

STATEMENT UNDER OATH

OF

JOSEPH MYERS

Taken pursuant to Notice by Miranda
D. Elkins, a Court Reporter and
Notary Public in and for the State of
West Virginia, at the U.S. Bankruptcy
Court, 324 West Main Street,
Clarksburg, West Virginia on
Thursday, February 16, 2006, at 8:56
a.m.

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A P P E A R A N C E S

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A P P E A R A N C E S (continued)

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on mine roof

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P R O C E E D I N G S

MR. STOLTZ:

My name is Richard
Stoltz. I am a mining
engineer with the Mine Safety
and Health Administration, an
agency of the United States
Department of Labor. With me
is Bob Wilson from the

1 Solicitor's Office, John
2 Collins and Dave Stuart with
3 the West Virginia Office of
4 Miners' Health, Safety and
5 Training.

6 I have been assigned to
7 conduct an investigation into
8 the accident that occurred at
9 the Sago Mine on January 2nd,
10 2006, in which 12 miners died
11 and one was injured. The
12 investigation is being
13 conducted by MSHA and the West
14 Virginia Office of Miners'
15 Health, Safety & Training to
16 gather information to
17 determine the cause of the
18 accident. And these
19 interviews are an important
20 part of the investigation.

21 At this time, the
22 accident investigation team

1 intends to interview a number
2 of people to discuss anything
3 that may be relevant to the
4 cause of the accident. After
5 the investigation is
6 completed, MSHA will issue a
7 written report detailing the
8 nature and causes of the
9 accident. MSHA accident
10 reports are made available to
11 the public in a hope that
12 greater awareness about the
13 causes of the accidents can
14 reduce their occurrence in the
15 future. Information obtained
16 through the witness interviews
17 is frequently included in
18 these reports. Your statement
19 may also be used in other
20 enforcement proceedings.

21 I would like to thank
22 you in advance for your

1 appearance here. We
2 appreciate your assistance in
3 this investigation. The
4 willingness of miners and mine
5 operators to work with us is
6 critical to our goal to making
7 the nation's miners safer. We
8 understand the difficulty for
9 you in discussing the events
10 that took place, and we
11 greatly appreciate your
12 efforts to help us understand
13 what happened.

14 This interview with Mr.
15 Joe Myers is being conducted
16 under Section 103(a) of the
17 Federal Mine, Safety and
18 Health Act of 1977, as part of
19 an investigation by the Mine
20 Safety and Health
21 Administration and the West
22 Virginia Office of Miners'

1 Health, Safety & Training into
2 the conditions, events and
3 circumstances surrounding the
4 fatalities that occurred at
5 the Sago Mine owned by
6 International Coal Group in
7 Buckhannon, West Virginia on
8 January 2nd, 2006. This
9 interview is being conducted
10 at the U.S. Bankruptcy
11 Courthouse in Clarksburg, West
12 Virginia on February 16th,
13 2006.

14 Questioning will be
15 conducted by representatives
16 of MSHA and the Office of
17 Miners' Health, Safety &
18 Training. This is not an
19 adversarial proceeding,
20 therefore Cross Examination
21 will not be permitted.

22 Mr. Myers, the

1 interview will begin by asking
2 you a series of questions. If
3 you do not understand a
4 question, please ask me to
5 rephrase it. Feel free at any
6 time to clarify any statements
7 that you make in response to
8 the questions. After we have
9 finished asking these
10 questions, you will also have
11 an opportunity to make a
12 statement and provide us with
13 any other information that you
14 believe may be important.

15 If at any time after
16 the interview, you recall any
17 additional information that
18 you believe may be useful in
19 the investigation, please
20 contact Richard Gates at the
21 phone number and e-mail
22 address provided to you. This

1 is his business card.

2 Your statement is
3 completely voluntary. You may
4 refuse to answer any question
5 and you may terminate your
6 interview at any time. If you
7 need a break for any reason,
8 please let me know.

9 A court reporter will
10 record your interview and will
11 later produce a written
12 transcript of the interview.
13 Please try and respond to all
14 questions verbally since the
15 court reporter cannot record
16 non-verbal responses. Also,
17 please try and keep your voice
18 up. Copies of the written
19 transcripts will be available
20 at a later time.

21 If any part of your
22 statement is based not on your

1 own firsthand knowledge, but
2 on information that you
3 learned from someone else,
4 please let us know. Please
5 answer each question as fully
6 as you can, including any
7 information you have learned
8 from someone else. We may not
9 ask the right questions to
10 learn the information you
11 have, so do not feel limited
12 by the precise question asked.
13 If you have information about
14 the subject area of the
15 question, please provide us
16 with that information.

17 At this time, Mr.
18 Collins, do you have anything
19 that you would like to add on
20 behalf of the Office of
21 Miners' Health, Safety &
22 Training?

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MR. COLLINS:

Yes. Mr. Myers, the West Virginia Office of Miners' Health, Safety & Training is conducting this interview session jointly with MSHA and are in agreement with the procedures outlined by Mr. Stoltz for the interviews that will be conducted here today. The Director reserves the right, if necessary, to recall or to call or subpoena witnesses or require the production of any record, document, photograph or other relevant material necessary to conduct this investigation. After the interview, if you have any questions or additional information that you'd like to provide, here's

1 a card for you to do that.

2 MR. STOLTZ:

3 Mr. Myers, are you
4 aware that you may have a
5 personal representative
6 present during the taking of
7 this statement?

8 MR. MYERS:

9 Yes.

10 MR. STOLTZ:

11 Do you have a
12 representative present here
13 today?

14 MR. MYERS:

15 Yes.

16 MR. STOLTZ:

17 And who is that?

18 ATTORNEY KILPATRICK:

19 Melanie Kilpatrick.

20 MR. STOLTZ:

21 Has anyone suggested to
22 you that you that you use this

1 representative?

2 MR. MYERS:

3 No.

4 MR. STOLTZ:

5 Are you aware that your
6 representative may have a
7 conflict of interest in
8 representing you while being
9 provided by someone else, such
10 as the company?

11 MR. MYERS:

12 I have no problem with
13 any conflicts with her.

14 MR. STOLTZ:

15 Have you been pressured
16 in any way to accept this
17 person as your representative?

18 MR. MYERS:

19 No.

20 MR. STOLTZ:

21 With this
22 understanding, do you still

1 want this person as your
2 representative?

3 MR. MYERS:

4 Yes, I do.

5 MR. STOLTZ:

6 Do you have any
7 questions regarding the manner
8 in which this interview will
9 be conducted?

10 MR. MYERS:

11 No, sir.

12 MR. STOLTZ:

13 Okay. Please swear the
14 witness in.

15 -----

16 JOSEPH MYERS, HAVING FIRST BEEN DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 -----

19 BY MR. STOLTZ:

20 Q. Please state your full name
21 and spell your last name.

22 A. My full name is Joseph B.,

1 Bernard, Myers, M-Y-E-R-S.

2 Q. Please state your address and
3 telephone number?

4 A. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. Are you appearing here today
8 voluntarily?

9 A. Yes.

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

12 ATTORNEY WILSON:

13 Excuse me, he gave us
14 an address, I don't think he
15 gave us his phone number.

16 A. [REDACTED]

17 [REDACTED]

18 BY MR. STOLTZ:

19 Q. Again, how many years of
20 mining experience do you have?

21 A. Twenty-five (25) and a half.

22 Q. Could you please give a brief

1 description of your coal mining
2 employment history?

3 A. I graduated with a B.S. in
4 Mining Engineering Technology in
5 1980. Worked underground for
6 approximately six years, at which
7 time I had my foreman's certificate.
8 Came out from underground in 1986,
9 pursued my engineering degree and
10 curriculum, and have been in the
11 engineering department since 1986 in
12 various capacities from mine engineer
13 to environmental engineer to the
14 present of chief engineer.

15 Q. How much of this time was
16 spent at this mine?

17 A. Direct time?

18 Q. With Sago or ICG?

19 A. My employment began on July
20 29th of 2005.

21 Q. With Sago or ICG?

22 A. With ICG.

1 Q. How about with Sago?

2 A. Well, basically that was one
3 of my responsibilities at that time
4 on coming onboard.

5 Q. And what is your present
6 position again?

7 A. Chief engineer.

8 Q. On a normal basis, how much
9 time do you spend in the Sago Mine?

10 A. In the mine? I have been
11 underground, I recall, three
12 different occasions prior to this
13 accident.

14 Q. And when you say underground
15 for three occasions, you're talking a
16 shift or a couple hours?

17 A. No, approximately --- it was
18 longer than a half a shift on all
19 three occasions.

20 Q. On those occasions, did you
21 --- where did you travel or did you
22 just ---?

1 A. I typically was traveling the
2 intake travelway looking for stopping
3 locations, trying to get --- up until
4 November, I was doing a lot of the
5 mapping myself so --- well, passing
6 on the information for the mapping
7 myself.

8 Q. Okay. Did you hold the same
9 position on January 2nd, 2006, the
10 day of the accident?

11 A. Yes, sir.

12 Q. And again, how long have you
13 worked in that position?

14 A. Since July 29th of 2005.

15 Q. Okay. What other positions,
16 if any, did you hold with ICG?

17 A. No other positions.

18 Q. Would you please describe your
19 normal job duties on the day of the
20 accident?

21 A. On the day of the accident?
22 Map generation and development of the

1 coordinates for the drilling program
2 and coordinated activity on any
3 questions coming from the command
4 center, which typically was the
5 discussion of the coordinates, the
6 planning for the drilling, trying to
7 work with the mine rescue teams as
8 they were giving ventilation commands
9 out and re-establishing the revised
10 mapping.

