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Transcript of the Testimony of Jeremy Irvin

Date: August 11, 2010

Case:

Printed On: August 23, 2010

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STATEMENT UNDER OATH

OF

JEREMY IRVIN

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 and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Wednesday, August 11, 2010, beginning at 4:00 p.m.

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P R O C E E D I N G S

JEREMY IRVIN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

ATTORNEY KOERBER:

Sir, would you please state your name ---
your full name and spell your last name for the
record?

A. My name is Jeremy Keith Irvin. Last name is
I-R-V-I-N.

ATTORNEY KOERBER:

And would you please state your mailing
address and your home telephone number?

A. [REDACTED]
[REDACTED]

ATTORNEY KOERBER:

Are you here today pursuant to a
subpoena?

A. Yes.

ATTORNEY KOERBER:

And did you receive that subpoena
sometime last evening?

A. Yes, I did.

ATTORNEY KOERBER:

1 And is this a copy of the subpoena you
2 received?

3 A. Yes.

4 ATTORNEY KOERBER:

5 Can I have that marked as State Exhibit
6 One or whatever the exhibits are.

7 ATTORNEY HAMPTON:

8 I'm marking this as Exhibit One, Irvin
9 8/11/10.

10 (Irvin Exhibit One marked for
11 identification.)

12 ATTORNEY KOERBER:

13 Do you have an attorney or a personal
14 representative with you here today?

15 A. No.

16 ATTORNEY KOERBER:

17 Is the reason you do not have an attorney
18 or a personal representative here with you today
19 because of the late hour upon which the subpoena was
20 served upon you?

21 A. No.

22 ATTORNEY KOERBER:

23 Do you feel that you need an attorney or
24 a personal representative with you to proceed?

25 A. No.

1 ATTORNEY KOERBER:

2 Thank you.

3 ATTORNEY HAMPTON:

4 Okay. My name is Polly Hampton. Today

5 is August 11th, 2010 and I am with the Office of the

6 Solicitor, U.S. Department of Labor. With me is Erik

7 Sherer. He is an accident investigator with the Mine

8 Safety and Health Administration, MSHA, an agency of

9 the United States Department of Labor. Also present

10 here are several people from the West Virginia team,

11 and I ask that they now state their appearance for the

12 record.

13 MR. FARLEY:

14 I'm Terry Farley with the West Virginia

15 Office of Miners' Health, Safety and Training.

16 MR. O'BRIEN:

17 John O'Brien with the West Virginia

18 Office of Miners' Health, Safety and Training.

19 MS. SPENCE:

20 I'm Beth Spence with the Governor's

21 independent investigation.

22 ATTORNEY KOERBER:

23 And note Barry Koerber, Assistant

24 Attorney General for the record, as well, because I

25 spoke first.

1 ATTORNEY HAMPTON:

2 We also have other members of the ---.

3 MR. BENTLEY:

4 Since I'm here, I'm Terry Bentley. I'm

5 the accident investigation's program manager for MSHA

6 headquarters. I'm just sitting in for a few days.

7 ATTORNEY HAMPTON:

8 Okay. All members of the Mine Safety and

9 Health Accident Investigation Team and all members of

10 the State of West Virginia Investigation Team

11 participating in the investigation of the Upper Big

12 Branch Mine-South --- mine explosion shall keep

13 confidential all information that is gathered from

14 each witness who provides a statement until the

15 witness statements are officially released. MSHA and

16 the State of West Virginia shall keep this information

17 confidential so that other ongoing enforcement

18 activities are not prejudiced or jeopardized by a

19 premature release of information. This

20 confidentiality requirement shall not preclude

21 investigation team members from sharing information

22 with each other or with other law enforcement

23 officials. Your participation in this interview

24 constitutes your agreement to keep this information

25 confidential.

1 Government investigators and specialists
2 have been assigned to investigate the conditions,
3 events and circumstances surrounding the fatalities
4 that occurred at the Upper Big Branch Mine-South at
5 April 5th, 2010. The investigation is being conducted
6 by MSHA under Section 103(a) of the Federal Mine
7 Safety and Health Act and the West Virginia Office of
8 Miners' Health, Safety and Training.

