

STATEMENT UNDER OATH

OF

JEREMY ROGER TOLER

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. District  
Court, 500 West Pike, Clarksburg,  
West Virginia, on Friday, February  
24, 2006, at 10:06 a.m.

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## 1 A P P E A R A N C E S

2

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

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P R O C E E D I N G S

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MR. SWENTOSKY:

My name is Dennis Swentosky. I'm an accident investigator with the Mine Safety & Health Administration, an agency with the United States Department of Labor. With me is Tim

1 Williams from our Solicitor's  
2 Office, John Collins and Jeff  
3 Bennett with the West Virginia  
4 Office of Miners' Health,  
5 Safety & Training.

6 I've 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.

12 The investigation is  
13 being conducted by MSHA and  
14 the West Virginia Office of  
15 Miners' Health, Safety &  
16 Training to gather information  
17 to determine the cause of the  
18 accident, and these interviews  
19 are an important part of the  
20 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 the causes of the  
9           accident. MSHA accident  
10          reports are made available to  
11          the public in the hope that  
12          greater awareness about the  
13          causes of accidents can reduce  
14          their occurrence in the  
15          future. Information obtained  
16          through witness interviews is  
17          frequently included in those  
18          reports. Your statement may  
19          also be used in other  
20          enforcement proceedings.

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

1 appearance here today. 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 of making  
7 the nation's mines safer.

8 We understand the  
9 difficulty for you in  
10 discussing the events that  
11 took place, and we greatly  
12 appreciate your efforts to  
13 help us understand what  
14 happened.

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

1 of Miners' Health, Safety &  
2 Training into the conditions,  
3 events and circumstances  
4 surrounding the fatalities  
5 that occurred at the Sago Mine  
6 owned by International Coal  
7 Group in Buckhannon, West  
8 Virginia, on January 2nd,  
9 2006. This interview is being  
10 conducted at the U.S. District  
11 Court in Clarksburg, West  
12 Virginia on February 24th,  
13 2006.

14 Questioning will be  
15 conducted by representatives  
16 of MSHA and the Office of  
17 Miners' Health, Safety &  
18 Training.

19 Mr. Toler, this  
20 interview will begin by me  
21 asking a series of questions.  
22 If you do not understand a

1 question, please ask me to  
2 rephrase it. Feel free at any  
3 time to clarify any statements  
4 that you make in response to  
5 the questions. After we have  
6 finished asking questions, you  
7 will also have an opportunity  
8 to make a statement and  
9 provide us with any  
10 information that you believe  
11 may be important.

12 If at any time after  
13 the interview you recall any  
14 additional information that  
15 you believe may be useful in  
16 the investigation, please  
17 contact Richard Gates at the  
18 phone number and e-mail  
19 address provided to you. And  
20 here's a business card for Mr.  
21 Gates.

22 Your statement is

1 completely voluntary. You may  
2 refuse to answer any question.  
3 You may terminate this  
4 interview at any time. If you  
5 need a break for any reason,  
6 just please let me know.

7 The court reporter will  
8 record your interview and will  
9 later produce a written  
10 transcript. Please try and  
11 respond to all questions  
12 verbally, since the court  
13 reporter cannot record  
14 nonverbal responses. Also,  
15 please try and keep your voice  
16 up. Copies of the written  
17 transcripts will be available  
18 at a later date.

19 If any part of your  
20 statement is based not on your  
21 own first-hand knowledge, but  
22 on information that you

1           learned from someone else,  
2           please let us know. Please  
3           answer each question as fully  
4           as you can, including any  
5           information that you learned  
6           from someone else.

7                         We may not ask the  
8           right questions to learn the  
9           information you have, so do  
10          not feel limited in the  
11          precise question that we ask.  
12          If you have information about  
13          the subject area of the  
14          question, please provide it to  
15          us.

16                        Mr. Collins, do you  
17          have anything that you would  
18          like to add on behalf of the  
19          Office of Miner's Health,  
20          Safety & Training?

21                                 MR. COLLINS:

22                                 Yes. Mr. Toler, the

1 West Virginia Office of  
2 Miners' Health, Safety &  
3 Training is conducting these  
4 interview sessions jointly  
5 with MSHA and are in agreement  
6 with the procedures outlined  
7 by Mr. Swentosky.

8 But the Director  
9 reserves the right, if  
10 necessary, to call or subpoena  
11 witnesses or require the  
12 production of any records,  
13 documents, photographs or  
14 other relevant materials  
15 necessary to conduct this  
16 investigation.

17 MR. SWENTOSKY:

18 Mr. Toler, are you  
19 aware that you may have a  
20 personal representative  
21 present during the taking of  
22 this statement?

1                   MR. TOLER:

2                   Yes, sir.

3                   MR. SWENTOSKY:

4                   And do you have a  
5                   representative with you here  
6                   today?

7                   MR. TOLER:

8                   Yes, I do.

9                   MR. SWENTOSKY:

10                  And who might that be?

11                  MR. TOLER:

12                  Joe Yuhas.

13                  MR. SWENTOSKY:

14                  Thank you. Has anyone  
15                  suggested to you that you use  
16                  this representative?

17                  MR. TOLER:

18                  No, sir.

19                  MR. SWENTOSKY:

20                  Are you aware that your  
21                  representative may have a  
22                  conflict of interest in



1           representing you while being  
2           provided by someone else, such  
3           as the company?

4                   MR. TOLER:

5                   Yes.

6                   MR. SWENTOSKY:

7                   Have you been pressured  
8                   in any way to accept this  
9                   person as your representative?

10                   MR. TOLER:

11                   No.

12                   MR. SWENTOSKY:

13                   With this  
14                   understanding, do you still  
15                   choose this person as your  
16                   representative?

17                   MR. TOLER:

18                   I do.

19                   MR. SWENTOSKY:

20                   Thank you. Do you have  
21                   any questions regarding the  
22                   matter before we get started

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with the interview?

MR. TOLER:

No, sir.

MR. SWENTOSKY:

Okay. Could you swear  
in Mr. Toler, please?

-----

JEREMY ROGER TOLER, HAVING FIRST BEEN  
DULY SWORN, TESTIFIED AS FOLLOWS:

-----

BY MR. SWENTOSKY:

Q. Could you give us your full  
name, and just spell your last name  
for us, please?

A. Jeremy Roger Toler, T-O-L-E-R.

Q. And could you provide us with  
your address and telephone number,  
please?

A. [REDACTED]  
[REDACTED]  
[REDACTED]

Q. Thank you. And are you

1 appearing here today voluntarily?

2 A. Yes, sir.

3 Q. And how many years of mining  
4 experience do you have, Mr. Toler?

5 A. Approximately five.

6 Q. And could you just give us a  
7 brief description of your employment  
8 history, please?

9 A. Worked at Brooks Run and  
10 worked for Massey for a little while,  
11 and several contractors.

12 Q. Okay. And how much time have  
13 you spent at the Sago Mine?

14 A. I started there the 1st of  
15 October.

16 Q. October of 2005?

17 A. Yes, sir.

18 Q. And what was your position on  
19 --- what is your present position?

20 A. I'm a roof bolter operator.

21 Q. And that was your position on  
22 the day of the accident?

1 A. Yes, sir.

2 Q. Were you working on the day of  
3 the accident?

4 A. No, sir.

5 Q. And when was the last day that  
6 you worked prior to the accident?

7 A. The Friday before, the day  
8 before New Year's Eve.

9 MR. SWENTOSKY:

10 And for the record,  
11 when I say the accident, I'm  
12 talking about January 2nd,  
13 2006.

14 BY MR. SWENTOSKY:

15 Q. And how long have you worked  
16 as a roof bolter?

17 A. Probably three and a half,  
18 four years.

19 Q. And did you hold any other  
20 positions at the Sago Mine, other  
21 than a roof bolter?

22 A. When I first started I helped

1 on screening the intake and cable  
2 bolting it, and then helped with the  
3 seals.

4 Q. Okay. And do you have any  
5 mining certifications?

6 A. Just my underground card.

7 Q. You don't have the --- what  
8 I'm speaking of, I'm talking about  
9 mine foreman ---

10 A. No, sir.

11 Q. --- examiner's papers. Okay.  
12 Thanks. And who is your immediate  
13 supervisor?

14 A. Right now it's Bob Williams.

15 Q. Okay. On January 2nd, 2006,  
16 who was your supervisor?

17 A. It would have been Bob also.

18 Q. And how long has he been your  
19 supervisor?

20 A. Not too long. Probably only a  
21 month and a half.

22 Q. And who would have been your

1 supervisor prior to that?

2 A. I guess Jeff Snyder was, on  
3 the seals. And of course, there were  
4 several up there. Jeff's who I  
5 started with. There were several  
6 other supervisors up there. But I  
7 guess I answered to Jeff.