11 Q. Okay. Do you have any mining
12 certificates?

13 A. Mine foreman certificate.

14 Q. Is that what ---?

15 A. Excuse me, I have a IS/IU card
16 as well, a training certificate.

17 Q. Is that with West Virginia?

18 A. The mine foreman, yes, sir.

19 Q. Okay. In your --- I guess, in
20 your capacity as chief engineer, do
21 you sign or countersign any required
22 mine records?

1 A. No.

2 Q. No. Who is your immediate
3 supervisor?

4 A. Mr. Charles Dunbar.

5 Q. How long has that person been
6 your supervisor?

7 A. Since July 29th.

8 Q. Where is his office located?

9 A. In Buckhannon.

10 Q. Okay. On a day of the
11 accident, were you scheduled to work
12 that day?

13 A. No, sir.

14 Q. So I guess, at some point that
15 day then, you received a phone
16 call ---

17 A. Yes, sir.

18 Q. --- to come to the mine?
19 Could you please then, starting at
20 the time you arrived at the mine,
21 basically, until you left the mine
22 property that day, just restate all

1 the details that you can remember
2 about that day? And I won't
3 interrupt or anything.

4 A. I received a call. They
5 finally got through to me at --- I'm
6 recalling the 10:30 time frame. It
7 may have been a little bit later. I
8 didn't start denoting times real well
9 until after the 12 o'clock time
10 frame. The situation was arrived
11 around 11:30 at the mine site. En
12 route I was making calls to Alpha
13 Engineering, which is our engineering
14 group that does our mapping for us.
15 I was contacting them to get a
16 mapping grade as well as a survey
17 grade and a conventional crew headed
18 in that direction, not knowing
19 directly, you know, what was --- what
20 I was going to be faced with. But I
21 made those contacts.

22 Like I said, I had a hand-held

1 GPS meter, probably a plus or minus
2 30-foot accuracy, 30 to 50 foot
3 accuracy normally, with me. I was
4 trying to make numerous GPS attempts
5 by placing it in front of the
6 windshield. The signal was terrible
7 that day.

8 After arriving on site, I
9 again, before going in the building,
10 checked again, had virtually no
11 signal. Again went through, made the
12 calls back again because I did not
13 have mapping on my computer that had
14 been updated, not on my hard drive.
15 So I asked Alpha to provide me with
16 the mapping that they had currently.
17 We have an FTP site, at which I had
18 them to download that to. I picked
19 the map up off of that, started
20 looking at potential areas for
21 drilling.

22 At approximately --- I'm

1 actually recalling 2:07, but I don't
2 recall that specifically, but that
3 Matt Ashley, which is a gentleman
4 that works for Alpha Engineering came
5 on site. He had a mapping grade GPS
6 meter with him. I asked him to go to
7 a specific coordinate which I gave
8 him. And he had informed me that he
9 was having poor signal strength as
10 well, even at that time, which was
11 probably a two-hour lapse period. He
12 went to that site. I told him I
13 would give him the definite
14 coordinate as soon as everyone was in
15 agreement for that coordinate.

16 Then we started --- or I
17 started map generation. I'm going to
18 say that during the process that
19 there was probably --- well, probably
20 50 to 60 maps generated. I was
21 making everything from 100 scale
22 small plots to 400 scale large plots

1 of the facility. Trying to keep
2 those in preparation for each one of
3 the mine rescue teams, making certain
4 that they had not only their map, but
5 when they came back out, updating
6 that map so I could give it to the
7 future mine rescue teams. This
8 process just kept repeating itself.

9 Everyone came to an agreement
10 that we were going to drill at a
11 specific coordinate, which is our
12 hole Number One, which I coordinate
13 back to Alpha, making certain that we
14 had made the necessary rotation based
15 upon the last check survey that was
16 done. We drilled --- in the end,
17 after getting underground, we found
18 that it hit right where we wanted it
19 to.

20 But I do want to note that the
21 coordinates in which we had made the
22 drill pad initially was not

1 sufficient because of the poor signal
2 strength. We did make the necessary
3 change or rotation after we got a
4 survey grade GPS meter in and
5 surveyed that down in there
6 conventionally to the site and made
7 the new pad and drilled that was
8 prior to.

9 Again like I said, after that,
10 then we started the other drilling
11 series of holes Numbers Two and
12 eventually Three that was during that
13 series. Hole Number Three was
14 actually stopped and kept from
15 penetrating the mine because it was
16 generating --- the driller was
17 telling me 60, 80 gallons per minute
18 of water. I knew that we didn't want
19 that into our facility and have to
20 deal with that problem as well.

21 After hearing the announcement
22 of an item being found, I went to the

1 location, started looking on the
2 mapping there. Kept waiting on
3 additional information. The
4 information naturally started slowing
5 down at that period of time. But
6 also listened to the announcement of
7 the mine rescue teams telling me
8 their location in proximity to where
9 we now know the mine seals were
10 located. In fact, I heard the
11 announcement coming back out on the
12 --- on that facility. Mapping all
13 that and in --- actually the first
14 time I had sat down in the command
15 center was after that period of time.
16 I listened to the announcement of the
17 information thereafter.

18 That was pretty much it, was
19 the mapping and was pretty much
20 updating to the fullest extent that
21 we knew the information that was
22 flowing from the underground. At ---

1 I can't recall what time I left, it
2 was --- unknown. I can't recall, you
3 know. It was many, many hours later.
4 That's the best of my recollection.

5 Q. Okay. Thank you. Again, if I
6 heard you right that you believe or
7 think you remembered receiving a
8 phone call about 10:30 that morning?

9 A. Yes, sir.

10 Q. Do you recall then what time
11 you arrived at the mine that day
12 then?

13 A. Like I said, I'm recalling the
14 11:30 range. I didn't look at my
15 watch or even my cell phone at that
16 time. I was making calls. I'm
17 speculating, say it was 11:30 range.

18 Q. Okay. When you arrived, do
19 you recall who was at the mine when
20 you arrived?

21 A. The first one that I reported
22 to was Mr. Dunbar. That's my

1 immediate supervisor. He had
2 informed me what information that he
3 had known, which was just very brief.

4 Q. Okay. Do you recall the
5 activities that were ongoing when you
6 arrived then, at that point in time?

7 A. No, sir, because I sort of
8 isolated myself and went to a
9 specific room and started trying to
10 get my mapping preparation in
11 progress. I was actually isolated
12 pretty much during the whole event.

13 Q. Okay. If I remember also then
14 hearing that you received a telephone
15 call and that's how you found out
16 about the explosion?

17 A. Yes.

18 Q. Okay. And then who notified
19 you, what party?

20 A. Mr. Dunbar.

21 Q. Could you please describe the
22 information you received in that

1 phone call then?

2 A. I'm trying to recall the exact
3 words. Joe, we've really had a bad
4 problem. Something's wrong. I can't
5 remember if the word explosion was
6 used or not. I'm wondering if I'm
7 recalling that from some other
8 occurrence or event, but I know that
9 he had told me --- in fact, my wife
10 handed me the phone, my home phone,
11 and he said, Joe, I've tried your
12 cell phone, which my cell phone was
13 in the truck that morning. He said
14 I've been trying your number. And I
15 said, well, I've been here all
16 morning. He said we've got a bad
17 problem. He said I need you here
18 immediately.

19 Q. Okay. And again, I guess, you
20 were at home, so where is your
21 residence again?

22 A. It's near Flatwoods.

1 Q. Flatwoods, okay. Do you
2 happen to recall or know who notified
3 MSHA or the State? Do you recall any
4 of that?

5 A. No, sir. I don't know.

6 Q. Okay. Would you like to take
7 a break, John?

8 MR. COLLINS:

9 No, sir.

10 A. No, sir.

11 BY MR. STOLTZ:

12 Q. No? When you arrived on site,
13 --- and again, these are some general
14 questions this time. I heard you say
15 you isolated yourself, tried to
16 isolate yourself, to do some of the
17 mapping. But did you hear of --- I
18 guess, once you got there, you found
19 out they had, you know, a little more
20 briefing on it. Did you hear
21 anything about the CO levels or any
22 talk about that, that they were

1 actually being measured or that it
2 was on the computer or ---?

3 A. No. There was --- like I
4 said, my main concern was to get
5 everything mapping, oriented, ready
6 for the purpose. No, I did not.

7 Q. Okay.

8 A. The first time that I started
9 hearing about that information flow
10 was late in the game, but when ---
11 actually Monty Hieb, I'm recalling,
12 and I can't even remember who it was
13 with MSHA had came in and started ---
14 then I started tracking the CO. But
15 that was much, much later.

16 Q. I'm just trying to go through
17 the questioning.

18 A. Sure.

19 Q. Okay. I definitely heard that
20 your involvement with the drilling of
21 the boreholes into the mine?

22 A. Correct.

1 Q. Okay. Who else was involved
2 with that?

3 A. I had my project engineer on
4 site. I'm recalling that he arrived
5 at --- the 5:00 to 6:00 p.m. range is
6 what I'm recalling. I do not know
7 that to be specific, but that's what
8 I'm recalling. I had him on site.
9 And like I said earlier, I had Matt
10 Ashley from Alpha Engineering on
11 site. Then their survey crew came in
12 as well. We were actually working
13 due to the proximity off of two
14 different coordinate bases. The ones
15 at Sago as well as our Spruce Mine
16 facility, which is also on a state
17 plan coordinate system.