9 And we really do appreciate your
10 assistance with the investigation. As Mr. Koerber was
11 asking you earlier, you have indicated to us you don't
12 have an attorney with you?

13 A. No.

14 ATTORNEY HAMPTON:

15 Okay. You may bring an attorney, but I
16 believe you knew that before you came in here;
17 correct?

18 A. Uh-huh (yes).

19 ATTORNEY HAMPTON:

20 Okay. Your identity and the content of
21 this conversation will be made public at the
22 conclusion of the interview process and may be
23 included in the public report of the accident unless
24 you request that your identity remain confidential or
25 that the information would otherwise jeopardize a

1 potential criminal investigation. Now, one thing, if
2 you do request confidentiality, we can only give you
3 that to the extent permitted by the law.

4 That means that if a judge were to
5 require us to reveal your name or if another law
6 enforcement purpose would require us to reveal your
7 name or if any law would require us to reveal your
8 name, we would have to do so. And it's also something
9 --- a statement only coming from the Federal team.
10 The State team is subject to their own FOIA
11 requirements, so they cannot promise you the
12 confidentiality.

13 A. Okay.

14 ATTORNEY HAMPTON:

15 Okay? Do you have any questions about
16 that?

17 A. No.

18 ATTORNEY HAMPTON:

19 Okay. After the investigation is
20 complete, MSHA will issue a public report detailing
21 the nature and causes of the fatalities in the hope
22 that the greater awareness about causes of accidents
23 can reduce their occurrence in the future.
24 Information obtained through witness interviews is
25 frequently included in these reports. Since we will

1 be interviewing other people, we do request that you
2 not discuss your testimony with other people so that
3 we can proceed through the interview process without
4 information in the community coming from this process.

5 A court reporter is recording your
6 interview, so please speak loudly and clearly. And if
7 you don't understand a question, please ask that
8 person to rephrase it. Also, please answer each
9 question as fully as you can, including giving us any
10 information you might have learned from somebody else.

11 We would like to thank you in advance for
12 your appearance here. We do appreciate your
13 assistance in the investigation, because your
14 cooperation is critical in making the nation's mines
15 safer.

16 Now, if after we you leave here today, if
17 you have something else you'd like to share with the
18 teams, any other information you'd like to give to us,
19 you may contact us through the contact information
20 provided to you in the letter that I handed you before
21 we started today. Norman Page is the lead accident
22 investigator for the MSHA team, and his contact
23 information is in that letter, so you can reach out to
24 us at any point if you have something that you'd like
25 to share with us. Also, when we conclude the

1 questioning today, we will give you an opportunity to
2 either make a statement, if you have anything else
3 that you would like to say, or if there are any
4 answers that you'd like to clarify or go back over,
5 then you can do so at that point; okay?

6 A. Okay.

7 ATTORNEY HAMPTON:

8 And any statements given by a miner
9 witness in MSHA are considered to be an exercise of
10 statutory rights and are protected activity under
11 Section 105(c) of the Mine Act. Okay.

12 MR. FARLEY:

13 Mr. Irvin, on behalf of the Office of
14 Miner's Health, Safety and Training I want to advise
15 you that the West Virginia Coal Mine Health and Safety
16 Regulations also provide protection against potential
17 discrimination resulting from your participation in
18 these interviews. I want to pass along some contact
19 information to you in the event that you experience
20 any such problems.

21 And should you have any problems, you can
22 contact the people listed on that memorandum. And
23 should you need to file a discrimination claim, you
24 need to do it within 30 days of the time of the
25 occurrence.

1 ATTORNEY HAMPTON:

2 Okay.

3 MR. FARLEY:

4 Are we ready?

5 ATTORNEY HAMPTON:

6 Yep.

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Mr. Irvin, how long have you been a coal miner?

