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Transcript of the Testimony of Edward Foster

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STATEMENT UNDER OATH
OF
EDWARD "EDDIE" FOSTER

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, Beaver, West Virginia, on Tuesday, June 29, 2010, beginning at 6:00 p.m.

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P R O C E E D I N G S

ATTORNEY WILSON:

Good evening. My name is Bob Wilson. I am with the Office of the Solicitor, United States Department of Labor. With me is John Godsey, an investigator with the Mine Safety and Health Administration. Also present are individuals with the State of West Virginia, and I'll ask that they state their appearance for the record.

ATTORNEY MCATEER:

I'm Davitt McAteer, with the Governor's investigative team.

MR. O'BRIEN:

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

ATTORNEY WILSON:

Today is June 29th, and we're here to conduct an interview of Eddie Foster in connection with the investigation of the Upper Big Branch Mine accident that occurred on April 5th, 2010. There are also additional members of the investigation teams present in the room.

All members of the Mine Safety and Health Administration Accident Investigation Team and all

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

17 Do you mind if we call you Eddie?

18 MR. FOSTER:

19 That's fine.

20 ATTORNEY WILSON:

21 Eddie, government investigators and
22 specialists have been assigned to investigate the
23 conditions and the events and circumstances
24 surrounding the fatalities that occurred at the Upper
25 Big Branch Mine-South on April 5th, 2010. The

1 investigation is being conducted by MSHA pursuant to
2 Section 103(a) of the Federal Mine Safety and Health
3 Act and by the West Virginia Office of Miners' Health,
4 Safety and Training. We appreciate your assistance in
5 this investigation.

6 You may have an attorney or a personal
7 representative present during the taking of this
8 statement. Do you have a personal representative or
9 attorney with you?

10 MR. FOSTER:

11 No, sir.

12 ATTORNEY WILSON:

13 All right. You may refuse to answer any
14 question, and you may terminate your interview at any
15 time. This is completely voluntary. And again, we
16 appreciate you cooperating. This is not an
17 adversarial proceeding. It is a fact-gathering
18 exercise. Thus, formal Cross Examination type
19 questions will not be permitted, but follow-up
20 questions will be allowed as appropriate.

21 Your identity and the content of this
22 interview will be made public at the conclusion of the
23 interview process and may be included in the public
24 report of the accident, unless you request that your
25 identity remain confidential or if your information

1 would otherwise jeopardize a potential criminal
2 investigation. If you request us to keep your
3 identity confidential, we will do so to the extent
4 permitted by law. In other words, if a judge orders
5 us to reveal your name or if another law requires us
6 to reveal your identity, we may do so. Also, there
7 may be a need to use the information you provide to us
8 in other investigations into and/or hearings into the
9 explosion. Do you have any questions concerning your
10 right to provide a confidential statement?

11 MR. FOSTER:

12 No.

13 ATTORNEY WILSON:

14 All right. After the investigation is
15 complete, MSHA will issue a public report detailing
16 the nature and the causes of the fatalities in the
17 hope that greater awareness about the causes of
18 accidents can reduce their occurrence in the future.
19 Information obtained through witness interviews is
20 frequently included in those reports. We will be
21 interviewing other individuals, so we request that you
22 not discuss your testimony here today with anyone
23 else.

24 A court reporter will be recording the
25 interview, so please speak loudly and clearly. I

1 notice that you speak a little softly, so try and
2 speak up. If you do not understand a question, just
3 ask that the question be rephrased. And again, as I
4 stated, if you want to take a break at any time, just
5 let me know.

6 Again, I would like to thank you in
7 advance for your appearance here. Your cooperation is
8 critical in making the nation's mines safer. After we
9 have finished asking questions, we will provide you
10 with an opportunity to add anything that you would
11 like to add to the record. If after the interview you
12 recall any additional information that you believe
13 would be important to the investigation, you can
14 contact MSHA here at the Mine Academy. The contact
15 information was included in the letter that was sent
16 to you, but here's another copy of that letter, and
17 that includes that information, or you can contact the
18 State. John, do you have anything you want to say
19 before we get started?

20 ATTORNEY O'BRIEN:

21 Yes. Eddie, on behalf of the Office of
22 Miners' Health, Safety and Training, I would just like
23 to let you know under the West Virginia Code you have
24 protection against potential discrimination. If that
25 would happen, I'm going to give you some contact

1 information that you can use. One thing I really want
2 to bring out is that you only have 30 days from the
3 point of discrimination to file a complaint.

4 MR. FOSTER:

5 Okay.

6 MR. O'BRIEN:

7 Also, I'd like to give you the business
8 cards for Bill Tucker and Terry Farley. They are our
9 lead investigators in this investigation.

10 MR. FOSTER:

11 Okay.

12 MR. O'BRIEN:

13 Thank you.

14 ATTORNEY WILSON:

15 Davitt, before we swear the witness in,

16 is there anything you'd like to add?

17 ATTORNEY MCATEER:

18 We're just trying to get this information

19 so we can improve safety. Thanks for coming.

20 ATTORNEY WILSON:

21 Eddie, would you please state your full

22 name for the record?

23 MR. FOSTER:

24 Edward Alan Foster, II.

25 ATTORNEY WILSON:

1 At this time I'll ask that the court
2 reporter swear you in.

3 -----
4 EDWARD "EDDIE" FOSTER, HAVING FIRST BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS:
6 -----

7 ATTORNEY WILSON:

8 I'm going to turn it over now to John
9 Godsey, who's going to start with the questioning.

10 EXAMINATION

11 BY MR. GODSEY:

12 Q. Your home address?

13 A. [REDACTED]

14 It's [REDACTED]

15 Q. Your telephone number?

16 A. [REDACTED]

17 Q. Are you appearing here voluntarily?

18 A. Yes, sir.

19 Q. Has anyone made any promises to you for giving
20 your statement or offered you any rewards in exchange
21 for your statement?

22 A. No, sir.

23 Q. Has anyone threatened you or warned you not to
24 provide a statement?

25 A. No, sir.

1 Q. Has anyone from the company or attorneys
2 representing the company talked to you concerning the
3 explosion?

4 A. Yeah. They had a --- I had to meet with the
5 company lawyers, Massey officials or whatever.

6 Q. When did you meet with them?

7 A. It's been a couple months ago.

8 Q. Did you receive any direction or instruction on
9 how to give your testimony today?

10 A. No, sir.

11 Q. Did the company --- did the lawyers suggest you
12 get in contact with them after this interview is over?

13 A. No. They just told me if I wanted a lawyer to be
14 available, I could. That was it.

15 Q. Has any other attorney or individual contacted you
16 about the explosion?

17 A. No, sir.

18 Q. Do you have any certifications or special
19 training?

20 A. Just my 80-hour underground card and just
21 different things throughout the mine, like the LD card
22 and oxygen sufficiency card, like to take gas tests in
23 the mines. I have that card.

24 Q. And the number of years you've got mining
25 experience?

1 A. The end of this year it will be six years.

2 Q. Six years?

3 A. Yeah.

4 Q. Can you give us a brief description of your mining
5 history?

6 A. Most of the time I've been on the bolt machine.

7 I've been on the miner for probably a little over a
8 year now. I started off on the hoot owl, on the belt
9 move crew, and I was on there for a few months, and
10 then I went to production, and then I started bolting
11 for a few years, like I said, and I've been on the
12 miner now for the last --- over a year.