18 Q. Okay. Your project engineer,
19 who is that? His name again?

20 A. Kermit Melvin.

21 Q. Did you have a specific role
22 in the selection of the drilling

1 company or ---?

2 A. Actually, a gentleman by the
3 name of Mike Ross had already had a
4 drilling rig in the vicinity. We had
5 them coming into that area and ---
6 after we gave them the drilling
7 coordinates.

8 Q. The selection of the drill
9 site, drill hole sites, could you
10 basically --- who was involved in the
11 actual selection of the various sites
12 and did you have involvement in
13 those?

14 A. Yes, I did have selection in
15 that. Naturally, in most mining
16 facilities, the coordinate system is
17 better, particularly in your belt
18 entry systems, so I knew that we
19 wanted along that belt entry
20 development. That was the
21 coordinated activity between the ICG
22 Group. I know I had made a selection

1 of the area based on topography as
2 well as the coordinate base that we
3 had and made my suggestion. Then it
4 went before others. I don't know how
5 it actually went through, but it came
6 back and said this is the one that
7 we're in agreement with based upon
8 what you had informed us of.

9 Q. And the others are the ICG
10 Group, whoever the ---?

11 A. Yeah, they were over in the
12 command center. I don't actually
13 know who that --- all that had went
14 through. Like I said, I was
15 isolated.

16 Q. Exactly when did the effort
17 start again for the ---?

18 A. For the drilling?

19 Q. Yes.

20 A. Man. I know --- or I'm
21 recalling that we had the initial
22 coordinate. I would think it's

1 around the 9:00 p.m. range, but
2 again, that I'm not --- I'm not clear
3 on that one ---

4 Q. Okay

5 A. --- on that, so I have to go
6 back and see if I can find anything
7 that I have on that.

8 Q. Did you actually participate
9 in surveying the holes or ---?

10 A. No, sir. I provided them with
11 the coordinates for the hole, and
12 then that was passed out to both
13 Kermit as well as Matt Ashley in the
14 field. And he was working back on
15 the crosscheck side to Alpha to
16 confirm.

17 Q. So those were the two
18 individuals that actually did the
19 surveying?

20 A. They were amongst the crews
21 that was there.

22 Q. Do you recall when the actual

1 surveying efforts started?

2 A. Like I said, as soon as Matt
3 Ashley arrived on site, I had him
4 going to the site in the proximity
5 seeing what his signal strength was.

6 Q. Do you recall then --- and
7 again, this is back to the borehole
8 in the Two Left. When was that
9 survey of the hole was actually
10 completed?

11 A. Not definite.

12 Q. Okay. How about the actual
13 preparation for the site and the rig
14 and the pad? I remember you stating
15 that you had to reposition the rig?

16 A. Right. I do recall that. The
17 times right now for some reason, I'm
18 not recalling those specifically.

19 Q. Yes, that's --- okay. Did you
20 have any involvement whatsoever with
21 the other activities? I know you
22 said you were isolated, but, you

1 know, the idea that the mine rescue
2 teams --- you know, there was a, you
3 know, a decision made in when to send
4 them. Did you have any involvement
5 with that?

6 A. No, sir.

7 Q. You didn't --- and if I
8 gathered right then, you didn't have
9 no decisions or no type of input into
10 the actual exploration of the mine in
11 the command center?

12 A. No direct input, but I made a
13 couple of comments after going by and
14 getting inby the First Left area.
15 And how it would be suggested to
16 course the air and create a one air
17 coarse inby that to where we would
18 have intake on the, if you would,
19 right side.

20 Q. Okay.

21 A. That's the only thing that I
22 recall.

1 Q. Okay. And again, then you
2 were making maps then the entire
3 time ---

4 A. Yes.

5 Q. --- for the rescue teams?

6 A. And then coordinating ---
7 right; with the field crews that I
8 had out.

9 Q. Okay. Out of curiosity, after
10 the empty mantrip was found in Two
11 Left, were you involved in any
12 decision to explore the faces into
13 Second Left or made any comments?
14 Because I know a lot of people, at
15 that point in time, had various
16 suggestions.

17 A. That's what I was trying to
18 recall. I was trying to recall if
19 there was someone who came into my
20 office. I can't recall who it was. I
21 had made comment to them inform ---
22 finding of that mantrip there at that

1 location. And listened because they
2 had made one penetration in --- into
3 that sealed area because they had
4 described just saying that they had
5 been into a heightened area, which
6 told me that they were inby the seal
7 location. Then I heard the comments
8 made that they had found tracks and
9 then they had lost them. I had made
10 a comment that --- to whomever that
11 was in my office that I don't think
12 that they went left-handed out of
13 that --- off the mains. Whether they
14 went back and told members of the
15 command center, I don't know. And I
16 can't recall who was in there, but
17 that was my comment I had made to
18 them.

19 Q. Okay. Were you in the command
20 center when the misinformation came
21 out that all the miners were alive?

22 A. Yeah, I was the next one

1 besides the phone when that was
2 announced.

3 Q. Can you describe then the
4 events to the best of your
5 recollection until the time it was
6 learned that only one miner was
7 alive?

8 A. Yes, sir. Like I said, that
9 was about the point where my mapping
10 had pretty much finished. I had went
11 in there to gain any information flow
12 because it had stopped, naturally
13 started slowing down for the
14 information flow on mapping. So I
15 went into the facility. Actually
16 that was the first time I had sat
17 down in the command center. I was
18 typically standing and getting
19 information and going back. I heard
20 the announcement, we have 12 --- we
21 have 12 alive. I looked amongst
22 others in the room, waited on the

1 reaction, because I didn't see
2 anybody jump. And then I seen
3 somebody pump their fist, then I
4 realized that they had heard the same
5 announcement that I did. I made a
6 comment to someone the other day that
7 I had touched the ceiling tiles when
8 I jumped up. I couldn't believe that
9 announcement. I just thought it was
10 fantastic. Then I took off running.
11 I came in the back door, run out the
12 side door towards the front of the
13 mine office, screaming, yelling. The
14 first one that I had run into --- I'm
15 trying to recall. I can't remember.
16 It was one of the miners that worked
17 there that didn't even know me. We
18 had talked about how fantastic it
19 was, and then started making a circle
20 around the building, run into Chuck
21 Dunbar, Charles Dunbar. We had
22 talked about how great it was. Run

1 into Brad Phillips, which is
2 superintendent of another facility.
3 I had told my project engineer to go
4 lay down and get some sleep.
5 Realizing I had already told him that
6 and forgot about him, I actually went
7 out and pounded on the window of his
8 car, told him they made the
9 announcement. Started making my way
10 back, it almost seems like a long
11 time, but came back in and seen a few
12 people sitting about the room. It
13 was quite, reserved. I didn't
14 understand, you know, what was that.
15 And then listened to the other
16 announcement. Even staying later to
17 where the mine rescue members come
18 out and described how they were
19 physically.

20 Q. What do you think happened
21 then on January 2nd, the accident?

22 A. I believe we had a detonation

1 behind the seals that ---.

2 Q. Would you like to take a
3 break, Joe, for a couple minutes?

4 MR. STOLTZ:

5 Let's take a little
6 break. Let's go off the
7 record.

8 SHORT BREAK TAKEN

9 BY MR. STOLTZ:

10 Q. I'm going to go back a little
11 bit and ask a couple earlier
12 questions of the event and we'll
13 come back to that then; okay?

14 A. Okay.

15 Q. You mentioned that you were at
16 the mine three prior times. What was
17 the last time prior to the accident
18 where you were at the mine?

19 A. I don't remember the specific
20 day, but actually I had went up onto
21 Second Left area. I'm recalling they
22 was probably out ten breaks or so and

1 they had encountered what I was
2 believing to be a trend where it came
3 across from the old former Second
4 Left onto the Second Left parallel.
5 I thought it was a roof condition
6 that was of similar quality or
7 similar condition I should state.
8 And I was thinking it was a
9 prevailing trend that we had hit all
10 the way from First Left through to
11 the former Second Left area. And I
12 was looking at those conditions
13 there.

14 Q. Okay. Do you recall the first
15 discussions to drill a borehole, at
16 what time it was made, those
17 discussions?

18 A. I'm going to say it wasn't
19 much more than an hour had elapsed,
20 so I'm going to say the time I got my
21 computer on it was --- and got all my
22 mapping up, I'm going to say it was

1 ten after 12:00, so I'm going to say
2 one o'clock range that I already
3 started looking for potential
4 suitable coordinates based upon the
5 topography, et cetera, conditions.

6 Q. Okay. What I understand, I
7 guess, were you aware that the road
8 to the drill site had problems?

9 A. Excuse me?

10 Q. Were you aware that the road
11 to the drill site, the initial drill
12 site, had problems? They had
13 problems ---?

14 A. Developing that?

15 Q. Yes.

16 A. Yes, there was communication
17 that came back down to me, but the
18 hillside that set out further inby on
19 the mine was --- it steepened up
20 based on the topography mapping that
21 I had and I knew that was actually
22 the most gentle course that we could

1 actually get down through there. The
2 other coordinates appeared on the
3 mapping I had to work with was
4 impossible or apparently looked like
5 it was impossible based on the
6 mapping I had.

7 Q. Did that, I guess, the road
8 construction --- do you know --- can
9 you recall the length of time it took
10 to decide and to prep the road?

