



**SARGENT'S  
COURT  
REPORTING**

**Quality Work. Quality People.**

**Transcript of the Testimony of James Fleming**

**Date:** July 13, 2010

**Case:**

**Printed On:** July 22, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

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

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

STATEMENT UNDER OATH

OF

JAMES FLEMING

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, July 13, 2010, beginning at 4:36 p.m.

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

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

A P P E A R A N C E S

ROBERT S. WILSON, ESQUIRE

U.S. Department of Labor

Office of the Regional Solicitor

1100 Wilson Boulevard

22nd Floor West

Arlington, VA 22209-2247

ERIK SHERER

Mine Safety and Health Administration

1100 Wilson Boulevard

Arlington, VA 22209-3939

JOHN O'BRIEN

Safety Inspector

West Virginia Office of Miners' Health,

Safety and Training

Welch Regional Office

891 Stewart Street

Welch, WV 24801-2311

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

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

BETH SPENCE

West Virginia Independent Investigation

[REDACTED]

[REDACTED]

## I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Wilson	6 - 10
5	STATEMENT	
6	By Mr. O'Brien	10 - 11
7	WITNESS: JAMES FLEMING	
8	EXAMINATION	
9	By Mr. Sherer	12 - 29
10	EXAMINATION	
11	By Mr. O'Brien	29 - 33
12	EXAMINATION	
13	By Ms. Spence	33 - 34
14	RE-EXAMINATION	
15	By Mr. Sherer	34 - 35
16	EXAMINATION	
17	By Attorney Wilson	35 - 36
18	CLOSING STATEMENT	
19	By Attorney Wilson	36 - 37
20	DISCUSSION AMONG PARTIES	37 - 39
21	CERTIFICATE	40
22		
23		
24		
25		

1	EXHIBIT PAGE	
2		PAGE
3	NUMBER	IDENTIFIED
4		
5	NONE OFFERED	
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

1  
2 -----  
3 ATTORNEY WILSON:

4 Good afternoon. We'll go on the record.

5 My name is Bob Wilson. I'm with the Office of the  
6 Solicitor, United States Department of Labor. And  
7 with me is Erik Sherer, an investigator with MSHA,  
8 also an agency in the Department of Labor.

9 Individuals also present with the State of West  
10 Virginia --- John, do you want to state your  
11 appearance?

12 MR. O'BRIEN:

13 John O'Brien, with the West Virginia  
14 Office of Miners' Health, Safety and Training.

15 MS. SPENCE:

16 And I'm Beth Spence, with the Governor's  
17 independent investigation team.

18 ATTORNEY WILSON:

19 Today is July 13th, 2010. We're here to  
20 conduct an interview of James Fleming. We appreciate  
21 you coming in today.

22 All members of the Mine Safety and Health  
23 Administration Accident Investigation Team and all  
24 members of the State of West Virginia Accident  
25 Investigation Teams participating in the investigation

1 of the Upper Big Branch Mine explosion shall keep  
2 confidential all information that is gathered from  
3 each witness who voluntarily provides a statement  
4 until witness statements are officially released.  
5 MSHA and the State of West Virginia shall keep this  
6 information confidential so that other ongoing  
7 enforcement activities are not prejudiced or  
8 jeopardized by a premature release of information.  
9 This confidentiality requirement shall not preclude  
10 investigation team members from sharing information  
11 with each other or with other law enforcement  
12 officials. Everyone's participation in this interview  
13 constitutes their agreement to keep the information  
14 confidential.

15 Government investigators and specialists

16 have been assigned to investigate the conditions, the  
17 events and the circumstances surrounding the April  
18 5th, 2010 explosion that occurred at the Upper Big  
19 Branch Mine-South. The investigation is being  
20 conducted by MSHA pursuant to Section 103(a) of the  
21 Federal Mine Safety and Health Act and by the West  
22 Virginia Office of Miners' Health, Safety and  
23 Training.

24 Mr. Fleming, you may have an opportunity

25 or personal representative present with you today. Do



1       you have a representative with you?

