



**SARGENT'S  
COURT  
REPORTING**

**Quality Work. Quality People.**

**Transcript of the Testimony of Charles Ward**

**Date:** May 10, 2010

**Case:**

**Printed On:** May 17, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH  
OF  
CHARLES WARD

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 & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, May 10, 2010, beginning at 8:05 a.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

J. DAVITT MCATEER, ESQUIRE  
West Virginia Independent Investigation  
132 West German Street

[REDACTED]  
[REDACTED] [REDACTED]

BARRY KOERBER, ESQUIRE  
West Virginia Office of Miners' Health,  
Safety, and Training  
1615 Washington Street East  
Charleston, WV 25311

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

2

3   TERRY FARLEY

4   West Virginia Office of Miners' Health,

5   Safety and Training

6   1615 Washington Street East

7   Charleston, WV 25311

8

9   JAMES BECK

10   West Virginia Independent Investigation

11   ██████████

12   ██████████

13

14   TIMOTHY R. WATKINS

15   ADM/Assistant Lead Accident Investigator

16   U.S. Department of Labor

17   Mine Safety and Health Administration

18   Coal Mine Safety and Health, District 6

19   1301 Airport Road

20   Beaver, WV 25813

21

22

23

24

25

## I N D E X

1		
2		
3	OPENING REMARKS	
4	By Attorney Wilson	7 - 12
5	WITNESS: CHARLES WARD	
6	EXAMINATION	
7	By Mr. Watkins	11 - 38
8	EXAMINATION	
9	By Mr. Farley	38 - 39
10	EXAMINATION	
11	By Attorney McAteer	39 - 45
12	RE-EXAMINATION	
13	By Mr. Watkins	45 - 48
14	RE-EXAMINATION	
15	By Mr. Farley	48 - 49
16	RE-EXAMINATION	
17	By Attorney McAteer	49 - 51
18	STATEMENT	
19	By Mr. Ward	51 - 54
20	RE-EXAMINATION	
21	By Attorney McAteer	54
22	RE-EXAMINATION	
23	By Mr. Farley	54 - 55
24	RE-EXAMINATION	
25	By Attorney Wilson	55 - 56

I N D E X (cont.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CLOSING REMARKS

By Attorney Wilson

56 - 57

CERTIFICATE

58

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Map	17*
Two	Order 8086905	56*

\*exhibits not attached

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----

ATTORNEY WILSON:

Good morning, Mr. Ward.

MR. WARD:

Good morning. Does he need to swear me  
in?

ATTORNEY WILSON:

We'll swear you in after I make ---

MR. WARD:

Okay.

ATTORNEY WILSON:

--- a preliminary statement.

MR. WARD:

Okay. Excuse me. Okay.

ATTORNEY WILSON:

My name is Bob Wilson, I'm with the  
Office of the Solicitor, the United States Department  
of Labor. With me is Tim Watkins, an accident  
investigator with Mine Safety and Health  
Administration. Also present on the panel are several  
people from the State of West Virginia. And at this  
time I will ask that they state their appearance for  
the record, starting with Davitt McAteer.

ATTORNEY MCATEER:



1 I'm Davitt McAteer, and I'm an  
2 Independent Investigator for the Governor, State of  
3 West Virginia.

4 ATTORNEY WILSON:

5 Terry?

6 MR. FARLEY:

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

9 ATTORNEY KOERBER:

10 I'm Barry Koerber, I'm Assistant Attorney  
11 General, assigned to represent the West Virginia  
12 Office of Miners Health, Safety and Training.

13 MR. BECK:

14 I'm Jim Beck. I work with Davitt McAteer  
15 on the Independent team.

16 ATTORNEY WILSON:

17 Okay. Also present here today in the  
18 room are several members of the investigation team.  
19 All members of the Mine Safety and Health  
20 Administration Accident Investigation Team, and all  
21 members of the State of West Virginia Accident  
22 Investigation Team participating in the investigation  
23 of the Upper Big Branch Mine Explosion, shall keep  
24 confidential all information that is gathered from  
25 each witness who voluntarily provides a statement

1       until the witness statements are officially released.  
2       MSHA and the State of West Virginia shall keep this  
3       information confidential, so that other ongoing  
4       enforcement activities are not prejudiced or  
5       jeopardized by a premature release of information.  
6       This confidentiality requirement shall not preclude  
7       investigation team members from sharing information  
8       with each other, or with other law enforcement  
9       officials. Your participation in this interview  
10      constitutes your agreement, everyone in this room,  
11      your agreement to keep information confidential.

12     Government investigators and specialists

13       have been assigned to investigate the conditions,  
14       events and circumstances surrounding the fatalities  
15       that occurred at the Upper Big Branch Mine South, on  
16       April 5th, 2010. The investigation is being conducted  
17       by MSHA under Section 103(a) of the Federal Mine  
18       Safety and Health Act, and by the West Virginia Office  
19       of Miners Health, Safety and Training. We appreciate  
20       your assistance in this investigation.

21     After the investigation is complete, MSHA

22       will issue a public report entailing the nature and  
23       causes of the fatalities in the hope that greater  
24       awareness about the causes of accidents can reduce  
25       their occurrence in the future. Information obtained

1 through witness interviews is frequently included in  
2 these reports. You should know that if you request  
3 confidentiality, confidentiality will be granted on a  
4 case-by-case basis. Your statement may also be used  
5 in other enforcement proceedings. You may have a  
6 personal representative present during the taking of  
7 this statement, and you may consult with the  
8 representative at any time. You may refuse to answer  
9 any question, and you may request a break at any time.

10 This is not an adversarial proceeding,  
11 formal Cross Examination will not be permitted. If  
12 you have a personal representative, he may ask  
13 clarifying questions. A court reporter is recording  
14 your interview, so please speak loudly and clearly.  
15 If you do not understand a question asked, please ask  
16 that the question be rephrased. Please answer each  
17 question as fully as you can, including any  
18 information that you may have learned from someone  
19 else.

20 Again, I would like to thank you in  
21 advance for appearing here. We appreciate your  
22 assistance in this investigation. Your cooperation is  
23 critical in making the nation mines safer.

24 After we have finished asking questions,  
25 you will have an opportunity to make a statement and

1 provide us with any other information that you believe  
2 to be important. If at any time after the interview,  
3 you recall any additional information that you believe  
4 might be helpful, please contact Norman Page, here at  
5 the Mine Academy. At this time, I would ask that the  
6 court reporter swear in the witness.

7 -----  
8 CHARLES WARD, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
9 AS FOLLOWS:

10 -----  
11 ATTORNEY WILSON:

12 At this time, I'll pass it to Tim  
13 Watkins, to begin asking questions. And just for the  
14 record, do you have a personal representative?

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

16 ATTORNEY WILSON:

17 All right. And you're appearing  
18 voluntarily here, sir?

19 A. Yes, sir, I am.

20 ATTORNEY WILSON:

21 All right. Thank you.

22 EXAMINATION

23 BY MR. WATKINS:

24 Q. Good morning, Charles.

25 A. Morning.

1 Q. We appreciate you being here today. First thing I  
2 need for you to do is to please state your full name,  
3 along with spelling your last name, please.

