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Statement Under Oath of Joseph Mackowiak

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

CONTINUED
STATEMENT UNDER OATH
OF
JOSEPH MACKOWIAK

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, June 7, 2010, beginning at 1:00 p.m.

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ROBERT S. WILSON, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209

CELESTE MONFORTON, MPH, DRPH
West Virginia Independent Investigation
2100 M. Street, NW
Suite 203
Washington, DC 20037

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

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

2

3 TIMOTHY R. WATKINS

4 ADM/Assistant Lead Accident Investigator

5 U.S. Department of Labor

6 Mine Safety and Health Administration

7 Coal Mine Safety and Health, District 6

8 1301 Airport Road

9 Beaver, WV 25813

10

11 JOHN T. O'BRIEN

12 Safety Instructor

13 West Virginia Office of Miners' Health,

14 Safety, and Training

15 Welch Regional Office

16 819 Stewart Street

17 Welch, WV 24801-2311

18

19

20

21

22

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ATTORNEY WILSON:

Good afternoon. Today is June 7th, and we're here to reconvene and continue the interview of Joe Mackowiak. Joe, thank you for coming in this afternoon. My name is Bob Wilson from the Office of the Solicitor, United States Department of Labor. With me is Tim Watkins, an accident investigator with the Mine Safety and Health Administration. The people here are with the State of West Virginia, and I'll ask that they state their appearance.

MS. MONFORTON:

Celeste Monforton with the Governor's special team.

MR. FARLEY:

Terry Farley with the Office of Miners' Health, Safety and Training.

MR. O'BRIEN:

John O'Brien with the Office of Miners' Health, Safety and Training.

ATTORNEY WILSON:

We had some follow-up questions that we wanted to ask you. We'll get to that in a second. There are some other individuals here in the room with

1 the Accident Investigation Teams. In the event that
2 some of them were not here the last time you appeared,
3 I'll restate the confidentiality requirements of the
4 interview process.

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

23 Mr. Mackowiak, I'll remind you that you
24 are still under oath, and I will turn the questioning
25 over to Celeste to begin with.

1 -----

2 JOSEPH MACKOWIAK, HAVING BEEN PREVIOUSLY DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 -----

5 MS. MONFORTON:

6 Do you want to start, Tim?

7 MR. WATKINS:

8 I started ---.

9 MS. MONFORTON:

10 Okay. Go ahead.

11 EXAMINATION

12 BY MR. WATKINS:

13 Q. Hi, Bill.

14 A. Hi.

15 Q. Hey, I appreciate you coming in here today to talk
16 to us. I guess since the last time that you've been
17 in there's a document that came to light, and I was
18 going to ask you a few questions about it. But just
19 if you refresh my memory a little bit, when did you
20 start with MSHA?

21 A. I started with MSHA in January of 2000.

22 Q. January of 2000. Okay.

23 A. September. Excuse me. Not January, September.

24 Q. Okay. And roughly, in 2004, what was your title
25 in 2004?

1 A. For the first portion of 2004, I was an
2 underground coal mine inspector in the Summersville,
3 West Virginia field office of District 4. Sometime
4 near the summer or towards the fall I became district
5 staff assistant in the Mount Hope district office.

6 Q. I think the memo that I have in front of you --- I
7 guess you can put it as an exhibit or whatever --- is
8 a 2004 memo from --- I guess a tech support memo. Are
9 you familiar with that document?

10 A. I am.

11 Q. Could you tell us when you became familiar with
12 that document?

13 A. May 21st, 2010 at 11:16 a.m.

14 Q. Why do you remember that date and time?

15 A. That --- it's specific just because I remember odd
16 dates, but also --- and it's been fairly recent, so my
17 mind hasn't had a chance to forget it.