2       MR. FLEMING:

3       No.

4       ATTORNEY WILSON:

5       Your statement is completely voluntary,  
6       and as I said, we appreciate you coming in today. You  
7       may refuse to answer any question and you may  
8       terminate your interview at any time. This is not an  
9       adversarial proceeding. Formal Cross Examination type  
10      questions will not be permitted, but follow-up  
11      questions will be allowed. Your identity and the  
12      content of this interview will be made public at the  
13      conclusion of the interview process and may be  
14      included in the public report of the accident unless  
15      you request that your identity remain confidential or  
16      if your information would otherwise jeopardize a  
17      potential criminal investigation. If you request us  
18      to keep your identity confidential, we will do so to  
19      the extent permitted by law. In other words, if a  
20      judge orders us to reveal your identity or some other  
21      law requires that we reveal your identity, we will do  
22      so. Also, there may be a need to use the information  
23      that you provide to us or other information that you  
24      may provide in the future in other investigations or  
25      hearings concerning the explosion. Do you understand

1       your rights concerning giving a confidential  
2       statement?

3   MR. FLEMING:

4   Yes, I do.

5   ATTORNEY WILSON:

6   And do you have any questions about that?

7   MR. FLEMING:

8   No, I don't.

9   ATTORNEY WILSON:

10   After the investigation is complete, MSHA  
11       will issue a public report detailing the nature and  
12       the causes of the fatalities in the hope that greater  
13       awareness about the causes of accidents can reduce  
14       their occurrence in the future. Information obtained  
15       through witness interviews is frequently included in  
16       those reports. We will be interviewing other  
17       individuals, so we request that you not discuss your  
18       testimony here today with anyone else outside this  
19       room. A court reporter will be recording the  
20       interview, so please speak loudly and clearly so that  
21       she can take everything down. If you do not  
22       understand a question asked, please ask us to rephrase  
23       the question. Please answer each question as fully as  
24       you can, including any information that you may have  
25       learned from someone else. Again, I want to thank you

1 in advance for your appearance here today. Your  
2 cooperation is critical in making the nation's mines  
3 safer.

4 After we have finished questioning, we  
5 will provide you with an opportunity to add anything  
6 else that you believe may be important to the record.  
7 After the interview, if you recall any additional  
8 information, you can contact Norman Page, who is  
9 MSHA's lead accident investigator, at the contact  
10 information in the letter that was sent to you.

11 John, is there anything else that you  
12 want to add?

13 MR. O'BRIEN:

14 Yes. Mr. Fleming, on behalf of the  
15 Office of Miners' Health, Safety and Training, I need  
16 to inform you that you do have rights against  
17 discrimination stemming from your participation in  
18 this interview. What I'd like to do is give you some  
19 contact information in case you would encounter any of  
20 that discrimination, and you can contact these folks.  
21 One thing I would like to caution you on, you only  
22 have 30 days from the time that you experience  
23 something like to file a claim. Also, I'd like to  
24 give you a business card from Mr. Bill Tucker and Mr.  
25 Terry Farley. They are our lead investigators. And

1 if you have any problems or questions, feel free to  
2 contact those two gentlemen. Any questions?