4 A. Charles W. Ward, W-A-R-D.

5 Q. And could you please state your address and  
6 telephone number?

7 A. [REDACTED]

8 [REDACTED]

9 Q. Appreciate that. Charles, how long have you ---  
10 how long have you worked for MSHA?

11 A. I started with them October the 6th, 2002, going  
12 on around seven and a half years.

13 Q. Okay. And what is your current duty station?

14 A. Currently assigned to the District Office at Mount  
15 Hope. I'm a CMI health specialist.

16 Q. Okay. And how long have you worked at that  
17 location?

18 A. Year and a half.

19 Q. Okay. And as a specialist for a year and a half?

20 A. Yes, sir.

21 Q. Okay. And who is your current supervisor?

22 A. Paul Prince.

23 Q. Just so we'll get to know you a little bit better,  
24 Charles, give us a little bit about your history  
25 mining experience.

1 A. I started in the mines in November 1975, worked  
2 for Westmoreland Coal Company. Went from Westmoreland  
3 Coal Company, to Beckley Coal here in Beckley, West  
4 Virginia, and then went to Maben Energy. Worked in  
5 the Boone County area for several years. I worked for  
6 Massey, right at five years for Massey. I was with  
7 the Elk Run Company. Went from Elk Run to --- oh,  
8 gosh. I guess, went to work at Dakota Mining and left  
9 there in 2002, and came to work with MSHA. And like I  
10 say, done all phases of mining, from a red hat to  
11 boss, roof bolter, shuttle car. Done everything in  
12 the place.

13 Q. Okay. When you worked for Massey, what jobs did  
14 you perform for them? What is your job with them?

15 A. Well, I was hired in as what they called a CMO  
16 equip, or something like that, equipment operator on  
17 the midnight shift, I think. I was at the Outpost  
18 East Mines. We put those mines in, Outpost East and  
19 Outpost West. They're presently Marfork Coal Company.  
20 And worked there a few months on the midnight shift  
21 and then went to day shift, ran a roof bolter. And  
22 then I was later transferred to --- they changed  
23 properties. We went up on a blue pin at I think it  
24 was the Black King Mines. Worked there several years,  
25 and the last --- the last year, I think I was at the

1 Black Knight Mines. I was a pumper at the Black  
2 Knight Mines. And reason I left Massey was I had an  
3 opportunity to get back with --- in the union. I  
4 needed a couple more years to get my union time in,  
5 and had the opportunity to leave to get my union time  
6 in.

7 Q. Okay. Charles, do you have any specialized  
8 training or certifications, mine foreman papers or  
9 anything ---?

10 A. Yes, sir. I'm a West Virginia Mine Foreman, West  
11 Virginia Mine Examiner, West Virginia Shot Fireman.  
12 Completed CMI School here at this Academy with 26  
13 weeks a year.

14 Q. Okay. You mentioned your current job title is  
15 Health Specialist; ---

16 A. Yes, sir?

17 Q. --- is that right? What are your areas of  
18 responsibility?

19 A. My areas of responsibility is probably 75 percent  
20 of my time is reviewing plans. Whenever we have a  
21 problem mine with silica or a dust issue, I'm assigned  
22 to go out and see if I can actually --- you know, see  
23 what the problem is. If that's, you know, doing the  
24 perimeters of the continuous miner, or whatever I'm  
25 looking at, at that particular day, the problem is,

1 then from actually running respirable dust. But  
2 generally, I go to the mines to see if I can actually  
3 see if they're doing their perimeters, if there's a  
4 deficiency in their perimeters, and to see if the plan  
5 that they have presented to us would be feasible for  
6 that particular mechanizing mining unit.

7 Q. Okay. Are you the authorized representative  
8 that's assigned --- that was assigned to the Upper Big  
9 Branch Mine?

10 A. No, sir, I'm not.

11 Q. Okay. When was the last time that you actually  
12 inspected there?

13 A. Well, actually inspected, I think I went --- it  
14 was around March. I'm not real sure of dates either,  
15 27th or 29th I was assigned to run respirable dust.  
16 Myself and CMI Clyde Gray went to the --- what they  
17 call the south portal section. I think that was MMU  
18 66, and 67. I ran respirable dust. That was the last  
19 day that I was actually --- and the reason that I was  
20 assigned to go to the mines that day was to help  
21 complete the E01 inspection. They was behind on their  
22 respirable dust.

23 Q. Okay. Let me go to this map here real quick.

24 A. Yes, sir.

25 Q. I can use this ---



1 A. Okay.

2 Q. --- for what you're talking about.

3 OFF RECORD DISCUSSION

4 A. Okay. Right here. Yeah. Like I say, the day  
5 that I --- I think it was either the 27th, or 29th. I  
6 can't remember exactly what day it was.

7 ATTORNEY WILSON:

8 Let me just stop for one second.

9 A. Yes, sir.

10 ATTORNEY WILSON:

11 If we're going to be referring to the  
12 map, let's keep in mind that when you say I was here,  
13 that's referencing ---.

14 A. Yes, sir. I'll explain what entry I traveled that  
15 day.

16 ATTORNEY WILSON:

17 Okay. You want to make it Exhibit One?

18 (Exhibit Ward One marked for  
19 identification.)

20 MR. WATKINS:

21 Sure.

22 ATTORNEY WILSON:

23 Okay. That will give you a chance to  
24 keep these matters straight here.

25 OFF RECORD DISCUSSION

1 BY MR. WATKINS:

2 Q. I wanted to get that stuff out of the way,  
3 Charles.

4 A. Okay.

5 Q. I want to try to get down ---.

6 A. Oh, well. Like I say, I was told to rerun --- to  
7 run respirable dust at that mine to help on the O1.  
8 And myself and Clyde Gray, CMI Clyde Gray, we arrived  
9 at the mines prior to starting time on dayshift, and I  
10 don't really recall the day, 27th or 29th. I know you  
11 all have my notes. I arrived at the mines, informed  
12 Gary May, he was like the mine foreman,  
13 superintendent, that we was here to run respirable  
14 dust. Was asked, did he have a full crew --- it was a  
15 super section, you know, side by side, two MMUs, and  
16 he said, yeah, we should have people to run our  
17 respirable dust. So I can't remember even who was the  
18 foreman there, but we went --- we gave our pumps out  
19 to our miners. We rode the mantrip in, which we left,  
20 you know, right out from the shop area, and we  
21 traveled the secondary gateway. That would be the  
22 track entry.

23 And we traveled along the track all the way up to  
24 the section, which would probably be about, I guess  
25 the orange is the section there. And they was --- we

1 got off the mantrip, walked towards the section. And  
2 this looks like the area that we was on, this little  
3 panel here to the right. They was just --- had  
4 started the ---.

5 Q. Can you designate on that?

6 A. I think we was --- we was right in on this panel  
7 here that day. And like I say, this looks like it.  
8 And myself and Clyde Gray, we made an imminent danger  
9 run across our faces.