13 Q. What companies did you work for?

14 A. Just Massey.

15 Q. Are you presently employed?

16 A. Yes, sir?

17 Q. Where?

18 A. Parker Peerless.

19 Q. And when did you start working for them?

20 A. That's where I was working at before they
21 transferred us to UBB. I've been working for them.
22 Let's see. What time did I go back?

23 Q. When did you leave UBB --- actually it was April
24 5th. When did you start working, I guess, at Parker
25 Peerless?

1 A. Probably about six weeks later. I didn't go back
2 to work for, like I said, about five weeks.

3 Q. And what's your current job description?

4 A. Miner operator.

5 Q. And all the following questions I ask you will be
6 pertaining to UBB.

7 A. Okay.

8 Q. And when did you arrive at UBB, Upper Big Branch?

9 A. I'm not exactly sure of the day, but it was around
10 the first of the year.

11 Q. Around January?

12 A. Yeah, a little after.

13 Q. And your first job assignment at Upper Big Branch?

14 A. Miner operator.

15 Q. And what area of the mine did you visit on the
16 first day?

17 A. We just went to where we was going to start mining
18 at the barrier section.

19 Q. And what kind of training did you get before you
20 went up there?

21 A. We just went over the intake, escapeway and stuff
22 like that and the track and they showed us the map of
23 the mines and stuff like that.

24 Q. Did you travel the primary escapeway?

25 A. Yeah.

1 Q. The first day?

2 A. Yeah.

3 Q. And have you had the Massey Initial Training?

4 A. Yeah.

5 Q. And what was your last annual refresher training
6 date; do you remember?

7 A. I'm not exactly sure of the date.

8 Q. Was it this year?

9 A. Yeah.

10 Q. And what time did you arrive for your shift at
11 UBB?

12 A. We got underground at 6:30 that morning.

13 Q. And you worked for how many --- what time did you
14 get off?

15 A. We usually quit around 3:30.

16 Q. And on April 5th, what was your job title?

17 A. Miner operator.

18 Q. Who was your supervisor?

19 A. Jack Martin.

20 Q. And you worked April 5th; right?

21 A. Yes, sir.

22 Q. Did you see anything or notice anything different
23 during the day?

24 A. No.

25 Q. Any kind of ventilation or anything else?

1 A. No.

2 Q. And what areas of the mine have you worked on?

3 Have you worked on different sections there?

4 A. No, that was it. I just went to the switch right

5 above the barrier section. That's the farthest I've

6 ever been in that mine.

7 Q. Have you ever been inby the Ellis Switch, you know

8 it?

9 A. No.

10 Q. Your entire time has been on the barrier?

11 A. Has been on the barrier, yeah.

12 Q. And so what portal did you ---?

13 A. The main portal.

14 Q. That would be the UBB Portal?

15 A. Yeah, the UBB.

16 Q. What was the --- how was the track maintained,
17 according to like rock dust and stuff from the portal
18 to the section?

19 A. It looked good. It was dusted white. They kept
20 it pretty good.

21 Q. How thick would you say?

22 A. Well, if you touched it, it was pretty nasty,
23 yeah, from --- there was moisture in there.

24 Q. And you went through some --- did you go through
25 any equipment doors or anything?

1 A. No. Yeah, we went through two sets. I take that
2 back. I forgot. One when you come in. I forgot.
3 But I've been to a couple different mines since then.
4 You first start in, there's two different sets of
5 doors, airlock doors.

6 Q. Were they manual or ---

7 A. Push button.

8 Q. --- automatic? Did they work all the time?

9 A. Yeah.

10 Q. And what kind of shape were they in?

11 A. They were in good shape.

12 Q. What about the roof and rib? How did the roof and
13 rib look going in?

14 A. They looked pretty good.

15 Q. And did you see any floor heaving anywhere?

16 A. No.

17 Q. And did you ever notice the ventilation --- which
18 way the direction of the air was going on the track?

19 A. I just road in the back of the mantrip. I didn't
20 pay attention. It was just another day.

21 Q. Did you have a spotter with you?

22 A. Yeah. I always carry one.

23 Q. Did you detect any methane on the track when
24 you ---?

25 A. No.

1 Q. And did you ever notice the beltline? Did you
2 ever go over to the beltline?

3 A. Yeah. When we first started, we worked on the
4 belts.

5 Q. How did they maintain the belt?

6 A. They looked good.

7 Q. Being good, did you see any coal --- rollers
8 turning coal or ---

9 A. No.

10 Q. --- float dust or anything?

11 A. Like I said, when I first started, the beltline I
12 was at, it was right there around the barrier. And
13 like I said, the beltline there, they kept it pretty
14 clean where they were working.

15 Q. What about clearance on the track?

16 A. Yeah, had good clearance because they always run
17 the big motors, hauling stuff in and out.

18 Q. Did the track --- did it have many switches on it?

19 A. It had a couple.

20 Q. Did they maintain them or did you have to get out
21 and take a stick or take a slate bar ---?

22 A. Yeah, you'd throw them because --- like I said,
23 the motors were always in and out.

24 Q. And what about the man door signs going in, you
25 know, exits ---?

1 A. Yes.

2 Q. Explain --- tell me about those, what the ---.

3 A. Where the man doors are located?

4 Q. Yeah.

5 A. Yeah, like they were sitting in the break like at
6 the track. You could see them hanging down in some of
7 the entries where they was located at.

8 Q. They keep them clear where you can see them?

9 A. Yeah.

10 Q. What time does it take to leave outside to get to
11 the section, barrier section?

12 A. Just very few minutes it seemed like. It didn't
13 take no time. About ten minutes, something like that.

14 Q. What's the distance from the end of the track to
15 the loading point on the barrier section?

16 A. I know our switch we went over the hill at was at
17 62 or 63 Break underground, and we wasn't very far in
18 the face, probably just a few more breaks. We didn't
19 get to load hardly anything ---

20 Q. Did you ---?

21 A. --- before it happened.

22 Q. Excuse me for interrupting. What entry did you
23 all walk up from the end of the track to the section?

24 A. Number Three. We called it three.

25 Q. How was it maintained?

1 A. It was good.

2 Q. Did you have any rib problems or ---

3 A. No.

4 Q. --- any roof?

5 A. No. It just --- it turned down over a big hill
6 when we first started our panel. That was it.

7 Q. How far up in did it turn over the hill like you
8 started off ---?

9 A. It was like a break and then it leveled back off.

10 Q. Did you see any displacement in the coal or the
11 roof or cracks or anything?

12 A. No.

13 Q. How about water?

14 A. No, just from leaky waterlines running into the
15 miner waterlines, and they were moving belt and stuff.

16 Q. Did you use belt air on the section?

17 A. We built one stopping one time and we went from
18 --- we was running both miners at one time to --- both
19 the miners, from split to sleep. We switched --- we
20 built a stopping on there.

21 Q. Were you using sweep or split on the last day?

22 A. On the last day we were blocking miners and sweep.

23 Q. What did they change?

24 A. I know in Number Seven entry, the farthest entry
25 over, they had built a stopping there and changed the

1 air to take it all the way over to the Number Seven
2 and sweep it back around.

3 Q. What was the ventilation? Describe how it was on
4 the section? Was it old? Did you have a problem
5 ventilating your ---?

6 A. Just we built that stopping, and you had to keep
7 everything tight. Your play pads and stuff was like
8 everything. Get your air where you need it to be.

9 Q. Did you ever --- did they ever --- did you all
10 ever mine with the curtains down, not fixing them and
11 go on with the continuous miner ---?