3 MR. FLEMING:

4 No.

5 MR. O'BRIEN:

6 Thank you.

7 ATTORNEY WILSON:

8 Mr. Fleming, if you would, face the court  
9 reporter and she'll swear you in.

10 -----

11 JAMES FLEMING, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
12 AS FOLLOWS:

13 -----

14 ATTORNEY WILSON:

15 Can you please state your full name for  
16 the record?

17 A. James Glenn Fleming, II.

18 ATTORNEY WILSON:

19 And could you tell us your address and  
20 telephone number?

21 A. My address is [REDACTED]

22 And phone number is [REDACTED]

23 ATTORNEY WILSON:

24 Thank you. Erik Sherer will take over  
25 the questioning.

1 EXAMINATION

2 BY MR. SHERER:

3 Q. Again, I want to thank you for coming by this  
4 afternoon. Are you appearing here today voluntarily?

5 A. Yes, I am.

6 Q. Has anyone else interviewed you concerning the  
7 accident?

8 A. No.

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

10 A. Five.

11 Q. Has that all been with Massey?

12 A. The majority of it.

13 Q. The majority of it. How long were you employed at  
14 UBB?

15 A. I'm going to have to take a guess. I'm going to  
16 say four-and-a-half years.

17 Q. Okay. When did you cease employment at UBB?

18 A. September of 2009.

19 Q. Okay. Why did you quit working at UBB?

20 A. Just getting tired of it, management people  
21 and ---.

22 Q. Too many hours?

23 A. A lot of hours, a lot of aggravation. It was  
24 getting --- the longwall had been there, hectic.

25 Couldn't get out on time or nothing.

1 Q. Where are you currently employed?

2 A. I'm employed with Massey now.

3 Q. At which mine?

4 A. Shonk No. 2.

5 Q. Do you have any Federal or State mining  
6 certifications?

7 A. No, I don't.

8 Q. Would you tell us what you were doing there at the  
9 last month or two of your employment at UBB?

10 A. I was on the move crew moving belt.

11 Q. Moving belt. Were you primarily working outby?

12 A. Yeah, most of my UBB career I was primarily outby.  
13 For the last few months I was moving belt on One  
14 section.

15 Q. Okay. And the One section is also the headgate?

16 A. Headgate. Yeah, current headgate.

17 Q. Current longwall panel. What shift did you  
18 normally work?

19 A. Third shift.

20 Q. Third shift, and that is primarily the maintenance  
21 shift, isn't it?

22 A. Yes.

23 Q. Who was your boss?

24 A. Tommy Harrah.

25 Q. Tommy Harrah. Do you know if he is still at the

1 mine?

2 A. No. He got in trouble for bossing without bossing  
3 certification.

4 Q. Oh, okay. Yeah, we've heard of him before. Was  
5 he your boss for a long period of time?

6 A. Last few months.

7 Q. Okay.

8 A. I helped him move the belt.

9 Q. And did you normally portal through the UBB  
10 Portal?

11 A. Yes.

12 Q. And do you recall going through any equipment  
13 doors or track doors on the way in and out of there?

14 A. Yes.

15 Q. Were there many of those?

16 A. There was two sets, four doors altogether.

17 Q. What shape were they in?

18 A. Oh, sorry.

19 Q. No, go ahead.

20 A. There was six doors.

21 Q. Six doors you had to open?

22 A. Yes.

23 Q. Were those doors ever beat up or banged up?

24 A. Yes, quite often.

25 Q. Do you think they leaked?

1 A. Yes.

2 Q. Could you hear air leaking when you went up to  
3 them?

4 A. Yes. They wouldn't shut properly.

5 Q. They wouldn't shut properly?

6 A. Most of them.

7 Q. Did they change those doors out?

8 A. I don't believe. As far as I remember, I don't  
9 ever remember them changing the doors out.

10 Q. Did you ever come up and find one or more of those  
11 doors open?

12 A. Yes.

13 Q. Did you ever get in with several of the mantrips  
14 at shift change and the first one would open the doors  
15 and the last one would close them?

16 A. Yes. Both doors open at one time?

17 Q. Yeah.

18 A. Yes.

19 Q. How common was that?

20 A. Quite common.

21 Q. Once a week?

22 A. Oh, I'd --- it would be more than that. I'd have  
23 to say probably on a daily basis, to be honest with  
24 you.

25 Q. Okay. So you were working back toward the



1 Bandytown fan?

2 A. Yes.

3 Q. And that was about the same time they were setting  
4 up the longwall?

5 A. Yes.

6 Q. Can you just describe the conditions back in the  
7 headgate, back behind the longwall up to the Bandytown  
8 fan?

9 A. From about 80 Break --- 85 Crosscut conditions  
10 were horrible, muddy, nasty, just dirty.

11 Q. Was there a lot of water?

12 A. A lot of water.

13 Q. Did you ever see any of them roofed out?

14 A. No, but close to it in the return. I don't  
15 remember what crosscut, though.

16 Q. Sure. Did they have pumps back there?

17 A. Yes. I don't think they worked.

18 Q. Okay. Do you recall if they were electric pumps  
19 or air pumps?

20 A. They was electric pumps.

21 Q. What were the --- what condition were the roof and  
22 ribs in; do you recall?

23 A. As far as I can remember, I don't think the roof  
24 was real bad, but the ribs were pretty nasty about  
25 rolling out and stuff.

1 Q. How high was it back through there?

2 A. It varied. I'm going to say seven to nine foot  
3 range.

4 Q. How about the floor, was it hooving up in places?

5 A. Yes. It's not so bad on the headgate side. There  
6 was as few places. I've been down in the tailgate  
7 side quite a bit retrieving stuff for our belt moves,  
8 and it was real bad on the tailgate side.