11 A. I'm recalling a three hour,
12 but I don't know if that's factual.
13 Like I said, I was allowing the guys
14 out there to track their noting of
15 that material time for development.
16 It did seem like it was a long time,
17 but it --- I know that they had went
18 down and got a, like I said, a
19 mapping grade GPS shot on that and
20 was trying to build to that point.

21 Q. Okay. What time did the
22 survey grade GPS arrive on site?

1 A. Survey grade?

2 Q. Yes.

3 A. I remember it was dark, but as
4 to the specific hour, I do not
5 recollect. I'd actually have to see
6 if I have anything in my notes to
7 where I tracked any.

8 Q. I guess, since you were having
9 problems with --- you mentioned you
10 were having problems with the regular
11 GPS. Could you have drilled --- or
12 could there have been a hole drilled
13 earlier off of that GPS?

14 A. Off of that initial?

15 Q. Yes.

16 A. No.

17 Q. Okay.

18 A. I mean, we missed the pad, so
19 I have no reason to believe we would
20 have hit the entry.

21 Q. Okay. I think I remember you
22 saying that you started writing down

1 the CO readings. Do you recall what
2 time that was or coordinating that
3 effort or writing those readings
4 down?

5 A. It was after the midnight
6 range, but before I even --- because
7 I had made comments, I was wanting to
8 see if MSHA had the initial methane I
9 knew that they had bottled and done
10 the sampling for the fan entry
11 earlier. They had told me that they
12 had. I was wanting to see if we
13 could quantify if we knew --- if we
14 had a major liberation. That was my
15 primary, but not seeing that CH4
16 reading really that elevated for the
17 main return. That's what I was
18 looking for.

19 Q. Okay.

20 A. Not necessarily the CO as much
21 as the methane I was looking.

22 Q. Okay. So you didn't

1 coordinate those readings with the
2 command center?

3 A. No.

4 Q. Okay. Were there any other
5 discussions about other drilling
6 companies?

7 A. We actually had, in fact,
8 another one on site. I think it was
9 Howard Drilling that had ended up
10 doing --- I'm recalling that they
11 done holes Two and Three if I'm not
12 mistaken. I'd actually have to look
13 and see. We had so many out there.
14 That's what I'm recalling that they
15 done Two and Three.

16 Q. Okay. Did you have any other
17 drillers, I guess, contact you and
18 volunteer their services, say, hey,
19 we're available? Do you recall?

20 A. I know that I actually had one
21 over at my Buckhannon office that had
22 left a message during this.

1 Naturally, I wasn't calling over
2 there to get my messages, but a Frame
3 Drilling had called and left a
4 message. I do recollect that one.

5 Q. You've referred several times,
6 I guess, to, I guess, personal notes
7 that you might have on the times.
8 Could we possibly get a copy of those
9 on the various times?

10 ATTORNEY KILPATRICK:

11 We'll look into
12 providing those.

13 MR. STOLTZ:

14 Okay. Thank you.

15 BY MR. STOLTZ:

16 Q. I guess taking off from the
17 question we left, do you believe ---
18 you mentioned that you have a methane
19 ignition and I believe that you said
20 that then blew out the seals if I ---
21 I'm just recounting your words. Do
22 you think coal dust was involved in

1 that ----

2 A. No.

3 Q. --- ignition -- explosion?

4 A. No. During this process, I
5 was informed not only by our workers
6 there at the facility, but also Mr.
7 Monty Hieb from the Office of Miners'
8 Health, Safety & Training had
9 informed me that we had had a
10 lightning strike. I just thought it
11 was astonishing the timing of that
12 time to coordinated to the explosion
13 underground. Therefore, I have a
14 suspicion that we had a methane
15 detonation and not a coal because
16 while the CO readings were up higher,
17 it seemed like, especially after we
18 got the hole through, you know, we
19 was having to concentrate to an area
20 and I didn't think with the
21 ventilation current that was --- we
22 was getting back out at that point,

1 if we truly had a fire. I felt as
2 though this is just motions that we
3 would see it elevated all the way
4 outside to the porthole area.

5 Q. And again, you've mentioned
6 about lightning. What do you think
7 the ignition source was?

8 A. Could you repeat that
9 question, please?

10 Q. Basically, what do you think
11 the ignition source was, what ignited
12 the methane?

13 A. Now, after traveling
14 underground and going to that point
15 of where it appears that there's no
16 material manager around and seeing
17 the blast forces, I do feel as though
18 it is lightning.

19 Q. Okay. Why do you think the
20 seals fell?

21 A. I feel that the pressures were
22 excessive. I feel that --- though I

1 haven't finished my calculations yet,
2 but just seeing the 1,500 pound
3 object hurled several hundred feet,
4 seeing a belt head that's twisted
5 sideways, based on the psi that's
6 needed there, I feel we exceeded the
7 capabilities of the strength of those
8 seals.

9 Q. All right.

10 A. I do not have the exact force
11 of what I think it is yet, but I
12 think it was very excessive of what
13 any seal is capable of withstanding.

14 MR. STOLTZ:

15 John, do you have some
16 follow-up questions you would
17 like to ask?

18 MR. COLLINS:

19 Just the ones you've
20 covered so far?

21 MR. STOLTZ:

22 Yes.

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MR. COLLINS:

No, I have none.

BY MR. STOLTZ:

Q. I'm going to go, I guess, back to the seals issue. How familiar are you with the old Two Left main seals?

A. Old Two?

Q. Well, we've heard the area as talked about old Two Left main seals, you know, inby Two Left. We've heard it as Three Left. So we've ---

anyway, those seals, how familiar are you with those seals that blew out?

A. As far as ever seeing them while they was --- after they was built? I'm not following your question.

Q. Well, I guess, have you ever seen them? Was you underground to ---?

A. No, I never physically seen them after they were constructed.

1 Q. After they were constructed,
2 were you there during their
3 construction?

4 A. No, sir.

5 Q. Was you there prior to the
6 construction then in that area?

7 A. No, sir.

8 Q. So basically you never did see
9 those seals?

10 A. No.

11 Q. Do you know then when they
12 were built, started and finished?

13 A. Not specifically, no, sir.

14 Q. Do you know who was in charge
15 of building the seals?

16 A. No, that'd just be an
17 assumption on my behalf.

18 Q. Okay. Do you recall ever
19 hearing about the methane being
20 measured in by the seal area and if
21 you do, what type of concentrations
22 they were finding --- had found?

1 A. I remember after they were
2 built asking for specifics on what
3 quantity of air that was moving
4 across the face of the seal area, and
5 hearing a comment that they had about
6 two-tenths measurement. I did not
7 ask if that was a pumped measurement
8 out from behind the seal, but I
9 assumed that it was. And the
10 quantity air that I'm recalling was
11 the 3,000 to 5,000 cubic feet per
12 minute that was in front of that.
13 That's recollection.

14 Q. Okay. Do you recall why the
15 mining was stopped in that area inby
16 the sealed area?

17 A. Yes, it was poor roof
18 conditions. We were --- our
19 productivity had declined
20 dramatically and we had made a
21 decision to bottom split the mine
22 coming back out of the facility or

1 that area.

2 Q. Okay. Is there any other of
3 history of any type of methane
4 problems that you're aware of?

5 A. That I'm aware of? No, sir.

6 MR. STOLTZ:

7 I'm going to be moving
8 to a discussion on the vent
9 plans, questions. Did you
10 want any more, John?

11 MR. COLLINS:

12 Do you have other
13 questions on the seals?

14 MR. STOLTZ:

15 No. Well, with
16 concerning the vent plan, yes.

17 MR. COLLINS:

18 I think I'll wait and
19 let you ask that so we won't
20 duplicate.

21 MR. STOLTZ:

22 Okay.

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MR. COLLINS:

We do have some additional questions on the seals.

MR. STOLTZ:

Okay.

BY MR. STOLTZ:

Q. Could you explain --- please explain your responsibility in preparing, evaluating or submitting the ventilation plan to MSHA?

A. Okay. My recollection is that I made a submittal. The initial submittal I'm recalling, it was late September, early October of which was --- I think it was amended on October 12th, if I recall correctly, to change and ask for the ten seals to be prepared, of which it asked for seals Two through Nine that was a typical proceeding to be built, brought up together. And then seals,

1 I'm recalling this, One and Ten to be
2 built simultaneously and cap the area
3 off. I'm recalling calling back and
4 getting information. I think it was
5 passed on to Johnny Stemple that Mr.
6 Ed Parish (phonetic) had questions on
7 the seal information. He wanted to
8 have the water traps and the seal
9 pipe to be addressed differently. In
10 fact, I had provided additional
11 information that I had found from a
12 previous engineer that I had worked
13 with who had spoke with Clete Stephan
14 and he had passed that information to
15 us via an e-mail. And I had
16 forwarded that deal design
17 information to Johnny Stemple, which
18 in turn had sent it to the
19 ventilation group in Morgantown. That
20 information design --- I recall going
21 back and actually I think I had a
22 pipe design on the water trap and

1 there was another comment on the gas
2 tube that actually they wanted to
3 revise. And I think I recall it
4 basically just going back to the
5 statement that water traps and gas
6 sampling tubes will comply with
7 75335, which was the typical language
8 the you placed on your seal diagrams.
9 Basically then it's a safety
10 proceeding that follows through and
11 then the approval goes to the mine
12 office, et cetera. That's my
13 recollection.

