but it was
19 fixed. I didn't really have to shut it down.

20 Q. Yeah, you've never had --- like been working on
21 third shift and find something that --- toward the end
22 of the shift that would kind of slow 'em down on the
23 production shift coming on?

24 A. No. No, I've never found nothing like that as far
25 as shutting 'em down.

1 Q. Have you ever seen anybody else have to shut this
2 equipment down, as far as during an exam or just an
3 electrician have to take a piece of equipment out of
4 service that hurt production the next day or ---?

5 A. No, not normally, because --- you know, I can't
6 speak for the production guys, you know. I don't know
7 if they have or not, but I've never seen anybody on
8 the hoot owl have to.

9 Q. On the third shift, did you ever see anybody or
10 was any of Massey's engineers there performing any
11 kind of ventilation changes or working on ventilation
12 while you were there?

13 A. They have done ventilation changes while I was
14 there, but we stayed outside.

15 Q. And when was the last time that had occurred?

16 A. I believe the last time they --- when they got the
17 violation over the ventilation and they had to --- I
18 can't recall what date or anything, but that was the
19 last time I recall an air change.

20 Q. Had you ever heard of or been in the mine or heard
21 of any of the other crews being in the mine and had to
22 be removed because of ventilation problem?

23 A. Not that I'm aware of.

24 Q. Could you kind of tell us any places in the mine
25 that had problems with water accumulations?

1 A. Two Section on the tailgate side had water from
2 the belt head to the tailpiece when I was up there in
3 the belt entry. I mean, it was not real deep water,
4 but it was water.

5 Q. And where was it coming from?

6 A. I think it was coming from the bottom, myself, but
7 I'm not a hundred percent.

8 Q. And how deep, I mean, was it?

9 A. Approximately 12 inches.

10 Q. Twelve (12) inches.

11 A. And they did have water problem issues in the ---
12 back in here (indicating) around 70-some Break, I
13 think.

14 Q. You're talking about the headgate area of the
15 longwall at Break 70?

16 A. Yes, they had water issues back in here
17 (indicating). I think this is why that Two Section
18 was driving this. Actually I think they even had to
19 shut down for this, for the water back here.

20 Q. Have you ever heard of any gas feeders or any kind
21 of problems where gas was coming out of the mine floor
22 at this mine?

23 A. I haven't heard anything about gas or anything at
24 the mines, but as far as production guys go, I mean,
25 they might have, but they don't --- you know, you very

1 seldom see 'em and you don't really hear. You just
2 talk to mainly guys on the hoot owl, so I haven't
3 heard of anybody picking up major ranges of gas.

4 Q. When you was held outside, who was inside working
5 on the ventilation when they wouldn't let you go in,
6 whenever that was?

7 A. Mr. Persinger. I think all the bosses, mostly all
8 the bosses. They even sent us home that night about
9 four o'clock.

10 Q. Was there anyone there from Massey Coal Services
11 or ---?

12 A. I believe Jason Whitehead was there.

13 Q. And can you recall when that was, how long back?
14 Was it a few months ago or weeks ago or ---?

15 A. It's been months. I'm trying to think when ---
16 yeah, it wasn't real, real --- I mean it wasn't ---.
17 I'm thinking three months, maybe, approximately.

18 ATTORNEY BAXTER:

19 Would that have been in January?

20 A. Approximately. I believe right around there. It
21 might've been sooner. I really can't recall, but I do
22 recall them doing air change.

23 BY MR. MAGGARD:

24 Q. Who does your --- I'm going to kind of change
25 gears and we'll get back to some more stuff, but who

1 does your electrical retraining?

2 A. Normally David Terry does it.

3 Q. And where does he do that at?

4 A. Mostly at the Pettus Elementary, old State --- the
5 State Police headquarters down in Pettus there.

6 Q. And when was the last time you had annual
7 refresher training?

8 A. Annual refresher? I think it was March 27th when
9 we had ours, of this year.

10 Q. And what all was covered in your annual refresher?

11 A. We covered electrical course in there. We covered
12 roof and rib control, ventilation, rescuers. We went
13 through smokehouse-like thing. What else did we go
14 through? Plans of the mines, you know, as far as ---.
15 I can't remember what class that was in, but ---. As
16 far as safety, just different safety issues,
17 violations that we've had and, you know, went over how
18 to fix 'em and not get 'em anymore.

19 Q. Did you have to don and transfer a rescuer?

20 A. Yes, sir.

21 Q. That was pretty recent, like in the last couple
22 months or when did you have it? When did you say that
23 you had it?