8 Q. And you say you weren't  
9 working on January 2nd, 2006. Did  
10 you go to the mine that day?

11 A. I went to the church that day.

12 Q. So you didn't go down to the  
13 mine at any point?

14 A. No, sir.

15 Q. Are you familiar with the old  
16 Two Left Main seals?

17 A. With the seals, yes.

18 Q. And when I say the old Two  
19 Left Main seals, we're talking about  
20 the ones that were blown out by the  
21 explosion?

22 A. Yes. That's correct.

1 Q. Okay. And you said you worked  
2 on those seals?

3 A. Yes, sir. A few of them.

4 Q. Okay. And do you know which  
5 seals you worked on?

6 A. I helped on seal Number Two,  
7 Four, Five, Six, Seven, Eight and  
8 Nine.

9 Q. Two, Four, Six, --- excuse me,  
10 Five?

11 A. Yeah. Seal Two, Four, Five,  
12 Six, Seven, Eight and Nine.

13 Q. Okay. And you had mentioned  
14 --- who was actually in charge of  
15 building those seals, the  
16 overall ---?

17 A. Well, it kind of switched  
18 hands in the middle of it. Starting  
19 with, Jeff Snyder was.

20 Q. Okay.

21 A. And they moved Jeff Snyder,  
22 and Marty Conrad came up there. Jeff

1       wasn't there but for just a few of  
2       the seals, but I don't remember which  
3       ones.

4       Q.       Okay. And you said after Mr.  
5       Snyder then Marty Conrad?

6       A.       Yes, sir.

7       Q.       And at that point there he had  
8       over-all charge of this seal  
9       construction underground at that  
10      time?

11     A.       Yeah. To my knowledge, yeah.

12     Q.       Okay. Who else was up there  
13     helping you building seals?

14     A.       There was John Jackson, Harmon  
15     Jordan, Casey Short, George Brooks,  
16     James Scott and Seth Osborne.

17     Q.       Okay. And you had mentioned  
18     Jeff Snyder and Marty Conrad ---

19     A.       Yes, sir.

20     Q.       --- during your period --- was  
21     there any time any other persons up  
22     there who would be directing those



1 seal constructions?

2 A. No, sir.

3 Q. Okay. I wonder if you could  
4 just start at the beginning of when  
5 you started constructing a seal,  
6 let's say a new seal, and go through  
7 the procedures that you used to  
8 construct those seals. You know,  
9 talk to me about their --- tell me  
10 about the mortar and the way you put  
11 the wedges in and how you secured  
12 into the side, and just the step-by-  
13 step method that you used to  
14 construct those seals and how you  
15 topped it off and so on. Just kind  
16 of a detailed, if you could, on how  
17 you did --- built the seal.

18 A. I don't remember all the  
19 details to it. What I remember was  
20 we would clean out the area and put  
21 some mud down, some mortar and start  
22 laying our block. We'd mud the block

1 horizontal and vertical, joints. And  
2 once we got a whole row complete,  
3 we'd take buckets of mud and smear it  
4 all over the top of that row. And  
5 we'd just do the whole seal like  
6 that. Capping it off, there were  
7 some boards that went in the top and  
8 wedges. And then that's about it, I  
9 guess.

10 Q. Okay. Were all ten of the  
11 seals for the old Two Left Mains,  
12 were they all the same type of seal?

13 A. They're all Omega seal, yes.

14 Q. Okay. And whenever you were  
15 sent to install that seal, what ---  
16 did you receive any training or  
17 anything on how to install those  
18 seals?

19 A. They went over --- the boss  
20 went over the plan with us, and  
21 pretty much gave us a general idea of  
22 what we were doing. And then --- you

1 know, he was there while we were  
2 building it. But he, you know, gave  
3 us a pretty good idea of how to get  
4 started --- and then you know, he was  
5 there.

6 Q. Okay. Was that your first day  
7 there, that he gave you your  
8 training?

9 A. Yes.

10 Q. And you say the boss, which  
11 boss would that have been?

12 A. That would have been Jeff  
13 Snyder.

14 Q. Jeff Snyder. And did he use  
15 any --- I mean, how did he describe  
16 to you how to install?

17 A. Well, really he read over the  
18 plan with us, and then just went up  
19 there and pretty much just showed us  
20 how to get started.

21 Q. I have a copy of a plan here,  
22 which consists of five pages. And

1 the first page consists of an  
2 approval letter from Mr. Kevin  
3 Strickland, and it's dated October  
4 24th. There's --- on the first page  
5 there's a small four up in the center  
6 of the top, and then it goes to five,  
7 six, seven and eight.

8 MR. SWENTOSKY:

9 We'll mark that Exhibit  
10 One.

11 (Jeremy Toler Exhibit  
12 One marked for  
13 identification.)

14 BY MR. SWENTOSKY:

15 Q. And do you recognize that at  
16 all?

17 A. Yeah. This is the plan that  
18 the boss had. I'm not sure if he had  
19 these first two pages, but I know  
20 that he had the instruction plan.

21 Q. Okay. And that's the plan  
22 that he had with him whenever he

1 reviewed --- that he reviewed with  
2 you?

3 A. To my knowledge, yeah. I  
4 never actually had the plan in my  
5 hands, but just looking at what he  
6 had, that looks like what he had,  
7 yes.

8 Q. Okay. And he reviewed that  
9 information with you by reading off  
10 of this plan that he had in his  
11 hands?

12 A. Yes, sir.

13 Q. Okay. Did he actually work  
14 with you to show you ---

15 A. Yes, sir.

16 Q. --- how to install that?  
17 Okay. Did you actually have an  
18 opportunity to actually read the plan  
19 yourself at all at any time?

20 A. I never asked to, but I'm sure  
21 that if I would have asked I could  
22 have, yes.

1 Q. Okay. But I mean, you never  
2 did?

3 A. No.

4 Q. You said Mr. Snyder did that?

5 A. Yes, sir.

6 Q. Is this the first time you  
7 were ever involved in building the  
8 Omega seals?

9 A. No, sir.

10 Q. And where would you have built  
11 those seals before?

12 A. For Brooks Run.

13 Q. Brooks Run?

14 A. Yes, sir.

15 Q. Okay. And when would that  
16 have been?

17 A. I don't even --- don't really  
18 have a clue. It was sometime when I  
19 was employed with them.

20 Q. Okay. And is this the same  
21 procedure that you used at Brooks  
22 Run ---

1 A. Yes, sir.

2 Q. --- that I've just shown you?

3 A. Yes, sir.

4 Q. Okay. How did you prepare ---  
5 did you measure up the seals, measure  
6 and pick a location for the seals?

7 A. Jeff did that.

8 Q. Jeff did that?

9 A. Yes, sir.

10 Q. And did he measure the  
11 distance for all of the seals?

12 A. Yes, sir.

13 Q. All the seals that you were  
14 involved in?

15 A. Yes, sir.

16 Q. Jeff Snyder or Jeff Toler?

17 A. Jeff Snyder.

18 Q. Jeff Snyder?

19 A. Sorry, yes. Yes, sir.

20 Q. Okay. He measured off every  
21 one, no one else measured off ---?

22 A. No. We held the tape line for

1       him, but he had it measured back  
2       where he felt we needed to build it,  
3       yes.

4       Q.       And he took those measurements  
5       from the corner of the outby side of  
6       the pillar block?

7       A.       Yes, sir.

8       Q.       To the location where he ---  
9       on both sides did you do that?

10      A.       Well, on the very first seal,  
11      we only did one side. And we had  
12      half a seal built, and Jeff Toler  
13      came up there --- and one side of  
14      that seal was only a couple feet back  
15      off of there, so we had to tear it  
16      down and move the seal back.

17      Q.       And what number seal was that;  
18      do you recall?

19      A.       I think it was Number Nine.

20      Q.       Number Nine seal, was that the  
21      very first seal that was installed?

22      A.       To my knowledge, yeah. I'm



1       pretty sure that was the first one we  
2       built, yes.

3       Q.       Okay.   And how far up did you  
4       have that seal when Mr. Jeff Toler  
5       made you tear it down?

6       A.       We had a good five or six rows  
7       on it.

8       Q.       Okay.   And when you moved it  
9       back, you reused those blocks?

10      A.       No, sir.

11      Q.       What did you do with those  
12      blocks?

13      A.       Well, for the time being we  
14      threw them over to the side, and I  
15      don't know where they went after  
16      that.

17      Q.       Okay.   When you started out a  
18      seal, just explain to me what you  
19      did.   What did you do when you  
20      started the seal, how far on each  
21      side of it did you clean the bottom?

22      A.       Well, we took the scoop first

1 and cleaned the whole area.