12 A. No, because it was too hard to hang where it was
13 so high. I mean, you keep it hung if it's not.

14 Q. What was the mining height?

15 A. It was out of my reach. It was like ten feet.

16 Q. How close did you keep your stoppings?

17 A. Yeah, they kept them up.

18 Q. And which --- did they plaster them or --- the
19 stoppings.

20 A. I'm trying to think if they used plaster or
21 B-Bond. I'm being honest. I don't know what they
22 used. I wasn't the scoop man.

23 Q. Okay. Just take us there and say when you get to
24 the section and your foreman comes up and he tells you
25 where the miner is and where to start. Just take off

1 and show us --- tell us what you do?

2 A. Okay. When we first arrive, we get out of the
3 mantrip and we all stand there and he reads us a page
4 out of the roof control and then he lets us know where
5 we're located, like what entry and who's going to
6 start. So say if I was starting, then I'd be in
7 Number Five and I'd go start, and they'd run a buggy
8 or whatever. Ventilation things would done.

9 Everybody went and made sure everything was tight, the
10 curtains, backups, before we even started loading.
11 That's basically ---.

12 Q. What about your dust parameters, when did you
13 check those?

14 A. As soon as we got there, the spads and stuff.

15 Q. And describe what you all did when you checked
16 them?

17 A. Well, on 20-foot cuts we don't run our scrubbers,
18 so we go up there and we check our sprays. And if
19 they need to be cleaned, we take them out.

20 Q. What else do you all do?

21 A. Our fire suppression on the miners and kept the
22 ventilation, made sure it was right before we started.

23 Q. What was the water pressure that you all had to
24 maintain?

25 A. Maintain 75 psi.

1 Q. Did you have to check both sides of the head or is
2 it double plumb?

3 A. No. They had like a water spray that screwed in.
4 They had a hose that come out with a gauge on it, and
5 we'd turn it on and it would read it out like that.

6 Q. What about the drill? What did they check on the
7 drill?

8 A. I think you had to maintain --- I don't know if it
9 was --- what, like 12 or something. I'm not for sure,
10 but I know you put a suction over the belt pipe.

11 Q. They had vacuum gauges?

12 A. They had vacuum gauges, yeah.

13 Q. What was the ventilation you had to maintain while
14 you were ---?

15 A. I'm trying to think. I know it was usually right
16 around 6,000. That's a hard question. You know what
17 I mean? Two different places and everything
18 different. I was thinking 6,000 or 6,5000.

19 Q. Who took the air reading?

20 A. Jack.

21 Q. Did you all ever --- did you ever detect any
22 methane up there?

23 A. No, I never did.

24 Q. Do you know if your supervisor ever did?

25 A. No. He never told us he has.

1 Q. And on your methane monitor, did you ever notice
2 anything while you were cutting?

3 A. No.

4 Q. And talking about methane monitors, did you ever
5 have a methane monitor that something happened to it
6 and it was bridged or something, they had to ---?

7 A. No. I was in Number Five entry one day and my
8 miner shut off. It was not even in the face to cut
9 coal. I was moving it to cut coal, and it just shut
10 down. And I'm not sure. It read like a P1 or
11 something and it wouldn't start, and they replaced it
12 there and we had to recalibrate it.

13 Q. And did you ever see a plastic bag placed over it?

14 A. No.

15 Q. How many miner operators do you have on a section?

16 A. Two.

17 Q. And are you assigned a miner?

18 A. Yeah, right side.

19 Q. And who was the guy, your other miner operator?

20 A. Jeremy Riffe.

21 Q. What was his name?

22 A. Jeremy Riffe.

23 Q. And how many roof drillers are on the section?

24 A. Two.

25 Q. And what type of roof drills are they, single head

1 or double head?

2 A. Double head.

3 Q. Walk-through?

4 A. No, just regular rip rangers.

5 Q. How much rock do you all cut when you mine?

6 A. We just had a middleman where we was at, and we
7 had a coal seam --- I'm not exactly sure. It was ---
8 I'm not exactly sure, a couple feet. Then we had a
9 middleman that was probably sometimes two foot thick,
10 and then there was another coal seam, and that was it.
11 That's all we took.

12 Q. How hard was it to maintain your curtain in a
13 height like that?

14 A. It was --- you had to keep climbing one step on a
15 ladder and stuff where it was high.

16 Q. Did you ever --- has anybody you heard up there
17 hang curtain?

18 A. No.

19 Q. Have you ever had to wear a dust pump, respirable
20 dust pump?

21 A. Yeah.

22 Q. Has anyone ever come and take it from you and
23 maybe hung it in the intake around?

24 A. No.

25 Q. Do you know if that ever occurred?

1 A. I've heard of it, but no, not there.

2 Q. Not UBB or ---?

3 A. No.

4 Q. What type of roof support do you all use up there
5 at UBB?

6 A. UBB?

7 Q. Uh-huh (yes).

8 A. They was using four-foot bolts.

9 Q. Do they have methane monitors installed on the
10 roof cribs?

11 A. They got a probe, and they put their methane
12 detector on the end of it, and they run it out in the
13 face.

14 Q. How do you check your 20-minute checks? How do
15 you --- describe how you do that.

16 A. They put like a magnet on the top of the head and
17 we can run it out in the face every 20 minutes.

18 Q. And you've never found any methane?

19 A. I've never --- it's never showed up while I was
20 there.

21 Q. And you feel like you've had adequate --- what
22 about adequate ventilation? Have you ever had
23 marginal ventilation?

24 A. No. I mean, I guess you could always use a lot
25 more air, but I mean, I always had enough when I was

1 running, because the mine foreman, when he was there,
2 he would check my air, too. He was there quite a bit.

3 Q. In the last little bit, have you --- in the last
4 couple months or month, have you noticed any air, any
5 difference in ventilation on your section, more or
6 less or ---?

7 A. Not really. Sometimes you just had to make sure
8 everything was tight across the section, your backups
9 and ---.

10 Q. And you said that you have a methane spotter
11 assigned to you?

12 A. Yeah.

13 Q. Who maintains that?

14 A. The outside man.

15 Q. And when do you get it?

16 A. Usually you just put it on charge and I get it
17 every day.

18 Q. What type?

19 A. Just the big open face where you could see the
20 numbers going out.

21 Q. Are you talking about ---?

22 A. Yeah.

23 Q. What centers were you driving up on the barrier
24 section?

25 A. Another question --- I've worked at different

1 places. I'm trying to think what centers there were.
2 That's one of the questions you asked. I've been a
3 couple different places, different centers. I'm
4 trying to remember what that one was.

5 Q. Well, if you think of it, just ---

6 A. Okay.

7 Q. --- let me know. And you told me roof bolters ---
8 do you know the roof bolter operators, the name of
9 them?

10 A. Yeah. Danny Williams and Chris Cabell.

11 Q. Do you all go from mine as a team --- you know, go
12 from mine to mine, you all together? Do you all work
13 together like that at once?

14 A. Yeah. We like help --- whenever I get done
15 mining, I'll help him fix that up and get everything
16 right.

17 Q. No. Like I'm saying, at Parker did you all work
18 as a unit together, like you go from one mine --- say,
19 when you go, does the rest of the crew go with you
20 when ---?

21 A. We did. From whenever we first went to UBB, we
22 come as a whole crew from Parker to UBB. And then
23 some of the guys that went to UBB got sent back to
24 Parker before it happened. And everybody's been
25 pretty much split up since then.