24 A. March 27th. I think that was the date it was.

25 Q. Before March 27th, when was the last time you had

1 to don and transfer a rescuer? Was it the previous
2 annual refresher?

3 A. That we had to?

4 Q. Yeah.

5 A. No, we do it --- normally do it about every six
6 months.

7 Q. When you was --- the day that you did your fire
8 fighting and evacuation drill from the tailgate
9 section, did you do it that day?

10 A. Yes, sir.

11 Q. And who went over that with you?

12 A. I'm thinking it was Kenny Farmer or Jason.

13 Q. Okay.

14 A. It's not Jason Whitehead I'm referring to. It's
15 the section boss or third shift boss.

16 Q. I don't know if I asked you. Where are you
17 currently working at right now?

18 A. Shaw No. 2 Mine at Roundbottom, for Elk Run.

19 Q. And what are you doing there now?

20 A. Electrician.

21 Q. Electrician. Had you ever installed any pumps in
22 the mine or when you had ---

23 A. Have I ever ---?

24 Q. --- water accumulations, were you ever --- did you
25 ever have to install any?

1 A. No, I've never had to install 'em, but we was
2 asked to go back and wire a pump up. But I went so
3 far and the water was too deep and I didn't do it.

4 Q. Did you ever experience --- been on a section and
5 the belts were running ---? When you got to the
6 section, was the second shift already done and left
7 the section normally or were they still running coal a
8 lot of times when you go there?

9 A. Generally they were at the mantrip or we passed
10 them on the track at 78 Break.

11 Q. Did you all have a ---? Did you ever get involved
12 with the CO system in the mine or tracking the
13 communication system?

14 A. No, sir.

15 Q. When you was in your last annual refresher, did
16 you get trained on anything to do with the CO system
17 or the ---?

18 A. That's what I forgot. They did go over the
19 tracking system and the radios and stuff.

20 Q. And what did they train you on that? Was that
21 done by the company or was that done by an outside
22 vendor or ---?

23 A. I think it was a vendor who was in there talking
24 about it.

25 Q. And what did you know about this system? How much

1 of it was not finished or do you know anything about
2 that or ---?

3 A. I sure don't. I really don't. We had two guys
4 working on that that was installing that.

5 Q. Do you know who they were?

6 A. Derek Kiplinger and --- oh, lordy.

7 Q. Patrick Lamas, ---

8 A. Yeah.

9 Q. --- maybe?

10 A. Patrick Lamas.

11 Q. As far as the CO, did you have a little bit of AMS
12 training during your annual refresher?

13 A. As far as the CO in the mines or ---?

14 Q. Yeah, your CO sensor?

15 A. As far as knowing how to --- I'm really not ---.

16 Q. What to do during an alarm condition or alert?

17 A. I don't recall.

18 MR. MAGGARD:

19 I guess we can go for one of these guys.

20 That's the end of my questions. Thank you, Brandon.

21 A. Okay.

22 EXAMINATION

23 BY MR. FARLEY:

24 Q. With your communication and tracking system, with
25 the radio that you had, were you able to communicate

1 with the dispatcher?

2 A. Yes, sir.

3 Q. Okay. Now, the last week you worked before the
4 accident on April 5th, I know you had indicated you'd
5 seen some doors open at times. Did you see any left
6 open that last week?

7 A. No, sir.

8 Q. Okay. Okay. I know you calibrated the methane
9 monitors on 22 Headgate; right?

10 A. Yes, sir.

11 Q. Okay. Did you encounter any problems during the
12 last week or so, prior to the accident?

13 A. Not that I can recall.

14 Q. Okay. When you were working 22 Tailgate or 22
15 Headgate section, did you --- do you do any cutting
16 and welding?

17 A. Periodically, yes, we do.

18 Q. Okay. Do you take a methane test when you do this
19 before you do it?

20 A. Absolutely.

21 Q. Okay. Do you guys mine any coal at all on the
22 midnight shift?

23 A. No, sir.

24 Q. Anywhere that you know of?

25 A. Not that I know of.

1 Q. Okay. So I guess you probably never operate any
2 equipment, then, do you?

3 A. Not very --- not very often.

4 Q. All right. When is the last time you would've
5 watched one of the continuous mining machines actually
6 cut --- mine coal? Do you recall?