2 Q. Okay.

3 A. And we got in the general area  
4 of where we had it marked to build  
5 the seal, cleaned the bottom out even  
6 better right there.

7 Q. And how did you do that?

8 A. Just with our hammer, and we  
9 had a shovel there also. It seemed  
10 like the scoop got it pretty well.  
11 And just mix some mud and poured it  
12 down. We poured a lot of mud at the  
13 bottom.

14 Q. And to get --- to level up  
15 that bottom, how did you do that?

16 A. With the mud.

17 Q. With the mud?

18 A. Yeah, to level the block up we  
19 used the mud.

20 Q. Okay. What do you do, just  
21 take a bag and put it down on the  
22 bottom and level it up, dump the bag

1 out and level it out?

2 A. We mixed a lot of it. There  
3 were some areas where it was pretty  
4 wet. We would do that, but there was  
5 usually a lot of wet mud involved  
6 with all of them on the bottom. And  
7 leveling them up, we used it dry,  
8 yes.

9 Q. So each seal then, where you  
10 had it uneven, to level that up, you  
11 just dumped the bag out and laid it  
12 on the bottom, and spread it out kind  
13 of like you do rock dust whenever  
14 you're building a stopping, that kind  
15 of thing?

16 A. Yeah. Pretty much, yeah. If  
17 the area --- if the bottom was pretty  
18 damp right there, where that could  
19 absorb the water.

20 Q. Was there puddles of water  
21 laying in that area?

22 A. Well, not huge puddles, but

1 the bottom was pretty damp, yeah.

2 Q. Muddy soft stuff?

3 A. No, not muddy, it just --- it  
4 had moisture, the ribs and  
5 everything. The mine, it's a wet  
6 mine, but there was no mud that they  
7 would build on, no.

8 Q. Okay. And when you --- okay,  
9 so then you ---.

10 Once you had this dry mortar  
11 laid down, and everything was leveled  
12 up, then explain to me how you laid  
13 the first row of blocks down.

14 A. Well, start on one rib, and  
15 you take a block, lay it down flat  
16 longways, all the way across.

17 Q. Okay.

18 A. Then come behind that block  
19 with the road, laid down flat going  
20 in the other direction, I guess you'd  
21 say.

22 Q. Okay.

1 A. And then you'd butt those  
2 together.

3 Q. Okay.

4 A. As you laid the block, you'd  
5 mud the joints and put them together,  
6 like that. And once you had that row  
7 all the way across, you'd take mud  
8 and dump on top of it, smear it all  
9 out pretty level and lay your next  
10 row over top of it.

11 Q. Okay. To mix that mud, did  
12 you have --- what type of consistency  
13 was that mud as you call it --- what  
14 was the name of that mud, as you've  
15 mentioned?

16 A. That it was B-Bond.

17 Q. B-Bond?

18 A. Yes, sir.

19 Q. BlocBond?

20 A. BlocBond, something, yeah.

21 Q. What color of bag did it come  
22 in?

1       A.       I'm not really sure. I know  
2       there's two colors, and I know there  
3       was a specific color, and the only  
4       reason I know that is, the motor crew  
5       had brought in the wrong color, a  
6       whole pallet of it one day. And Jeff  
7       Snyder refused to let us use it, and  
8       that's when they found out that there  
9       was a specific B-Bond that we had to  
10      use.

11     Q.       I see. And whenever you would  
12     mix that, what did you mix that  
13     material in?

14     A.       It was mixed in a wheelbarrow.

15     Q.       Okay. How many bags did you  
16     mix at a time?

17     A.       I don't even remember. It was  
18     different, just whatever you needed.

19     Q.       Could you mix four or five  
20     bags in there at one time, or two  
21     bags?

22     A.       Probably on the average, two.

1 Q. And how much water did you put  
2 in there to mix up two bags?

3 A. I don't even remember.

4 Q. Did anybody ever tell you how  
5 much to mix in a bag, water per bag?

6 A. I don't think so, no.

7 Q. Okay. So you just ---  
8 whatever ---?

9 A. Whatever you felt was a good  
10 mixture.

11 Q. Was the mud pretty soupy?

12 A. No, it was good thick mud.

13 Q. Okay. Whenever you laid the  
14 blocks down and the mortar on top of  
15 it, would it have to be pretty soupy  
16 to get down in the joints --- you  
17 know, between the blocks to get it  
18 down in between there? How did you  
19 get that mortar down in between  
20 there?

21 A. Well, we kind of made the mud  
22 for what we needed. If we needed it,

1 a little bit thin and lay it a little  
2 bit thin so it would get down in  
3 those joints. You know, it would be  
4 a little bit thicker to spread on top  
5 of the blocks and the joints. You'd  
6 make it a little bit thicker for  
7 that.

8 Q. Okay. So on occasion --- was  
9 there like maybe two applications  
10 where you use a little thinner mortar  
11 so it would get down in between the  
12 joints and then you had to lay it on  
13 top so it would make it nice and  
14 thick on top, or ---?

15 A. Yeah. But I mean, it wasn't  
16 like water or anything. I mean, it  
17 was still --- it still had a pretty  
18 good texture to it, but --- you know,  
19 it would get down into the cracks  
20 there pretty good.

21 Q. I see. Would you lay the  
22 blocks the whole way across and then



1 put the mortar on top of the block,  
2 or how did you do that? When I say  
3 the whole way across, you started at  
4 a rib and completed that row to the  
5 next rib, and then put mortar on top?  
6 Is that how you did that, or ---?

7 A. On the top of the blocks?

8 Q. Yes.

9 A. Yes, yes.

10 Q. Okay. So you completed a row.  
11 Okay.

12 MR. SWENTOSKY:

13 I have a drawing here.  
14 And we'll mark this Exhibit  
15 Two. And what it shows is a  
16 series of blocks, and it's  
17 identified as first course  
18 laid on the floor. And it  
19 shows a series of blocks which  
20 are lettered A through O.

21 And I have also marked  
22 on each block the number on

1           each side of the block, one to  
2           four, which would indicate the  
3           sides of the block.

4                           (Jeremy Toler Exhibit  
5                           Number Two marked for  
6                           identification.)

7   BY MR. SWENTOSKY:

8   Q.       And I'd like to just show you  
9           that for a minute, please. And  
10          starting with the --- as we could  
11          look at this as if the top of the  
12          paper and the bottom of the paper  
13          would be the ribs.

14   A.       Uh-huh (yes).

15   Q.       And whenever you installed  
16          Block A, could you circle with this  
17          blue pen, the joints to which you may  
18          have mortared or didn't mortar  
19          whenever you would lay that  
20          particular block down?

21   Q.       Okay. And you have indicated  
22          with a circle, a blue pen, that you

1       circled sides one, two, three and  
2       four?

3       A.       Uh-huh (yes).

4       Q.       And on those --- what does  
5       that indicate?

6       A.       All sides.

7       Q.       All sides, meaning?

8       A.       That when we lay a block down  
9       on the sides where it had a mortar  
10      joint on it.

11      Q.       When you say mortar joint, I  
12      just don't understand. Did it have  
13      mortar on the complete side of the  
14      joint, or just a little, or a lot or  
15      what?

16      A.       I had a pretty good amount on  
17      it. I mean, I don't know how thick  
18      it was.

19      Q.       And you've indicated you put  
20      mortar on side number four?

21      A.       Yes, sir.

22      Q.       As that would be the outside

1 of either the outby or the inby side  
2 of the block in whatever way. You  
3 also put mortar on that during the  
4 installation instruction --- or the  
5 installation of the block?

6 A. Yes.

7 Q. Okay. And what was that for?

8 A. Both sides, inby and outby,  
9 had to be mudded.

10 Q. Okay. And then whenever you  
11 completed it, did you go over it  
12 again?

13 A. Yes, we did. A lot of it  
14 would fall.

15 Q. And then whenever you would  
16 install Block B, as shown on the  
17 drawing, where would you place mortar  
18 prior to laying that block then?  
19 Just circle those sides which would  
20 be provided with mortar.

21 Q. And you've indicated one, two,  
22 three and four. Okay. And how much

1 mortar would you place on those  
2 vertical joints?

3 A. What do you mean by how much?

4 I mean, ---.

5 Q. Thickness.

6 A. I didn't have a tape measurer  
7 to measure it.

8 Q. Okay. I understand. Sure.

9 A. I don't know how thick it was,  
10 really.

11 Q. How thick were those mortar  
12 joints supposed to be?

13 A. A quarter of an inch, if I'm  
14 not mistaken.

15 Q. Okay. And how did you put  
16 that mortar on the block?

17 A. We was wearing rubber gloves.  
18 You just took it in your hand and  
19 just smeared it on there, yeah.

20 Q. And whenever that --- and that  
21 entire row was or rows of blocks were  
22 laid in that same fashion?

1 A. Uh-huh (yes).

2 Q. Then once a row was completed,  
3 how did you secure it to the rib?

4 A. Just put the block as tight to  
5 it as we could. There's usually very  
6 little space in between that we put a  
7 lot of mud down in it. That's about  
8 it, really.