1 Q. So you portalled at UBB. Did the longwall crew
2 portal over there also?

3 A. I believe so, yes.

4 Q. Did you ever talk to any of the people from the
5 longwall?

6 A. A couple guys.

7 Q. Do they ever talk about ventilation problems up
8 there?

9 A. No. They just talked about how hard the rock was
10 up there all the time. Some of the miner operators,
11 they'd get a couple buggies and have to back up and
12 set bits it was so hard.

13 Q. What type of roof? Was it sandstone or ---?

14 A. Yeah, sandstone.

15 Q. And how often did they say they had to set bits?

16 A. They'd load a few buggies sometimes and have to
17 back out. Yeah, they said it was hard.

18 Q. Have you talked to any others, Tailgate 22 or the
19 Headgate 22 people?

20 A. Not really. I had a buddy that worked up there,
21 Jason. He was one of the ones that was in the
22 accident. And I think he bolted top. I never talked
23 to him about mining. We grew up together. That's as
24 far as I know.

25 Q. I hate to hear that about your friend. Did you

1 all use radios on the section?

2 A. No.

3 Q. Have you ever known of making a ventilation change
4 with people underground?

5 A. No.

6 Q. Has anyone --- did you talk to anyone on the other
7 sections or ---?

8 A. No. Just before we came I heard they made a
9 ventilation change and everybody had to be sent home
10 when they was going to do it or something. I'm not
11 exactly sure, but I just know they had to make one at
12 one point in time.

13 Q. When was that?

14 A. I guess that was before we got there. Like I'm
15 not exactly sure. I mean, like I said, I just hear
16 people talk about things. There's a lot of people
17 down there. Everybody has a story. But I do know
18 they had to make a ventilation change.

19 Q. Let's talk a little bit about cleanup on the
20 section. How do you all --- how many times did the
21 roof drill bolt downwind of you?

22 A. I know by law you're only allowed once.

23 Q. How many times?

24 A. Well, if we're talking miners, they didn't have to
25 ever been in it, really. So if I bolted a cut and

1 there's sweep air, then usually you didn't have to be
2 in it.

3 Q. How about the scoop operator? How did he follow
4 you?

5 A. He kept up real good.

6 Q. Did he follow --- how did he follow the scoop or
7 drill or how did he ---?

8 A. Yeah. He would come up and load the bolter and he
9 would clean and dust everything that needed to be. He
10 kept up the section pretty good.

11 Q. Would he roll the curtain up when he cleaned the
12 place?

13 A. No. Sometimes where it was available they would
14 lift it up and let him go under it. Like I said, it
15 was so high. If you would tear it down, it was as
16 pain in the butt. So he usually had help when he went
17 on the curtain side.

18 Q. Did you ever have safety concerns on the section
19 that you would like to talk about?

20 A. No. I just --- I didn't like it where it was so
21 high and the thought of being in between two longwall
22 panels.

23 Q. Did it cause any problems?

24 A. No, just --- you'd hear it bump and crack
25 everywhere now and then, pressure I guess. Like

1 everywhere I've ever been in the mines you could hear
2 it.

3 Q. How about dry rock?

4 A. It's very seldom. Like I said, we just take the
5 coal seam and barely --- we don't even scratch the
6 rock on the top. It's already high enough, so ---.

7 Q. Did anybody ever talk about over mining there at
8 the barrier section, the mining over top of you?

9 A. No.

10 Q. Did you ever ask anybody about it?

11 A. No.

12 Q. Have you ever been on a section where someone's
13 been injured?

14 A. There?

15 Q. Yeah.

16 A. No.

17 Q. Have you ever been injured at UBB?

18 A. No.

19 Q. Have you or do you know anybody that's ever called
20 a Massey 800 number?

21 A. No. I don't know.

22 Q. What about the MSHA hotline?

23 A. No.

24 Q. Are you aware of any time on oncoming shift was
25 cancelled due to a safety concern or something?

1 A. No.

2 Q. Has the mine been evacuated? Do you know of any
3 time the mine's been evacuated for a safety reason,
4 something happened?

5 A. Not since I've been there, no.

6 Q. Has your section foreman ever stopped production
7 due to maybe some problem or something and you had to
8 report it outside, then they tell them to go back to
9 work, they will fix it later?

10 A. No.

11 Q. Have you ever been concerned for your safety at
12 UBB?

13 A. No.

14 Q. Has anyone ever talked to you --- mentioned to you
15 that they were?

16 A. No.

17 Q. How would you think that --- or you may know how
18 upper management would react if you would want to file
19 a safety complaint with them?

20 A. As far as I know, they would try to fix it. I
21 mean, the people I work for, they would.

22 Q. Have you ever talked to the people above your
23 section foreman?

24 A. About?

25 Q. Any safety concerns or anything like that?

1 A. No.

2 Q. Did the explosion surprise you?

3 A. Yeah, it did.

4 Q. Why?

5 A. Because, I mean, I didn't know methane was that
6 bad there. Like I said, I never been no farther than
7 the barrier section, and I know the longwall and stuff
8 like that, but I never knew that methane was that bad.
9 Never heard anybody talking about it being like that.

10 Q. Since April 5th, have you talked to many of the
11 miners that used to work at UBB?

12 A. Yeah. I work with --- like I said, a lot of them
13 went back to Parker, but we're on different crews.
14 And some of the guys that was on one of the longwall
15 sections, there's some of them up there, too, the
16 miner operators.

17 Q. Have they ever --- have you all ever discussed
18 what maybe happened there, some of the things they
19 thought might have happened?

20 A. I just heard rumors about a fire or something
21 outside in an old gas well. I just heard stuff like
22 that. That's about all I've heard on rumors. That's
23 it.

24 Q. Did you provide Massey's attorneys with the same
25 information you have to us today?

1 A. Yes, sir.

2 EXAMINATION

3 BY MR. O'BRIEN:

4 Q. Eddie, what kind of miners did you have on the
5 section?

6 A. 1415s.

7 Q. 1415s. Both of them?

8 A. Yeah.

9 Q. Were they remote miners?

10 A. Yes, sir.

11 Q. Did they have decks on them?

12 A. No.

13 Q. How many readouts on your methane --- on the
14 methane monitor on the miner?

15 A. Just one.

16 Q. One?

17 A. Yeah, on the backend of it.

18 Q. On the back of the miner?

19 A. Yeah.

20 Q. Which side was it on?

21 A. It's on the right side.

22 Q. Right side?

23 A. Yes.

24 Q. Did it have a strobe on it? Did they both have
25 strobes, ---

1 A. Yeah.

2 Q. --- strobe lights on?

3 A. Yeah.

4 Q. Were the strobes working?

5 A. It's never went off. I mean, I never showed
6 methane or nothing for it to go off.

7 Q. But they were burning? Was it the kind of strobe
8 that burned all the time or just flashed when you hit
9 one percent?

10 A. It flashed, yeah, when you hit one percent.

11 Q. Did you say you never had an instance where your
12 methane monitor was down except that one time?

13 A. Yeah.

14 Q. Let's say it would go down, what would your
15 procedure have been if you were mining coal and your
16 methane monitor went down? What's your normal
17 procedure?

18 A. Get the electrician and the boss and see what
19 needs to be done from there.

20 Q. Before you went into a cut, who would normally
21 take methane examinations?

22 A. I would up in the face.

23 Q. You would? Did the foreman ever take them?

24 A. He has. Yeah, he usually does. When he takes the
25 readings, he's there behind the curtains. But

1 normally I walk up in front of the miner and take a
2 reading in the face.