9 Q. So the hooving was worse over on the tailgate?

10 A. Oh, definitely. Some nights you'd come in and  
11 bring a motor in and it would be good and did your  
12 structure, and the next night you go in to get your  
13 belt and track and the canopy on the motor roofed out  
14 because of the ---.

15 Q. Oh, geez.

16 A. It was terrible.

17 Q. How was the ventilation back in there?

18 A. I don't know much about the ventilation, but I'll  
19 tell you the air didn't move a whole lot on the track  
20 up in this area.

21 Q. Did anybody on your crew carry a methane detector?

22 A. Yes.

23 Q. Did the thing ever go into alarm?

24 A. Yes. I was dragging a tailpiece one time ---. If  
25 I was to guess on a map, we was moving belt here on

1 the tailpiece, I'm going to say somewhere around 100  
2 break. He was running a tailpiece. And I think he  
3 hit a pocket of gas, and the detector went off for a  
4 few seconds. You could see the air coming out of the  
5 hole.

6 Q. Okay. How long did that last?

7 A. Just a few seconds. A short period of time.

8 Q. So you drilled that --- how deep were you  
9 drilling?

10 A. They were drilling I think a 36-inch hole.

11 Q. Okay. So a 36-inch hole, you hit a pocket of  
12 methane down in there?

13 A. Yes. Or he did, the boss, Tommy Harrah.

14 Q. What sort of drill was he using?

15 A. The hydraulic down drill.

16 Q. Stoker type ---

17 A. Yeah.

18 Q. --- or Sinker type, rather?

19 A. Yeah.

20 Q. What did you power that off of?

21 A. The scoop.

22 Q. Had they completed the fan construction at the  
23 time of that?

24 A. No. They was in the --- the bit broke. I'm not  
25 sure how much more they had to drill, but they had

1 done drilled quite a bit of the hole and the bit  
2 broke.

3 Q. Okay. And they were raising that up from inside  
4 the mine?

5 A. Yes.

6 Q. Did you go up there when they were doing that?

7 A. Yes.

8 Q. What were the conditions like up around there?  
9 Was there decent ventilation?

10 A. It seemed like it was because it wasn't so dusty  
11 outby where they were drilling from where we was at,  
12 but it was real dusty up there.

13 Q. How were they mucking the cuttings out? Did they  
14 have scoops up there?

15 A. Yes, they had scoops.

16 Q. And were they loading it out on the conveyor belt?

17 A. I don't believe they was, no.

18 Q. What did they do with those cuttings?

19 A. I had to clean up one time and belts were down,  
20 and I was told to take it. You had to go I think it  
21 was a break inby and over toward the return, up in the  
22 headings and facing back here.

23 Q. So they just gobbled it out basically?

24 A. Yeah, pretty much.

25 Q. How fine were those cuttings; do you recall?

1 A. They was small. It's hard to describe. About the  
2 size of a lid on that water bottle.

3 Q. So roughly, less than an inch ---

4 A. Yeah.

5 Q. --- in size? That's interesting. Do you recall  
6 if it was slightly uphill from the --- where the fan  
7 was bottoming out to where you had to stack those  
8 cuttings?

9 A. Yes, it was uphill.

10 Q. Was it steep uphill or ---?

11 A. Yeah.

12 Q. Did you have trouble packing those things in  
13 there?

14 A. I don't know. I wasn't part of bringing the drill  
15 bit in.

16 Q. Okay. Let me ask you some general questions about  
17 the mine. You say you were there about four years or  
18 so?

19 A. Yes.

20 Q. Had you noticed a change in the way the mine was  
21 operating over that four years?

22 A. Yes.

23 Q. Could you describe that, please?

24 A. Not enough rock dusting.

25 Q. Not enough rock dusting.

1 A. Not enough beltline cleaning as far as shoveling  
2 and changing rollers. The track wasn't kept up on the  
3 sections. Water over the track in places you had to  
4 work. You know, terrible.

5 Q. Specifically, what was going on with the rock  
6 dust?

7 A. With the rock dust?

8 Q. Uh-huh (yes).

9 A. Well, ---

10 Q. It was starting to get ---?

11 A. --- as far as I can remember, they only had two  
12 men on one shift trying to rock dust this whole coal  
13 mines.