9 Q. Okay. To get it nice and  
10 tight in there, I know --- like  
11 stoppings or so, you use wedges to  
12 put that in?

13 A. I don't know if there was ---  
14 if they used them or not. I can't  
15 remember if we used any or not  
16 really.

17 Q. You say Number Nine was the  
18 first one that you built?

19 A. Yes, sir.

20 Q. And who helped on that? Who  
21 built that stopping --- or excuse me,  
22 not a stopping, seal?

1 A. I don't even remember who all  
2 was up there that day, really.

3 Q. Did you mix mud for that?

4 A. For the whole seal?

5 Q. Yes.

6 A. No, sir.

7 Q. Okay.

8 A. I mean, I mixed mud off and  
9 on, but ---.

10 Q. And you were involved in  
11 laying the blocks down, also?

12 A. Yes, sir.

13 Q. And you say you don't recall  
14 who assisted on Number Nine seal?

15 A. No. To my knowledge, no, I  
16 don't.

17 Q. Do you recall whether it was  
18 one of you or two of you up there?  
19 Excuse me --- yeah, two of you?

20 A. Starting out there was very  
21 few of us, yeah. I don't remember  
22 how many was up there, no.

1 Q. Was there three people?

2 A. I don't remember, really.

3 Q. And then when you dumped the  
4 mortar on top of the block, how did  
5 you get it down in between the  
6 joints?

7 A. Usually it would just go down  
8 in the joints.

9 Q. Okay. So it was pretty soupy  
10 then? Soupy enough that it would ---

11 A. That it would go ---.

12 Q. --- just drain down?

13 A. Yeah.

14 Q. Did you have to push it down  
15 into a certain spot?

16 A. There were spots, yeah.

17 MR. SWENTOSKY:

18 We'll mark another  
19 drawing, and we'll call this  
20 Exhibit Three. And it's  
21 identified as course at mid-  
22 height. And the drawing is



1           the same as Exhibit Two, and  
2           it identifies Blocks A through  
3           O. And it also shows the  
4           sides of the block as one  
5           through four sides.

6                           (Jeremy Toler Exhibit  
7                           Number Three marked for  
8                           identification.)

9   BY MR. SWENTOSKY:

10   Q.        Would this represent the  
11   blocks on, say, mid-row, I mean,  
12   about halfway up?

13   A.        Yeah, similar. Yes.

14   Q.        Okay. And as an example,  
15   whenever you would lay --- let's just  
16   say lay Block G, the one that's  
17   marked G, where would you place  
18   mortar, say, during the installation  
19   of that block?

20   A.        On all the sides. One, two,  
21   three and four.

22   Q.        Okay. Could you mark with a

1 blue pen, circle those numbers where  
2 you put the ---?

3 Q. Okay. And as an example then,  
4 D, where would you place the mortar?

5 A. The same. Two, three and  
6 four.

7 Q. You can't have my pen.

8 A. Okay.

9 Q. Prior to initial installation  
10 of the block, were there ever any  
11 pipes or cables or anything metallic,  
12 track or anything, running from the  
13 outby side of the seal or the inby  
14 side of the seal?

15 A. There were screen in a few of  
16 the headings.

17 Q. Okay. And what did you do  
18 with the screen?

19 A. We took cutters and cut the  
20 screen out.

21 Q. Okay. And what kind of ---  
22 what type of cutters would you have

1       used for that?

2       A.       Just like bolt cutters.

3       Q.       I see.   And did you ever have  
4       an occasion where pieces of the  
5       material was actually --- where the  
6       seal was at, maybe it wasn't quite  
7       cut back far enough and it was within  
8       the seal?

9       A.       The screen?

10      Q.       Yes.

11      A.       No, sir.

12      Q.       No.   Okay.   And was there a  
13      water trap, or were you involved in  
14      any of the seals that may have had a  
15      water trap, or ---?

16      A.       No, sir.

17      Q.       No.   How about a pipe that was  
18      put through?

19      A.       Yes, sir.

20      Q.       Did you ever see any pipe or  
21      anything that was put into those  
22      seals?

1 A. No.

2 Q. And as you were building the  
3 seal, how did you finish that off up  
4 against the rib? How would you  
5 finish that off, each row as you went  
6 up?

7 A. Well, the block was pretty  
8 tight against the rib.

9 Q. Okay. What did you do, cut  
10 the blocks like you do with concrete  
11 block, just tap it with an ax and  
12 move ---

13 A. Yeah.

14 Q. --- to break them into size?

15 A. Yeah.

16 Q. Okay. So they were pretty  
17 tight that way?

18 A. Yeah. There was also mud  
19 there.

20 Q. Okay. You put mud down in  
21 between the rib and the block?

22 A. No, you put it on the side of

1 the block when you put it up, yeah.

2 Q. Okay. And was there any  
3 spaces between ---?

4 A. Fill that with mud.

5 Q. Dry mud?

6 A. No. Wet mud.

7 Q. And I know, like, when you  
8 build stoppings sometimes you fill  
9 holes up with, like, paper, you know,  
10 so it doesn't have to get mud in  
11 there. Did you ever use like paper  
12 or anything to put in there?

13 A. No, sir.

14 Q. Whenever you were measuring  
15 those seals, you said you helped to  
16 hold the tape measurer at times?

17 A. For measuring the location of  
18 it?

19 Q. Yes, sir.

20 A. Yeah.

21 Q. Did you measure width, too?

22 A. Yeah. We measured the width.

1 Q. And how wide were they?

2 A. Most of them was probably 18  
3 or 19-foot wide.

4 Q. Okay. You measured height,  
5 too?

6 A. Yeah.

7 Q. How high was that?

8 A. It just differed with every  
9 seal. I don't remember what height  
10 they were, but they were --- one  
11 place it might be six foot, the next  
12 place it might be seven foot.

13 Q. Okay. Did you ever have to  
14 move a seal because of the height or  
15 anything like that?

16 A. Yeah. I don't remember which  
17 seal it was, but we had to move it  
18 back in the block to build it so it  
19 would be in the requirement of it,  
20 like the height.

21 Q. Was that the one you were  
22 telling me about a minute ---

1 A. No.

2 Q. --- just a little while ago  
3 where you had to move it back?

4 A. No.

5 Q. Is that that occasion?

6 A. No.

7 Q. So you're talking about a  
8 different one?

9 A. Yes.

10 Q. Okay. Was that seal started?

11 A. No. We hadn't started it yet.  
12 We just moved it from where we had  
13 originally planned on building it.  
14 We just moved it on back.

15 Q. And did you --- the seals that  
16 you built and you described earlier,  
17 which ones those were, did you help  
18 in measuring all of those?

19 A. No, not all of them. No.

20 Q. Okay. The ones that you're  
21 involved in measuring, who was  
22 helping you measure those?

1 A. Jeff Snyder.

2 Q. Jeff Snyder. And how many  
3 seals was he involved in while you  
4 were there?

5 A. You'd have to ask him that. I  
6 don't know ---.

7 Q. Oh, you don't know any ---  
8 which seals he was there and which  
9 seals he wasn't there?

10 A. No. I mean, I know he left,  
11 but I don't know which seals he was  
12 there to help us on, no.

13 Q. What seal did Marty Conrad  
14 arrive, what seal did he start  
15 building?

16 A. I don't recall when Marty came  
17 up there, I just know he was up  
18 there.

19 Q. Okay. Did you ever have  
20 occasion to use block for  
21 construction of those seals, maybe  
22 --- you know, how they use them for



1       stoppings and things like that, bring  
2       them in and re-use them. Did you do  
3       that at all?

4       A.       Re-use block?

5       Q.       Yes.

6       A.       No, sir.

7       Q.       Those were all new block?

8       A.       Yes, sir.

9       Q.       Did you ever have occasion to  
10       use a pier, pour concrete down and  
11       build the seal on top of concrete,  
12       like a floater-type thing?

13       A.       No.

14       Q.       And how did you --- whenever  
15       you notched rib in, how did you do  
16       that?

17       A.       We didn't have to notch the  
18       rib.

19       Q.       Didn't have to notch the rib?

20       A.       No.

21       Q.       All those seals, were they all  
22       the same thickness, or some of them

1        were a little thinner than others?

2        A.        No, they're all the same, I  
3        guess, yeah.

4        Q.        You guess. I mean, ---.

5        A.        I mean, you lay every seal the  
6        same, so I guess that they would be  
7        the same thickness.