10 A. About three years.

11 Q. Okay. Have you always worked for Massey?

12 A. Yes.

13 Q. Okay.

14 A. Well ---.

15 Q. Go ahead.

16 A. I started off as contractor for David Stanley.

17 Q. Okay. All right. How long did you work as a
18 contractor?

19 A. Four months.

20 Q. Okay. And then you hired in as a member; is that
21 correct?

22 A. Yes.

23 Q. Okay. Now, have you always --- were you always
24 employed at UBB prior to April 5th?

25 A. I was.

1 Q. Okay. No other mines?

2 A. No.

3 Q. Okay. As of April 5th of 2010 what was your job
4 classification at UBB?

5 A. I was a scoop operator.

6 Q. Okay. What part of the mine did you work in?

7 A. Tailgate 22.

8 Q. Tailgate 22; okay. What shift did you work in?

9 A. Evening.

10 Q. Okay. Now, prior to the explosion on April 5th,
11 what was the last shift that you worked?

12 A. I believe it was the Friday night, I believe,
13 prior. My schedule was mixed up. I believe it was a
14 Friday night before.

15 Q. Okay. Did you have a three-day weekend since it
16 was Easter weekend?

17 A. Yeah. It might've been the Thursday.

18 Q. Okay

19 A. And it was ---.

20 Q. All right. Were you at the mine preparing to go
21 to work --- go to work when the explosion occurred on
22 April 5th?

23 A. No.

24 Q. Okay. Were you off that day, too?

25 A. I was headed there. I hadn't gotten there yet.

1 Q. Okay. But you were scheduled to work on this ---

2 A. Yes.

3 Q. --- regular afternoon shift, April 5th?

4 A. Yes.

5 Q. Okay. All right. How long had you been the scoop
6 operator on Tailgate 22?

7 A. A month.

8 Q. Okay. And did you start on Tailgate 22 about the
9 time that the initial mining started to develop the
10 section?

11 A. Yes.

12 Q. Okay. And about when --- you said about a month
13 prior to April 5th?

14 A. Yes.

15 Q. Okay. Now, what part of the mine did you work in
16 prior to your assignment on 22 Tailgate?

17 A. I was over on Three section.

18 Q. That means in the southern part of the mine?

19 A. Yes, sir.

20 Q. Was that the one commonly known as the portal
21 section?

22 A. I believe it was. I was on the other side of the
23 mountain.

24 Q. Okay. All right. Now, until you moved to the
25 Tailgate 22 section, how often did you work in this

1 northern part of the mine? Well, let me say this.

2 How often did you work at any location inby Number 78
3 on the track?

4 A. I haven't worked on that side for about two years.

5 Q. Okay. All right. So a month prior to the
6 explosion, the first time you were inby 78 in two
7 years; is that fair?

8 A. Yes, sir.

9 Q. Okay. So obviously you've never visited the
10 longwall before then if you did ---

11 A. No, sir.

12 Q. --- now. Okay. All right. What'd you do on
13 Three section? What was your job down there?

14 A. I was on the move crew on the hoot owl shift.

15 Q. Okay. Now, when you first began to work on
16 Tailgate 22, who was your section foreman?

17 A. Brian Collins.

18 Q. Brian Collins, known as Hammer?

19 A. Yes.

20 Q. Okay. All right. During your last shift there on
21 the Tailgate 22 section, which, as you say, probably
22 would've been about Thursday, April 5th; is that
23 correct?

24 A. Yes.

25 Q. Okay. Can you kind of give me an idea of what

1 happened that night? Just kind of take me through,
2 just generally, what you did throughout that shift?

3 A. Just a normal day. I got my scoop, cleaned a
4 little bit, supplied the bolter, rock dusted, just a
5 typical shift.

6 Q. Okay. Had you noticed anything unusual that
7 night?

8 A. No.

9 Q. Anything that was out of the ordinary in any way?

10 A. No, sir.

11 Q. No visual differences, any smells, any different
12 odors?

13 A. No, sir.

14 Q. Okay. Notice anything different about the
15 ventilation?

16 A. No.

17 Q. Okay. Now, as to ventilation on the Tailgate 22
18 section, how was the ventilation, the face ventilation
19 on Tailgate 22 on your last shift?

20 A. Can you rephrase it?

21 Q. Sure, okay. Are you aware of any ventilation
22 problems that you guys might've encountered on April
23 1st during your evening shift?

24 A. No, I was not aware of any problems.

25 Q. Okay. Now, did you have any conversations with

1 Mr. Collins during the shift, the last shift that you
2 worked?

3 A. No, not really, not about anything important, just
4 normal ---

5 Q. Okay.

6 A. --- talking.

7 Q. Did he, at any time, say to you or anybody else on
8 the section that night that there was something amiss
9 with the ventilation?