3 Q. Okay. Have you ever --- I know you said
4 ventilation was pretty much the same. Did you ever
5 see the air like come and go, fluctuate, in the place?

6 A. Just when we had to build that stopping whenever
7 we switched air. We had to put up a stopping at
8 Number Seven. That was the only time we switched air.

9 Q. But as you are mining, you never saw the dust kind
10 of go in and come out?

11 A. No.

12 Q. Did you ever see when you had more dust, like you
13 were mining and everything was good, and all of a
14 sudden, the dust just kind of got still? Did you ever
15 see that?

16 A. No.

17 Q. Did you ever hear --- what kind of detector did
18 the foremen have?

19 A. Solaris.

20 Q. Solaris. Did you ever hear it alarm?

21 A. No.

22 Q. You were there the day of the event?

23 A. Yeah.

24 Q. How did you know about what happened?

25 A. After I got home, because like I said, it was ---

1 my watch is probably a little different from most
2 people. At 3:05 I lost power. I was loading coal.
3 And the boss come to me and told me that we needed to
4 go. He said they can't get a hold of nobody else, and
5 something's happened. So we all gathered and got on
6 the mantrip and we come up to our switch and started
7 on the main drag and it was real dusty, and we thought
8 there was a fall or something inby us. And we come
9 outside and they took our name on a list and we went
10 home. I mean, I didn't --- that was all I knew. I
11 didn't know it was that bad until after I got home.

12 Q. When you said it was real dusty, can you explain
13 that? Was it just hanging in the air or was it moving
14 fast or ---?

15 A. It was just hanging in the air.

16 Q. What color was the dust, roughly?

17 A. Just like a dirty --- like coal would be, like
18 brown and tan and just like a dusty --- yeah.

19 Q. How far to the outside was it? Was it all the way
20 out?

21 A. Yeah.

22 Q. And from about where did you first see it at the
23 switch?

24 A. Whenever we first come up over our hill onto the
25 main switch and it was as far as you could see inby

1 and all the way to the outside.

2 MR. O'BRIEN:

3 Thank you. That's all I have right now.

4 EXAMINATION

5 BY ATTORNEY MCATEER:

6 Q. Let me go back to that day, Eddie, the day of the
7 disaster. You have recollection that your clock went
8 off ---

9 A. Yeah.

10 Q. --- at 3:05?

11 A. Yeah, because I keep my times for my cuts, when I
12 start and when I quit and when I lose downtime.

13 Q. Yeah.

14 A. Yeah.

15 Q. And where was the clock, on the machine or in your
16 watch?

17 A. I keep it on my dinner bucket and I keep it
18 sitting on the back of the miner.

19 Q. Okay.

20 A. And as soon as something stops, I go up there and
21 look at it so I can write it down in my notepad.

22 Q. Sure. Sure. Where were you in the cut on that at
23 that time?

24 A. Five Right.

25 Q. Did you finish loading or you finished ---?

1 A. No. I was in the middle of a cut.

2 Q. Was there anything else to indicate something had
3 happened?

4 A. No, just --- I just thought somebody got a cable
5 at first, because I looked around and then I seen ---
6 realized everybody else didn't have no power.

7 Q. Okay. So the power went off?

8 A. Yeah, the power went off.

9 Q. No noise?

10 A. No. When you're standing there beside of a miner
11 and loading a chain, it's pretty loud, and I wear
12 earplugs.

13 Q. Okay. Any disruption of ventilation, anything
14 that you would have noticed?

15 A. No.

16 Q. No concussion kind of thing?

17 A. No. I didn't really --- he was asking me if I
18 felt anything, and no, but --- because like when
19 you're driving a miner in and you shear down, you
20 shear all the way down to the rock, and you feel a
21 vibration from it. So I mean, if there was, I
22 probably wouldn't have noticed it myself, personally.

23 Q. Now, who told you at that point --- who instructed
24 you what to do next?

25 A. Our boss. He come and started gathering everybody

1 up.

2 Q. Who is that?

3 A. Jack Martin.

4 Q. So he gathers everybody up and says what?

5 A. He said that we need to go outside. He said,
6 something's happened. They couldn't get ahold of
7 nobody else but us inby. He said our phone was the
8 only one that was working

9 Q. So your phone was working, so they had called from
10 outside?

11 A. Yeah. As far as --- that's what I, yeah, remember
12 him saying.

13 Q. And spoken to Martin presumably?

14 A. Yeah.

15 Q. Okay. Did he tell you who called or ---?

16 A. No.

17 Q. What were the instructions that Martin said to
18 you? He said we can't get ahold of anybody --- they
19 can't get ahold of anybody else?

20 A. Yeah, inby us.

21 Q. Okay. And then what else? What's the next thing?

22 A. We just all gathered and ---.

23 Q. Okay. Martin says now, can't get ahold of anybody
24 else inby.

25 A. He said we need to go outside.

1 Q. We need to go outside?

2 A. Yeah. He said something has happened, and we got
3 to go. That's all I remember him saying.

4 Q. Was he scared? Was he upset?

5 A. He's wiry. He's always back and forth, so yeah.

6 Q. Okay.

7 A. Yeah. He was in a --- he was in a hurry because,
8 like you said, he was fire bossing the rescue chamber,
9 I believe, when he said he come from it.

10 Q. He was fire bossing the rescue chamber?

11 A. Yeah, at one point in time. And then he talked to
12 somebody over there. There's a phone in the intake
13 somewhere that I know of.

14 Q. Where is that rescue chamber?

15 A. It was over in our Number Seven entry.

16 Q. So it's in the barrier section?

17 A. Yeah.

18 Q. And there's a phone over there?

19 A. There was a phone on our intake, yeah.

20 Q. Anybody say anything in the crew?

21 A. No. We just ---.

22 Q. Wait a minute. They told you to leave, and you
23 don't say, Jesus, wonder what went on? I mean, ---.

24 A. Oh, yeah, we talked. We was wondering what was
25 going on. When they said they couldn't get ahold of

1 nobody, we all thought there was a rock fall, a roof
2 fall on the track, because that's where all your main
3 power comes in at.

4 Q. Okay. So you were thinking it was a roof fall
5 that hit that main power line?

6 A. Yeah.

7 Q. Yeah. Sure.

8 A. We even thought it was more so when we got on the
9 track and seen where it was dusty. Because like I
10 said, I never felt nothing --- that big an explosion.
11 And when we got up on the track it was dusty, like a
12 roof fall would be, and so that's what we thought it
13 was.

14 Q. Yeah. Sure. And you walked out?

15 A. No. We rode the mantrip.

16 Q. Oh, you rode the mantrip?

17 A. Yeah.

18 Q. So you come to the point where you make the turn
19 there at Ellis Switch ---?

20 A. No, by the barrier, yeah, on the main track.

21 Q. Okay. And you make that turn and then everybody
22 obviously is going to look inside?

23 A. Yeah.

24 Q. What did you see, anything --- when you say you
25 saw dust, what was it like?

1 A. Just dusty, just ---.

2 Q. On the ground, in the air?

3 A. Just everywhere, yeah.

4 Q. So it was the whole ---?

5 A. Yeah. It was pretty smoky or whatever --- not
6 smoky but dusty.

7 Q. Dusty?

8 A. Yeah.

9 Q. So it would have been --- so let's say the mine is
10 a square and you look at it and it's --- how thick is
11 the dust?

12 A. You couldn't see very far. You couldn't see
13 probably no more than past the mantrip on the other
14 end. I mean, you know how you can sit on the front
15 end and look down a mantrip?