8        Q.        Did you ever have an occasion  
9        --- was one of them that had a pier,  
10       or did any of them have a pier ---  
11       excuse me. I'm sorry, I already  
12       asked you that. A pilaster. Do you  
13       know what I mean by pilaster?

14       A.        No.

15       Q.        Okay. A pilaster in a seal  
16       would be as the --- you project away  
17       from the seal.

18       A.        That thing that comes out of  
19       the middle of it?

20       Q.        Yes.

21       A.        Like a block that ---?

22       Q.        Yes. That projects out from

1 the side of it, which makes it a  
2 larger on the inby side and the outby  
3 side?

4 A. On the ones that I helped on,  
5 I don't think we put --- we did not  
6 put a pilaster on any of them.

7 Q. Okay. You had said you don't  
8 think, but ---?

9 A. I know we didn't.

10 Q. You know you didn't?

11 A. Yeah.

12 Q. And what type of mortar was  
13 that you used, again?

14 A. That was BlocBond.

15 Q. BlocBond?

16 A. Yeah.

17 Q. Okay. Not B-Bond?

18 A. We call it B-Bond. BlocBond,  
19 yeah.

20 Q. Okay. And what color of bag  
21 was that?

22 A. Again, I know there was two

1 colors. There was a certain color  
2 that we had to use, but I don't  
3 remember which one it was.

4 Q. Was it a green bag?

5 A. I know there was green and  
6 blue.

7 Q. Which one did you use?

8 A. I don't remember. I mean, we  
9 used one for building stoppings that  
10 we use every day, and we used one for  
11 building the seals. So then I see  
12 both of the bags regularly. I don't  
13 remember which we used at the seals.

14 Q. So is it possible you could  
15 have used the green bag? If you  
16 don't remember, I just wondered ---.

17 A. I don't remember what color we  
18 used, no.

19 Q. So it's possible you could  
20 have used the green bag and ---.

21 ATTORNEY YUHAS:

22 He answered the

1 question Denny. You asked him  
2 the same question six or seven  
3 times.

4 MR. SWENTOSKY:

5 I'm just trying to be  
6 clear.

7 ATTORNEY WILLIAMS:

8 It wasn't six or seven.  
9 He's trying to get a clear  
10 answer.

11 ATTORNEY YUHAS:

12 He asked him about 15  
13 minutes ago of the color of  
14 the bags.

15 MR. SWENTOSKY:

16 Yes, I did. Yes, I  
17 did. I'm just trying to make  
18 it clear which one he used,  
19 that's all.

20 ATTORNEY YUHAS:

21 I think you're trying  
22 to put words in his mouth.

1  
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ATTORNEY WILLIAMS:

There's really no need to make statements like that. He's asking a question --- and he's asking questions as you and I do every day to try to maybe get more detail and provoke his memory, and maybe get the answer from him. If he doesn't remember, maybe say something to help him remember. If he doesn't remember, ultimately, that's fine. We're just trying to get your memory. That's all.

BY MR. SWENTOSKY:

Q. Do you know approximately what the weight of those bags were?

A. No.

Q. Does any of the mortar ever come in buckets?

A. No, sir.

1 Q. Okay. I'm going to show you  
2 another drawing.

3 MR. SWENTOSKY:

4 And this drawing's  
5 called top course at the roof.  
6 And it also identified blocks  
7 as A through O. And again,  
8 the sides of the block are  
9 identified as one, two, three  
10 and four. We'll mark that as  
11 Four.

12 (Jeremy Toler Exhibit  
13 Number Four marked for  
14 identification.)

15 BY MR. SWENTOSKY:

16 Q. And again, --- I'll let you  
17 use my pen.

18 A. All right.

19 Q. With a blue pen. As an  
20 example, Block L, and when you were  
21 laying that particular block, which  
22 sides would be mortared?

1 A. One, two, three and four.

2 Q. One, two, three and four.

3 Okay. And you installed that mortar  
4 the same way, with your hands?

5 A. Yes, sir.

6 Q. Did you ever have an  
7 opportunity to use a trowel, did  
8 anybody have any trowels up there or  
9 anything?

10 A. No, we didn't need them.

11 Q. Didn't need them? Okay. And  
12 as an example, did anyone say block E  
13 --- can you show me which side would  
14 be mortared? One, two, three and  
15 four again.

16 And how close to the roof did  
17 you take the block up?

18 A. I don't know. It was close,  
19 but I don't know.

20 Q. Close. Three or four inches,  
21 or two inches?

22 A. I never measured it.



1 Q. Okay. And how would you top  
2 off the seal?

3 A. There was some boards that we  
4 put in there and wedges.

5 Q. And how thick were those  
6 boards, do you recall?

7 A. No.

8 Q. One-inch?

9 A. Probably about one-inch, yeah.  
10 I never measured them.

11 Q. Okay. And how were those ---  
12 what do you call those boards? Was  
13 it fly board? I know there's been  
14 terminology, is that what you called  
15 that, fly board?

16 A. Yeah. We would call it fly  
17 board, yeah.

18 Q. For reference?

19 A. Yeah.

20 Q. And how many fly boards were  
21 installed on there?

22 A. Three.

1 Q. Three. And using the blue pen  
2 again, could you draw me how those  
3 boards were installed or laid on top  
4 of that seal? And let's just ---  
5 I'll mark on this as outby side of  
6 the seal, and I've written that with  
7 a blue pen, and that is the outby  
8 side meaning the active side of the  
9 mine. And inby side of the seal, the  
10 side I've marked, and that would  
11 represent the sealed part of the  
12 mine, the non-ventilated part. And  
13 could you just draw with this pen  
14 with a line, the first board that you  
15 installed when you were topping off  
16 the seal?

17 A. I don't know which one is the  
18 first one.

19 Q. Okay.

20 A. You'd have one in the middle,  
21 and one on each side.

22 Q. One on each side?

1 A. Yeah.

2 Q. And you're not sure which one  
3 was installed first, but ---. Okay.  
4 Just indicate by line of where those  
5 boards were installed.

6 A. One in the middle, one inby  
7 side and one outby side.

8 Q. Using this as a reference, the  
9 bottom of the paper and the top of  
10 the paper as the ribs, represent the  
11 ribs. These boards were they  
12 installed just on the center, as  
13 you've indicated from Block B on the  
14 inby side to Block G and on the outby  
15 side marked from K to N?

16 A. I don't know.

17 Q. Did they go clear across, or  
18 how was that installed?

19 A. I don't remember how close the  
20 sides of the board came to the rib.

21 Q. The end of the boards?

22 A. Yeah. I mean, I don't know

1       how far the end of this board was  
2       from this rib and the end of the  
3       other side of the board was to that  
4       rib.

5       Q.       Okay.  You're indicating right  
6       and left, and ---?

7       A.       Right.  And all I was showing  
8       you on that was where the placement  
9       of the boards were.

10      Q.       Okay.  Sure.  So the boards  
11      may have not gone the whole way  
12      across from rib to rib?

13      A.       No, they probably didn't.  Not  
14      all the way, no.

15      Q.       Okay.  Do you have any  
16      recollection of approximately how  
17      short those boards may have been?

18      A.       No.

19      Q.       Did you ever have to cut a  
20      board?

21      A.       I never had to, no.

22      Q.       No.  Did you install any of

1       those boards up there?

2       A.       Very few of them.

3       Q.       But you did?

4       A.       Yes.    I installed a few, yes.

5       Q.       A few boards.   Okay.   And the  
6       boards that you installed, how close  
7       to the rib were you able to get with  
8       them?

9       A.       Again, I don't remember how  
10      close they were.

11     Q.       Did you ever have to install  
12     two boards?

13     A.       Had to install three.

14     Q.       Have you ever had an  
15     opportunity where you had to maybe  
16     install one on top of the other?

17     A.       No.

18     Q.       No.    And you say you had to  
19     wedge them?

20     A.       Yeah.   There were wedges in  
21     the top.

22     Q.       Okay.   And explain that to me

1 a little bit, what did you do there?

2 A. I don't know. I know they  
3 just put wedges in there and put them  
4 in all the way across.

5 Q. Okay. When you say they, did  
6 you have an opportunity to put those  
7 wedges in?

8 A. Yeah, I put a few wedges in.  
9 Yeah.

10 Q. Okay. And how did you install  
11 them between the Omega block and the  
12 board, or between the roof and the  
13 board?

14 A. I think it was between the  
15 Omega block and the board.

16 Q. Okay. Did you hammer those in  
17 there to wedge it up tight ---

18 A. Yeah.

19 Q. --- just use a hammer?

20 A. Or an axe.

21 Q. An axe?

22 A. Yeah.

1 Q. Okay. In what direction were  
2 those wedges installed? Were  
3 they ---?

4 A. They were faced ---.

5 Q. Here, just --- I'll tell you  
6 what. Just mark them --- those  
7 wedges, they have a thin end and they  
8 have a thick end; is that correct?