10 A. No, sir.

11 Q. Okay. Now, during the time that you worked on the
12 Tailgate 22 section, did you recall instances where it
13 was necessary to stop production because of
14 ventilation problems?

15 A. Yes. We had one evening we had to shut down
16 production and redo ventilation.

17 Q. Okay. Can you describe the nature of the problem,
18 please?

19 A. We had fly pads that had come loose. We just had
20 to tighten those up so the ---

21 Q. Okay.

22 A. --- intake would come up the intake and go across.

23 Q. Okay. Was the air short circuiting?

24 A. Yes.

25 Q. Okay. Now, do you recall an instance on the

1 Tailgate 22 section where the air --- the intake air
2 might've --- you might've had more air coming up the
3 conveyor belt than you did in the intake?

4 A. That was the incident.

5 Q. Same incident?

6 A. Yes, sir.

7 Q. Okay. Now, can you give me an approximate date?

8 A. No, sir, I cannot.

9 Q. Now, would it have been in the month of March
10 2010?

11 A. Yes, probably early March.

12 Q. Okay.

13 A. I mean pretty early.

14 Q. Two to three weeks from the explosion; is
15 that ---?

16 A. Sounds ---.

17 Q. Is that in the ballpark?

18 A. Sounds about right, yes, sir.

19 Q. Okay. Now, this particular instance where you had
20 the air problem, too much air coming up the belt
21 entry, about how much time did you and other people
22 spend trying to correct this problem?

23 A. From the start of trying to find the problem and
24 finishing it?

25 Q. Uh-huh (yes).

1 A. About an hour.

2 Q. Okay. Now, did this problem occur at the start of
3 your shift? Did you notice it as soon as you arrived
4 on the section?

5 A. No, sir.

6 Q. Okay. At what point during your shift did you
7 notice? How long had you been there when it became
8 apparent that there was a problem?

9 A. About four hours prior to --- four hours from the
10 start.

11 Q. Okay. About four hours into the shift, then;
12 okay.

13 A. Yes.

14 Q. Did Mr. Collins offer any explanation as to what
15 might've caused this problem?

16 A. No, sir.

17 Q. Okay. Did you have confidence in Mr. Collins as a
18 section foreman?

19 A. I did.

20 Q. Okay. Where was your charging station for your
21 scoop located in the vicinity of 22 Tailgate section?

22 A. You want me to show it on the map?

23 Q. Yes. Matter of fact, make it easier for all of
24 us. If you wouldn't mind, just take a marker and draw
25 a --- mark it on the map. That we know --- it's much

1 easier to ---.

2 A. Let me get reoriented here.

3 Q. This is the 22 Tailgate section, MMU-040-0.

4 A. Let's see here. The charging station was right
5 here.

6 ATTORNEY HAMPTON:

7 Okay. The witness has marked the map

8 with a pink circle, and I'm going to ask, could you
9 please draw a line out into this blank area and write,
10 charging station?

11 WITNESS COMPLIES

12 ATTORNEY HAMPTON:

13 Thank you. And I am going to mark ---

14 this is a map of the longwall --- as Exhibit Number
15 Two, Irvin 8/11/10.

16 (Irvin Exhibit Two marked for
17 identification.)

18 BY MR. FARLEY:

19 Q. Okay. Now, just in looking at the location you
20 marked on the map for your charging station, it
21 appears that that charging station was located between
22 two sets of doors.

23 A. Yes, sir.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. Okay. Now, it appears that if you're facing north
2 in the entries known as the crossover, that it would
3 be in the crosscut to the right in the Number Three
4 entry; is that a fair description, sir?