14 Q. Okay. Who were all the
15 company personnel that you're aware
16 of that contributed to any portion of
17 the ventilation plan?

18 A. It would be the mine
19 superintendent in a typical fashion.
20 Are you speaking for an annual
21 ventilation submittal or ---?

22 Q. Well, to the plant plan that

1 was submitted on --- I think I heard
2 October 12th?

3 A. That's what I'm recalling,
4 the amended --- I don't know if that
5 corresponds with the Office of
6 Miners' Health, Safety & Training,
7 because we would typically try to go
8 through and get these. One would be
9 looked at and then had the plan and
10 check off and then get the Office of
11 Miners' Health, Safety & Training
12 approval. With that plan
13 involvement, it would have been
14 myself, Jeff Toler, Johnny Stemple,
15 and Al Schoonover would have been
16 parties involved.

17 Q. What sections of the vent plan
18 did each of these individuals
19 contribute to?

20 A. Well, naturally Jeff would
21 have correspond to me where he was
22 wanting the building locations,

1 information, you know, that that was
2 suitable place to build based on the
3 typical building parameters which he
4 knew. We was wanting so many feet
5 inby and for rib support, et cetera.
6 So he was looking in that degree.
7 Then once he gave me that
8 information, then I'd try to work up
9 a ventilation design to keep the
10 ventilation proper in front of the
11 seals.

12 Q. How about Mr. Stemple or Mr.
13 Schoonover?

14 A. Johnny was involved from the
15 fact that he had corresponded with
16 the final design where the
17 ventilation group had asked for
18 additional information for the Omega
19 seal design because to my knowledge,
20 the Omega seals was not an approved
21 method in the ventilation plan up
22 until the time of that submittal.

1 That's what I recall.

2 Al would have been basically
3 just a kind of information flow
4 because everything would have come
5 back to him for approvals, et cetera.

6 Q. I guess in that plan --- and
7 I'll provide that to you now. This
8 is a copy of the vent plan. Let me
9 show you this.

10 MR. STOLTZ:

11 Use that as an evidence
12 thing, as Mr. Myers Evidence
13 Number One.

14 BY MR. STOLTZ:

15 Q. I guess as you look it over,
16 could you verify that's an accurate
17 copy of that plan? And I think
18 there's a couple submittals on it.

19 ATTORNEY WILSON:

20 While he's reading
21 through those, can we take
22 about a two-minute break?

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MR. STOLTZ:

Yes. Off record.

SHORT BREAK TAKEN

BY MR. STOLTZ:

Q. Okay. We provided you a copy.
Is that the vent plan as you know it?

A. Actually, the first set that was approved October 24th and addressed of the amendment, like I said, that I described I had, initially had, a submittal on September 29th that was amended to October 12th to show the Ten seal as opposed to the Nine. And the ventilation diagram for such. I do recall that. The situation for this October 24th additionally stating the alternative seal methodology, why I made the submittal, I was recalling that that was actually contested and I didn't know --- did not know that that one was approved because my

1 was approved as Exhibit One.

2 MR. STOLTZ:

3 Okay.

4 MR. COLLINS:

5 And what he referred to
6 as this one here, I didn't
7 know it had been approved, as
8 Exhibit Two? And the Third
9 one as Exhibit Three.

10 (Myers' Exhibits One
11 through Three marked
12 for identification.)

13 ATTORNEY KILPATRICK:

14 Exhibit One is dated
15 October 24th and has a four at
16 the top?

17 MR. STOLTZ:

18 Yes.

19 OFF RECORD DISCUSSION

20 ATTORNEY KILPATRICK:

21 We would just like to
22 make the clarification that

1 for purposes of this interview
2 we'll assume that you've
3 stapled them together, you
4 know, correctly how they were
5 submitted, but that we can't
6 say for sure if the right
7 pages go with the right cover
8 letters without looking back
9 at our files.

10 MR. STOLTZ:

11 Okay. That's
12 understandable. I guess
13 otherwise, it appears to be
14 the correct information
15 until ---.

16 MR. COLLINS:

17 Yes, it appears to be.

18 Yes.

19 MR. STOLTZ:

20 Okay.

21 BY MR. STOLTZ:

22 Q. You've mentioned, you know,

1 that you had four people contribute
2 to the plan. How were their comments
3 from these individuals incorporated
4 into the plan, you know the
5 particular procedure?

6 A. Well, like I said, typically
7 it's a coordinated activity between
8 the mine superintendent telling me
9 where these can physically be built,
10 coming back out to the ventilation
11 design to make certain we can keep
12 air course in front of these because
13 we actually had a stipulation. I
14 don't see that --- can we go off
15 record just a second?

16 MR. STOLTZ:

17 Yes.

18 OFF RECORD DISCUSSION

19 A. Going back to that, the
20 ventilation course, we had designed
21 it as two-step proceeding. One of
22 which when it was initially built,

1 the intake would actually split at
2 the mouth of Second Left sweep the
3 seals, go back down a former return
4 entry, which was the Number Nine
5 entry in northeast mains. Upon the
6 completion of overcast, we would
7 actually reverse that air. Air would
8 come up from that right side, that
9 entry, return entry, would no longer
10 exists, of which also it worked in
11 conjunction with an escape way,
12 primary escape way changes, that they
13 were making, and the air would sweep
14 the faces and then go out over an
15 overcast, set overcast across the
16 mouth of the Two Left parallel, which
17 then it would go out to the main
18 vent.

19 BY MR. STOLTZ:

20 Q. Through entries One and Two, I
21 believe, as the returns in the mains?

22 A. Correct.

1 Q. Was this communication between
2 the individuals, did you --- was that
3 over the phone or do you all have
4 meetings to ---?

5 A. The communications on the
6 locations came into me via phone.
7 The recollection of the seal design,
8 I recall seeing a faxed copy of the
9 seal design going back to Jeff via
10 Johnny. And I recollect discussing
11 that angled stopping with Jeff.
12 Don't recall that being a phone
13 conversation, but actually remember
14 him being over at the office when we
15 described that ventilation detail.

16 Q. Okay. Who is the ---
17 ultimately responsible for making
18 sure that every aspect of the vent
19 plan is corrected?

20 A. It's a coordinated activity.
21 I mean, it's between safety,
22 engineering and the mine to make

1 certain that we try to follow up and
2 have all aspects.

3 Q. No one has the ultimate
4 responsibility?

5 A. Well, since --- well, that's
6 just --- no. That's just an opinion.

7 Q. Okay. Who is ultimately
8 responsible for submitting the vent
9 plan to MSHA?

10 A. Typically without any
11 ventilation changes, the safety
12 department handles the submittals.

13 Q. How about on non-typical, such
14 as the amendments for the seals?

15 A. Then the engineering
16 department would have a statement or
17 input.

18 Q. Once the plan is approved, how
19 does the workforce become aware of
20 the plan requirements?

21 A. Typically it's conveyed back
22 to the superintendent and/or the mine

1 foreman if the superintendent is
2 going. And then he does the
3 necessary training for the miners.

4 Q. Do you know if every section
5 of the plan is discussed with the
6 miners and foremen?

7 A. Do I know? No. No. I know
8 that there's been several occasions
9 which we've had miners sent off on
10 the back. I've seen that occur. But
11 to say that's it's occurred on
12 everything, no, sir.

13 Q. So again, back --- you're very
14 familiar with the plan then, you have
15 input into the plan that was
16 submitted to MSHA concerning the
17 seals?

18 A. Yeah, I had input into it,
19 yes.

20 Q. Okay. Why was the decision
21 made to seal the area, do you know?

22 A. Actually it was when we bottom

1 split mined. We had worked out an
2 agreement with the ventilation group
3 in Morgantown. They had asked us how
4 quickly we could get that sealed if
5 we go through with that proceeding.
6 So they had actually asked us to give
7 them a verbal time frame. I don't
8 recall that being in writing, but I
9 do remember a verbal communication
10 with them when we bottom split mined
11 the area, that we would have the area
12 sealed in a specific time.

13 Q. Do you know who those
14 discussions were made with at, I
15 guess, your level, ICG or ---?

16 A. When we had this
17 communication?

18 Q. Yes, sir.

19 A. It was myself, Ty Coleman and
20 with MSHA there was --- I'm
21 recalling, Nelson Blake, Tom Alasfa
22 (phonetic), Ed Parish and I was

1 trying to think there was one other
2 roof control guy that was in and out.
3 And I can't recall who that was. But
4 I recall that we addressed that issue
5 about the development of those seals
6 at that time.

7 Q. Who decided where the seals
8 were to be located?

9 A. Like I said, that was Jeff
10 Toler who had looked underground and
11 checked those.

12 Q. Okay. And he also then --- be
13 a little more --- narrow the aspect,
14 even including the seal Number One?

15 A. Yes.

16 Q. Was there any discussions of
17 or concerns in the selection of the
18 sites, seal sites, that they might
19 exceed the area, and I say the height
20 and width requirements?

21 A. My understanding of
22 recollection for that, that he had

1 checked the area for height and width
2 restrictions in that.

3 Q. When you say he, you're
4 saying?

5 A. Jeff.

6 Q. Jeff did. You all submitted
7 initially a requirement or a plan for
8 a, I believe, if I recall, 8 feet by
9 20 seal and then you later on put an
10 addendum in for an increased height
11 and width?

12 A. Right.

13 Q. Why was that decision made?

14 A. Because we was going to be in
15 heightened areas for A-1 and A-2
16 panels.

17 Q. Off of the One Left?

18 A. Off of the One Left. Those
19 were bottom split mined areas that we
20 knew that would exceed that height in
21 those areas.