14 Q. That's a lot of coal mines.

15 A. That's too much coal mine for two men.

16 Q. Sure.

17 A. And then when they do rock dust, the only place  
18 they rock dust is the track and belt entries. That's  
19 it.

20 Q. Did you ever get off in some of the side entries?

21 A. Yes.

22 Q. What did they look like?

23 A. Terrible.

24 Q. Were they black?

25 A. Yeah, black over the return. The intake wasn't

1 too bad.

2 Q. Full of coal dust in the return?

3 A. Yeah.

4 Q. Okay.

5 A. Especially up toward the north mains because, as a  
6 matter of fact, I had to dust it one time. And the  
7 way we was told to dust it, we was to stick the hose  
8 from a pod duster from the trap of the man door, every  
9 man door, and run the pod.

10 Q. That's a lost of dust.

11 A. And it just goes in one place. I mean, there  
12 wasn't enough air to push it down to the next man  
13 door.

14 Q. Oh, geez.

15 A. You know what I mean?

16 Q. Yeah.

17 A. It was terrible.

18 Q. Now, the weekly examiners are supposed to walk  
19 those entries, aren't they?

20 A. Yes.

21 Q. Did you ever talk to any of those guys?

22 A. Yes.

23 Q. Were they concerned about that coal dust?

24 A. Yes.

25 Q. Did they put that in their books?

1 A. I don't know.

2 Q. Now, you were talking about water and you talked  
3 about the water back on the headgate out toward the  
4 fan. Any other place that water was a problem?

5 A. Well, for a while it was here at the Ellis Switch.  
6 It was on the main line. It ain't on here.

7 Q. That's actually off this map. It would be ---.

8 A. I think it's around 130 Break, 132, on the main  
9 line.

10 Q. Yeah. It would be up in here.

11 A. Yeah. Right there at that switch they would cut  
12 out underneath the six-foot beltline, there was a big  
13 hole and a lot of water there. There was a place  
14 outby that kept flooding on the track.

15 Q. So there were several places ---

16 A. Yes, several places.

17 Q. --- that water would collect and ---? Was it a  
18 hazard because of the water?

19 A. No, not really. It was just aggravating that a  
20 man would have to work in it.

21 Q. Do you know if that track entry is also one of the  
22 escapeways?

23 A. Secondary escapeway.

24 Q. Would you feel comfortable trying to get out that  
25 escapeway if it was all smoked up with that water in



1       there?

2       A. Walking?

3       Q. Yeah. Uh-huh (yes).

4       A. No.

5       Q. Okay. What do you think contributed to this  
6       downhill condition of the coal mine? Did bringing the  
7       longwall back cause problems?

8       A. Yes.

9       Q. What happened? Did things become ---?

10      A. More focused on the longwall than anything else.

11      Q. Were things rushed?

12      A. Yes.

13      Q. Do you think people took shortcuts just trying to  
14      get the longwall ---?

15      A. I would say so.

16      Q. Was there any changes in management along the way  
17      there?

18      A. Yes, there was.

19      Q. Did any of the changes in management --- did  
20      things go downhill quickly after the change in  
21      management?

22      A. Yes, it did.

23      Q. Who changed with the management structure when  
24      that happened?

25      A. I'm trying to think. It went --- Craig Boggs to

1 Chris Blanchard as mine president.

2 Q. About when did that happen?

3 A. I would say within the last year I worked there.

4 Q. Okay.

5 A. I would say in 2000 would be my best guess.

6 Q. So you'd say early 2009?

7 A. I would say, late 2008, early 2009.

8 Q. What about the mine superintendents, were they the  
9 same?

10 A. No. I'm trying to think who that is.

11 Q. There was a gentleman, Wendell Wills, that was  
12 super at one point in time.

13 A. Yes. He was in my early UBB years. I think the  
14 world of Wendell. No, it wasn't Wendell. Rick Hodge  
15 and Homer Wallace and at least it was --- I can't  
16 remember his name, but they call him Dick, Everett.

17 Q. Everett ---

18 A. Hagey or Hager.

19 Q. --- Hager. Okay. Was Everett a good mine  
20 superintendent?

21 A. I don't know much of Everett, but he was a hateful  
22 old man.

23 Q. Hateful old man?

24 A. Yeah.

25 Q. I worked for a few of those.

1 A. Somebody you would try to avoid, you know.

2 Q. Sure. Let me ask you a real general question.  
3 Knowing what you know about the mine and the people  
4 who worked here, what do you think may have caused  
5 this accident?

