

01 EXAMINATION UNDER OATH
02 OF
03 MIKE PLUMLEY
04
05
06 Taken pursuant to Notice by Autumn D.
07 Furby-Pritt, a Court Reporter and
08 Notary Public in and for the State of
09 West Virginia, at the Department of
10 Environmental Protection, 1101 George
11 Kostas Drive, Logan, West Virginia,
12 on Friday, February 24, 2006, at
13 4:51 p.m.

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25 by the certifying agency.

01 A P P E A R A N C E S

02
03 KENNETH A. MURRAY
04 District Manager
05 U.S. Department of Labor
06 Mine Safety and Health Administration
07 Coal Mine Safety and Health
08 District 6
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11
12 TERRY FARLEY
13 Health & Safety Administrator
14 Office of Miners' Health, Safety &
15 Training
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19 ANTHONY BURKE
20 CMS&H Inspector
21 U.S. Department of Labor
22 Mine Safety & Health Administration
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25 Whitesburg, KY 41858

3

01 A P P E A R A N C E S (cont.)
02
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04 Offutt, Fisher & Nord

05 812 Quarrier Street, Suite 600
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09 DANIEL M. BARISH, ESQUIRE
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17 Assistant Inspector at Large
18 West Virginia Office of
19 Miners' Health, Safety & Training
20 142 Industrial Drive
21 Oak Hill, WV 25901

22
23
24
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01 A P P E A R A N C E S (cont.)
02
03 ALSO PRESENT: MSHA TEAM MEMBERS
04 STEVE COX
05 MICHAEL FINNIE
06 DENNIS A. BEITER

07 RONALD W. STAHLHUT
08 WILLIAM J. FRANCCART
09 CHARLES W. POGUE
10 ARLIE A. WEBB
11 ANTHONY L. BURKE
12 C. A. PHILLIPS
13 EUGENE WHITE
14 JEFFREY WAGGETT
15 BETH SPENCE
16 DERRICK TJERNLUND
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01 I N D E X

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03 INTRODUCTION 7 - 19

04 WITNESS: MIKE PLUMLEY

05 QUESTIONS

06 By Mr. Murray 19 - 24

07 By Mr. Farley 26

08 CERTIFICATE 29

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01 P R O C E E D I N G S

02 -----

03 MR. MURRAY:
04 Good afternoon, Mr.
05 Plumley.

06 MR. PLUMLEY:
07 Good afternoon.

08 MR. MURRAY:
09 How are you?

10 MR. PLUMLEY:
11 All right.

12 MR. MURRAY:
13 My name is Kenny
14 Murray. I represent the Mine

15 Safety and Health
16 Administration, which is an
17 agency of the United States
18 Department of Labor. I'm a
19 member of MSHA's accident
20 investigation team that's
21 charged with investigating the
22 accident that occurred at the
23 Aracoma Coal Company,
24 Incorporated, Aracoma Alma
25 Mine Number One on January

8

01 19th, 2006.

02 This is a joint
03 investigation that MSHA is
04 conducting with the State of
05 West Virginia. I will be
06 asking the questions for MSHA
07 in today's interview.

08 With me here today are
09 other members of MSHA's
10 accident investigation team
11 and the State's team as well.
12 MSHA's team includes various
13 subject matter experts from
14 all over the United States,
15 and also members of the
16 Solicitor's Office from our

17 headquarter office in
18 Arlington, Virginia.
19 At this time I'd like to ask
20 each member of MSHA's team to
21 identify themselves for you.
22 Mr. Webb?

23 MR. WEBB:
24 Anthony Webb,
25 Pikeville, Kentucky.

9

01 MR. STAHLHUT:
02 Ronald Stahlhut with
03 MSHA of Vincennes, Indiana.

04 MR. POGUE:
05 Charley Pogue, MSHA,
06 Hunker, Pennsylvania.

07 MR. TJERNLUND:
08 Derrick Tjernlund,
09 technical support, Tridelphia.

10 MR. FINNIE:
11 Michael Finnie, MSHA,
12 Madisonville, Kentucky.

13 MR. WAGGETT:
14 Jeff Waggett, MSHA,
15 Hunker, Pennsylvania.

16 MR. BEITER:
17 Dennis Beiter, MSHA,
18 Tech Support, ventilation
19 unit.

20 MR. FRANCCART:
21 Bill Francart,
22 Pittsburgh, Pennsylvania.

23 MR. BURKE:
24 Tony Burke, MSHA,
25 Whitesburg, Kentucky.

10

01 ATTORNEY BARISH:
02 Dan Barish, Solicitor's
03 Office for MSHA in Arlington,
04 Virginia.

05 MR. MURRAY:
06 And I'm from Pikeville,
07 Kentucky. Here with me today
08 representing the State of West
09 Virginia is Bill Tucker. Mr.
10 Tucker will be asking the
11 questions for the state. And
12 this time, I'd ask Mr. Tucker
13 to introduce his team and
14 provide a statement from the
15 state.