16 Q. Uh-huh (yes).

17 A. You can --- it was pretty dusty.

18 Q. Okay. Any impact on your breathing, anything like
19 that?

20 A. No. I mean, the boss' detector wasn't detecting
21 anything, so we just, like I said, thought it was a
22 roof fall. So we just come on up and went straight
23 outside.

24 Q. So when you're coming outside then it's how many
25 breaks there?

1 A. Sixty (60) some breaks.

2 Q. And during that time of travel, were you traveling
3 through suspended dust or were you ---?

4 A. Yeah, just like it was when we come up on the
5 track.

6 Q. Okay.

7 A. It was pretty much like that all the way to the
8 outside.

9 Q. So when you left that portal, was it at the
10 portal, the North Portal there?

11 A. Yeah.

12 Q. Okay. Was there any force with it, any push with
13 it?

14 A. No, it was just sitting still, I mean, just --- it
15 was moving a little bit, but it wasn't like the air in
16 the intake blowing around or nothing. It was just
17 kind of lingering, just barely moving.

18 Q. But was there any air that you noticed coming in
19 from the ventilation system itself or just ---?

20 A. It was just like dead air.

21 Q. The crew just thinks it's a roof fall still?

22 A. Yeah.

23 Q. Anybody say anything about explosion or anything
24 like that?

25 A. No.

1 Q. And Martin is with you?

2 A. Yeah.

3 Q. Anybody else? Any other boss?

4 A. No.

5 Q. When you got outside, who talked to you out there?

6 A. I'm trying to --- we seen the superintendent right
7 before we got outside and ---.

8 Q. Still in the mantrip and still within the portal?

9 A. Yeah. We --- as we was coming through them doors,
10 he was right there and he told us to go outside and we
11 had to sign a piece of paper.

12 Q. Who was the superintendent?

13 A. Gary May.

14 Q. And then you got outside and he said ---?

15 A. There was a guy out there with a piece of paper.
16 We all had to sign a list, our name on there, I guess
17 for a headcount.

18 Q. Who was that?

19 A. I'm trying to remember who it was. Like I said,
20 there was a lot of people around. I don't know a
21 whole lot ---

22 Q. Sure.

23 A. --- by faces because we ain't been there very
24 long.

25 Q. Did he have a nickname or ---?

1 A. I'm trying to think of who it was.

2 Q. Persinger?

3 A. No. No, it wasn't him.

4 Q. What job did he have, you know, ordinarily?

5 A. I think he was an outside man.

6 Q. Mechanic? Motorman? Motor mechanic?

7 A. No.

8 Q. Okay. Where was your car?

9 A. My car? In the parking lot.

10 Q. Is it a truck or a car?

11 A. It's a truck.

12 Q. Should have known. Does everybody who drives
13 Route 3 consider it a speedway?

14 A. I don't know. We was talking about that earlier.
15 Yeah, they --- it's unreal. I live in [REDACTED]. It's
16 wild.

17 Q. It is. I know just --- every time I go down there
18 I think, Jesus, everybody drives this way.

19 A. Do you know where the two goes across the road?

20 Q. Yeah.

21 A. I live right there in [REDACTED], in a double wide.

22 Q. Okay.

23 A. As soon as I come around that turn, they're wide
24 open, all hours of the night, as soon as they can get
25 off. I mean, ---.

1 Q. Scary.

2 A. They have no respect for nobody.

3 Q. So who then told you to go home?

4 A. Just, I guess, our boss, Jack.

5 Q. Jack?

6 A. Yeah, he was talking to somebody, you know, just
7 go on home.

8 Q. So you guys are standing there in the yard and he
9 goes away and talks to somebody and comes back?

10 A. Yeah. The outside man, it's like I'm not exactly
11 sure. There was a couple people there, but ---.

12 Q. Sure.

13 A. And I guess everybody was around and we went in
14 and got our stuff and went home.

15 Q. Okay.

16 A. Nobody knew exactly what was going on yet ---

17 Q. Right.

18 A. --- and so they was trying to figure it out.

19 Q. Did you see a helicopter arrive or anything like
20 that?

21 A. No, not while I was there.

22 Q. Okay. Just a couple other questions. When you
23 talked to the company lawyers, do you remember their
24 names?

25 A. No. I'm trying to --- I'm not real good with

1 names and stuff.

2 Q. Me either, so don't feel bad. Dave Hardy come to
3 mind?

4 A. Dave Hardy?

5 Q. Yeah. If you remember.

6 A. I've heard that name.

7 Q. Okay.

8 A. But I'm not sure if that's who it was.

9 Q. Okay. And the second is they said that you could
10 have a representative with you if you wanted to?

11 A. Yeah.

12 Q. Can you try to remember what they told you, the
13 language?

14 A. They just asked where I worked at whenever I went
15 to meet with them and trying to figure out what was
16 going on. They were asking me about air changes and
17 stuff like that, if I've ever done anything illegal,
18 run without curtain and stuff like that. And then
19 they told me if I ever --- if I talked to MSHA, which
20 would be contacting me, too, that I could either have
21 them available or I could talk to them by myself or
22 whatever I wanted.

23 Q. Uh-huh (yes). How many were there?

24 A. There was just two guys, I guess the guy that was
25 recording, writing stuff.

1 Q. Like this young lady?

2 A. No. He was writing on a piece of paper.

3 Q. Just by hand?

4 A. Yeah.

5 Q. Okay. The day you built the stopping, when was
6 that?

7 A. The day --- it's --- we didn't run on split air
8 very long, so it wasn't long after we was there we had
9 to change it. I don't know what date it was, but we
10 wasn't there very long when we done it.

11 Q. But it wasn't near the time of the explosion?

12 A. No.

13 Q. You said the mine foreman was there a good bit.
14 Is that --- you're talking about Jack there?

15 A. No, Rick Foster. He's a mine foreman.

16 Q. Okay. Did you see Rick Foster on the day of the
17 explosion?

18 A. Yeah. Him and the inspector was on our section
19 that morning.

20 Q. Which inspector?

21 A. I don't recall that either.

22 Q. Federal or State?

23 A. I think it was Federal.

24 Q. Did you ever have anybody call in ahead of
25 inspections?

1 A. No.

2 Q. Oh, come on. Did you ever flip your lights when
3 you think the State Police is behind you to tell the
4 other guy?

5 A. No.

6 Q. I do.

7 A. I got a big truck and you can see. It's a Ford
8 F350. And I got it lifted way in the air, so it would
9 be too noticeable.

10 Q. That is a big truck.

11 A. Yeah.

12 Q. So Foster and an inspector were in that day?

13 A. Yeah, that morning. I think the last I seen them
14 it was close to around noontime.

15 Q. What was the inspector doing, taking samples?

16 A. He stood there with me a little while while I
17 loaded coal and done, you know, my methane checks and
18 gas checks and made sure ventilation was all right,
19 and he stood there and watched me load a little while.

20 Q. Okay. When you said you've worked at three or
21 four different Massey operations, it could be four, I
22 don't know, how does this mine, UBB, compare to the
23 other in terms of ---?

24 A. Of the way I feel about it?

25 Q. Yeah.

1 A. I didn't like that place.

2 Q. Okay.

3 A. I mean, like I said, I'm short and it was entirely
4 too high. And the rock, the middle man --- I was
5 like, man, it would be great to have a big coal seam,
6 just to load coal and no rock. And they told us that,
7 you know, it was going to be a good loading section,
8 and we got down there and it wasn't. It was around
9 20-foot cuts. And the middleman was extremely hard,
10 and it was just too high. I didn't like it. And it
11 rolled real bad. Everywhere leaned and rolled, so I
12 didn't like it. I like to run coal, so --- in that
13 place you couldn't.