18 Q. Okay. So how did you become acquainted with that
19 document, if you will?

20 A. One of my employees, Pete Stone, was doing an
21 informational request. I don't know exactly who the
22 information request was for. It was through Mike
23 Dickerson, the current staff assistant, and it's
24 either as a result of a FOIA or as a result of a
25 headquarter's request. And as he was going through

1 old files in order to prepare for the --- or get them
2 in order for ---

3 Q. Uh-huh (yes).

4 A. --- the request and to see if we had everything
5 with which to answer, he saw them and called me into
6 the room, and that's when I became aware of their
7 existence.

8 Q. Okay. Have you had any discussions with people
9 upon discovery of this document?

10 A. I did. I actually issued a memorandum to Norman
11 Page and Robert Hardman and provided them with a copy
12 of it immediately. I think I drafted it --- that may
13 be like a Thursday. I'm not sure when the 21st was
14 with regard to the days of the week. I drafted a
15 memorandum, contemplated my wording for a day or two
16 and then submitted it to them. It was as quick as I
17 was comfortable in releasing it. I didn't discuss it
18 with anyone prior to that other than to tell Pete
19 Stone that it is part of the informational request and
20 it should go forward as such.

21 Q. Okay. In your conversation in the office
22 regarding this memo, did --- was anybody aware of it?
23 Did anybody say, oh, yeah, I remember that?

24 A. Last Monday, I assembled the ventilation
25 department and inquired about the memo, and no one was

1 aware of it.

2 Q. Okay. So it happened like I said back in 2004.

3 Where did they find it at? Where was it located?

4 A. They found it in some archived files within the

5 ventilation department. It was not in any of the

6 active files.

7 Q. Okay.

8 A. And let me also add that those files were archived

9 prior to my arrival.

10 Q. Okay. What's the standard procedure when you

11 receive a letter or something like that from tech

12 support? What do you normally do with it?

13 A. Normally it's placed in the active file within the

14 ventilation department, which would be contained in

15 the map room. We have a series of file cabinets, and

16 they're separated by mine ID. And it would be

17 retained for perpetuity. There'd be no reason to

18 supersede something like that.

19 Q. Okay. So it stays in there?

20 A. As long as it's applicable and the mine's active.

21 Q. Okay. In the case of this particular memo, that

22 didn't happen?

23 A. No, sir, it was found in archived files.

24 Q. Okay.

25 MR. WATKINS:

1 Terry, do you want to ---?

2 EXAMINATION

3 BY MR. FARLEY:

4 Q. Is it fair to say you've read this memorandum that
5 was ---

6 A. Yes, sir.

7 Q. --- was found? Who was the district manager or
8 acting district manager at the time this memo was
9 originally drafted? Do you know?

10 A. Sir, I can only --- again, I can't recall 2004
11 that well, so I can only refer to the name on the
12 memorandum, which would be John M. Pyles, acting
13 district manager.

14 Q. Okay. How long was he active district manager?

15 A. I'm unsure.

16 Q. Okay.

17 A. It was temporary, as I recall.

18 Q. Okay. Based on my reading of the memorandum, the
19 gist of it seems to be, and correct me if I'm wrong,
20 that the riders suggest that the events at UBB in 2003
21 and 2004, particularly the event in February of 2004
22 occurred because --- or may have occurred because the
23 overburden had reached a level of around 1,100 feet
24 and the interburden between the Eagle seam and the
25 Lower Eagle had gotten down to 11, 12, 13 feet and

1 thus creating a situation where possible pressure ---
2 downward pressure on the longwall shields may have
3 created this floor outburst or break in the floor
4 which allowed gas from strata below the lower Eagle
5 seam to escape into the mine; is that correct?

6 A. Generally, it seems correct. I would only refer
7 you to page four of the conclusions on the memo, and I
8 didn't --- I neither drafted nor was aware of it 'til
9 just recently, so I really don't know if I want to
10 impart my own opinion of it.

11 Q. Okay. Very well. And you're not sure whether
12 this search was conducted for a Freedom of Information
13 Request or an informational request from Arlington?