5 A. Yes, sir.

6 Q. Okay. Well, that was in the crosscut there, I
7 suppose; is that correct?

8 A. We had ---.

9 Q. Well, one --- it was in a crosscut on one side or
10 the other, I assume; is that correct?

11 A. Right here. Well, how would I explain this? The
12 belt head is right here. We had the charger on this
13 side ---

14 Q. Okay.

15 A. --- in the middle of the block and a charger right
16 here ---

17 Q. Okay.

18 A. --- in the middle of the block.

19 Q. So you actually had chargers in both crosscuts ---

20 A. Yes, sir.

21 Q. --- on each side?

22 ATTORNEY HAMPTON:

23 Would it be helpful to have him label
24 those locations?

25 MR. FARLEY:

1 Sure.

2 ATTORNEY HAMPTON:

3 Okay. I'm going to hand you a green
4 marker. If you could locate the chargers, maybe make
5 an X where the chargers were?

6 WITNESS COMPLIES

7 ATTORNEY HAMPTON:

8 Okay. And do you want the belt head
9 identified, as well?

10 MR. FARLEY:

11 I think we've got that.

12 ATTORNEY HAMPTON:

13 Okay. Good.

14 BY MR. FARLEY:

15 Q. Now, on the last shift that you worked, which
16 would've been, as you said, Thursday, April 1st, was a
17 set of doors still there which --- on the south end of
18 Number Three entry?

19 A. Yes, sir. All the doors were present.

20 Q. Okay. What was the condition of those doors?

21 A. They were fine, in working order.

22 Q. Okay. All right. Now, after your last shift, did
23 you hear of these doors being removed and replaced
24 with a stopping?

25 A. No, sir.

1 Q. Okay. All right. Did you ever have occasion to
2 travel through the doors into the longwall headgate
3 entries?

4 A. Our doors went from our return to our neutral so
5 the longwall was shut off from us.

6 Q. Okay. All right.

7 A. They had built stoppings there.

8 Q. Okay. But the doors were there last time you were
9 there?

10 A. Yes, sir.

11 Q. Okay. Both sides?

12 A. Yes, sir.

13 Q. Okay. I hope I'm not repeating this, but did you
14 have occasion to travel through the doors into the ---
15 over towards the headgate?

16 A. Well, we had to travel from the doors over to the
17 return, which is marked on the map where the doors are
18 to the longwall. And we did have to travel the
19 return.

20 Q. Okay. Now, you traveled the return with your
21 scoop up from the charger?

22 A. Yes, sir.

23 Q. Okay. Was that a regular routine?

24 A. Yes, sir.

25 Q. Okay. All right. Now, it appears that the track

1 entry --- where was the track entry on the 22 Headgate
2 --- 22 Tailgate section? Where was the end of the
3 track?

4 A. You know, the track was, I'm wanting to say, about
5 24130.

6 Q. Why don't we mark that, too, if you don't care.

7 ATTORNEY HAMPTON:

8 Okay. I'm handing you a blue marker

9 BY MR. FARLEY:

10 Q. Draw a line out from it and then put, end of
11 track, please.

12 WITNESS COMPLIES

13 BY MR. FARLEY:

14 Q. Okay. Now, on the last shift you worked, which
15 was around April 1st, what was the overall condition
16 of those charging units? Were they in good condition?

17 A. Yes, sir, they were in working condition.

18 Q. Did you notice any unusual smells?

19 A. No, sir.

20 Q. Any rotten egg odor?

21 A. No.

22 Q. Any other unusual odors emanating from anywhere
23 else?

24 A. No, sir.

25 Q. Any stinging sensation in your eyes?

1 A. No.

2 Q. Okay. How often --- or let's say --- let's say
3 this. During the month that you worked on the 22
4 Tailgate section, did anyone on the section at any
5 time detect any quantities of methane?

6 A. Not to my knowledge.

7 Q. Okay. Now, how many people on the section
8 would've carried a methane detector, as best you know?

9 A. Maybe four.

10 Q. Can you name them?

11 A. The electrician, Scott, Hammer and possibly bolt
12 man.

13 Q. Okay. Did you ever hear of any problems with the
14 methane monitoring system on the continuous mining
15 machine?

16 A. No.

17 Q. Okay. During the month you were there, you never
18 --- ever hear of any breakdowns or disruptions in
19 production due to a methane monitor problem?

20 A. No, sir.

21 Q. Okay. Now, was there one continuous mining
22 machine on 22 Tailgate or two?

23 A. There were two.

24 Q. Okay. Did they normally operate one or both at
25 the same time?

1 A. One at a time.

2 Q. Okay. When you charged the batteries on your
3 scoop, did you charge them while they were on the
4 scoop or off the scoop? Was your design such that you
5 could remove the batteries and exchange them?