10 Q. All right. Let me just ---.

11 A. Yes, sir.

12 Q. Just for the record, you put your initials ---

13 A. Yes, sir.

14 Q. --- and 5/10/10?

15 A. Yes, sir. That's for --- I'm pretty sure that's  
16 the area that we was at that day, like 066. I'm  
17 writing --- 066 and 067 was the two MMUs that was  
18 running at that particular section. Made our imminent  
19 danger run across the faces. They had just turned a  
20 section right-handed. The belt line, they was ---  
21 dumping, they had their feeder set, and they was  
22 dumping --- this belt head wasn't even set yet. And  
23 like I said, we made our imminent danger run, checked  
24 our pumps, started doing our perimeters on the  
25 continuous miner, our on-shift perimeters. I cited

1 --- that particular day, I cited them for their --- on  
2 their methane control dust plan, the miner was in ---  
3 was in terrible condition. I can't exactly remember.  
4 There was sprays that was stopped up, there was a  
5 fitting busted on the miner. And it was just obvious  
6 that they weren't doing their on-shifts. That's what  
7 I felt. And I wrote their --- they weren't  
8 maintaining their sprays. That was the condition that  
9 I cited that day on that particular miner.

10 Finally, we got in the coal at 11 o'clock that day  
11 and we ran --- I think they only needed --- to get  
12 their 80 percent, it was very low ---. I don't  
13 recall.

14 Q. Okay.

15 A. But that was --- that's the gist of it. I don't  
16 know what more I can tell you. Like I say, we  
17 traveled --- like I say, we traveled the secondary  
18 escapeway from this ---. What they told us, this was  
19 the south portal, which I'm not real familiar with the  
20 mine. I've only been there a couple times, just went  
21 when I was directed to, you know, if they had a  
22 problem or whatever, was directed that day the last of  
23 March, went to that mine to do the respirable dust  
24 order. And like I say, Clyde Gray, myself, we ran  
25 dust on 066 and 067.

1 At the completion of the day, you know, we  
2 gathered our pumps, and traveled back out the  
3 secondary escapeway, by rail mantrip to the surface.  
4 I issued my citations and offered them conference  
5 rights, and left and departed the mines, and went back  
6 to headquarters. So that's all I know, the question  
7 that you asked me, that I can answer that.

8 Q. You might have mentioned it, and I might have  
9 missed it, but did anyone from the company travel with  
10 you?

11 A. Yes, sir.

12 Q. And who was that? Do you know who that was?

13 A. Frank --- wait a minute, Frank Foster --- no, Rick  
14 Foster.

15 Q. Rick Foster?

16 A. Yeah, he was the mine foreman. Later on that day,  
17 Gary May came up on a section, which he would be like  
18 a block superintendent. And I have had dealings with  
19 him prior. And he came up on the second --- we hadn't  
20 run --- we hadn't even got into the coal yet, and he  
21 was asking me what --- you know, what situation I was  
22 finding. And I told him and Rick both, I called them  
23 to the side, and I explained to Rick and Gary May  
24 that, you know, here are these brand new miners,  
25 miners ain't several months --- couple months old, and

1 they were in terrible condition, you know, the water  
2 sprays, the fittings, you know. It was just not  
3 acceptable. It was just not acceptable and --- 'cause  
4 I'm a coal miner.

5 Q. Uh-huh (yes).

6 A. That's the bottom line. I'm a coal miner. And  
7 you come in, you send your men to work and that, and  
8 they're down at 11 o'clock fixing sprays. It was just  
9 not acceptable to me.

10 Q. When you had this conversation with him, what was  
11 their reply, or their response?

12 A. Well, their response was, it's always the same  
13 response, you know. It's hard to get good people, you  
14 know. That was their answer.

15 Q. Now, you said you --- they started running about  
16 11 o'clock?

17 A. Yes, sir.

18 Q. So they was down for how long?

19 A. Well, I think we went underground at seven o'clock  
20 that morning. And it was probably --- by rail trip,  
21 it was a 20, 20-minute ride to the section, ride room  
22 section, the foreman had a safety talk with his  
23 miners, and went over the roof control plan, you know,  
24 adopt ---. Set right there, talked to the miners  
25 myself, you know, just because these are miners, we

1       intimidate 'em, you know, just by the patch that we  
2       wear on our jacket, on our outfit. And we --- you  
3       know, we told them just do their normal thing, you  
4       know, we're here to run respirable dust, and, you  
5       know, we're here to help them if they had any  
6       questions. We're not here to point fingers. More or  
7       less sort of ease 'em so we didn't --- they won't ---  
8       we won't be in there in harm's way, when they start  
9       running coal. So that was ---.

10      Q. You mentioned part of your job is --- the biggest  
11      part of your job is to look at the plan, review the  
12      plan?

13      A. Yes, sir.

14      Q. So you're familiar with the plan that was in  
15      effect at UBB at that time?

16      A. Yes. I had --- I always carried my plans with me,  
17      but, you know, to recall them right now, ---

18      Q. No, I ---

19      A. --- I've seen so many plans now ---.

20      Q. --- understand.

21      A. Yes, sir.

22      Q. Okay. But just in general, I guess. Did you ever  
23      have meetings with the company in regards to those  
24      plans, other than the mine business? Like, for  
25      example, did the company come into the office and talk

1 to you about their plans?

2 A. Generally that's handled with the supervisor, or  
3 the AD, assistant district --- technical district  
4 manager. That would be either Rich Kline or Paul  
5 Prince. And prior to that it was Otis Matthews. I  
6 worked for him. To say an actual meeting with me?

7 No, sir.

8 Q. Okay.

9 A. When I was at the mine site, you know, we would  
10 discuss what I was, you know, the reason I was  
11 here, ---

12 Q. Uh-huh (yes).

13 A. --- and their current approved plan to assure that  
14 they was abiding with the plan.

15 Q. Okay.

16 A. But then like I say, the day that I was there, you  
17 know, the condition of the miners, and water sprays,  
18 it was just --- it was just alarming to me that, you  
19 know, that they know --- the company --- they can  
20 track our inspection. They know what generally we're  
21 going to do. And they knew this was getting to be the  
22 end of the quarter, and the miners weren't --- they  
23 weren't even ready to go in the coal. So it was just  
24 disheartening to me that day when I went to the mine.

25 Q. Did you have a chance to check in the record books



1 before you went down?

2 A. I always check my on-shift examination book prior  
3 to me entering the mines. And I always document what  
4 I see in my notes. That would generally be what I  
5 would check, you know, like I say, just a one-day  
6 visit at the coal mines.

7 Q. Do you recall, from your observation underground,  
8 did they reflect what you saw in the books that  
9 morning ---?

10 A. The best I can recall, yes, sir.

11 Q. Okay.

12 A. Also, I remember that day ---. And this is just  
13 --- this is just speaking from a second person. I  
14 think Mr. Gray, he issued a LOB, last open break,  
15 reading on his side of the section. Low air. I think  
16 there was like ---. What I recall, there was like  
17 7,000 or maybe even less than that on the right side.  
18 They had to go in there and do --- tighten their  
19 curtains up to get --- to correct the violation. I  
20 remember I was --- I was on the left side of the  
21 section. During my imminent danger run, I didn't have  
22 no problem with air or anything like that. But I  
23 remember Mr. Gray --- excuse me, he issued a citation  
24 for low air that particular day on the right-hand  
25 side.