9 A. Right.

10 Q. And let's just use this board  
11 here. We're looking at the --- well,  
12 let's just do it this way. We'll  
13 look at the outby of the seal. And  
14 just show me a direction that you  
15 would, right at this board, and we're  
16 going to look at block L as an  
17 example here, and show me how you put  
18 that wedge in. Just draw a piece of  
19 wedge.

20 A. This being the thin, that  
21 being the thick.

22 Q. Okay. And the thin then is

1 driven toward the ---

2 A. Center of the seal.

3 Q. --- into the center of the  
4 seal?

5 A. Yes.

6 Q. And how far apart did you put  
7 those wedges as you were going  
8 across?

9 A. Just --- I don't remember how  
10 far apart they were.

11 Q. Was there some areas where  
12 there were large distances, three or  
13 four feet, or were some of them a  
14 foot, six inches? Can you kind of  
15 recall that a little bit maybe?

16 A. No. They weren't far apart.

17 Q. And in between the wedges, or  
18 in between the wedges, what did you  
19 do with the cracks that may have been  
20 there between ---?

21 A. Threw mud back in it.

22 Q. Threw mud back in it?



1 A. Yeah.

2 Q. What, did you just take it  
3 like a baseball and throw it back in  
4 the ---?

5 A. Threw it back in there, yeah.

6 Q. And did you ever have an  
7 opportunity to use anything to pack  
8 it back in there or anything, or just  
9 you'd throw it back in there?

10 A. Just threw it back in there.

11 Q. Threw it back in there. And  
12 that was what was done as you went  
13 across to complete the seal?

14 A. Yes, sir.

15 Q. What about the inby --- inby  
16 and outby the seals, wedges on both  
17 of those?

18 A. Yeah, on both sides were done  
19 the same.

20 Q. The same. Okay. And what  
21 about that middle board, what did you  
22 do with that middle board?

1       A.       Just threw it back in there.  
2       I mean, there wasn't much you could  
3       do with it.

4       Q.       Because it's in the seal  
5       there, the block's in the way a  
6       little bit?

7       A.       Right.

8       Q.       And what about wedges there?

9       A.       I don't remember if there was  
10      any wedges on that or not. I don't  
11      see any way that you could have put  
12      wedges in it.

13     Q.       Okay. How was that mortar  
14      applied to the vertical joints? I  
15      think you said that, but just for  
16      clarification.

17     A.       It was applied with our hands.  
18      We had a glove on our hand.

19     Q.       With your hand, okay. And as  
20      you --- I know you mentioned to me  
21      about as like the first row, but as  
22      you kept going up with the

1       consecutive rows of block, and you  
2       mentioned to me that you cut the  
3       block to fit there with an axe  
4       across, and --- to fill in those  
5       places. Were there occasions  
6       whenever you had to drive wedges down  
7       in to tighten that block up?

8       A.       I don't remember if there was.

9       Q.       You don't remember. Okay.

10       And once the seal was completed with  
11       the layers and the boards, then what  
12       did you do with the seal?

13       A.       Went back over both sides of  
14       it, inby and outby, and mortared.

15       Q.       Okay. Like full face it; is  
16       that what you mean?

17       A.       Yes. Yeah.

18       Q.       And did you apply extra  
19       mortar, like around the perimeters of  
20       it, roof, bottom?

21       A.       Yeah. That had been done when  
22       we did it, yeah.

1 Q. Did that mortar --- did it  
2 harden up pretty hard, or is it, say,  
3 of a soft consistency, do you recall?

4 A. I can't recall, no.

5 Q. And how was that mortar  
6 applied to the full face of that?

7 A. Just applied it with our hand.

8 Q. With your hands again?

9 A. Yeah.

10 Q. Never used a trowel or  
11 anything?

12 A. No, we didn't need one.

13 Q. Was there any trowels up  
14 there?

15 A. Not that I remember, no.

16 Q. Okay. During the  
17 construction, was there any  
18 management people that came up to the  
19 site at all, do you recall, to see  
20 what was going on?

21 A. No. I already told you that  
22 Jeff Toler was up there. He's the

1 mine superintendent.

2 Q. Okay.

3 A. And he brought it to our  
4 attention that we built the first  
5 seal wrong.

6 Q. Okay. Was that the only time  
7 he was up there?

8 A. I can't remember how many  
9 times he was --- I don't remember if  
10 he was up there any more or not.

11 Q. All right. How about Mr.  
12 Crumrine?

13 A. I seen Carl up there, yes.

14 Q. Okay. And how many times do  
15 you remember seeing him?

16 A. I don't remember.

17 Q. Did Mr. Crumrine ever give you  
18 any instruction on how to put it in  
19 or talk to you about the installation  
20 of the seal at all?

21 A. He came up there with a  
22 federal inspector one day. I don't

1 remember the inspector's name, and  
2 they looked at how we were building  
3 the seal.

4 Q. Okay.

5 A. That's about it.

6 Q. And Mr. Jeff Toler, did he  
7 ever give you any instructions on how  
8 to put the seal in at all, or did he  
9 instruct anyone on how to put the  
10 seal in at all?

11 A. I mean, he didn't --- our boss  
12 instructed us.

13 Q. Okay.

14 A. I don't know that he  
15 instructed the boss, but the boss had  
16 to get it from somewhere.

17 Q. Okay. And did he ever give  
18 any of the construction workers any  
19 instruction?

20 A. Only when he told us that we  
21 had built that seal wrong.

22 Q. Okay. That's the only time

1       then?

2       A.       That I remember, yeah.

3       Q.       Getting back to those roof  
4       wedges. Is that how all of the  
5       wedges were installed on those seals,  
6       or were there any different way that  
7       they may have been installed in  
8       another seal or any time that you  
9       recall?

10      A.       Could you clarify what you're  
11      asking?

12      Q.       Sure. Were the wedges ever  
13      placed along those boards parallel  
14      and then another wedge installed  
15      parallel with that wedge? In other  
16      words, thin end to thin end to try to  
17      wedge it up?

18      A.       I didn't see every wedge  
19      installed in those seals.

20      Q.       Okay. But the wedges --- but  
21      as you've described, that's the only  
22      way that you installed those wedges?

1 A. That's the only way I put the  
2 wedges in, yes.

3 Q. Okay. During the construction  
4 of a seal, and prior to putting the  
5 mud on the wedges, do you ever ---  
6 and I'm --- so what you're telling me  
7 then, you never saw a wedge installed  
8 as I described it?

9 A. No, sir.

10 Q. Okay. And all the wedges were  
11 installed, if I'm correct --- and I  
12 just want to clarify. Were all of  
13 the wedges installed there between  
14 the board and the block; right?

15 A. Well, the ones that I  
16 installed. I don't know about all of  
17 the wedges, but the ones I installed,  
18 yes.

19 Q. Okay. Was there ever an  
20 occasion whenever you started a seal  
21 and had to discontinue the  
22 installation of it and then come back



1 at a later time?

2 A. When I was up there?

3 Q. Yes, sir.

4 A. The last seal, yes, that I  
5 helped on, which was seal Number Two.

6 Q. Two?

7 A. Yes.

8 Q. Explain that to me a little  
9 bit, will you please?

10 A. Well, that was --- we ran out  
11 of material, and we also had some  
12 overcasts that we had to construct to  
13 ventilate the seals. So while we  
14 were out of materials on the seals,  
15 we started on the overcasts. And  
16 when we got our seal material in, we  
17 went back to the seals.

18 Q. And what length of time might  
19 that have been?

20 A. It might have been a shift, an  
21 eight-hour shift, maybe two. I can't  
22 really remember.

1 Q. Were those --- were there two  
2 shifts of miners working during the  
3 installation, or were those just the  
4 one shift working doing the  
5 installation of those seals?

6 A. It was only our shift, yeah.

7 Q. Only your shift?

8 A. Yeah.

9 Q. Okay. Were there --- what  
10 about roof support? Was there ever  
11 any roof support installed on either  
12 side of those seals?

13 A. Cribs.

14 Q. Cribs?

15 A. Yeah.

16 Q. Where were they installed?

17 A. There were two cribs behind  
18 each seal and two cribs in front of  
19 each seal.

20 Q. Okay. And approximately how  
21 far away from the seal, do you recall  
22 the way they were?

1 A. I don't remember how far they  
2 were. Marty and Jeff showed us where  
3 to build the cribs.

4 Q. And you mean Jeff Snyder?

5 A. Yes, sir. Sorry.

6 MR. SWENTOSKY:

7 Let's just take a ---  
8 go off the record, we'll take  
9 a break.

10 SHORT BREAK TAKEN

11 BY MR. SWENTOSKY:

12 Q. You started at Sago in  
13 October?

14 A. Yes, sir.

15 Q. On October 1st. Okay. And  
16 were you working for ICG at that  
17 point, or were you working for a  
18 contractor at any time?