16 MR. TUCKER:
17 I need to read you a
18 brief statement. The West
19 Virginia Officer of Miners'
20 Health, Safety & Training is
21 conducting this interview

22 session jointly with MSHA.
23 And we're in agreement with
24 the procedures outlined by Mr.
25 Murray.

11

01 However, let me make it
02 clear that the Director
03 reserves the right, if
04 necessary, to call or subpoena
05 witnesses or require the
06 production of any record,
07 document, photograph or other
08 relevant materials necessary
09 to conduct this investigation.
10 And again, my name is Bill
11 Tucker and I work out of the
12 Oak Hill office, and that's
13 Region Four.

14 ATTORNEY BRADFORD:

15 I'm Tim Bradford and
16 I'm an attorney.

17 MR. PHILLIPS:

18 C.A. Phillips. I'm the
19 deputy director in Charleston,
20 West Virginia.

21 MR. WHITE:

22 Eugene White, district
23 inspector out of Region Three.

24 MR. COX:

25 Steve Cox, Region

12

01 Three.

02 MS. SPENCE:

03 Beth Spence, Governor's
04 office.

05 MR. MURRAY:

06 Okay. This
07 investigation is being
08 conducted by MSHA, in the
09 State of West Virginia, to
10 gather information to
11 determine the cause of the
12 accident and to help prevent
13 this from happening in the
14 future. These interviews are
15 an important part of the
16 investigation.

17 After the investigation
18 is completed, MSHA will issue
19 a written report detailing the
20 nature and causes of the
21 accident. The MSHA accident
22 reports are made available to
23 the public in the hope that
24 greater awareness about the
25 causes of accidents can reduce

13

01 their occurrence in the
02 future.

03 The information
04 obtained through witness
05 interviews is frequently used
06 in these reports. Your
07 statement may also be used in
08 other enforcement proceedings.

09 I'd like to thank you
10 in advance for your appearance
11 here today. We appreciate
12 your assistance in this
13 investigation. The
14 willingness of miners and mine
15 operators to work with us is
16 critical to our success in
17 making the nation's mines
18 safer.

19 This interview with Mr.
20 Mike Plumley is being
21 conducted under Section 103(a)
22 of the Federal Mine Safety and
23 Health Act of 1977, as part of
24 an investigation by the Mine
25 Safety and Health

14

01 Administration into the
02 conditions, events and
03 circumstances surrounding the

04 fatalities that occurred at
05 the Aracoma Alma Mine Number
06 One located at Route 17 North,
07 Bandmill Hollow Road,
08 Stollings, West Virginia,
09 25646.

10 This interview is being
11 conducted at the State of West
12 Virginia, Department of
13 Environmental Protection,
14 Division of Mining and
15 Reclamation at 1101 George
16 Kostas Drive in Logan, West
17 Virginia 25601 on February
18 24th, 2006. And the time is
19 approximately 4:58 p.m.
20 Eastern Standard Time.

21 Mr. Plumley, the
22 interview will begin by asking
23 you a series of questions.
24 Feel free at any time to
25 clarify any statements that

15

01 you make in response to the
02 questions. After we have
03 finished asking the questions,
04 you will also have an
05 opportunity to make a

06 statement of your own and
07 provide us with any other
08 information that you believe
09 may be important. You are
10 permitted to have a
11 representative with you during
12 the interview and you may
13 consult with your
14 representative at any time.
15 You may designate any person
16 to be your representative.

17 Following the questions
18 by MSHA and the State, your
19 representative will be given
20 the opportunity to ask
21 questions for purposes of
22 clarification on areas already
23 discussed. Your statement is
24 completely voluntary. You may
25 refuse to answer any questions

16

01 or you may end your interview
02 at any time.

03 If you don't understand
04 a question, tell me and I'll
05 rephrase the question for you.

06 If you need a break for any
07 reason, please let me know.

08 You may request the

09 opportunity to make a
10 confidential statement which
11 we will withhold from the
12 public, to the extent allowed
13 by law. Should you desire to
14 give a confidential statement,
15 you should advise me before I
16 begin your interview so that I
17 can reschedule your interview
18 in order to properly consider
19 your request. Do you want a
20 confidential interview?