6 A. Yes, we had extra set of batteries so that they
7 could be removed. We would charge the ones on the
8 ground. Then once I needed to change the batteries, I
9 would change the batteries and charge those.

10 Q. Okay. All right. Now, where would you routinely
11 leave your scoop at the end of your shift?

12 A. I took it to the charger, put it on the charge.

13 Q. Okay. Now, did you have a forklift, too, on the
14 22 Tailgate section?

15 A. Yes, sir, we did.

16 Q. Okay. Was it a permissible forklift?

17 A. I do not believe so.

18 Q. Okay.

19 A. I'm not quite sure.

20 Q. When you traveled, did you portal at the UBB
21 Portal at Montcoal?

22 A. Yes, sir.

23 Q. Okay. All during the month that you worked on 22
24 Tailgate?

25 A. Yes.

1 Q. Now, when you traveled to the 22 Tailgate section,
2 is it fair to say that you passed through a
3 considerable number of doors along the track?

4 A. Yes, sir.

5 Q. Okay. As you were traveling in and out of the
6 mine during the month preceding the accident, did you
7 ever come upon any of these doors and find them open?

8 A. No.

9 Q. Okay. What was the condition of these doors? Do
10 you recall any of the doors having any particular
11 damage that would've made them dysfunctional?

12 A. No, sir, they were working properly.

13 Q. Okay. While you were working on 22 Tailgate
14 section, did you ever have occasion to run into any of
15 the people from the 22 Tailgate section, either in the
16 --- either outside or inside the mine?

17 A. On the inside we did run into them occasionally.

18 Q. Okay.

19 A. Just around the track and switch area.

20 Q. Okay. You ever have any conversations with any of
21 them?

22 A. No, sir.

23 Q. Okay. So I guess if they didn't have any
24 conversations with you, they didn't express any
25 concerns about the ventilation to you; would that be

1 correct?

2 A. Yes, sir.

3 Q. All right. Did you hear from any other source
4 that there might've been some ventilation problems on
5 the Headgate 22 section?

6 A. No.

7 Q. Okay. Are you aware of any major mine air changes
8 that were made while you were working on the 22
9 Tailgate section?

10 A. No, sir.

11 Q. Were you ever kept outside or asked to leave the
12 mine early because of any kind of an air change?

13 A. Not an air change. We had a fan go down one
14 night ---

15 Q. Okay.

16 A. --- but they took us out as soon as it happened
17 and got it running.

18 Q. Okay. Do you recall when that fan outage
19 occurred?

20 A. Maybe March 15th, give or take.

21 Q. Okay. Now, I know we've already asked questions
22 about the ventilation on the 22 Tailgate section.
23 Now, during the month that you worked on the 22
24 Tailgate section, as best you understood it, was the
25 ventilation consistent, other than this episode where

1 you had the air coming up the belt? Was the face
2 ventilation consistent?

3 A. Yes, sir.

4 Q. Okay. There weren't any significant noticeable
5 changes from one day to the next?

6 A. No.

7 Q. Okay. Did you ever operate any equipment on the
8 22 Tailgate section other than the scoop?

9 A. No, sir.

10 MR. FARLEY:

11 Okay. Erik.

12 MR. SHERER:

13 Okay, sure.

14 EXAMINATION

15 BY MR. SHERER:

16 Q. Mr. Irvin, when you were working in the mine,
17 either on Three section or once you got up on the
18 tailgate section, did you ever --- did anybody ever
19 say anything like, there's inspectors on the property?

20 A. Occasionally they did.

21 Q. Okay. Who would tell you that?

22 A. Just I would overhear it from Brian Collins.

23 Q. Okay. Did you wear a jacket when you worked on
24 this tailgate section?

25 A. No, sir.

1 Q. Did you wear a long-sleeved shirt?

2 A. Yes.

3 Q. Okay. Did you ever notice it getting hot up
4 there?

5 A. Not really. It stayed usually the same
6 temperature.

7 Q. Okay. Did you notice any change in temperature
8 from the 1st of March when you first came on the
9 section until the end of March?