1 Q. Okay. You mentioned yourself and Mr. Gray being  
2 on this section.

3 A. Uh-huh (yes).

4 Q. Was there any other MSHA people that you know of  
5 in the mine that day?

6 A. Not that I know of. I mean, I know we arrived  
7 prior to starting time.

8 Q. Okay.

9 A. And me and Mr. Gray, we went underground, we rode  
10 with the coal crews underground to the section.

11 Q. This wasn't part of the ventilation group  
12 that ---?

13 A. No, sir. It was just respirable dust. Just to  
14 get the dust run for that E01 inspection.

15 Q. Okay. Let's talk about --- let's talk a little  
16 bit about what you observed on the --- in the section  
17 that day, and on your way in as far as rock dust. How  
18 was the mine rock ---?

19 A. Well, like I say, I was in a covered mantrip,  
20 from ---. I had entered that south portal just in  
21 like the track. What I can --- best I can recall, I  
22 didn't see no issue with the rock dust. You know, we  
23 was --- we was in a mantrip. And you sit on those  
24 Brookvilles, you're sitting, you know, off side and  
25 operator side. And I didn't see no issue with the

1 rock dust, the best I can recall.

2 Q. Okay. I know you talked about Gray issuing a  
3 violation on the other side.

4 A. Uh-huh (yes).

5 Q. Were there any other problems with ventilation?

6 A. He might --- best I can recall, I know he issued  
7 the low air.

8 Q. You didn't have --- you didn't have any ---?

9 A. No, sir. No, sir. The perimeter was my issue the  
10 day that I went to the section. Once, you know, they  
11 got that corrected, you know, they had sufficient air,  
12 you know, to meet their minimums of their plans, and  
13 we --- they mined coal.

14 Q. Okay. How about the ventilation problems coming  
15 in? Are they well-maintained, well-built?

16 A. The best I can recall, which you know, I wasn't  
17 really there to investigate that. I was there, you  
18 know, like I say, just sitting in a mantrip. I didn't  
19 see nothing out of the ordinary.

20 Q. Okay. Up on the section, they were --- how many  
21 breaks to the face?

22 A. That day there, they had --- like I say, they had  
23 turned a section. And they was wanting to --- see,  
24 within --- the requirements of the law, the first 600  
25 feet after you turn that section, they did not have a

1 control ---. And it would have been a little bit ---  
2 I thought it was a little bit ---. This control right  
3 here, and this, and I'm looking here in the primary  
4 escapeway here, intake air.

5 Q. How about that ---?

6 A. This control right here was not up that day, or  
7 this one. They got a stopping right there, which  
8 shouldn't have been, a stopping but ---.

9 Q. Okay.

10 A. Oh, I see that. Okay. These two controls were  
11 not in place, and that's showing off of that little  
12 panel, and they were not up that particular day.

13 Q. Okay.

14 A. But, well, you know, according to the law, they  
15 can go 600 feet with temporary controls that day, you  
16 know, just turning the section. But to get the air  
17 for Mr. Gray, they constructed these two stoppings  
18 here. And like I say ---.

19 Q. Those are the ones you're marking ---?

20 Q. Yes, sir.

21 A. Okay.

22 Q. They constructed those two permanent controls in  
23 their intake to get the air to the left side. Well,  
24 excuse me, the right side, but the mine foreman, Rick  
25 Foster, ---

1 A. Uh-huh (yes).

2 Q. --- he was the one that brought people in. He  
3 brought his people and they constructed those two  
4 stoppings right here, prior to --- while they was  
5 doing their perimeters on their mine.

6 A. But I can recall that. And that was --- like I  
7 say, it was March 27th or 29th. I don't exactly  
8 remember what date it was.

9 Q. How about air quality, methane, oxygen?

10 A. I did not detect no methane in the working face.  
11 During my imminent danger run, it was zero methane,  
12 20.8 oxygen. There was a positive movement. Didn't  
13 recall any methane issue there at that mine on the day  
14 that I was there.

15 Q. Okay. How about the roof? What were the roof  
16 conditions?

17 A. It was damp. The roof, I didn't --- best I can  
18 recall, I don't --- nothing stands out in my memory,  
19 but I remember, you know, it was damp.

20 Q. Okay.

21 A. And see, when I was there that day, these two ---  
22 like this number one. And I'm going just highlight  
23 them in orange. And number two, they hadn't even  
24 started yet. They had a --- they had this number  
25 three, which I'm marking in orange, it was started.

1 They had this --- and I'm going to highlight what I  
2 seen that day. The number four was up and connected  
3 with the number five, and we're talking at survey  
4 span, looked like it's 24, 555, and this --- that was  
5 connected five --- five to four was connected, and  
6 five to six was connected. They had started a  
7 crosscut, six to seven, and number seven looked like  
8 it was in one cut. So that's more or less the way the  
9 section looked the day that I was there.

10 Q. Okay. You said damp. Was anything left in the  
11 water --- anything built up?

12 A. No, sir. No. Not that I can remember. It was  
13 just wet, you know, nothing out of the ordinary.

14 Q. Okay. Change gears a little bit with you,  
15 Charles, and just talk about some of the --- maybe  
16 some of the previous inspections.

17 A. Uh-huh (yes).

18 Q. What areas of the mine have you previously been in  
19 to?

20 A. Well, I was sent to this mine, and I can remember  
21 things but not dates. I was sent --- it seemed like  
22 it was in summertime of last year. I was sent there.  
23 They was having a issue with silica, and that's ---  
24 you know, we have a list come out every week that  
25 mines that has silica problems that exceeds a hundred

1 micrograms, we try to pay a mine visit to see what ---  
2 if we can detect something wrong. And I was sent out  
3 there. And at that particular time I was working for  
4 Otis Matthews. And went to this --- back to this  
5 south portal, which would be the left-hand side coming  
6 out of the bath house, or the shop. And I traveled  
7 back to the section, which I can't recall what area of  
8 the mines I was at, you know, they had mined so much.  
9 But this here, you know, like I say, previously I can  
10 almost picture this, but I don't know exactly where I  
11 was at, referring to your map. And I was there at one  
12 time.

13 Q. Down in the portal section?

14 A. Yes, sir. That same area. And I think 66 and 67  
15 was not the MMU numbers. I don't recall what the two  
16 MMUs that I visit that day.