21 ATTORNEY FISHER:

22 No, he doesn't.

23 MR. MURRAY:

24 I'd ask the witness to
25 answer the question. And if

17

01 you could, verbal answers, so
02 that the court reporter ---.

03 MR. PLUMLEY:

04 No.

05 MR. MURRAY:

06 Thank you. A court
07 reporter will record your
08 interview and will later
09 produce a written transcript
10 of the interview. I would ask

11 that you state your answers
12 verbally because the court
13 reporter can't record
14 gestures, such as nodding your
15 head. I guess we've already
16 talked about that.

17 MR. PLUMLEY:

18 Okay.

19 MR. MURRAY:

20 Thanks. Neither the
21 transcript of this interview
22 nor the content of this
23 interview will be released to
24 the public or the media until
25 MSHA's final accident

18

01 investigation report is
02 issued, or until required by
03 court order, or until a public
04 hearing takes place.

05 If any part of your
06 statement is based not on your
07 own firsthand knowledge, but
08 on information that you
09 learned from someone else,
10 please let us know. Please
11 answer each question as fully
12 as you can, including any
13 information that you learn

14 from someone else. We may not
15 ask the right questions to
16 learn the information you
17 have, so don't feel limited to
18 the precise question that I
19 ask.

20 If you have information
21 about the subject area of a
22 question, please provide us
23 with that information. Do you
24 have any questions about the
25 manner in which the interview

19

01 will be conducted?

02 MR. PLUMLEY:

03 No.

04 MR. MURRAY:

05 Would the court

06 reporter please swear the

07 witness in?

08 -----

09 MIKE PLUMLEY, HAVING FIRST BEEN DULY

10 SWORN, TESTIFIED AS FOLLOWS:

11 -----

12 BY MR. MURRAY:

13 Q. Mr. Plumley, please state your

14 full name, address and telephone

15 number and then please spell your

16 last name for the record.

17 A. Michael Plumley,

18 P-L-U-M-L-E-Y.

19 Q. Address?

20 A. On the advice of Counsel, I

21 assert my privilege pursuant to the

22 Fifth Amendment of the United States

23 Constitution, to refuse to answer any

24 questions that might tend to

25 incriminate me.

20

01 Q. Okay. Did you want to give

02 your address for the record?

03 A. On the advice of Counsel, I

04 assert my privilege pursuant to the

05 Fifth Amendment of the United States

06 Constitution, to refuse to answer any

07 questions that might tend to

08 incriminate me.

09 Q. Okay. I respect that. Are

10 you appearing here voluntarily today?

11 A. Yes.

12 Q. Has anyone made any promises

13 to you for giving this statement?

14 A. On the advice of Counsel, I

15 assert my privilege pursuant to the

16 Fifth Amendment of the United States

17 Constitution, to refuse to answer any

18 questions that might tend to

19 incriminate me.

20 Q. Do you have a representative
21 with you today?

22 A. On the advice of Counsel, I
23 assert my privilege pursuant to the
24 Fifth Amendment of the United States
25 Constitution, to refuse to answer any

21

01 question that might tend to
02 incriminate me.

03 Q. Okay. I see a gentleman
04 sitting to your right. Did you want
05 to identify him for the record?

06 A. On the advice of Counsel, I
07 assert my privilege pursuant to the
08 Fifth Amendment of the United States
09 Constitution, to refuse to answer any
10 questions that might tend to
11 incriminate me.

12 MR. MURRAY:

13 Would the gentleman to
14 your right like to identify
15 himself for the record?

16 ATTORNEY FISHER:

17 Absolutely. My name is
18 Mike Fisher. I'm a partner
19 with Offutt, Fisher & Nord in
20 Charleston, West Virginia, and

21 I've been retained to
22 represent Mr. Plumley in
23 connection with this matter.

24 MR. MURRAY:

25 Okay.

22

01 ATTORNEY FISHER:

02 I'm his attorney.

03 MR. MURRAY:

04 And I assume you're his
05 representative as well?

06 ATTORNEY FISHER:

07 I am.

08 BY MR. MURRAY:

09 Q. Mr. Plumley, have you chosen
10 the gentleman to your right to be
11 your representative?

12 A. On the advice of Counsel, I
13 assert my privilege pursuant to the
14 Fifth Amendment of the United States
15 Constitution, to refuse to answer any
16 questions that might tend to
17 incriminate me.