10 A. No, sir.

11 Q. Okay. Did you guys ever hang any diagonal
12 curtains, line curtains to try to get air?

13 A. What do you mean?

14 Q. Where you'd go from the rib on one side with your
15 line curtain diagonally across to the opposite corner,
16 basically funneling all the air that would come into
17 that intersection down that line curtain?

18 A. Most of the time it would be attached to the, you
19 know ---.

20 Q. Well, you want to draw a little diagram or
21 something?

22 A. Sure. Yeah.

23 Q. Here.

24 WITNESS COMPLIES

25 A. That's probably good. This was the face area.

1 And it would usually come up to about right here and
2 come down to this rib.

3 BY MR. SHERER:

4 Q. Okay. So you didn't do any diagonals?

5 A. Not to my knowledge.

6 Q. Okay. Thank you.

7 A. Uh-huh (yes).

8 ATTORNEY HAMPTON:

9 Is this diagram something that you would
10 like to become ---

11 MR. SHERER:

12 No.

13 ATTORNEY HAMPTON:

14 --- attached to the record?

15 MR. SHERER:

16 No, just a explanatory diagram.

17 ATTORNEY HAMPTON:

18 Okay.

19 BY MR. SHERER:

20 Q. Okay. I lost my place here. Excuse me for a
21 minute.

22 A. Uh-huh (yes).

23 Q. Now, when you came up on the tailgate section, ---

24 A. Okay.

25 Q. --- do you think that the work was herder or

1 easier than what you were doing on Three section?

2 A. Some things were a little bit harder, but just
3 about the same, really.

4 Q. About the same; okay. Now, did you notice that
5 you were more fatigued at the end of the shift?

6 A. No.

7 Q. Did you ever hear anybody else on the section
8 talking about being fatigued?

9 A. No, sir.

10 Q. Okay. Thank you. Are you aware of any explosives
11 that were used or stored anywhere near the tailgate
12 section?

13 A. No.

14 Q. Okay. Was there a trickle duster on the belts in
15 the tailgate section?

16 A. No, sir.

17 Q. Okay. What was the condition of the rock dust
18 like? Did you ever walk down the section belt?

19 A. Once I did.

20 Q. What did it look like?

21 A. It was rock dusted pretty good.

22 Q. Did you notice any gray areas?

23 A. Yeah, a couple of them here and there, usually
24 right under the belt line.

25 Q. What about on the structure? Was there any float

1 dust on the structure?

2 A. There was dust on the structure.

3 Q. Float coal dust?

4 A. No.

5 Q. Okay. Thank you. Did you do much rock dusting on
6 the section?

7 A. Yes, sir.

8 Q. Did you do it manually or did you use a scoop
9 duster?

10 A. Manually.

11 Q. Okay. What was the quality of the rock dust like
12 on the section?

13 A. It was good, dry.

14 Q. How high was the coal --- or how high was the
15 mining height on that section?

16 A. It was about six foot, seven foot, give or take.

17 Q. Okay. Were there any mesh on the roof?

18 A. No.

19 Q. Okay. What about the floor through there? Was
20 there any floor heaving?

21 A. A little bit.

22 Q. Would that develop one break, two breaks, three
23 breaks back from the face?

24 A. It was about three.

25 Q. Okay. When you were on the section, did you

1 notice any unusual thumping or cracking noises?

2 A. Thumping, I guess. There was thumping one night.

3 Q. Okay. Do you recall about when that night was?

4 A. About a week or two prior to the accident. The
5 bolt men were bolting the cut and it just started
6 thumping.

7 Q. Okay. Was it thumping in that cut they were
8 bolting?

9 A. Yes, sir.

10 Q. Okay. Did you notice anything else going on while
11 it was thumping or soon afterwards? Was the ribs
12 taking weight? Was there anything dribbling out of
13 the roof or was the floor heaving?