17 Q. So your other visits have all been to the same ---

18 A. Yes.

19 Q. --- to the same area?

20 A. Yes, sir.

21 Q. Did you observe the same conditions then? We're  
22 talking about methane and ---.

23 A. Yes, sir. Well, what I can remember, they was ---  
24 they had low vein equipment at that particular time.

25 Q. Uh-huh (yes).

1 A. And they was wanting a plan for 66 and 67, which  
2 they had applied for, methane control dust plan. And  
3 the MMU that I went to visit that day had a high  
4 silica problem. And I talked to Everett Hager that  
5 morning, you know, to tell him what my purpose of my  
6 visit was. And he was --- and he said that the  
7 section was --- when they ran respirable dust, it was  
8 low, and they probably got the sandstone dust off of  
9 the roof, what made the silica count high. Well,  
10 little did I know they had already moved that section,  
11 and Everett told me --- Everettt Hager told me they  
12 had moved a section. It was in a different ---  
13 another area of this south portal. And I told  
14 Everett, Everett Hager, I said, why I'll go up there  
15 and just see if I can see anything anyways.  
16 So they brought me --- and I remember exactly,  
17 they brought me in from the south ---. I went into  
18 the south portal. Looking at the map, I traveled the  
19 track secondary into the coal mine and we stopped  
20 right here. And I'm going to refer to that as,  
21 probably survey spad 85, here in your track entry.  
22 And I was accompanied with Rick Foster that --- Frank  
23 Foster --- Rick Foster. And we walked through these  
24 doors that's indicated on this map. So as soon we  
25 walked through the doors ---. So we must have



1       been ---. The section at the time I was looking at  
2       since if I go through the doors, and I'm going to  
3       refer to survey spad 24105, that was probably as far  
4       as that section had advanced back, you know. That was  
5       last year. Summer of last year. So that would be the  
6       second visit that I visited there at that coal mines.

7       Q. You mentioned going through doors?

8       A. Uh-huh (yes).

9       Q. Do you know of any problems the mine had, as far  
10      as leaving equipment doors open?

11      A. No, sir. Not at that particular time that I was  
12      visiting that coal mine.

13      Q. Uh-huh (yes). What about any other time, as far  
14      as any problems? Did they ever leave the doors open  
15      or ---?

16      A. No, I couldn't truthfully answer that.

17      Q. Okay. Thank you. Have you ever visited the  
18      longwall, or the tailgate or any gate sections?

19      A. No, sir. No, sir. The extent of my inspection,  
20      as being at this portal here, which they referred to  
21      as the south portal, or portal section, that's the  
22      extent of my inspection. Only two times I ever  
23      visited the mine prior to the disaster they had.

24      Q. What about complaints? Have you ever investigated  
25      any complaints at this mine?

1 A. No, sir. No.

2 Q. Are you aware of any complaints involving this  
3 mine?

4 A. No. Not myself.

5 Q. Okay. Do you know of any ---?

6 A. No, sir.

7 Q. Okay. In your travels at the mine at any time,  
8 did any of the miners or anybody talk to you about  
9 their concern for unsafe conditions or anything like  
10 that?

11 A. No, sir.

12 Q. Okay. Are you aware at any time for the --- maybe  
13 the oncoming --- oncoming shift was cancelled or even  
14 delayed through some kind of mining conditions?

15 A. No, sir.

16 Q. At any time during your inspection, Charles, did  
17 you personally have any concern regarding the mining  
18 conditions there at Upper Big Branch Mine?

19 A. No, sir.

20 Q. I'm going to change gears on you here a little  
21 bit, I'm going to go to the April 5th accident. Okay?

22 A. Uh-huh (yes).

23 Q. Can you tell me when and how you were notified of  
24 the accident?

25 A. My boy told me that.

1 Q. Okay.

2 A. His name is [REDACTED]. And I was sitting there at  
3 the house, and he came home, which he worked --- at  
4 that time, he was a contractor, and he worked for Elk  
5 Run Coal Company. And [REDACTED] came in the house, and  
6 said, daddy, he said the mine --- he said Upper Big  
7 Branch blowed up. I said [REDACTED], where'd you hear that  
8 from? And he works day shift, and he saw the traffic  
9 going down Route 3. And at that --- a friend of his  
10 that works at those mines called him and told him that  
11 the mines had blowed up. And I don't know who the boy  
12 was.

13 At that time, I got the phone and I called my  
14 supervisor, Paul Prince. I said Paul, they said ---  
15 [REDACTED] just came in and said they had an explosion here  
16 at this coal mine. Paul said that he'd get back ---  
17 get back with me in just a minute. So he called Rich  
18 Kline. And Rich Kline told him, yes, they was ---  
19 there had been an incident there at that coal mine and  
20 there was people at the mines or on their way to the  
21 mines. And so Paul called me, and told me. And I  
22 told him, you know, I was available, because I was  
23 just like everyone else, just anything I could do to  
24 help. And then the next day I went to work and I was  
25 assigned to Upper Big Branch for eight days during the

1 recovery of the miners.

2 Q. Okay. Do you remember about what time it was when  
3 your boy told you?

4 A. It was 4:00, 4:30 that he come --- he usually  
5 comes home --- that day.

6 Q. Okay. So the first time you actually arrived at  
7 the mine following the, you know, mining accident, do  
8 you know what day that was?

9 A. That would have been the sixth on evening shift.  
10 I worked --- I think I reported to the mines at three  
11 o'clock that evening and worked for --- my supervisor  
12 was Dave Morris.

13 Q. Okay. Who was it that assigned you to go to the  
14 mine?

15 A. My supervisor, Paul Prince.

16 Q. And what were your responsibilities, what job did  
17 he give you?

18 A. Dave Morris, the first --- first couple of days I  
19 was called a runner. I was running from the mines to  
20 Bandytown with the air samples that they was  
21 collecting. And then one day I was --- I guarded the  
22 records down at the safety office at Upper Big Branch.  
23 And then the remaining time, I worked the command  
24 center taking notes, the last few ---. The last days  
25 I was there, I was in command center.

1 Q. So you got there on the sixth. Did you work all  
2 the way through until the rescue and recovery  
3 operation was over?

4 A. Yes. Well, we normally try to work a eight-hour  
5 shift at the mines. We were relieved out after eight  
6 hours by another crew coming in. And we would, you  
7 know, brief them what was taking place. And generally  
8 there was a man that would take my position, you know,  
9 either as a runner or as a guard, or in the command  
10 center.

11 Q. But you were in there every day, ---

12 A. Yes, sir.

13 Q. --- stayed up to the end?

14 A. Yes, sir. I was there every day.

15 Q. Who was in charge of the mine site when you  
16 arrived, for MSHA and the State, and the company? On  
17 the 6th, when you arrived, who was in charge?

18 A. Well, I reported to Joe Dooley. And I worked ---  
19 at that time, on evening shift, Hubert Payne I worked  
20 for. Well, he was like the ADM there. That's the  
21 name I can really --- it was a District 4 manager, and  
22 I can't recall his name that was on evening shift, but  
23 that's ---. Like I say, Hubert Payne and then Dave  
24 Morris was the ones that I usually would talk to  
25 after, you know, reporting to Joe Dooley, that, you

1 know, we --- that I was there. And then we'd wait  
2 until everyone showed up at the mines, and then Joe  
3 Dooley would brief us where he had people at, and we  
4 would try to relieve those people out so they could go  
5 home.

6 Q. Okay. Does anything, you know, stick out in your  
7 mind, as far as the events that happened, you know,  
8 while you were in the command center taking notes, or  
9 even after ---?