14 Q. Just in comparison, sloughing off the ribs being
15 cleaned up, how does that compare at UBB to the next
16 place, to Peerless, the general maintenance?

17 A. Yeah. My side was a little softer on the ribs
18 compared to the left side. They were like solid wall.
19 I mean, it was like night and day sometimes.

20 Q. Okay.

21 A. I mean, it was nothing bad, just the coal would
22 get a little fluffy. But his side, I mean, it was
23 smooth, just like that wall. The coal was a lot
24 harder on the left side to the right. Because he
25 always made fun of me. He's like, yeah, I got the

1 better side.

2 Q. Yeah, buddy.

3 ATTORNEY MCATEER:

4 I think that's all the questions I have

5 right now. Thank you, Eddie.

6 MR. FARLEY:

7 John, do you have any follow-ups?

8 MR. GODSEY:

9 I have a few.

10 RE-EXAMINATION

11 BY MR. GODSEY:

12 Q. You said you cut a lot of rock. Did you all have
13 much maintenance problems there?

14 A. Just torque shafts, I mean.

15 Q. What about on the heads and stuff, miner heads?

16 A. Just changing bits and he would check the oil in
17 the heads, the electrician would. He'd take the plugs
18 out of it and check it and have to put them in every
19 now and then, heavy duty.

20 Q. Did they do much cutting and welding up there?

21 A. No.

22 Q. We talked about that going from split to --- I
23 mean, from split to sweep ventilation. Do you know
24 why they did that?

25 A. Honestly, no. I have no --- I guess they would

1 have been easier to maintain that way or ---.

2 Q. Do you think it would have been ---?

3 A. Where there may be so many different sections, it
4 would be easier to keep the air right on our side like
5 that.

6 Q. How many miners were on the crew?

7 A. How many miners?

8 Q. Not continuous miners, but miners, miner men.

9 A. Yeah.

10 Q. The whole crew.

11 A. The whole crew. Well, there was two miner men.

12 And after they switched everybody back, we was down to
13 two bolt men, two buggy men, a scoop man, an
14 electrician and a boss.

15 Q. So around ten, something like that?

16 A. Yeah.

17 Q. And when is the last time all of you all traveled
18 the primary escapeway?

19 A. Just I guess around when it first started. We
20 wasn't there very long.

21 Q. Did all of you travel together?

22 A. Yes.

23 Q. Did the foremen go with you?

24 A. Yeah. They always go.

25 Q. And you said when --- who called underground? I

1 may have missed that. You may have said it. Who
2 called underground and told you all that you had to
3 exit the mine because something happened?

4 A. He never did say. He just said that somebody got
5 a hold of him on the phone and said that they could
6 not reach or get a hold of nobody else on the phones
7 inby us. We was the only section they could get ahold
8 of, and something has happened. So we lost power
9 anyway, so we just got outside.

10 Q. So you rode a mantrip out?

11 A. Yeah. Were both doors open when you got down to
12 the doors?

13 A. I'm trying to remember. I was on the back of the
14 mantrip, so I'm not really recalling if they were or
15 not. I know on the manual doors you got to take the
16 pins out whenever you lose power, so I'm trying to see
17 who opened them. There was guys on the switch down
18 there. I think one of them opened them for ---.

19 Q. Both of them were open?

20 A. At that time.

21 Q. When you all ---?

22 A. Yeah.

23 Q. And who was there at the door? You said somebody
24 was there?

25 A. I seen the superintendent, Gary May, and I think I

1 seen James Walker.

2 Q. Who is James Walker?

3 A. He's a --- I don't know if he's an airway --- not
4 airway, but --- I'm trying to think what his job title
5 is now. He used to be our superintendent at Shumate
6 when he went down there. I don't know what his job
7 title was there.

8 Q. And you said you signed a paper. Did you read
9 what you signed?

10 A. It was just a blank piece of paper. There wasn't
11 nothing on it.

12 Q. Okay.

13 A. Just a list of names.

14 Q. And you said --- did you talk to any of the
15 surface personnel about what happened, what they head
16 out there at the fans or anything?

17 A. No. Well, after I done got and started changing,
18 I'd heard that the fan had reversed, and they said ---
19 at that time everybody thought it was a roof fall, and
20 it was an explosion. They said it was a fall with
21 such a force. And then I got home and my neighbor
22 works there, too, and I went over and talked to him,
23 and he was telling me things he had heard, too, by
24 that time, that the rumors started spreading. And
25 then he told me that he had heard there was an

1 explosion. And I told him Mays told me there was a
2 fall. So I mean, at that time we really didn't know
3 for sure.

4 Q. And how long did you stay there before you
5 departed, after you got on the surface?

6 A. After I signed that paper, I went and changed and
7 put my light up and my belt, and I went straight home.

8 Q. Did you see anyone go underground after you come
9 out? Did you see anybody go underground after
10 everybody come out?

11 A. No.

12 RE-EXAMINATION

13 BY MR. O'BRIEN:

14 Q. On April 5th, did you and your other guys all on
15 the section, did you just drop everything you had and
16 go or did you knock the power?

17 A. There wasn't no power.

18 Q. Okay. Did you leave like in a normal fashion or
19 did you just drop everything and go?

20 A. Yeah. We just grabbed our buckets and left. That
21 was all we could do. We didn't have no power or
22 nothing like that.

23 ATTORNEY WILSON:

24 Davitt, anything in follow-up?

25 ATTORNEY MCATEER:

1 No, thanks.

2 ATTORNEY WILSON:

3 Okay. Let's go off the record.

4 SHORT BREAK TAKEN

5 ATTORNEY WILSON:

6 Back on the record.

7 RE-EXAMINATION

8 BY MR. GODSEY:

9 Q. Just about five more minutes, if you can tolerate
10 it. We were talking earlier about while you were
11 mining up on the section. Did you all run into any
12 horsebacks or slickenside ---

13 A. No.

14 Q. --- or slips? No trends, anything like that?

15 A. No.

16 ATTORNEY MCATEER:

17 Kettle bottoms?

18 A. No, I didn't really see no kettle bottoms there.
19 I mean, I come from the mines at Shumate Powellton,
20 and that was always in that mines. Everybody was
21 kettle bottom, stuff like that, and I didn't really
22 see any there.

23 BY MR. GODSEY:

24 Q. And would you say that was like ten feet high?

25 A. It was --- yeah, it was out of my reach. I mean,

1 it was --- some people every now and then could reach
2 the top, but it was pretty high.

3 Q. Do you know why they were taking so much rock?

4 A. It wasn't taking no rock. It was the ---

5 Q. Middleman?

6 A. --- coal --- it was a coal seam, then there was a
7 middleman, and there was a coal seam on top of it, and
8 that was it.

9 Q. Did the thickness vary on the different sides?

10 A. Yeah, because it would roll.

11 Q. Which way did it roll?

12 A. Sometimes it rolled when you were driving down the
13 hill. And if you're driving the breaks across, it
14 would lean to the left a little bit sometimes and up a
15 hill. It just laid different ways.

16 Q. Didn't have any uniformity to it?

17 A. No.

18 Q. And could you show us on a map where you talk
19 about the big hill was? You said that you first went
20 in, somehow it went down.