7 A. I'll say seven months ago.

8 Q. Okay.

9 A. Just guessing.

10 Q. You remember where that was?

11 A. We was on Two Section on the tailgate side. We
12 were driving the cross ---.

13 Q. Okay. All right. You didn't work on April 5th,
14 obviously?

15 A. No, sir.

16 Q. Have you heard any ---? Are you aware that the
17 longwall may have been down on the dayshift of April
18 5th and know anything about that?

19 A. I've heard rumor that the longwall had been down
20 all day during the day of the explosion.

21 Q. Well, is the rumor that the longwall was down all
22 day or just part of the day?

23 A. I heard they was down 'til 2:45.

24 Q. All day until 2:45?

25 A. Is what I heard. Now, I don't know that to be

1 facts, but that's just what I've heard.

2 Q. Okay. Any idea why ---?

3 A. I wouldn't have any idea.

4 Q. Okay.

5 ATTORNEY BAXTER:

6 Brandon, do you remember where you heard

7 that from?

8 A. I can't remember who would've said --- stated
9 that.

10 BY MR. FARLEY:

11 Q. Okay. All right. And the mine would've been idle
12 on April 4th, as far as you know; is that correct?

13 A. As far as I know, it was supposed to be idle.

14 Q. Okay. When you normally make it to your section
15 on midnight shift, where do you usually find the
16 continuous miner and the roof bolter parked?

17 A. Normally we find the miners in the last open break
18 versus --- one, two or three ---.

19 Q. Okay.

20 A. The roof bolter, there might be one sitting back
21 from the second row of bolts or ---.

22 Q. Okay. Now, when you go to the working faces on 22
23 Headgate or where you recently worked on 22 Tailgate,
24 does it appear to you that the faces are properly
25 ventilated when you get there? Are the curtains

1 hanging in the --- inby ---

2 A. Most of it ---.

3 Q. --- the crosscut ---?

4 A. For the most part, I have seen curtains up. Like
5 I say, I don't really know how --- much about
6 ventilation.

7 Q. Okay.

8 A. But they seemed to be to me.

9 Q. All right. Let me go back to something here. I
10 want to make sure I heard you right. You said that
11 you hadn't actually set up a pump, but you'd been
12 asked to wire one, and you didn't do it because the
13 water was too deep. Where was that location?

14 A. Right in --- I think the pump was at 70-some
15 Break, 72 Break, approximately.

16 Q. The existing longwall headgate entries?

17 A. Uh-huh (yes).

18 Q. Okay. Now, you also said that you think they may
19 have been shut down once because of water in those
20 headgate entries. Do you remember when that was?

21 A. I don't believe that actually inspectors have shut
22 'em down. I believe the company shut 'em down ---

23 Q. Okay.

24 A. --- until they got this water taken care of in
25 behind the wall.

1 Q. Okay. Do you remember when that was? This year?

2 A. It was this --- it was last year.

3 Q. Last year?

4 A. Uh-huh (yes).

5 Q. Okay. All right. Since the --- when you were
6 down the, oh, Shaw --- Roundbottom --- since April 5th
7 of this year, has any company representative
8 interviewed you about the April 5th accident?

9 A. Yes, sir.

10 Q. Okay. Can you tell us who that was?

11 A. It was Massey lawyers. I don't know.

12 Q. Okay. Do you remember the names?

13 A. No, sir, I don't.

14 MR. FARLEY:

15 Okay. All right.

16 MS. SPENCE:

17 I have just a couple of things.

18 EXAMINATION

19 BY MS. SPENCE:

20 Q. Did you ever hear anyone, Brandon, talk about they
21 couldn't get any air any place in the mine?

22 A. No, I haven't heard it personally. No, I haven't
23 heard anything, as far as that goes.

24 Q. Did you ever see any evidence of anything that was
25 done to methane monitors that might interfere with

1 their ability to measure?

2 A. No, I've never seen any interference with the
3 methane monitors.

4 MS. SPENCE:

5 That's all I had.

6 SHORT BREAK TAKEN

7 ATTORNEY BAXTER:

8 Back on the record.

9 RE-EXAMINATION

10 BY MR. MAGGARD:

11 Q. Okay. Brandon, I got a few more questions to ask
12 you. Have you ever had any bosses talk to you and
13 tell you about any --- when you come to work, about
14 any hazardous conditions they observed during the
15 previous shifts?

16 A. No, sir, I have not.

17 Q. Were you ever on a section when a MSHA inspector
18 was on the section?

19 A. As far as production shift or just any time?

20 Q. Just any time.

21 A. Yes, sir.

22 Q. Did anyone in --- when that inspector came, did
23 you already know he was coming or ---?

24 A. No, I didn't know he was coming.

25 Q. Did anyone else know on the section?

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

2 Q. Before the inspector arrived, did anyone from
3 management ever say, we need to do this? We need to
4 get curtains hung? We need to clean up things or ---?