19 A. I started with Tug Valley, or  
20 no, what was it? GMS.

21 Q. GMS?

22 A. Yeah. I'm not sure what that

1 stands for, but it was only for a few  
2 weeks.

3 Q. Okay. You just worked for  
4 them?

5 A. Yeah. I just worked for them  
6 while I had my physical and  
7 everything with ICG.

8 Q. Okay. So on October 1st, or  
9 that initial time, it was  
10 approximately three weeks that you  
11 worked actually for GMS?

12 A. Yeah. Yeah, about that. I  
13 drew probably three weeks off them,  
14 yeah.

15 Q. Okay. And then, at that point  
16 then, you were employed by ICG, of  
17 course, until now?

18 A. Yes, sir.

19 Q. Okay. The cribs that were  
20 installed behind the seals, can you  
21 kind of give me an idea of how far  
22 they were installed away from the

1 seal? In other words, could you walk  
2 between the seal and the cribs?

3 A. Yeah, you could walk in  
4 between them.

5 Q. Without dodging or just  
6 cleanly walk through there?

7 A. Yeah.

8 Q. Okay. And how about between  
9 the rib and the crib, and the crib  
10 and the crib, was there enough  
11 distance you could just walk back and  
12 forth through there?

13 A. Yeah.

14 Q. Could you say whether or not  
15 they were --- were they five feet?  
16 Were they at least five feet from the  
17 seal?

18 A. I don't know how far they was.  
19 I know you could walk in between  
20 them.

21 Q. Okay. About ten feet?

22 A. No, they wasn't that far.

1 Q. Okay. So somewhere between  
2 five and ten feet, closer to five?

3 A. I'd say between probably three  
4 and half to five feet, somewhere  
5 around there.

6 Q. Okay. Were all the seals in a  
7 straight line, meaning the seal was  
8 from --- the seals from Three to  
9 Nine, were they all in a straight  
10 line across? In other words, in the  
11 same location in the block?

12 A. Are you talking distance from  
13 the corner, from the outby corner  
14 back?

15 Q. Yeah. You're right. The  
16 distance from the outby side of the  
17 block to the seal, were those all the  
18 same distance, or ---?

19 A. No, not all of them were.

20 Q. Okay. And do you know why  
21 that was?

22 A. Not on every seal, no. I know

1       one we had to move it back in the  
2       block to get it in the right height.

3       Q.       Okay.

4       A.       It was real high at the  
5       beginning of the block, and then the  
6       top dropped down, so we moved it back  
7       to get it underneath that top.

8       Q.       Okay. And the area of that  
9       particular seal, the initial area,  
10      did you help measure that at all?  
11      Approximately how high was that, I  
12      guess is what I'm asking, where it  
13      was too high?

14     A.       Where it was too high?

15     Q.       Yes.

16     A.       I don't know. It was too  
17     high, I know that. They said it had  
18     to go on back.

19     Q.       Okay. And whenever --- as you  
20     mentioned, whenever you started the  
21     seal and you had to level it up, and  
22     you had to put some dry mortar down,

1 to kind of make it nice and level,  
2 routinely, how many bags of mortar  
3 would that take to do that?

4 A. Well, I mean I said earlier,  
5 we didn't use dry mortar on every  
6 seal.

7 Q. Okay. But typically how many  
8 --- and that's what I'm asking.  
9 Typically, how many bags would it  
10 take to level it up, when you did do  
11 that?

12 A. I have no clue, really.

13 Q. Were there occasions whenever  
14 --- because the roof, ventilations,  
15 low areas and so on, was there ever  
16 occasions when you weren't able to  
17 get a board in on top of the seal?

18 A. I don't know about every seal.

19 Q. That's not what I'm saying  
20 every. Any seal.

21 A. I don't know if there was  
22 three boards on every seal, no, I



1       can't say that. I can't say there  
2       was, I can't say there weren't.

3       Q.       Okay. And whenever you were  
4       topping it off and you were throwing  
5       this mortar back in there, how much  
6       mortar did it take to throw back in  
7       there? I mean, did it usually take  
8       like a full wheelbarrow load, or  
9       anything like that, or several bags,  
10      several buckets? I guess, you were  
11      --- what did you use to take the  
12      mortar from the wheelbarrow to  
13      the ---?

14      A.       Empty buckets.

15      Q.       Empty buckets. Are those  
16      five-gallon buckets?

17      A.       Yeah. It was five-gallon  
18      buckets.

19      Q.       Okay. And how many of those  
20      buckets would it take to top off a  
21      seal?

22      A.       Every seal was different.

1 Q. A little bit different?

2 A. Yeah. I have no idea, really.

3 Q. And you had mentioned earlier  
4 that Mr. Jeff Toler that was up ---  
5 he would stop in and visit at  
6 different times; is that correct,  
7 during the seal construction?

8 A. Yeah. He was up there a few  
9 times, yeah.

10 Q. Was it like every day?

11 A. I don't know how often he was  
12 up there. I just know he was up  
13 there.

14 Q. Did he visit every seal?

15 A. You'd have to ask him that.

16 Q. Okay. Whenever Mr. Jeff  
17 Snyder was reviewing the plan with  
18 you --- you had talked about that  
19 earlier --- was he just giving you  
20 that information, or did he give  
21 others that information?

22 A. I know he gave it to me. I

1 don't know who else was around.

2 Q. So then, he didn't --- or did  
3 he? Were there others with you  
4 actually listening to him at that  
5 time?

6 A. Well, I know Seth Osborne  
7 should have been with us.

8 Q. Should have been, you mean, he  
9 wasn't?

10 A. He was on our crew at that  
11 time.

12 Q. He was on your crew?

13 A. Yeah.

14 Q. And just for clarification,  
15 when you said that he should have  
16 been there, do you mean he was there  
17 or he should have been and wasn't; is  
18 what I mean?

19 A. I don't know. He should have  
20 been there, but I don't know. He may  
21 have been off that day, may have been  
22 sick or came in late or something.

1 Q. Okay. So you don't know who  
2 was around you at that time?

3 A. No.

4 Q. So he may have been giving  
5 that to you by himself?

6 A. I know he gave it to me.

7 Q. All right. Was there ever an  
8 occasion whenever you were just  
9 working by yourself, have an occasion  
10 to, I guess, build the seal by  
11 yourself?

12 A. Just me?

13 Q. Yes.

14 A. No.

15 Q. No. There was always someone  
16 with you. Okay. And the floor, you  
17 had mentioned earlier that it was ---  
18 it was damp on some occasions?

19 A. Yeah. The mine's damp, yes.

20 Q. Yeah. But there wasn't any  
21 puddles of water laying around?

22 A. No.

1                   MR. SWENTOSKY:

2                   Okay. John, do you  
3                   have anything?

4                   MR. COLLINS:

5                   No. Jeremy, we have no  
6                   questions concerning the seals  
7                   at this time.

8                   A.            Okay.

9                   MR. COLLINS:

10                  I assume you're going  
11                  to ask him the same as you did  
12                  before, about the training or  
13                  if he has anything concerning  
14                  the explosion.

15                  BY MR. SWENTOSKY:

16                  Q.            Did you ever have an  
17                  opportunity to install Omega  
18                  stoppings? I'm talking about --- and  
19                  I didn't make a mistake there. I'm  
20                  talking about stoppings.

21                  A.            Yeah. I've done Omega  
22                  stoppings, yeah.

1 Q. Okay. And tell me a little  
2 bit about how you install those?

3 A. Build it like a regular  
4 stopping.

5 Q. Okay. And let's just pretend  
6 I don't know how you do that.

7 A. All right. Turn the block up,  
8 you know, on it's side. Instead of  
9 laying them down for the seal, you  
10 turn them up on their side for a  
11 stopping, and you dry stack them.  
12 And you wedge them in the top and  
13 then you plaster them.

14 Q. Okay. And do you use a board  
15 on top of those, too?

16 A. No.

17 Q. And how do you wedge those  
18 down on top?

19 A. With a wedge.

20 Q. And how do you --- do you  
21 wedge those into the side, though, to  
22 tighten those up?

1 A. Yeah, you might put a wedge in  
2 them, maybe, if you need it.

3 Q. Okay. And behind the seals,  
4 on the inby side of the seals, do you  
5 recall, was there a stopping line  
6 behind those seals in the next block  
7 inby?