6 A. If I were to guess, it would be a mixture of  
7 methane and coal dust, float dust, because the last  
8 little while the fire bosses were getting caught not  
9 fire bossing correctly. So they could have something  
10 to do with it.

11 Q. Sure.

12 A. I don't know.

13 Q. Do you recall if they cut back on the number of  
14 fire bosses?

15 A. Yes, they did.

16 Q. And that was the same time they were mining out  
17 more entries than they had to cover?

18 A. (Indicates yes). They couldn't keep people  
19 working for them.

20 Q. Did people quit because they had to do too much?

21 A. They was quitting, yeah.

22 Q. Do you feel like a lot of the good people, good  
23 workers of this mine quit because of the conditions?

24 A. I don't think because of the conditions of the  
25 mine. It was the condition of how they were treated

1 by management.

2 Q. Okay. Well, that's an important condition.

3 A. Yeah.

4 Q. When you were working in the mines and there was  
5 some inspectors on the property, either State or  
6 Federal, was there advance notice that those  
7 inspectors were coming in?

8 A. Yes, there was.

9 Q. Did you ever hear that?

10 A. Yes.

11 Q. How did they call it in, on the mine phone?

12 A. Yes. Dispatchers outside the mine would call up  
13 on the section and let you know we've got a State or  
14 Federal on the property.

15 Q. Sure. Okay. Would you do things different  
16 because of that?

17 A. No.

18 Q. Okay. Was the mine ventilation adequate at all  
19 times?

20 A. No, I don't --- I'm not an expert on mine  
21 ventilation.

22 Q. Sure.

23 A. I don't know, but I know that several times on  
24 this main line going to the Glory Hole, when I would  
25 have to rock dust or do something, if they got the

1 Glory Hole open, the gates open on the Glory Hole,  
2 they would go one way, get out and shut it and go the  
3 other way.

4 Q. That's not good.

5 A. No.

6 Q. Did you hear many complaints about ventilation  
7 from the other folks working on the sections?

8 A. No.

9 Q. Were they making many changes to the ventilation  
10 system while you were working here?

11 A. I don't believe so.

12 Q. Okay. Did you ever hear of mining taking place  
13 without ventilation curtains in place?

14 A. Yes.

15 Q. How common was that?

16 A. I'm not sure how common it was.

17 Q. You just heard about it?

18 A. Yes, just hearsay, just talk.

19 Q. Okay. Sure. Did you ever hear of methane  
20 monitors being bridged out or covering up the sniffer  
21 with a bag or something like that?

22 A. No.

23 Q. Okay. Did miners feel like they were able to  
24 complain about safety situations or bring safety  
25 issues to management's attention? Did they do that

1 often or were they afraid to do that?

2 A. I think that as far as management --- complaining  
3 of unsafe conditions to the management, I would say  
4 the superintendents, the mine foremen and the  
5 president, vice-president and so forth, I think they  
6 were probably afraid to. They could have told the  
7 safety department, but not much would have got done.

8 Q. Sure. Do you know if anybody did that and  
9 suffered because of it, had gotten put on a bad  
10 section or bad shift or just fired?

11 A. I don't think. I don't think so.

12 MR. SHERER:

13 That's all the questions I've got.

14 EXAMINATION

15 BY MR. O'BRIEN:

16 Q. I've got a few here, Mr. Fleming. Did you  
17 primarily run a motor on the move crew? Did you run a  
18 motor a lot of times?

19 A. Yes, a lot of times run a motor.

20 Q. Were the rails often slick?

21 A. Yes, this time of the year especially.

22 Q. Were they often covered with water?

23 A. Just in places.

24 Q. Were right-of-ways prevalent, happen quite often?

25 A. Yes. They stick a lot of people in there that

1 don't know how to operate them, those motors.

2 Q. The sanders always worked good or would you have  
3 to work on them?

4 A. A lot of times you have to work on them. They  
5 would be stopped up with water, you know, just enough  
6 water to be ovetop of the rails to spin up in there  
7 and clog them up.

8 Q. About this Tommy Harrah, ---

9 A. Tommy Harrah.

10 Q. --- now, was he primarily bossing on the One  
11 section?

12 A. Yeah, he was the move crew boss on the One  
13 section.

14 Q. All right. Before you entered the mine, did  
15 anyone ever tell you of any potential hazards to watch  
16 for?

17 A. Yes.

18 Q. What might have been some of those things they  
19 told you to look out for?

20 A. Let's see. Rides on the track, other people  
21 working in the areas. If the water was over the  
22 track, you know, the third shift foreman --- if he  
23 knew about it he'd tell us. I would get soaking wet  
24 going in or something.