22 Q. So those seals were

1 anticipated to be used?

2 A. Correct.

3 Q. Okay. You mentioned
4 communication with Mr. Clete Stephan.

5 A. Yes.

6 Q. Was that ----?

7 A. Yeah, I didn't personally
8 speak with him, the former engineer I
9 spoke with had just received data
10 from him.

11 Q. When you say data, do you know
12 if it was an e-mail or verbal or ---?

13 A. It's an assumption on my
14 behalf that it was an e-mail because
15 he actually sent me the drawing files
16 that he had had from him. I don't
17 know whether it was a direct or
18 whether it was --- I assume that it
19 was just a pass-on of his
20 information.

21 Q. When you're saying the drawing
22 files, you're talking about the files

1 that you put into the plan?

2 A. Correct.

3 Q. Do you know specifically, I
4 guess, where the seal construction
5 information came from? Is that where
6 it came from --- provided?

7 A. Yes. Correct.

8 Q. And we're talking about the
9 eight-foot by 20-foot wide seal?

10 A. No. It was all seals. The
11 Nine ---.

12 ATTORNEY KILPATRICK:

13 Can I see?

14 A. Yeah, excuse me.

15 ATTORNEY KILPATRICK:

16 Let me see that.

17 A. It was the 8 by 20, 10 by 20
18 and the 12 by 20 information.

19 BY MR. STOLTZ:

20 Q. So you actually had drawings
21 then, those types of drawings?

22 A. Correct.

1 Q. Maybe copies of those
2 drawings?

3 A. Yeah, I would assume that they
4 were copies of.

5 Q. Okay. But like I said, I do
6 recall the stipulation of that, of
7 those particular drawings being
8 somewhat modified because they wanted
9 the language instead of addressing
10 the water traps, the way I'm
11 recalling it, it came directly in
12 e-mail to just state in the sampling
13 pipes would be installed as per
14 the ---

15 Q. Seventy-five (75) ---.

16 A. --- the 75330 form.

17 Q. Okay. Do you recall when that
18 information was --- you received that
19 information from Clete or from your
20 other engineer received it from
21 Clete, Mr. Stephan?

22 A. No. I wouldn't have had that

1 e-mail file still. But no, I do not
2 recall the specific day.

3 Q. Could we get a copy of that
4 e-mail, please.

5 ATTORNEY KILPATRICK:

6 Yeah, we'll look into
7 it ---

8 MR. STOLTZ:

9 Thank you.

10 ATTORNEY KILPATRICK:

11 --- and provide it.

12 BY MR. STOLTZ:

13 Q. I guess one follow-through
14 question about the Number One seal,
15 was there any discussions that you're
16 aware of that it might exceed the
17 area or the height might exceed ---?

18 A. No. That was my understanding
19 of why they had moved it back was to
20 keep it within ---

21 Q. Okay.

22 A. --- the restraint of 8 by 20.

1 Q. Are you aware of any
2 installation procedures provided by
3 the manufacturer?

4 A. No. Other than my assumption
5 that the information that came from
6 Clete Stephan would have been
7 information that MSHA would have
8 worked with NIOSH or others when they
9 had approval.

10 Q. Okay. How do you know whether
11 all the steps of the seal
12 construction are covered in the plan?

13 A. Just by passing on the
14 information of what's in the plan to
15 the superintendent, which has built
16 Omega seals in the past.

17 Q. Okay. Would you know --- I
18 guess you would not. Would you know
19 if there are any important steps
20 missing?

21 A. Would I know?

22 Q. Yes.

1 A. No, not unless he would inform
2 me of such.

3 Q. And did he ---?

4 MR. STUART:

5 Let me just clarify
6 something, when you said steps
7 were missing, are you talking
8 about in the actual
9 installation or ---

10 MR. STOLTZ:

11 Yes.

12 MR. STUART:

13 --- or the plan itself?

14 MR. STOLTZ:

15 In the installation
16 which was submitted in the
17 plan.

18 ATTORNEY KILPATRICK:

19 Are you asking whether
20 they skipped steps when they
21 installed it or if there were
22 steps ---

1 MR. STOLTZ:

2 Steps in the plan ---

3 ATTORNEY KILPATRICK:

4 --- in the ---

5 MR. STOLTZ:

6 --- that are missing.

7 ATTORNEY KILPATRICK:

8 --- plan that are

9 missing?

10 MR. STOLTZ:

11 Yes.

12 ATTORNEY KILPATRICK:

13 Okay.

14 A. Only by the fact that I
15 wouldn't receive approval back.

16 BY MR. STOLTZ:

17 Q. Okay.

18 A. I mean, I have to rely upon
19 the approval agencies to make certain
20 that that's been checked. Typically
21 most in the industry does not get
22 their information directly. We rely

1 upon others. In some cases if a new
2 product is used, we gain that either
3 through a Freedom of Information Act
4 or what else or whatever information
5 we can get from others in the
6 industry.

7 Q. Okay. Are you familiar with
8 any other seals that have been built
9 at any --- at Sago or any other mine?

10 A. Sure.

11 Q. What type of seals were they?

12 A. I've seen pack setter
13 (phonetic). I don't know if you call
14 the conventional seals Mitchell Baird
15 (phonetic) or just a conventional
16 seal. I'm familiar with those, the
17 Hugh (phonetic) style, Mycon
18 (phonetic), several.

19 Q. So this was the first time
20 that you all had submitted --- or you
21 had submitted for a plan for Omega?

22 A. For that facility, to my

1 knowledge, yes. I don't know if it
2 --- anybody had ever had it in there
3 before and during an annual process
4 it was left out or whatever, but to
5 my knowledge, yes.

6 Q. For that facility, how about
7 any other mine that you ---?

8 A. That I've been acquainted
9 with? Yes, I've placed several in
10 there.

11 Q. Omega?

12 A. Omegas, yes.

13 Q. The Omega seals, was they
14 similar to what was submitted and
15 built in Sago then?

16 A. Yes.

17 Q. I guess with that knowledge,
18 did you verify or would you have
19 verified that the information
20 received from Mr. Stephan in which
21 you had submitted previously on
22 another plan was similar or correct?

1 A. No. I probably would have
2 relied upon the information coming
3 from --- especially if it comes from
4 him, I would assume that it would be
5 correct information. I mean, maybe,
6 you know, make a brief check, but I
7 don't know that I would make a real
8 thorough --- as thorough as I would
9 otherwise since it's coming from that
10 direction.

11 A. Why did the company want to
12 change the type of seals that they
13 had built previously underground at
14 the mine and go to Omega?

15 ATTORNEY KILPATRICK:

16 If you don't know, ---.

17 A. I don't know specifically.

18 BY MR. STOLTZ:

19 Q. Again, back to just clarify,
20 who then would have been recommended
21 the change to the Omega seals?

22 A. I know that Jeff had come to

1 me and asked, but I don't know if
2 that's where it came from or whether
3 it came from somebody else also.
4 It's an unknown.

5 Q. Okay.

6 ATTORNEY WILSON:

7 One quick question.
8 Did you --- I don't know if
9 you gave us the name of the
10 former engineer.

11 A. No, I did not.

12 ATTORNEY WILSON:

13 What was his name?

14 A. Joseph Pugh.

15 ATTORNEY WILSON:

16 Do you know how to
17 spell his last name?

18 A. P-U-G-H.

19 MR. STOLTZ:

20 John, do you have any
21 additional questions?

22 MR. COLLINS:

1 Yes.

2 BY MR. COLLINS:

3 Q. I do have some questions about
4 the seals and if I repeat, I
5 apologize. I think you stated
6 earlier that you did submit this
7 drawing.

8 A. Correct.

9 Q. Okay. And that --- did you do
10 the drawing as to how the seals were
11 going to be constructed?

12 A. Showing the sequential? Yes,
13 I labeled the numbers, yes.

14 Q. Did you make that drawing from
15 another drawing you had or had used
16 before?

17 A. The Omega drawing?

18 Q. Yes.

19 A. The reason I'm taking a little
20 while is I don't recall if I revised
21 that one based on the information
22 flow that I had or whether I had a

1 former drawing, so I would have to
2 research that.

3 Q. Okay. I'm going to jump out
4 just a little bit here, but the
5 approval number three, Joe, I take
6 that to apply to seals constructed
7 after the north main seals some day,
8 not having anything to do with the
9 north main seals; is that correct?

10 A. My timing, that's what I need
11 to look at in my files. The
12 recollection of this one that was
13 done for the initial seal submittal,
14 I know that the faxed letter that I
15 got back from the Office of Miners'
16 Health, Safety & Training, now after
17 looking at this data, was on or
18 around that same time of the October
19 12th. I don't know whether it was
20 based upon communication I had with
21 Tom Alasfa, and he said all right
22 this is going through, therefore I

1 contact the Office of Miners' Health,
2 Safety & Training and made that step
3 of the procedure. Or this final
4 approval date of December 8th, it
5 came from MSHA on a higher type
6 seals. You know, that isn't a really
7 direct answer but I would have to
8 check my files, John, to see how that
9 came --- that communication came to
10 the Office of Miners' Health, Safety
11 & Training.

12 Q. So you're saying that you
13 should have three state approvals to
14 pretty well parallel those?

15 A. Should at least have two, and
16 I assume that John made his same
17 submittal to the State. I have no
18 reason --- I don't know without
19 checking Johnny's files and/or the
20 mine's files.