14 A. Yeah, and it just said all documents. It wasn't
15 specific. The request that I was told was not
16 specific to anything. I don't believe that the
17 requestor was even aware of something like this.

18 Q. Okay. Any and all documents probably?

19 A. I was told to get all documents ---

20 Q. Okay.

21 A. --- for Upper Big Branch and get them in order
22 and ---.

23 Q. Okay.

24 A. They were scanning documents. In the midst of
25 that, I was called into the room.

1 Q. Okay.

2 RE-EXAMINATION

3 BY MR. WATKINS:

4 Q. You said it was down in one of the archived files.
5 Was that ventilation, roof control, which ---?

6 A. Well, I believe it was in ventilation. Now, the
7 ones I saw actually didn't include this one that says
8 roof control division on May 21st. I saw that one
9 maybe a day later. And I'm not sure if that came from
10 roof control or ventilation.

11 Q. Okay.

12 A. I think there's a subsequent one to this that
13 doesn't include roof control division above it. I'm
14 not really sure.

15 Q. Okay. But they didn't find it in the roof control
16 section? They found it in the ventilation department;
17 is that correct?

18 A. Yes.

19 Q. Okay.

20 EXAMINATION

21 BY MS. MONFORTON:

22 Q. Thank you, Mr. Mackowiak. I'm not familiar with
23 the MSHA file system, so would normally a memorandum
24 like this from technical support be put in the mine
25 file in addition to the ventilation file, or how would

1 that normally work?

2 A. I'm unsure about the mine file. I've never
3 maintained those myself. As a regular CMI, 2000 to
4 2004, I don't recall seeing memorandums in the mines
5 that I inspected, but that's not to say that they
6 couldn't exist.

7 Q. Okay.

8 A. But certainly, this would be retained within the
9 ventilation department files in the active files of
10 the map room.

11 Q. Okay. And you indicated that in the last week or
12 so you met with people in the ventilation department
13 to inquire if any of them were familiar with it.

14 A. Correct.

15 Q. And none of them were ---

16 A. Correct.

17 Q. --- familiar with it. Were these individuals
18 employed with MSHA during the time period of when the
19 memo was written? I'm trying to get a sense of are
20 they not familiar with it because they weren't working
21 for the agency at the time or at least in your office?

22 A. Several were employed with the agency, but I
23 believe in different areas with the exception of
24 potentially one employee. I think he was in the
25 ventilation department at the time.

1 Q. Okay. When you --- I'm trying to get a sense of
2 when you took over as the ventilation supervisor ---

3 A. Supervisor.

4 Q. --- in the district. You may repeat it, so I
5 apologize if I ---.

6 A. Approximately June of 2008.

7 Q. June of 2008.

8 A. I don't know the exact date, but that was the
9 month.

10 Q. And when you took over in June of 2008, who were
11 you replacing?

12 A. William or Bill Ross.

13 Q. Okay. And is it your understanding that Bill Ross
14 would have been involved in ventilation either as a
15 ventilation supervisor or in that department at the
16 time that these memos were ---

17 A. I think so.

18 Q. --- written?

19 A. Again, I believe he was.

20 Q. Okay. And when you took over from him, what were
21 the procedures or what mechanisms did you have for him
22 to brief you on, you know, key issues that were going
23 on in the district with respect to ventilation?

24 A. Formal or informal?

25 Q. Just ---.

1 A. Procedures, I mean ---.

2 Q. Just generally, how did you, you know --- how did
3 he make you aware of what was going on in the --- I
4 mean, was there a system for that or was it just kind
5 of the job dumped on you and you ---?

6 A. He left prior to me accepting that position. It
7 was posted, and there's a time period between his
8 absence and my entrance. So there wasn't a formal
9 opportunity to get together and discuss things.

10 However, you know, as soon as I became a ventilation
11 supervisor, first thing I did was get acquainted with
12 the employees and subsequently the system that was in
13 place.