5 A. No, I do know that when an inspector showed up on
6 the property, they called the sections. What they
7 said, I don't know, but I do know they tried to get
8 ahold of the sections.

9 Q. And how much --- would that be like an hour prior
10 to the inspector getting to the section or how much
11 time would you have to ---?

12 A. I'd say probably that time, by the time he gets --
13 - everybody gets ready and gets him a ride, I would
14 say that, about an hour.

15 Q. Okay. And did that happen every time or most of
16 the time?

17 A. Most of the time that I was aware of, they did
18 inform the sections.

19 ATTORNEY BAXTER:

20 Who would they talk to on the section?

21 A. I'm assuming whoever answered the phone.

22 BY MR. MAGGARD:

23 Q. Were you ever on the section --- any of the
24 sections, when a violation was written for a low
25 volume of air behind the curtain or in the last open

1 break?

2 A. I believe I was. I believe I do recall a
3 violation being wrote over not enough air in the face
4 or in the last open break, I believe.

5 Q. How long did it take you, take the --- take you
6 guys to get it corrected or ---?

7 A. About five minutes, I think. I mean, I believe
8 you just had to hang one piece of curtain up.

9 Q. Did the section boss say anything to you guys
10 after the inspector left about that violation or ---?

11 A. No, because we just --- the inspector rode in with
12 us on the hoot owl and come up to the section.

13 Q. So it was something that was left by the
14 production shift?

15 A. They were actually still there at that time.
16 That's the one time they were actually still there.

17 Q. Was this a curtain in the face or ---?

18 A. I don't really recall exactly where it was at.

19 Q. Did you ever see ---? When you did observe 'em
20 running coal, did you ever see any kind of --- any
21 curtains rolled up or not in place or ---?

22 A. I generally --- I mean, I've seen curtain, you
23 know, down, I never seen it rolled up.

24 Q. I think this --- you go to --- you know, you've
25 been going to work from Ellis Portal. I think there

1 was a rumor. I don't know if it was at Ellis or there
2 was a note on the board to hook some pumps up or ---
3 had you heard anything about 'em needing to pump water
4 somewhere in the mine?

5 A. No, I hadn't heard anything like that.

6 Q. Had you ever seen ---? Do you know Chris
7 Blanchard?

8 A. I don't know him personally. I've only talked to
9 him --- talked maybe once or twice.

10 Q. Have you ever seen him underground at the mine?

11 A. I seen him underground one time, and I was passing
12 him. I was sitting at a switch in a mantrip, headed
13 outside. And he had coal bars with him.

14 Q. What about Jason Whitehead? I know you've said
15 you --- he came underground the day that you all
16 couldn't go inside. How often does he come to the
17 mine?

18 A. He comes to the mines ---. He was coming to the
19 mines pretty regularly, that I recall. I mean, he was
20 probably there at least twice to three times a week,
21 that I recall. I mean, that's just an estimated
22 guess.

23 Q. Did Whitehead ever say anything to your crew, have
24 any ---

25 A. I never ---.

1 Q. --- discussions ---

2 A. No, I never had ---

3 Q. --- discussions with you?

4 A. --- any run-ins with him. I never had to ---.

5 Q. Was there a lot of pressure at this mine on the
6 sections to produce coal or ---?

7 A. Yeah, there was. There was pressure on 'em.

8 Q. And how did that affect you or on your daily
9 routine, was it high --- fast-paced or ---?

10 A. No, it really didn't affect me much. I'm pretty
11 laid back. I just --- I just go on with my thing.

12 Q. How did it affect the bosses? Were they ---?

13 A. Some of the bosses were smotherers. They would
14 smother out, you know. Well, like, when they're
15 moving belt or something. That's the only bosses that
16 I've been around, you know.

17 Q. Do you feel that they kind of put production
18 before anything else or ---?

19 A. I feel like as my opinion, I believe that they did
20 put production before they --- before anything else.
21 That's my opinion.

22 Q. As far as all the men that worked on third shift,
23 did everybody have spotters or methane detectors
24 or ---?

25 A. I didn't hear you.

1 Q. Did everybody have a multi-gas detector that
2 worked with you or a personal multi-gas detector?
3 Just part of the crew or ---?