21 Q. Okay. I think we covered
22 quite a bit that you have installed

1 or been aware of installation of
2 Omega seals in the past. And I
3 believe we did several of those. But
4 this particular drawing, Joe, again,
5 did you bring that with you from
6 another job?

7 A. I know the initial --- I'm
8 going off of recollection. The
9 initial, I think, predates my e-mail,
10 but like I said, I have to check and
11 see that. I don't know without
12 checking.

13 MR. STUART:

14 So then when you say
15 initial, you're referring to
16 Exhibit One?

17 A. Yes. Yes, sir.

18 BY MR. COLLINS:

19 Q. Okay. So this is basically
20 the same question, but did you ---
21 have you installed or had you
22 installed this type of seal before as

1 designed at Two north mains, as
2 designed by these parameters?

3 A. Without checking, I assume
4 that yes, I have, but like I said, I
5 would have to check and make certain
6 that it was my formal --- I've got a
7 formal information file.

8 Q. Okay. And then did I
9 understand that if you --- you submit
10 something and the requirements that
11 is on that submittal and the
12 requirements that are approved, are
13 those the only requirements that you
14 have to follow?

15 A. Repeat that, please.

16 Q. If you submit something with
17 requirements on it, such as this seal
18 plan, and it's approved, then are
19 those the only requirements that you
20 have to follow, safety precautions or
21 requirements of seal construction?

22 A. Unless it, you know, imposes

1 against some other safety restraint
2 of which they would check and our
3 safety department would look at.

4 Q. Did you list all the safety
5 requirements or precautions that you
6 knew of?

7 A. That I knew of? Yes, that I
8 knew of.

9 Q. Okay. Joe, did you train or
10 provide any information to other
11 people being trained on how to
12 install these seals?

13 A. Did I train? No.

14 Q. Did you provide any
15 information to other people to be
16 trained on these seals?

17 A. I have in my file a copy what
18 was given to the mine as well as the
19 office copy. So what's a typical
20 proceeding for me is to make certain
21 that the mine has a copy and our
22 office copy as well, have a copy

1 which shows them.

2 Q. I think you mentioned earlier,
3 or did you mention earlier that you
4 submit this stuff to MSHA, your
5 plans, ventilation plans, to MSHA and
6 then obtain approval and then bring
7 it to the State?

8 A. That's a typical proceeding,
9 but sometimes if it's --- it's in a
10 rush proceeding --- and actually at
11 that time, this may have went in
12 simultaneously. A lot of times ---.

13 Q. And we're not sure?

14 A. Yeah, on this one, no, sir.

15 Q. If MSHA had asked you for any
16 additional information on these
17 seals, would you have provided that
18 to the State?

19 A. Only if it would be counter to
20 anything that the --- that would
21 affect the State's approval. What
22 I'm stating is, a lot of times their

1 language, their sample pipe language
2 of 75335 is unacceptable and you've
3 got to put the 22A or whatever
4 language in them.

5 Q. The plan that you submitted to
6 the State, did you submit other
7 precautions than what MSHA required,
8 such as maybe the requirements by the
9 director?

10 A. I would have to check and see
11 the plans.

12 Q. But as far as today, do you
13 believe that you've submitted all the
14 safety precautions to the State that
15 you submitted to MSHA for these
16 seals?

17 A. To the best of my belief, yes.

18 Q. And Joe, do you have a --- I
19 think you assisted or helped or have
20 knowledge of the ventilation of these
21 seals. The final ventilation as to
22 where the intake splits in the Number

1 Nine entry of northeast mains and the
2 seals that's basically on their own
3 ventilation, on their course, do you
4 recall how much air we should have
5 going across those seals?

6 A. Do I recall? No. Just like I
7 said, the earlier communication, they
8 had told me that they had around
9 3,000 to 5,000 is my recollection.

10 Q. So there wasn't a requirement
11 of how much air was going through
12 across those?

13 A. No, there was a not a --- just
14 an adequate amount to keep the
15 atmosphere swept.

16 Q. And this was just from a ---
17 you're talking about information
18 received from MSHA on seal
19 construction and design. Is that
20 after you submitted for the seals at
21 Two northeast --- or northeast mains?

22 A. It was after, yes.

1 Q. So the information that you
2 obtained for those, the first seals,
3 for first approval, that's not ---
4 you didn't get that drawing from
5 MSHA?

6 A. Repeat that one.

7 Q. Okay. The information that
8 you said you obtained from MSHA, was
9 that information on the drawings on
10 the seals that was used at Two
11 northeast main?

12 A. I would actually have to see
13 how that was in my files.

14 Q. And when you submit a plan to
15 MSHA to build seals and to the State,
16 when you get that back, do you assume
17 that that's all the precautions that
18 has to be followed?

19 A. From MSHA and the State? Like
20 I said, unless safety observation or
21 something else comes up, and then
22 that decision is usually made at the

1 mine site.

2 Q. In the past have you submitted
3 any manufacturer's recommendations
4 for the request?

5 A. In the past? I can't answer
6 it because I don't know. I mean,
7 I've done so many files, it would be
8 tough to state whether I put the
9 manufacturer's request in. My first
10 thought, I don't recall.

11 MR. COLLINS:

12 That's all I have right
13 now, Joe. Thanks.

14 A. You're welcome.

15 BY MR. STOLTZ:

16 Q. Just to clarify for myself,
17 and again, back to amendment one.
18 Did I hear you say that you're not
19 sure whether you used Mr. Stephan's
20 drawing material in amendment one
21 then for the initial submittal?

22 A. That's what I need to check on

1 and see.

2 Q. If there were manufacturer
3 recommendations, I guess, I thought I
4 had heard you said that you don't
5 check for those, that you were
6 relying on your safety department to
7 check, and in this case, pertaining
8 to the seals.

9 A. Well, in this case, with the
10 information coming directly from
11 MSHA, I probably wouldn't have. I
12 mean, I would assume that everything
13 in that development would have been a
14 direct information flow and no
15 additional information was necessary.

16 Q. Provided you had that
17 information initially, which you're
18 not sure?

19 A. Correct.

20 Q. You're going to check on it?

21 A. Right.

22 Q. Also, I guess another follow

1 up to a previous answer, was who made
2 or why was the decision made to
3 ventilate the seals using intake air
4 from Nine and Eight in the mains and
5 wrap it around, bringing it out over
6 the --- an overcast, to set up the
7 ventilation system that way?

8 A. Because the primary escape way
9 route in which MSHA and the State had
10 requested that we get a primary
11 escape way route out and get it
12 screened in as quick as possible, and
13 the easiest way to do that was use
14 the screening over in the Number Nine
15 entry and develop outby. And that
16 was actually a coordinated effort
17 between the company, MSHA and the
18 State. So hence, you couldn't leave
19 that as a return entry if you're
20 going to try to make it a primary
21 escape way.

22 Q. Right. When was the decision

1 or --- that made?

2 A. That was an ongoing
3 proceeding, I don't know the specific
4 day, but it was jointly during that
5 same time frame.

6 MR. STOLTZ:

7 John, do you have any
8 more follow-ups, questions on
9 the seals then before --- I'm
10 ready to move on.

11 MR. COLLINS:

12 Okay. Thank you.

13 MR. STOLTZ:

14 Okay.

15 BY MR. STOLTZ:

16 Q. Just a quick question I guess.
17 You said you were only in the mine
18 three times, but I'm sure you've been
19 in other mines numerous times. Do
20 you ever recall seeing any anomalies,
21 roof anomalies, such as, I'm going to
22 say the thing or what they're calling

1 the potential area, ignition area?

2 A. No. I've never ever seen
3 anything like that.

4 Q. And I guess, I was just going
5 to throw this out as an exhibit and
6 the thing, the ignition area, that is
7 a picture of the marks on the roof?

8 A. Correct. I've never seen
9 anything like that.

10 Q. Okay.

11 MR. STOLTZ:

12 And that would be
13 Exhibit --- what are we up to?

14 ATTORNEY WILSON:

15 Four.

16 MR. STOLTZ:

17 Four.

18 (Myers Exhibit Four
19 marked for
20 identification.)

21 OFF RECORD DISCUSSION

22 BY MR. STOLTZ:

1 Q. Okay. I was going to just
2 diverse now to some other questions.
3 Can you describe the belt hangers
4 that are bolted to the mine roof?

5 A. Can I describe them?

6 Q. Yeah.

7 A. In what fashion? What ---?

8 Q. Just general description. Are
9 you familiar with the belt hangers in
10 the Sago Mine? Yes, no?

11 A. No. Not to any specific
12 degree, no.

13 Q. Okay. I was going to move on
14 now to some training questions. When
15 was the annual retraining class that
16 you participated in?

17 A. Actually, I'd have to dig back
18 through some old cards. I had
19 changed jobs so it would have been
20 with --- Brooks Run Mining Company
21 should have been my last annual
22 refresher. And probably transpired

1 in 2005, that's what I'm recalling,
2 in the spring time frame.

3 Q. Can you describe what was
4 covered in that training session?

5 A. First-aid, donning the SCSRs,
6 spotter, ventilation, roof control,
7 which is the typical eight-hour
8 session.

9 Q. You mentioned SCSR training,
10 how was that done?

11 A. Hands-on.

12 Q. Hands-on?

13 A. Yes. It was done in front of
14 the instructor.

15 Q. Actual donning?

16 A. Yes.

17 Q. Used demonstrators or ---?

18 A. Yes, using demonstrators. He
19 would repackage and make each person
20 go in front.

21 Q. Do you recall who actually
22 conducted the training, the annual

1 retraining class --- retraining?