25 Q. And did you guys ever have safety meetings?

1 A. Yes.

2 Q. How often?

3 A. Every week. Every Sunday night.

4 Q. Did you feel like they were true safety meetings  
5 from the heart or would somebody read off a piece of  
6 paper?

7 A. They'd pretty much read off a piece of paper and  
8 ask if anybody had any questions, to be careful and  
9 that was it.

10 Q. Be careful?

11 A. That was it.

12 Q. Let's go back to the hole where you said there was  
13 methane coming out. Could you hear the methane  
14 coming --- you said you saw it. Could you hear the  
15 methane coming out of the hole?

16 A. Yes. When you're drilling a hole and you got a  
17 lot of dust acquired around the top of the hole, ---

18 Q. Uh-huh (yes).

19 A. --- yeah, you could hear it. I mean, I may have  
20 been a hundred foot away putting structure in, ---

21 Q. You could hear it?

22 A. --- me and another guy, two guys on the tailpiece,  
23 and yeah, you could hear it. And they stopped the  
24 drill and turn around and looked and there was dust  
25 everywhere and --- a methane detector went off, and



1       then it quit.

2       Q. About how long did it come out of the hole?

3       A. If I was to guess, it was 15 or 20 seconds.

4       Q. What kind of --- you said you yanked at the  
5       tailpiece with bolts, right, 36-inch bolts?

6       A. Yeah.

7       Q. And how did you anchor --- were they new bolts  
8       or ---?

9       A. No, just round bars that go in the hole, got a  
10      square on the a hole turnbuckle.

11      Q. Okay. When you worked did you hear of any  
12      ignitions at this mine while you worked there?

13      A. Yes. That's one --- Headgate 15, I was kind of  
14      young to the mines. Don't know a lot. I think it was  
15      Headgate 16.

16      MR. SHERER:

17      I think there was One.

18      A. I think it was Headgate 16. A while back. It may  
19      have been --- I may have been there a year when it  
20      happened. I didn't even know what an ignition was,  
21      so ---. I mean, this ---.

22      MR. SHERER:

23      This is Headgate 16 right here.

24      A. Yeah. I think that's what it was.

25      BY MR. O'BRIEN:

1 Q. So you had been there about a year?

2 A. Before I heard of an ignition. I know we was off  
3 four days over --- that's what I was told it was over,  
4 an ignition.

5 Q. So you were off about four days because of the  
6 ignition, ---

7 A. Yes.

8 Q. --- as best you remember?

9 A. Yes.

10 Q. When you came back to work, did anybody talk about  
11 it? Did you have any kind of meetings about it or did  
12 anybody discuss it, any management people?

13 A. No. I have heard some people talk about it.

14 Q. Okay.

15 MR. O'BRIEN:

16 All right. That's all I have right now.

17 Thank you.

18 MS. SPENCE:

19 I just have a couple.

20 EXAMINATION

21 BY MS. SPENCE:

22 Q. Did you ever raise any safety issues with any  
23 management people yourself?

24 A. Yes, I have. They stuck me with --- I was ---  
25 they wanted me --- they come up with a rock dust crew

1 one time, and it was me and two red hat females. And  
2 you got a two-person locomotive and a black hat. And  
3 as far as I know, you ain't allowed to have two red  
4 hats. And this went on for a few days. I finally  
5 talked to Dishman, Clarence Dishman, about it, and he  
6 took care of it.

7 Q. Were you ever afraid working at UBB?

8 A. No. I loved working at UBB until about the last  
9 year of it.

10 Q. Have you talked with anybody that you worked there  
11 with since the disaster?

12 A. Yes, where I work there's quite a few guys that  
13 had gotten transferred there from UBB.

14 Q. What do you hear about what people think happened?

15 A. I hear all sorts of rumors. They hit a gas well  
16 or a bottom hooved and gas come out of the bottom,  
17 just --- that's basically it.

18 MS. SPENCE:

19 That's all I have.

20 MR. SHERER:

21 One last question.

22 RE-EXAMINATION

23 BY MR. SHERER:

24 Q. This hole where you're drilling for the belt  
25 structure or someone else is drilling, roughly where

1 was that at? Do you recall?