14 I did have the opportunity within the first month
15 to speak to Bill Ross as he had come into the office
16 for other matters relative to Massey Energy. And I
17 pulled him to the side at the conclusion of one of
18 those meetings and brought him into this area where
19 those files were contained and asked him what was
20 pertinent, what is this, what should I know, just to
21 --- generally in the learning process, if you would,
22 with any new position. And those particular files,
23 actually I was told weren't of any importance. There
24 was a large conglomeration of them, of course. It's
25 not just pertinent to Upper Big Branch Mine. But I

1 was told at that time there wasn't anything important
2 in them and subsequently they didn't need to be kept.

3 Q. Okay. Thank you.

4 A. I did not follow that guidance. I kept
5 everything.

6 Q. Okay. I've read through these memos a couple of
7 times, and I don't --- I have not seen Mr. Ross' name
8 on here. I'm trying to understand the process when
9 tech support was called in to do this evaluation, if I
10 might call it that, but it was submitted to the
11 ventilation department. What would be the process
12 when tech support would provide this type of service?
13 What would be the expectation for Mr. Ross when he
14 obtained this information?

15 A. That's two questions. Let me answer the first,
16 what would be the process for obtaining such
17 information or gaining tech support's involvement. I
18 can tell you how I would handle something like that,
19 and I'm sure it would be similar, but the exact
20 process used for these memorandum, I really can't say.
21 But I would go to the assistant district manager and
22 make my request, and then he would handle it either
23 from his level or within the district manager's
24 office. Then tech support would generally deal
25 directly with me gaining more intimate information.

1 Potentially, there could be a mine visit with it, may
2 or may not. And then when this is completed, it's
3 generally issued as a draft that comes out for review
4 sometime, sometimes not, depending on the incidents.
5 And then it's finalized through the people who are
6 specifically named in the memorandum. In order to get
7 from the district manager to the ventilation
8 department, then it would just be routed within the
9 office.

10 Q. And ---.

11 A. And you also alluded to an additional memo, which
12 I don't have before me, so I'm kind of not ready to
13 talk about that yet.

14 Q. I have these two memos. One is marked four and
15 one is July ---

16 A. Fifteen (15), ---

17 Q. --- 15.

18 A. --- 2004, yes. The July 15th is the one that I
19 saw on May 21st.

20 Q. Okay. And that's the one that has ventilation
21 division at the ---

22 A. Correct.

23 Q. --- top of it? Okay. Is it fair then to say that
24 when you took over as ventilation supervisor and you
25 had this discussion with Mr. Ross, that he did not

1 alert you to this particular issue at the Upper Big
2 Branch Mine?

3 A. That is correct.

4 Q. Whether related to the Upper Big Branch Mine or to
5 other mines in the district, do you recall
6 conversations or other issues related to methane
7 outburst being discussed, specifically related to this
8 particular coal seam?

9 A. No, ma'am.

10 Q. Would you expect, given these events that occurred
11 that the management at Upper Big Branch would be ---
12 should be aware of this, that these incidents
13 occurred?

14 A. Yes and no. Yes, that miners are likely to be
15 aware because they've been employed there for a long
16 period of time, but the management at that particular
17 mine has changed over time. So whether they're aware
18 or not, I'm unsure of. Some of the upper level Massey
19 Energy management certainly should have been aware.

20 Q. And then my final question is, the precautions
21 that are listed in those memos, they appear to be
22 recommendations of actions that the mine operator
23 could take.

24 A. Yes, however, I can only say that the amount that
25 the mine operator's aware of these considerations as

1 described on page three of the 2004 July memo, I don't
2 know if they receive a copy of this or really what was
3 done with this since it happened prior to my arrival.

4 Q. Okay. Thank you. That --- just to clarify for
5 the record, so this memorandum, as far as you know,
6 was put together, but we don't have information about
7 whether it was shared with the mine operator?