10 A. No, sir.

11 Q. Okay.

12 A. Nothing out of the ordinary.

13 Q. So you had somebody from the company that was in  
14 the command center ---

15 A. Yes.

16 Q. --- at the mine? Who was that?

17 A. Well, I worked for Chris --- well, in the command  
18 center there was Chris Prater. He was actually  
19 running the command center a day or two, that, you  
20 know, he would communicate underground with the rescue  
21 teams. Then Frank Foster, he ran the command center,  
22 you know, communication. And then there was, oh,  
23 gosh, another feller's name. Oh, Mr. Frampton, Gary  
24 Frampton. And generally, those was the three men at  
25 the times that I was working in the command center.

1       Then the actual last day, when we got the last miners  
2       out, Chris Adkins communicated with Command Center.

3   MR. WATKINS:

4   Okay. You have any?

5   MR. FARLEY:

6   Maybe a couple of questions.

7       EXAMINATION

8       BY MR. FARLEY:

9       Q. You said your job duties currently, you're  
10      primarily involved with the respirable dust ---?

11     A. Yes, sir.

12     Q. Are you involved in any ventilation plan approval?

13     A. No, sir.

14     Q. Okay.

15     A. But what I will say is, when we review a plan, we  
16     have to coordinate with the ventilation, if they put a  
17     statement in there about, you know, three open breaks  
18     or whatever, we have to assure they have an approved  
19     plan when they put a statement like that in there,  
20     making a control dust plan.

21     Q. Okay. All right. Are you aware of or familiar  
22     with any significant ventilation plan changes at the  
23     UBB Mine in the months preceding the ---?

24     A. No, sir.

25     Q. Okay. Also since you've visited the UBB Mine,

1 were you aware that when you entered the property at  
2 Montcoal, you cross a bridge, right, and there's a  
3 gate guard there?

4 A. Yes, sir.

5 Q. Had that gate guard been there last year, before,  
6 other times you were there ---?

7 A. Yes, sir. Like I say, I was there prior to the  
8 March date, I was there, like in the summer time that  
9 year. There's always been someone there at the gate.

10 Q. Uh-huh (yes).

11 A. And generally they won't even --- they see your  
12 vehicle, they'll raise the gate up and you just go on  
13 through.

14 Q. Okay. Would you consider it likely that they  
15 probably called the mine and announce your presence?

16 A. I can't answer that truthfully.

17 MR. FARLEY:

18 I don't think I have anything else.

19 EXAMINATION

20 BY ATTORNEY MCATEER:

21 Q. Mr. Ward, my name is Davitt McAteer. Would you be  
22 surprised if they didn't call the office?

23 A. You know, that has been accused at other  
24 operations, but, you know, they're always going to say  
25 that they don't, so I honestly don't know how to



1 answer that.

2 Q. You said you sometimes consulted the ventilation  
3 plans if there was one that had an impact on the work  
4 that you were doing.

5 A. Uh-huh (yes).

6 Q. Did you do that in this case?

7 A. No, not really, because that was just --- the plan  
8 that --- on this section here, these was only 20 foot  
9 cut plans.

10 Q. Okay.

11 A. They were pretty generic plans, nothing out of the  
12 ordinary that I needed to confirm with ventilation, or  
13 even roof control, to see if I needed to gather  
14 anymore information.

15 Q. And do you know who drew up their plans?

16 A. Yeah. We dealt a lot with Eric Lilly. He's a  
17 member of Massey and their engineering team. Matt  
18 Walker, and Heath Lilly, they're all part --- they're  
19 the Route 3 Engineering.

20 Q. Is that an independent company?

21 A. No, they're based right there, and office there.

22 Q. The Route 3 Engineering's just a location?

23 A. Yes, sir. We just call it ---. Yeah.

24 Q. Right. Okay. Which contractor does your son work  
25 for?

1 A. At that present time he was working for David  
2 Stanley Consulting. He has made his --- he's a  
3 Certified Miner in the State of West Virginia, and now  
4 he works for the company.

5 Q. Okay. [REDACTED] works for Massey now?

6 A. Yes, sir. Elk Run Coal Company.

7 Q. When you said that the miners --- you didn't have  
8 any recollection of miners talking to you, were they  
9 any different than miners in other mines, or about the  
10 same?

11 A. About the same.

12 Q. Did you ever run across --- during the visits,  
13 particularly in March, did you encounter any unusual  
14 methane ---? You said your reads were not, but did  
15 you have any indication that there was any methane  
16 deposits or methane --- being run across, or any  
17 conversation with anybody?

18 A. I never did could recall that. Like I say, I  
19 would review the pre-shift book. I'd go to this  
20 section, make my imminent danger run across the face,  
21 and I did not detect any methane, at any working  
22 places on the south portal of this coal mine.

23 Q. And the pre-shift books, did they indicate that  
24 these mines have been shift pre-shifted?

25 A. Yes, sir.

1 Q. They indicated that preventative measures had been  
2 taken, or accidents have been taken?

3 A. Well, like I say, if it would have been an  
4 infraction in the pre-shift examination, they would  
5 have been issued a citation. So there was no --- I  
6 didn't see nothing that was out of the ordinary in the  
7 pre-shift book. It was completed according to our  
8 regulations and the State.

9 Q. Frequently with phrases like all okay, or  
10 everything okay, or something like that?

11 A. Well, none observed. I remember seeing a none  
12 observed. Like there were no hazards observed,  
13 something in that line being enter in the book.

14 Q. Sure. You said that the conditions alarmed you a  
15 little, particularly in regard to the miner?

16 A. Yes, sir.

17 Q. What kind of miner was it?

18 A. It was a Joy 1212 miner.

19 Q. And you said that it was your recollection that  
20 that was a pretty new machine?

21 A. Yes, sir, 'cause after my visit in --- after the  
22 summer, we approved this 66 and 67 methane control  
23 dust plan. In my visit in the summer, like I say that  
24 was in this area. We're looking at the map referred  
25 to, they had some old low vein equipment.

1 Q. Uh-huh (yes).

2 A. Some 21 shuttle cars and 1410-AA miners. And  
3 their new equipment was parked to the side, in the air  
4 force --- waiting to get an approved plan to put this  
5 new equipment in service. And we had not approved  
6 that at that particular time. They just kept using  
7 their old equipment, the day that I was there in the  
8 summer that year.

9 Q. And a Joy 1212, is that a low ---?

10 A. No, sir. That would be a higher ---.

11 Q. So they were taking higher cuts?

12 A. That's what they was taking, what I recall. The  
13 reason that they was wanting the bigger equipment,  
14 they was taking a binder with a coal seam underneath  
15 it.

16 Q. Okay.

17 A. So it was generally --- after mining like that, it  
18 was probably six to seven foot high in that area. And  
19 the day that when I was on the section in March, it  
20 was probably six to seven foot high also that time.  
21 So they was taking both seams when they was mining  
22 with the bigger equipment.

23 Q. Do you recall offhand the seams' names?

24 A. No.

25 Q. You suggested also that the on-shift examination

1 was of concern, that you had a concern about the ---.

2 A. Yeah. My problem was, was the day that I talked  
3 to Gary May and Rick Foster, you know, the conditions  
4 that I found that miner in that day that I ran dust,  
5 this stuff just don't happen overnight, you know, they  
6 were not maintaining their sprays on their miners.  
7 And that's exactly what I told Gary May and Rick  
8 Foster that day.