21 A. Sixty-two (62).

22 Q. Yeah. If you could show us on the ---.

23 A. Just looking at that map over there, I'm not
24 familiar with that. Is that the same map over
25 there ---? I know it was in Number Three, your belt

1 entry is on Number Four. So that would be the next one
2 upside the belt. That's where our track entry was.

3 Q. Can you mark that?

4 ATTORNEY MCATEER:

5 We'll get a marker.

6 BY MR. GODSEY:

7 Q. Just circle it.

8 WITNESS COMPLIES

9 BY MR. GODSEY:

10 Q. Can you draw out from it and just say big hill?

11 ATTORNEY WILSON:

12 John, so the court reporter --- are you
13 talking away from here, so she can't hear you.

14 MR. GODSEY:

15 Okay.

16 ATTORNEY WILSON:

17 Go ahead. You can explain it, just ---.

18 BY MR. GODSEY:

19 Q. Out from it just draw ---

20 A. A line.

21 Q. --- big --- write big hill ---

22 A. Big hill.

23 Q. --- in a green highlighter.

24 A. Just draw a line?

25 ATTORNEY MCATEER:

1 Just draw that so we know what it says.

2 Just draw a line up there and then write the word big
3 hill.

4 WITNESS COMPLIES

5 BY MR. GODSEY:

6 Q. Which way does it lay?

7 A. Say you was going down over the hill ---.

8 Q. In other words, it's going at the face?

9 A. Yeah. So you're driving straight to the face. It
10 went downhill and it leveled back off.

11 Q. And it leveled off. Did it lay --- either lay
12 left or right?

13 A. I think when you're laying, just a hair lower on
14 the right side as you're going down, but it went down
15 over the hill.

16 Q. Did you have any water on the right side?

17 A. On my side?

18 Q. On the right side, down there.

19 A. There was --- actually you got down to the bottom
20 of the hill, there was a little waterhole that was
21 from a waterline leak. It wasn't from anywhere else
22 that would --- I don't know.

23 ATTORNEY MCATEER:

24 Can I ask him a question?

25 RE-EXAMINATION

1 BY ATTORNEY MCATEER:

2 Q. Mark, if you could, where you came out and saw the
3 dust?

4 A. Right there when we turned to go ---.

5 Q. Go ahead.

6 A. Just mark it right here?

7 Q. Uh-huh (yes). Just mark it with an X and then put
8 a line down here and say dust.

9 WITNESS COMPLIES

10 ATTORNEY MCATEER:

11 Alison, that would be the dust after the
12 day of the explosion.

13 A. At the day of the explosion.

14 BY ATTORNEY MCATEER:

15 Q. So now you have from here all the way out to the
16 portal?

17 A. Yeah.

18 Q. It's down here, and so you say there's dust all
19 that way?

20 A. Yes.

21 ATTORNEY MCATEER:

22 He's indicating there's dust from that
23 point all the way out to the portal. That's the North
24 Portal at UBB.

25 A. Yeah. So like I said, we come up the hill and

1 there's the track switch right here. And you can see
2 a couple breaks --- well, it's a straightaway right
3 there, and you couldn't see past the mantrip a little
4 bit.

5 BY ATTORNEY MCATEER:

6 Q. Okay.

7 A. So it was just like that all the way down through
8 there.

9 Q. No concussions, no secondary, no nothing?

10 A. No. It was just standing there, just barely
11 moving.

12 ATTORNEY WILSON:

13 All right. And I'm marking this map as
14 Foster Exhibit One.

15 (Foster Exhibit One marked for
16 identification.)

17 RE-EXAMINATION

18 BY MR. GODSEY:

19 Q. I just have one more question.

20 A. Okay.

21 Q. You said you had a friend who --- on April 5th he
22 was on the section when this happened.

23 A. Yeah.

24 Q. Did he ever talk to you about any conditions up
25 there?

1 A. No. I never really got to talk to him about
2 mining up there. Just his locker was across from me
3 and we talked about outside. We didn't talk about the
4 mines. But like I said, we grew up together, and that
5 was the only time I really got to see him anymore, was
6 there at work, switching out in the mornings. And he
7 never really talked about it. I just knew he was a
8 bolt man because he had a rope hanger that had the bit
9 changer on it. And I asked him if he finally got off
10 the buggy, and he said yeah.

11 Q. Did he have any relatives or anything you've
12 talked to since then?

13 A. No.

14 Q. You don't know whether they've ever talked --- you
15 talked to any of --- his wife or ---?

16 A. No, not really.

17 MR. GODSEY:

18 That's all I have.

19 RE-EXAMINATION

20 BY MR. O'BRIEN:

21 Q. At the portal that you go in, could you normally
22 hear the fan running?

23 A. Yeah.

24 Q. The day you came out, April 5th, did it sound any
25 different or did you ---?

1 A. Didn't hear it.

2 Q. Couldn't hear it?

3 A. Yeah.

4 Q. Couldn't hear any difference?

5 A. I couldn't hear it running.

6 Q. You couldn't hear it?

7 A. Yeah.

8 Q. Normally you could hear it, ---

9 A. Yeah.

10 Q. --- but that day you could not hear it?

11 A. Yeah.

12 MR. O'BRIEN:

13 Okay.

14 ATTORNEY WILSON:

15 Follow-up, Davitt?

16 ATTORNEY MCATEER:

17 I'm done. Thank you.

18 ATTORNEY WILSON:

19 Edward, I think we're through. On behalf

20 of MSHA and the Office of Miners' Health, Safety and

21 Training, I want to thank you for appearing and

22 answering our questions today. Your cooperation is

23 very important to the investigation as we work to

24 determine the cause of the accident.

25 A. Okay.

1 ATTORNEY WILSON:

2 I want to inform you of your rights under

3 the Mine Act. Any statements given by miner witnesses

4 to MSHA are considered to be an exercise of statutory

5 rights and protected activity under Section 105(c) of

6 the Mine Act. If you believe any discharge,

7 discrimination or other adverse action is taken

8 against you as a result of your cooperation with this

9 investigation , you are encouraged to immediately

10 contact MSHA and file a complaint under Section 105(c)

11 of the Act. Remedies under the Mine Act include back

12 wages and immediate temporary reinstatement to your

13 most recent position, pending a complete investigation

14 of your complaint. In order to file such a complaint,

15 you would need to contact the MSHA office for District

16 Four in Mount Hope or you can find additional

17 information at MSHA's website, which is www.msha.gov.

18 Again, we request that you not discuss your testimony

19 with any person because we will be interviewing

20 additional witnesses.

21 A. Okay.

22 ATTORNEY WILSON:

23 After questioning other witnesses, we may

24 call you if we have any follow-up questions that we

25 feel that we may need to ask. And if at any time you

1 have additional information regarding the accident
2 that you would like to provide to the investigation
3 team, please contact us at the contact information
4 that was provided to you in the letter or contact the
5 Office of Miners' Health, Safety and Training.

6 Now, before we go off the record, I
7 promised you I would give you an opportunity. If you
8 want to make any kind of a statement or if there's any
9 additional information that you think we should know
10 about, you can provide that to us at this time.

11 A. There's none that I can think of at this moment.
12 Like I said, I don't know all about the mines. I
13 wasn't there very long, and that's pretty much all I
14 know about it. I didn't really care for the place.

15 ATTORNEY WILSON:

16 Okay. Well, if there's anything else
17 that you think of after today, please contact us.

18 A. Okay.

19 ATTORNEY WILSON:

20 Then again, if there's nothing further,
21 thank you again for your cooperation, and go off the
22 record.

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 7:11 P.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

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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