14 A. No, sir, just thumping.

15 Q. Okay. That last night you worked, Thursday night,
16 did anything seem the least bit unusual?

17 A. No, sir.

18 Q. Okay. Have you been back to the mine since the
19 explosion?

20 A. No. I have not been in the mine.

21 Q. Okay. Have you talked to anybody from the mine?

22 A. No, sir.

23 Q. Okay. Have you talked to any attorneys?

24 A. No.

25 MR. SHERER:

1 Okay. Thank you. That's all the
2 questions I've got.

3 EXAMINATION

4 BY MS. SPENCE:

5 Q. Where are you working now?

6 A. I'm currently working at Parker Peerless.

7 Q. Okay. And the day of the accident you said that
8 you were on the way. Did you ever make it to the
9 mine?

10 A. I did.

11 Q. And what, just to the outside? Can you tell us
12 your experience that day, please?

13 A. I was told, you probably won't be going in today.
14 They thought they had a rock fall in front of the fan.
15 So we just stayed out, outside until one of the --- I
16 think Gary May told us there was an explosion, you
17 know what I mean? Just stay outside all day.

18 Q. How long did you stay approximately?

19 A. Three and a half hours.

20 Q. Okay. And you didn't help with the recovery at
21 all?

22 A. No, ma'am. That was on the other side.

23 MS. SPENCE:

24 Okay. Thank you.

25 RE-EXAMINATION

1 BY MR. FARLEY:

2 Q. You were describing a thumping noise that you
3 heard about a week prior to the explosion as a place
4 on the 22 Tailgate section was being bolted. Now, can
5 you be a little bit more specific about this thumping
6 noise? Was there any vibration associated with it? I
7 mean was it loud? Did it scare you?

8 A. It was loud. It frightened me. As far as
9 vibrating, I would not know. I didn't really go up
10 there.

11 Q. Okay. Where were you located when it occurred?

12 A. About a break and a half or two breaks outby.

13 Q. Okay. Now, I think you described this occurring
14 around where the roof bolter was working in the face.
15 Did the roof bolter operators leave the machine when
16 it occurred?

17 A. Yes, sir.

18 Q. And did they leave the machine in a hurry?

19 A. Yes.

20 Q. Okay. Did they appear frightened?

21 A. Yes, they did.

22 Q. Okay. Did they offer any description or any
23 explanation as to what might've been occurring?

24 A. No.

25 Q. Did anyone else?

1 A. No. Just said it was jus thumping.

2 Q. Okay. Now, do you know if the thumping came from
3 the floor or the roof, ribs, and where and how it
4 originated?

5 A. I do not know.

6 Q. Okay. Did anyone mention any methane release from
7 this --- at the same time of this thumping noise?

8 A. No, sir.

9 Q. Okay. Is this the only time that occurred when
10 you were on 22 Tailgate section?

11 A. Yes.

12 Q. Okay. Did you hear of such an occurrence on any
13 other shift?

14 A. No.

15 Q. Okay. I have one other thing if we're finished
16 here. Bear with me. As a subpoenaed witness you are
17 entitled to a 40-hour witness fee and mileage. To
18 receive this fee you will need to fill out forms at
19 the end of the interview and provide your Social
20 Security number. Would you like to fill out those
21 forms or do you decline the fee?

22 A. I decline the fee.

23 MR. FARLEY:

24 All right. Very well. Thank you very
25 much.

1 ATTORNEY HAMPTON:

2 Okay. All right. On behalf of MSHA and
3 the Office of Miners' Health, Safety and Training we'd
4 like to thank you for coming in and talking to us
5 today. Your cooperation is very important to the
6 investigation as we work to determine the cause of the
7 accident.

8 As I mentioned before, we do request that
9 you not discuss your testimony with any other person,
10 and if after questioning other witnesses, we have some
11 follow-up questions, we might get in contact with you
12 again. And as I did mention, if you have anything
13 else that you'd like to share with the teams, please
14 feel free to contact us at the information that was
15 provided to you earlier.

16 Now, as I had stated before we started
17 the questioning, you have an opportunity to make any
18 statement that you would like or to go over any of the
19 answers that you've given us to clarify anything. So
20 is there anything else that you would like to share
21 with us?

22 A. No, not to my knowledge.

23 ATTORNEY HAMPTON:

24 Okay. Again, thank you for your
25 cooperation.

1 A. Thank you.

2 ATTORNEY HAMPTON:

3 Okay. Off the record.

4 * * * * *

5 STATEMENT UNDER OATH CONCLUDED AT 4:35 P.M.

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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