9 Q. You're suggesting that the level of the dust, and  
10 the type of equipment breaks, problems, occurred over  
11 a period of time, and it would be accumulative, it  
12 wouldn't be just one shift?

13 A. As many sprays they had stopped up, it was over a  
14 period of time. It just didn't happen on one shift.  
15 That was my opinion.

16 Q. Okay. Now, you said you offered conference  
17 rights, or when they came out, before you wrote the  
18 --- when you were writing the paper?

19 A. After I issue the paper, I always explain to the  
20 operator, that they have conference rights on anything  
21 that I issue.

22 Q. And who do you explain that to?

23 A. Generally it's the mine foreman. At that  
24 particular time it was Rick Foster.

25 Q. And what was their response to the ---?

1 A. No remark.

2 Q. They used that phrase?

3 A. No, that's just what I put in my notes.

4 Q. Okay.

5 A. They did not respond back to me.

6 Q. You mean they just didn't say anything.

7 A. Yes.

8 Q. Okay. Are you familiar with Bill Reed?

9 A. Bill Reed, no, sir.

10 ATTORNEY MCATEER:

11 Okay. That's all the questions I have.

12 Thank you, Mr. Ward.

13 ATTORNEY WILSON:

14 All right. Let's take a short break, and

15 then we'll come back on, and then we'll finish back

16 up.

17 SHORT BREAK TAKEN

18 BY MR. WATKINS:

19 Q. Mr. Ward, just a few follow-up questions, some

20 clarifying questions, if you don't mind.

21 A. Yes.

22 Q. Going back to your observations, on the section in

23 the face area when you was underground. Did you have

24 an opportunity to watch the miner actually run coal,

25 cut coal?

1 A. Yes, sir.

2 Q. When you was observing this, did the methane  
3 levels change as he was cutting coal?

4 A. The best I can recall, it would maybe show one or  
5 two-tenths on the methane monitor itself, when it was  
6 actually cutting coal.

7 Q. Uh-huh (yes).

8 A. But that's just the best I can recall.

9 Q. That's the most you've ever seen is maybe a couple  
10 tenths?

11 A. Yes, sir.

12 Q. Do you know if they were using a blowing curtain  
13 or exhaust curtain?

14 A. This was exhaust curtain.

15 Q. Okay. How about the plan, did the plan have ---?

16 A. No, sir. It was all exhaust ventilation,  
17 according to their approved methane control dust plan.

18 Q. Okay. The controls in the face area when you were  
19 underground on the section, were they new curtains,  
20 old curtains? You know, could you tell the curtain  
21 had been used or ---?

22 A. Best I can recall, it looked like they had been  
23 using the curtain, yes, sir.

24 Q. Okay.

25 A. But that day there, they always take --- you know,

1       excuse me, extra curtain with 'em, so there was  
2       probably some new rolls also. I think in one  
3       particular place I can remember, they had to take out  
4       what was in the actual face. And they put a new piece  
5       in that would just more or less hold the air in place,  
6       instead of just those short pieces.

7       Q. You mentioned an inspection that was on the other  
8       side issued a citation for low air?

9       A. Yes, sir.

10      Q. Once the company had established air flow on his  
11      side, ---

12      A. Yes, sir.

13      Q. --- did you take another air reading on your side?

14      A. Yes, sir, I did.

15      Q. Okay.

16      A. And like I say, I took my air reading and I  
17      remember this as plain as day. When they started this  
18      section, I was probably here at this survey spad 2453.  
19      That would actually have been the last open break air  
20      for that MMU I was at, 'cause one or two hadn't  
21      started yet.

22      Q. Did your air reading change any?

23      A. No, I didn't see no difference in my air reading,  
24      no, sir.

25      Q. Okay. And you mentioned that you coordinated with



1 the ventilation department as far as the ventilation  
2 plan ---?

3 A. If I had a question, yes, sir, I would always go  
4 down and ask them. If they had disapproval ---. This  
5 letter, as it were, you know that would ---. And most  
6 of the ---. About the only time that I would have to  
7 talk to ventilation or ask them a question is if they  
8 had the statement about three open breaks, they shall  
9 maintain 13,500. I would go down and check to see if  
10 that actual --- they did have a proof for 13,500.

11 Q. Do they come to you and ask for your ---?

12 A. On occasion they have. I know --- not on this  
13 particular coal mine, but I know that they've come up  
14 and, you know, I pulled a plan, we'd sit and I'd try  
15 to, you know, discuss to see if they have an issue  
16 when they was doing their approval on certain things,  
17 but I couldn't recall which ones --- not on this  
18 particular area here, no, sir.

19 RE-EXAMINATION

20 BY MR. FARLEY:

21 Q. Again, the last time you were there prior was  
22 March 27th ---?

23 A. Yeah. 27th or 29th. I can't recall.

24 Q. Okay. Now, on the day that you were there, from  
25 the time you arrived at the mine south parking lot,

1 approximately how much time elapsed before you  
2 actually were able to get underground?

3 A. Well, let me see. We probably arrived ---  
4 probably 45 minutes prior to their starting time. I  
5 usually like to get there, you know, look at my books,  
6 and get with the foreman to see if we can --- review  
7 the map. I'm just speculating, we probably left the  
8 surface --- it was after 7:00, so we was a little bit  
9 behind, actually leaving the surface, but, we was ---  
10 I mean, we was at fault, you know, making sure we had  
11 our pumps and everything.

12 Q. Yeah. I'm not suggesting who is at fault.

13 A. Yeah. But that's my --- one of the delay was, you  
14 know, just ensure that we had all of our pumps on our  
15 maps.

16 Q. Okay. And when you entered the mine, did you ride  
17 in with the coal production ---?

18 A. Yes, sir. Rode inside with the mine --- with the  
19 mantrip --- rode with the miners on the mantrip, yes,  
20 sir.

21 RE-EXAMINATION

22 BY ATTORNEY MCATEER:

23 Q. Just one question. You suggested in the command  
24 center, that Chris Paton ---?

25 A. Adkins.

1 Q. Chris Adkins?

2 A. Uh-huh (yes).

3 Q. Was he there?

4 A. Yes.

5 Q. And Frank Foster?

6 A. Yes, sir.

7 Q. There's Gary Foster, but Frank Foster ---?

8 A. Frank Foster from Magnum.

9 Q. I thought he left the company in 2002?

10 A. He works for Magnum, doesn't he, Frank Foster?

11 Q. I think so. But I ---.

12 A. Yeah. That's who was there. Yeah, Patriot ---.

13 Q. Yeah.

14 A. He was there helping, 'cause he had his rescue  
15 teams there.

16 Q. Oh, okay.

17 A. That's the reason that they was --- and like I  
18 say, they had Chris Prater one night.

19 Q. Chris Prater?

20 A. Yeah.

21 Q. And then you said Chris Adkins was there the last  
22 day?

23 A. Well, he took over the command center there the  
24 last few hours. They was kind of getting a plan to  
25 get all the rescue teams out of the coal mine. So