8 A. At one time, yeah.

9 Q. Okay. During the construction  
10 of those seals, were those stoppings  
11 there?

12 A. Yeah.

13 Q. Okay. Did those stoppings  
14 extend the whole way across?

15 A. No. I don't think that they  
16 --- no, they weren't in every entry.

17 Q. Okay. Just some entries?

18 A. Yeah.

19 Q. And to the best of your  
20 recollection, do you recall which  
21 seal would have had a stopping on the  
22 inby side of it? Can you give me

1       some kind of an idea, possibly?

2       A.       I know for sure that One and  
3       Ten did not.

4       Q.       Okay. And what about, let's  
5       says, Three, Four, Five, Six, Seven,  
6       Eight and Nine; do you recall?

7       A.       Yeah. I don't know if there  
8       were stoppings behind a lot of those  
9       seals.

10      Q.       But you don't know which ones?

11      A.       No. I mean, I know that there  
12      was not a stopping behind Number One  
13      seal or Number Ten seal.

14      Q.       And that was to allow air to  
15      flow inby?

16      A.       Yeah. To blow in and go back  
17      out.

18      Q.       Okay. Do you know if those  
19      stoppings were removed after the seal  
20      --- well, after the seals were  
21      installed, but I don't --- I mean, of  
22      course, One and Ten? I mean, nobody



1 can get back there after it was all  
2 sealed off.

3 A. Right.

4 Q. But at some point, were they  
5 removed? Some of them? All of them?

6 A. All that I know that was done  
7 to them was after the seal was  
8 complete, the whole seal was  
9 complete, for us to get out, we would  
10 have to knock a few block out and  
11 crawl out. But I don't know --- you  
12 know, I wasn't there when the One and  
13 Ten seal went up.

14 Q. Yeah. And I understand that.

15 A. So I don't know what they did  
16 as far as, you know, if they took  
17 block out or if the block were there.  
18 I don't know.

19 Q. So the ones that you were on  
20 the inby side, to get out, you would  
21 have to knock a few blocks out of  
22 those stoppings that were on the inby

1 side?

2 A. Yeah.

3 Q. Okay. But you don't recall  
4 like --- were they completely taken  
5 out at one point, or left there?

6 A. No, I don't remember if they  
7 were or not. I just remember what we  
8 did to them.

9 Q. What you did, okay.

10 MR. SWENTOSKY:

11 Off the record for just  
12 a second.

13 OFF RECORD DISCUSSION

14 BY MR. SWENTOSKY:

15 Q. Do you recall in just your  
16 short amount of there the history of  
17 methane --- did you roof bolt up in  
18 the old Two Left area, the area that  
19 was sealed off?

20 A. The area that was sealed? No.

21 Q. No. You were never up there?

22 A. No.

1 Q. Okay. Do you recall when your  
2 last annual retraining class that you  
3 participated in?

4 A. February of 2005.

5 Q. Okay. And at that point  
6 there, you obviously weren't working  
7 at Sago at that time?

8 A. Right. I was at Brooks Run.

9 Q. You were with Brooks Run?

10 A. Yes, sir.

11 Q. Okay. And that's the mine  
12 that you worked at prior to Sago?

13 A. Yes. The company, yes.

14 Q. Okay. Did you work for GMS at  
15 that point?

16 A. At what point?

17 Q. When you took this training,  
18 or when you were at Brooks Run?

19 A. No. I worked for Brooks Run.

20 Q. You worked for Brooks Run. So  
21 then whenever you came to Sago Mine  
22 in October of 2005, that's whenever

1       you became an employee of GMS?

2       A.       GMS.    Yes.

3       Q.       Okay.   And when you started at  
4       Sago Mine, what training did you  
5       receive?

6       A.       Just the same as you get  
7       anywhere else.   I mean, we went over  
8       the mine map, and showed you the  
9       escapeways.

10      Q.       Okay.

11      A.       Have a rescuer.

12      Q.       Okay.

13      A.       I remember everything he went  
14      through.

15      Q.       And did that take a couple  
16      hours, a day, or ---?

17      A.       No, it took a little while,  
18      yeah.

19      Q.       Okay.   Did you spend your full  
20      day outside, or did you have an  
21      opportunity to go underground that  
22      particular day?

1 A. I did not go underground that  
2 day, no.

3 Q. Okay. And you mentioned that  
4 you had SCSR training, self-rescuer  
5 training?

6 A. Yeah.

7 Q. And where did you take that  
8 training?

9 A. Al had a training meeting  
10 outside, Al Schoonover.

11 Q. Al Schoonover. And what  
12 position does he have?

13 A. He's the safety director.

14 Q. Okay. Can you explain that a  
15 little bit to me, that particular  
16 training that you had?

17 A. What training, with the SCSR?

18 Q. The SCSR, yes.

19 A. They just told me to go  
20 through and show them how I would don  
21 it if I was in an emergency and had  
22 to use it.

1 Q. Okay. And what did you do  
2 whenever you did that?

3 A. Just donned the rescuer, just  
4 like I would have ---.

5 Q. What steps did you use?

6 A. I just on my --- got down on  
7 my knees and turn my bottle cap on,  
8 turn it toward it towards the rescuer  
9 and popped the top on it and put it  
10 clear around my neck, put the  
11 mouthpiece in, activated the bag, put  
12 the nosepiece on, and the goggles;  
13 got up like I'd walk out.

14 Q. Okay. Was that a --- you said  
15 that was a training model that you  
16 were using?

17 A. Yes.

18 Q. Do you feel the training was  
19 adequate?

20 A. Yeah.

21 Q. Was there any other areas of  
22 training that you might --- that you

1       could suggest that they should have,  
2       or shouldn't have, any suggestions  
3       you might have?

4       A.           No.

5                               MR. SWENTOSKY:

6                               Let's take another  
7                               short break.

8       SHORT BREAK TAKEN

9       BY MR. SWENTOSKY:

10       Q.           Just one other question about  
11       the stoppings behind the seals on the  
12       inby side of those seals. Were those  
13       concrete block or Omega block?

14       A.           For the most part, I think  
15       they were Omega.

16       Q.           Okay. Well, for the most part  
17       --- I mean, was there some with  
18       concrete, or ---?

19       A.           I know of one concrete  
20       stopping, yes.

21       Q.           Okay.

22       A.           But the rest of them I believe

1       they were Omega, yeah.

2       Q.       Okay.  Have you ever been  
3       searched for smoking articles at the  
4       Sago Mine?

5       A.       Yes, sir.

6       Q.       And how do they do that?

7       A.       Just pat you down, take off  
8       your hard hat.  That's about it.

9       Q.       And who conducts those  
10      searches?

11     A.       The boss did mine.

12     Q.       Did yours, okay.  And how  
13     often does he do that, do you know?

14     A.       Usually once a weekend.  I  
15     worked the weekend crew.  He usually  
16     did it once a weekend.

17     Q.       So that would have been every  
18     week?

19     A.       Yeah.

20     Q.       Have you ever observed anyone  
21     smoking underground?

22     A.       At the Sago Mine?



1 Q. Yeah.

2 A. No.

3 Q. Have you ever found any  
4 smoking articles underground?

5 A. At Sago?

6 Q. At Sago Mine.

7 A. No.

8 Q. Has anyone offered you  
9 anything or made any promise to you  
10 in exchange for your appearing here  
11 today?

12 A. No.

13 Q. And do you have anything that  
14 you would like to add before I close?

15 A. No.

16 MR. SWENTOSKY:

17 On behalf of MSHA, I'd  
18 like to thank you for  
19 appearing and answering the  
20 questions today. Your  
21 cooperation is very important  
22 to the investigation as we

1 work to determine the cause of  
2 the accident.

3 We ask that you not  
4 discuss your testimony with  
5 any person who may have  
6 already been interviewed, or  
7 who may be interviewed in the  
8 future. This will ensure that  
9 we obtain everyone's  
10 independent recollection of  
11 the events surrounding the  
12 accident.

13 After questioning other  
14 witnesses, we may call you if  
15 we have any follow-up  
16 questions that we feel that we  
17 need to ask. If at any time  
18 you have additional  
19 information regarding the  
20 accident that you would like  
21 to provide to us, please  
22 contact us at the contact

1 information that was  
2 previously provided to you,  
3 and that was the business  
4 cards that we provided to you.

5 The Mine Act provides  
6 certain protections to miners  
7 who provide information to  
8 MSHA, and as a result are  
9 treated adversely. If at any  
10 time you believe that you have  
11 been treated unfairly because  
12 of your cooperation in the  
13 investigation, you should  
14 immediately notify MSHA.

15 If you wish, you may go  
16 back over any answer you have  
17 given during the interview and  
18 you may also make a statement  
19 if you would like to make it  
20 at this time. Do you have  
21 anything you'd like to add?

22 A. No.

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MR. SWENTOSKY:

Thank you for your help  
in this matter.

\* \* \* \* \*

SWORN STATEMENT

CONCLUDED AT 11:45 A.M.

\* \* \* \* \*