18 Q. Mr. Plumley, how long have you
19 worked at the Aracoma Alma Mine
20 Number One?

21 A. On the advice of Counsel, I
22 assert my privilege pursuant to the
23 Fifth Amendment of the United States

24 Constitution, to refuse to answer any
25 questions that might tend to

23

01 incriminate me.

02 Q. Did you feel that that was an
03 incriminating question?

04 A. On the advice of Counsel, I
05 assert my privilege pursuant to the
06 Fifth Amendment of the United States
07 Constitution, to refuse to answer any
08 questions that might tend to
09 incriminate me.

10 Q. Mr. Plumley, what's your
11 current job title?

12 A. On the advice of Counsel, I
13 assert my privilege pursuant to the
14 Fifth Amendment of the United States
15 Constitution, to refuse to answer any
16 questions that might tend to
17 incriminate me.

18 Q. Are you currently employed at
19 the Aracoma Mine Number One?

20 A. On the advice of Counsel, I
21 assert my privilege pursuant to the
22 Fifth Amendment of the United States
23 Constitution, to refuse to answer any
24 questions that might tend to
25 incriminate me.

01 Q. We've obtained work records
02 from your employer that indicate that
03 you're an employee of Aracoma Alma
04 Mine Number One. Do you dispute
05 those work records?

06 A. On the advice of Counsel, I
07 assert my privilege pursuant to the
08 Fifth Amendment of the United States
09 Constitution, to refuse to answer any
10 questions that might tend to
11 incriminate me.

12 Q. Are you going to answer each
13 of those questions that I ask in the
14 same manner?

15 A. On the advice of Counsel, I
16 assert my privilege pursuant to the
17 Fifth Amendment of the United States
18 Constitution, to refuse to answer any
19 questions that might tend to
20 incriminate me.

21 MR. MURRAY:

22 Okay. At this time,
23 I'll defer to my colleagues
24 from the State of West
25 Virginia to see if they'd

01 have ---.

02 ATTORNEY FISHER:

03 And I don't know if I'm
04 speaking out of turn or not,
05 but it is his intention to
06 assert the Fifth on all
07 questions. I don't know if
08 that helps or if I should just
09 keep my mouth shut, but you
10 guys do what you need to do.

11 MR. MURRAY:

12 It does help. But
13 there is a bit of a formality
14 that we'd like to get on to
15 the record.

16 ATTORNEY FISHER:

17 I understand.

18 MR. MURRAY:

19 Okay.

20 MR. FARLEY:

21 Could we ask for a
22 one-minute break?

23 MR. MURRAY:

24 Yes. Sure.

25 SHORT BREAK TAKEN

26

01 MR. MURRAY:

02 I think we are to the
03 point where the State of West
04 Virginia is going to continue

05 with the questioning.

06 BY MR. FARLEY:

07 Q. What time were you called

08 about the fire?

09 A. On the advice of Counsel, I

10 assert my privilege pursuant to the

11 Fifth Amendment of the United States

12 Constitution, to refuse to answer any

13 questions that might tend to

14 incriminate me.

15 MR. FARLEY:

16 I have no further

17 questions.

18 MR. FISHER:

19 That's it. I don't

20 have any questions.

21 MR. MURRAY:

22 We were going to ask if

23 you had any clarifying

24 questions.

25 MR. FISHER:

27

01 No, I don't.

02 MR. MURRAY:

03 Do you have anything

04 to ---?

05 MR. FISHER:

06 I don't.

07 MR. MURRAY:

08 Well, in any event, we
09 do appreciate you taking the
10 time coming in here, Mike.
11 And if at some later point you
12 do have a change of heart or
13 you have information that you
14 want to share with us, I'm
15 going to give you my card and
16 the card of my staff
17 assistant, Anthony Webb. And
18 our contact phone number's on
19 there. And I've provided that
20 same information to your
21 representative.

22 And just so you know,
23 the Mine Act provides certain
24 protection for individuals who
25 participate in accident

28

01 investigations. If at any
02 time you believe that you've
03 been treated unfairly because
04 of your cooperation in this
05 investigation, please
06 immediately contact me or
07 Anthony Webb. Would you like
08 to make a closing statement?

09 MR. FARLEY:

10 We also appreciate you
11 coming in, Mike. And here's
12 my card if you need to contact
13 me about anything.

14 ATTORNEY FISHER:

15 Okay. Thanks, guys.

16

17

18 * * * * *

19 EXAMINATION UNDER OATH

20 CONCLUDED AT 5:20 P.M.

21 * * * * *

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