4 A. If I didn't have one, the boss had one. So
5 everybody did not have one.

6 Q. Did they ever go over calibration procedures and
7 train you on ---?

8 A. Have never trained me on how to calibrate 'em.

9 Q. Do you have --- what kind of certifications do you
10 have, ---

11 A. It's just ---.

12 Q. --- other than electrical?

13 A. That it, just electrical.

14 Q. Do you have a methane/oxygen qualification or do
15 you know?

16 A. I received one, but I didn't receive one this
17 year. I've had one last year.

18 Q. During the annual refresher, do they go over how
19 to detect gas or ---?

20 A. Yeah, they did go over how to ---.

21 Q. Did they actually show you how to ---? Has
22 anybody ever showed you how to check for gas ---

23 A. Yes, sir.

24 Q. --- on a section?

25 A. Uh-huh (yes).

1 Q. But they've never went over how to calibrate
2 or ---?

3 A. I've never been shown how to calibrate one.

4 Q. Do you know how to use a Galaxy and calibrate an
5 instrument?

6 A. Are you talking --- they just set it in there
7 upside down? That's the only thing I know.

8 Q. Okay. When you noticed --- I know that we talked
9 about doors. You seen some open. You seen some
10 damaged. Whenever that occurred, did you notice the
11 direction of air flow?

12 A. I don't really recall. I really didn't notice.

13 Q. Could you tell a change that maybe it was
14 reversing or ---?

15 A. No, I couldn't.

16 MR. MAGGARD:

17 Okay. I think that's about it.

18 EXAMINATION

19 BY ATTORNEY BAXTER:

20 Q. I just ---. When you mentioned the calling down
21 to the section, when the inspector's there, were ---
22 do you remember the last time that happened?

23 A. There were so many of 'em there. I don't recall.
24 The last time I recall it happening is when I had to
25 fill in for dayshift one time, and that's been, like,

1 say seven months ago I'll estimate.

2 Q. Do you remember anybody else who was there with
3 you when that happened?

4 A. No, I'm actually the one that answered the phone
5 at that time ---

6 Q. Uh-huh (yes).

7 A. --- and said there was an inspector on the
8 property.

9 Q. Do you remember who was calling --- calling out
10 from the surface?

11 A. I'm assuming it was dispatch. I don't recall who
12 it was at that time, but I'm assuming that's who it
13 was.

14 Q. Did you answer the phone any other time prior to
15 that, about the inspectors coming down?

16 A. No, sir.

17 Q. Do you remember anyone else who did?

18 A. No. Normally they paged for the boss or a buggy
19 man that was going to be close to the --- around
20 there, but like I say, I don't recall anybody ever
21 answering the phone particularly.

22 RE-EXAMINATION

23 BY MR. MAGGARD:

24 Q. You mentioned there was a couple guys that took
25 care of all the belts and done rock dusting outby and

1 stuff. Did they just work one shift or did they keep
2 two guys every shift doing that?

3 A. I'm pretty sure, not a hundred percent, that they
4 just mainly dusted on the hoot owl. I'm not 100
5 percent about that, but I'm thinking that way.

6 Q. Had you ever been in the returns very much outby
7 or ---?

8 A. Just mainly up towards the section as far as
9 return.

10 Q. As far as rock dusting went in those, would you
11 say it looked worse or a little bit better than the
12 belt lines or ---?

13 A. Maybe a little bit better. Really about the same,
14 I'd say.

15 Q. About the same?

16 ATTORNEY BAXTER:

17 Okay. On behalf of MSHA and the Office
18 of Miners' Health, Safety and Training, I want to
19 thank you for appearing and answering questions today.
20 Your cooperation is very important to the
21 investigation as we work to determine the cause of the
22 accident. We request that you not discuss your
23 testimony with any person aside from your personal
24 representative. After questioning other witnesses, we
25 may call you if we have any follow-up questions that

1 we feel we need to ask you. If at any time you have
2 additional information regarding the accident that
3 you'd like to provide to us, please contact us at the
4 contact information that was previously provided to
5 you.

6 If you wish, you may now go back over any
7 answer you've given during this interview. You may
8 also make any statement that you'd like to make at
9 this time.

10 A. That's about all I have.

11 ATTORNEY BAXTER:

12 Again, I want to thank you for your
13 cooperation in this matter.

14

15

* * * * *

16

STATEMENT UNDER OATH CONCLUDED AT 4:06 P.M.

17

* * * * *

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CERTIFICATE

I, Brett Steele, a Notary Public in and for
the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Brett Steele