1 Chris got on the command center and directing the  
2 mantrips to get the rescue teams out there.

3 Q. Okay.

4 A. That's like the last night anyone was underground.  
5 But like I say, Frank, he was there. I saw Frank  
6 Foster. He was there, about every night I was ---

7 Q. Okay.

8 A. --- at the mine.

9 ATTORNEY MCATEER:

10 All right. That's all the questions I  
11 have.

12 MR. WATKINS:

13 Well, as promised, do you have anything  
14 that you'd like to add that may be relevant?

15 A. Well, nothing relevant. No, sir, I don't. You  
16 know, like I say, the best I can recall I was only  
17 there on this particular section twice. And I was  
18 there this summer and went to this MM --- this section  
19 to ---. The day that I went there, I issued probably  
20 two pieces of paper that day, and it's nothing  
21 relevant to ---. And what it was, was they was up  
22 there operating without no canopy on their equipment.  
23 They moved that section from that low seam, when I was  
24 explaining that they had low equipment, and they was  
25 there like --- they moved a section, put it in the

1 coal Monday. I arrived on the section Wednesday,  
2 walked through the doors, was on a section. I  
3 explained to Rick Foster, who's a mine foreman. I  
4 asked him I said --- I saw, here was a scoop on the  
5 last open break, got no canopy. And I asked Rick, I  
6 said, what's this scoop doing up here, got no canopy?  
7 They said, oh, they probably just cleaning and just  
8 left it there. I said, well, I'm going to issue a  
9 citation for this, not having no canopy over the last  
10 open break.

11 Well, when I went around the corner, there was a  
12 shuttle car, no canopy. And I looked at Rick and I  
13 said, Rick, let me ask you this, how many pieces of  
14 equipment up here on this section does not have  
15 canopies? He said, well, we don't have no canopies on  
16 the equipment. And I said, you've been mining here  
17 since Monday? He said, yeah. I said, well the  
18 situation's completely changed now. I said that  
19 citation that I was going to issue on that canopy on  
20 the scoop, that's an Order now. And I said, how many  
21 more pieces of equipment you got up here? He said,  
22 well, he didn't really recall. I said, well, Rick, I  
23 said when I go across my faces, and if it's less ---  
24 if it's over 42 inches in a working face, I said I'm  
25 going to issue an Order on every piece of face

1 equipment I see up here. And I issued 5 D2 Orders.  
2 Talking to the section boss, which I can't recall  
3 his name, I asked that section boss, when I was trying  
4 to gather my facts. I said, why are you up here  
5 running this equipment and you know you --- the law  
6 says 42 inches you got to have canopies? He said,  
7 well, I can't shut the equipment down, they wouldn't  
8 let me. I said, who are they? He said, I'll lose my  
9 job. So that was the end of that conversation there.  
10 So like I told them in the day that I was on that  
11 particular day, I said, and Gary May came up on the  
12 section. He was the block superintendent. Gary went  
13 across right behind me measuring the faces. Gary got  
14 back to me and he said --- I asked Gary, I said Gary,  
15 I said, did you find any place inby the section  
16 doesn't measure 42 inches or less? He said, no. I  
17 said, Gary, why are you all up here mining this coal,  
18 and not no equipment on this thing? He couldn't  
19 answer me. And I told Gary that particular day, I  
20 said, Gary, you got your cart in front of your horse.  
21 I said, you all should have put this equipment ---  
22 these canopies on this equipment prior to you mining  
23 coal. So that was the two adventures that I had on  
24 this particular section that day.

25 MR. FARLEY:

1 Okay. I appreciate it.

2 RE-EXAMINATION

3 BY ATTORNEY MCATEER:

4 Q. Can I ask a follow up on that? When you spoke  
5 with Mays about the orders, did he respond in any way?

6 A. He did not answer me. But he did say that he  
7 measured the faces, and he could not find anything  
8 less than 42 inches in the working faces either.

9 Q. Okay. Is it unusual to find mining without  
10 canopy?

11 A. It was unusual for me, because it surprised me.

12 Q. Uh-huh (yes).

13 A. And I never dreamed I'd find ever a piece of  
14 equipment up there without a canopy.

15 Q. Was there any explanation from anybody from the  
16 management side?

17 A. No, sir.

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. Forgive me if I'm being redundant, but what was  
21 the date on this one? I think I missed it?

22 A. It was summer of 2000 ---. Like I said, I was  
23 only at the mines twice. The best I can recall,  
24 March, and then the summer prior to that.

25 Q. Okay. Do you remember the section foreman's name?

1 A. It's in my notes, that's all I can tell you.

2 Q. Okay.

3 A. And I talked to too many people. I'm not being  
4 --- I can't remember.

5 Q. At that time, did any of the hourly employees on  
6 that section make any comments to you about the  
7 canopies, or the absence of canopies?

8 A. No.

9 RE-EXAMINATION

10 BY ATTORNEY WILSON:

11 Q. Charlie, is this a copy of one of the Orders that  
12 issued on that day?

13 A. Yes, sir, it is.

14 Q. All right. And what is the date there?

15 A. That was 10/21/2009. And I issued 'em to Ken  
16 Williams. He was the foreman on that section that  
17 day.

18 Q. All right. And just for the record, that was  
19 Order Number 8086905?

20 A. Yes, sir.

21 Q. And that's one of the Orders that you're referring  
22 to for the equipment not having canopies; right?

23 A. Yes, sir, I am.

24 Q. And, again, October 21, 2009 was that date; right?

25 A. Yes, sir. I thought it was summer, so --- I



1 remember it just being warm, so ---.

2 ATTORNEY MCATEER:

3 Can we put that in the record?

4 ATTORNEY WILSON:

5 Sure we can put it ---. Make that an

6 exhibit. Ward Two.

7 (Exhibit Ward Two marked for

8 identification.)

9 ATTORNEY WILSON:

10 Charlie, again, we would like to thank

11 you for coming in and providing the information that

12 you've given us today. We're going to give you a copy

13 of the letter that was previously sent to you

14 requesting your appearance. On the second page,

15 there's a phone number. If you think of any

16 additional information that you believe may be helpful

17 to the investigation, please call Norman Page at that

18 phone number.

19 A. Yes, sir.

20 ATTORNEY WILSON:

21 We ask that you not discuss with anybody

22 else your testimony here today. We'll be calling

23 other witnesses and questioning them, and we want them

24 to tell us what they know and not what they talked

25 with other people about. So we ask that you not talk

1 with anybody else about what you told investigators  
2 here today.

3 A. Yes, sir.

4 ATTORNEY WILSON:

5 All right? Again, thank you very much.

6 A. You're welcome. And like I say, I just ---. I  
7 just feel --- like myself, I'm just a coal miner, and  
8 you know, I want to know --- I'd like to know what  
9 happened here, too, because I had some ---. I had  
10 some friends that lost their lives there in that coal  
11 mine.

12 ATTORNEY WILSON:

13 Okay. Thank you.

14 A. Thank you.

15

16

\* \* \* \* \*

17

STATEMENT UNDER OATH CONCLUDED AT 9:20 A.M.

18

\* \* \* \* \*

19

20

21

22

23

24

25

1 STATE OF WEST VIRGINIA )

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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*