2 A. I'm going to have to guess around --- somewhere  
3 around 100 crosscut on the headgate.

4 Q. Okay.

5 A. It's definitely inby 85 because there was a big  
6 hill and they set a belt head there somewhere.

7 Q. So it was up around 100?

8 A. Yeah, that would be my best guess.

9 Q. Okay. Thank you.

10 ATTORNEY WILSON:

11 Let me just ask a couple of clarifying  
12 questions.

13 EXAMINATION

14 BY ATTORNEY WILSON:

15 Q. You were talking earlier about the conditions of  
16 the rock dust at the mine ---

17 A. Yes.

18 Q. --- and you said that you talked to the fire  
19 bosses about that, and they had expressed concern  
20 about the rock dust?

21 A. Yes. Let's see. What was it? He would talk that  
22 when he would walk his return, where he makes his feet  
23 marks just turns up black. I mean, it would be white  
24 on top, but it would be like an inch or two of float  
25 dust underneath.

1 Q. And who was this that told you that?

2 A. Harley Taylor.

3 Q. Harley Taylor?

4 A. Taylor.

5 Q. And was he the only one you spoke to about that?

6 A. Yes, as far as I can remember. It's been a while,  
7 so --- I know it hadn't changed up there because they  
8 would try to get a scoop in there, clean it and do it  
9 right.

10 Q. Did they check for smoking materials?

11 A. Yes, they did a smoker.

12 Q. Did they do that on a regular basis?

13 A. They did it quite often. Just depends. Sometimes  
14 you get it right before you get on the mantrip to go  
15 underground. Sometimes you get it when you get to the  
16 section, when the ride stopped.

17 Q. And are you aware of anyone ever smoking  
18 underground?

19 A. No, I am not.

20 ATTORNEY WILSON:

21 Anyone else? Okay. On behalf of MSHA

22 and the Office of Miners' Health, Safety and Training,  
23 I want to thank you again for appearing and answering  
24 questions. Your cooperation is very important to the  
25 investigation as we work to determine what happened.

1 Again, because we will be interviewing additional  
2 people, we ask that you not discuss your testimony  
3 with anyone.

4 After questioning witnesses, if we have  
5 any follow-up questions, we may contact you. And if  
6 you think of any additional information or other  
7 people that you think would be helpful to the  
8 investigation, please let us know. Before we go off  
9 the record, is there anything that you would like to  
10 add at this time?

11 A. There's something that may not be --- may not be  
12 nothing to it, but I do remember on the other side of  
13 the mountain there was some seals and they was taken  
14 away. It was around One North head. And there was as  
15 lot of complaining, trying to figure out what they was  
16 going to do about trying to keep them from cracking  
17 and busting, you know, the B-Bond and stuff  
18 starting ---.

19 MR. SHERER:

20 When you say on the other side of the  
21 mountain, could you show us on this larger map up  
22 here?

23 A. Yeah. Let's see. Where am I at?

24 MR. SHERER:

25 Here is the UBB Portals.

1 A. UBB Portal?

2 MR. SHERER:

3 Uh-huh (yes).

4 ATTORNEY WILSON:

5 It was back in here?

6 A. I believe it was --- I don't believe we have  
7 any ---.

8 MR. SHERER:

9 We got a larger scale map over here.

10 ATTORNEY WILSON:

11 Let's go off the record and then we'll go  
12 back on.

13 OFF RECORD DISCUSSION

14 ATTORNEY WILSON:

15 Let's go back on the record. And you  
16 were able to look at another map and the seals that  
17 you were referring to are those that are set three  
18 seals?

19 A. Set three seals at the One North head.

20 ATTORNEY WILSON:

21 One North head?

22 A. Yeah.

23 ATTORNEY WILSON:

24 Okay.

25 A. That's about all the information I got for you.

1 MR. SHERER:

2 We appreciate that.

3 ATTORNEY WILSON:

4 And again, we want to thank you for  
5 coming in, and we'll go off the record.

6

7 \* \* \* \* \*

8 STATEMENT UNDER OATH CONCLUDED AT 5:19 P.M.

9 \* \* \* \* \*

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1 STATE OF WEST VIRGINIA )

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

CERTIFICATE

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



*Alison Salyards*