2 A. I'm recalling Jeff Bennett.
3 That's not the State's Jeff Bennett,
4 it's a safety instructor.

5 Q. And just quickly go through
6 --- because a lot of these will not
7 be applicable. Okay.

8 MR. STOLTZ:

9 Can we take a brief
10 five-minute or three-minute?

11 SHORT BREAK TAKEN

12 BY MR. STOLTZ:

13 Q. Previously, you had mentioned,
14 Joe Pugh ---

15 A. Yes.

16 Q. --- as an ex-worker?

17 A. Correct.

18 Q. Do you have any contacts with
19 him now or do you know where we could
20 get contact information for him?

21 A. He works with the Brooks Run
22 Mining Company.

1 Q. Is that local?

2 A. It's in the Sutton area.

3 Q. Would you happen to have a
4 phone number?

5 A. I'm recalling 765-4006.

6 Q. Okay. I'm going to take you
7 back a little bit. You and I
8 traveled a lot underground mapping
9 and then you eventually went up and
10 visited the thing, I'm going to call
11 Exhibit --- is it Four?

12 A. Yes.

13 Q. Based on your observations in
14 the mine, do you have any opinions as
15 to whether the seals were properly
16 constructed?

17 A. Do I have an opinion?

18 Q. Yes, based on --- you know, we
19 traveled, we went mapped and you went
20 through the seal area back to the
21 area.

22 A. My opinion is I have the

1 feeling that they --- yes, they were
2 because we had two inspections of
3 that that no one had any problems
4 with. So based on that, I have to
5 assume that everything was fine with
6 everything.

7 Q. The inspections you refer to,
8 who made those inspections or what
9 type of inspections?

10 A. My understanding both an MSHA
11 inspection and a State inspection was
12 made of those seals.

13 Q. Upon their completion or ---?

14 A. No. Actually, typically the
15 state typically requires to see,
16 prior to completion, an inby and
17 outby inspection prior to the capping
18 off. I understand that transpired.

19 Q. Okay. Why do you think the
20 Omega blocks from the seals were
21 basically obliterated? The majority
22 of the stuff we mapped, when I

1 mapped, were a third of a piece
2 baseball size, softball size. What's
3 your feelings on why they were ---?

4 A. Expressed feelings?

5 Q. Or your opinion?

6 ATTORNEY KILPATRICK:

7 Yes. I mean, if you
8 have an opinion, you can make
9 it.

10 A. Like I said, I hadn't
11 completed my calculations yet, but if
12 you go through, force equals mass
13 times acceleration, and go through
14 and see what some of these items were
15 accelerated to, my feeling is that we
16 had a blast. Without finishing my
17 calculation, in excess of probably 50
18 psi. But that's an assumption, I
19 don't think that to be factual yet.

20 BY MR. STOLTZ:

21 Q. That's understandable. I
22 guess --- you brought up the

1 calculations. I've got to ask, what
2 are you going to base your
3 calculations on?

4 A. Actually, I'm going to be
5 looking at the weight of that belt
6 head being turned as one item. And I
7 know that it's even affixed so I can
8 look at the resistivity of steel and
9 concrete and know that that's moved
10 in that direction X number of feet,
11 therefore, it took a sliding motion
12 of X to produce that. That's one.

13 Getting to the acceleration
14 issue, as you being an engineer are
15 well aware of, acceleration is a time
16 matter. So to derive at that
17 function is very difficult. I can
18 say that that weight of that object
19 moved and come up with a resistivity
20 on it saying if it didn't even
21 deflect, what force would it have
22 took it to propel that object that

1 far. Or add some hence number to
2 that and come up with that function.

3 Q. So was that the only thing
4 you're going to base your ---?

5 A. Well, that's my first two
6 initial because I know those. As far
7 as looking into others, time has been
8 very precious here lately in trying
9 to get everything else back, so
10 that's my two functions I was going
11 to look at personally on behalf of
12 the company just for my own looks.

13 Q. Okay. I guess I've got to for
14 a follow-up then because as part or
15 the company then, are they going to
16 be basing, you know, I guess --- do
17 you know what they're basing their
18 --- or are you involved in that?

19 A. I'm certain that they ---.

20 Q. Going to be involved in that?

21 A. No.

22 ATTORNEY KILPATRICK:

1 Just whatever you know.

2 A. No.

3 ATTORNEY KILPATRICK:

4 If you know.

5 BY MR. STOLTZ:

6 Q. If you --- yeah.

7 A. No, they have not asked me.

8 Q. Okay.

9 MR. STOLTZ:

10 Mr. Collins?

11 MR. COLLINS:

12 Just a couple

13 follow-up, please, Joe.

14 BY MR. COLLINS:

15 Q. During your deposition or
16 statements, you have mentioned your
17 files, Johnny Stemple's files and the
18 mine files.

19 A. Correct.

20 Q. Would you clarify that some
21 about the files?

22 A. Since we are a new division,

1 location, we have been switching and
2 getting copies of all the mine files
3 and bringing those over to what we
4 call the office. To state that
5 everyone's in there, no, I can't
6 state that. We are building that
7 environment back --- or forward I
8 should say. So right now, there are
9 files each one person has and we're
10 building that and putting those in as
11 those are approved. Mine are in
12 there with Johnny's in what we call
13 the Sago file right now. So to say
14 anything prior to July 29th, I can't
15 say. You know, I have to go upon the
16 information.

17 Q. Just sort of a general
18 question on mapping. But since the
19 event, there's been a lot of mapping
20 underground and I believe that the
21 State is aware of all that. As far
22 as you know, is the State aware of

1 all the mapping activities that you
2 did on the surface in respect to the
3 boreholes or gas wells or gas line
4 locations?

5 A. Actually, Monty has every file
6 that he has requested from me. He
7 actually even has another company's
8 data that they respectfully asked for
9 us not to provide it. He actually
10 has that file in hand.

11 Q. Okay. You mentioned some ---
12 you talked some about coming into the
13 command center during the event and
14 during the rescue efforts and stuff.
15 Just some clarification, at any time
16 did you feel as though you were in
17 charge of the command center for the
18 operator?

19 A. No.

20 Q. Then if you --- when you have
21 submitted --- and dealing with you
22 for several years, you have submitted

1 several of these, have you submitted
2 to MSHA or the State, manufacturer's
3 requirements for building a seal?

4 ATTORNEY KILPATRICK:

5 I think you've already
6 asked him that one.

7 A. Yeah, like I said, I would
8 have to go back and check as my
9 answer to state whether they would
10 have had the guidance proceedings on
11 that or had that label, I would have
12 to check.

13 MR. COLLINS:

14 And I'm aware I've
15 asked that before. It's the
16 same question, but I ---. I
17 think that's all we have, Joe.

18 A. Okay.

19 BY MR. STOLTZ:

20 Q. Okay. I just have a couple
21 more questions. Have you ever been
22 searched for smoking materials?

1 A. Yes. I was trying to recall.
2 It's been a long time, but yes I
3 have. Typically because I don't go
4 underground every day is the reason
5 that's elongated.

6 Q. Okay. So you have never been
7 searched for smoking materials at
8 Sago Mine then on your three visits?

9 A. Correct.

10 Q. In those three visits, have
11 you ever observed anyone smoking
12 underground at Sago Mine?

13 A. No.

14 Q. Have you ever found any
15 smoking articles underground at the
16 Sago Mine?

17 A. No.

18 Q. Has anyone offered you
19 anything or made any promises to you
20 in exchange for your appearance here
21 today?

22 A. No.

1 Q. Do you have anything that you
2 would like to add that may be
3 relevant to this investigation, Joe?

4 A. No.

5 MR. STOLTZ:

6 John?

7 MR. COLLINS:

8 I don't have anything
9 else. Thank you, Joe.

10 A. You're welcome. Thank you.

11 MR. STOLTZ:

12 I've got a closing
13 statement here. I'm sorry.
14 On behalf of MSHA, I want to
15 thank you for appearing and
16 answering questions today.
17 Your cooperation is very
18 important to the investigation
19 as we work to determine the
20 cause of the accident.

21 We ask that you not
22 discuss your testimony with

1 any person who may have
2 already been interviewed or
3 who may be interviewed in the
4 future. This will ensure that
5 we obtain everyone's
6 independent recollection of
7 the events surrounding the
8 accident. After questioning
9 other witnesses, we may call
10 you if we have any follow-up
11 questions that we feel that we
12 need to ask you. If at any
13 time you have additional
14 information regarding the
15 accident that you would like
16 to provide to us, please
17 contact us at the contact
18 information that was
19 previously provided to you,
20 and that was Mr. Gates' card.

21 The Mine Act provides
22 certain protections to miners

1 who provide information to
 2 MSHA, and as a result, are
 3 treated adversely. If at any
 4 time you believe that you have
 5 been treated unfairly because
 6 of your cooperation in this
 7 investigation, you should
 8 immediately notify MSHA.

9 If you wish, you may
 10 now go back over any answer
 11 you have given during this
 12 interview and you may also
 13 make any statement that you
 14 would like to make at this
 15 time.

16 A. No.

17 MR. STOLTZ:

18 Again, I want to thank
 19 you for your cooperation in
 20 this matter

21 * * * * *

22 SWORN STATEMENT

1 CONCLUDED AT 11:23 A.M.

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