8 A. I don't have the information, no, ma'am.

9 Q. One of the memorandums indicates that there was a
10 meeting with mine management about this.

11 A. I believe it's contained within one of these
12 documents.

13 Q. All right.

14 A. Yes, it's on page one of July 15th.

15 Q. Okay. So at least some individuals from Upper Big
16 Branch or Massey management was aware of this
17 situation and probably the precautions or
18 recommendations made by MSHA?

19 A. Yes. However, I should also point out that
20 regardless of the recommendations of the agency, the
21 mine operator has a standard of care to its employees,
22 and that I think is specifically addressed under
23 75.370 where it states that they must develop and
24 follow their own mine ventilation plan. So certainly
25 upon being aware that such an event had occurred or

1 could occur, that they have a standard of care with
2 which to meet.

3 Q. So there's a burden on the operator despite what's
4 indicated --- their own independent burden of care ---

5 A. Yes.

6 Q. --- to take care of these types of issues?

7 MS. MONFORTON:

8 I don't have further questions on the
9 memos, but did have a couple of additional questions,
10 but I just ---.

11 ATTORNEY WILSON:

12 Go ahead.

13 BY MS. MONFORTON:

14 Q. In your previous appearance here today, I believe
15 it was suggested that there were four or five
16 additional applications or --- I'll call them
17 revisions to the ventilation plan that Upper Big
18 Branch had submitted to MSHA. Is that --- did you
19 testify previously to that?

20 A. I believe they had --- are you saying some that
21 are submitted for approval, but had not yet been
22 proposed?

23 Q. Correct.

24 A. Yes.

25 Q. Correct. And that --- would it be correct to say

1 that those were in the Mount Hope office at the time
2 of incident on April 5th and had not been reviewed or
3 approved? They're ---

4 A. Correct.

5 Q. --- considered pending ---

6 A. Correct.

7 Q. --- violation --- pending modifications to their
8 plan? And in my review over the last year or so of
9 the ventilation plan revisions that were submitted, I
10 counted 30 or so revisions to the plan that were made
11 and then --- and I think those are the approval ---
12 those were revisions that were approved, not
13 considering revisions that were rejected.

14 A. There's essentially two separate types of
15 revisions that are contained within that 30-plus
16 number. Some of those are map revisions, which are
17 pursuant to 75.372. There's also some face plan
18 revisions, which would be approved pursuant to 75.371
19 and 370. The actual face plan itself I believe was
20 modified two or three times, and that's kind of the
21 paperwork portion of it.

22 Q. Okay.

23 A. The 8 and a half by 11, those are typicals that
24 the miner operator would do --- standard operating
25 procedure. The map revisions are actual air change

1 --- air changes that need approval from the district
2 manager, so there's really --- although we kind of
3 talk about them collectively, there's actually two
4 separate items contained within that number.

5 Q. Thank you for that clarification. So of these
6 five pending modifications, did you have a sense how
7 these five kind of fit in with the master plan there?

8 A. I do not. Again, if they're pending, I haven't
9 done a review of them per se. After the accident, I
10 thumbed through them very quickly to see if there was
11 anything that would pop out. Nothing resonated with
12 me at that time. Certainly, if they have enacted a
13 revision prior to approval, that would be of
14 importance, but I would have no way to know that, so I
15 certainly don't want to make an allegation such as
16 that.

17 Q. So would it be fair to say at this point or even
18 to the point up to the date of the April 5th
19 explosion, your office hadn't acted on any of those
20 plans?

21 A. Other than to receive them, log them into our
22 tracking system and place them in a bin, which is
23 basically a holding area until we can get to them.
24 Now, let me also state that I don't want to give the
25 perception that we hold on to things that aren't of

1 importance. We have volumes of submittals, and
2 subsequently, there's a process with which we get to
3 each one.

4 Q. Okay.

5 A. So just as with most government agencies I'm sure
6 that have a lot of submittals, there's a process for
7 which you get to each one so that there's fair and
8 equitable treatment to all mine operators.

9 Q. And this is just a clarification from your
10 previous appearance here. The notes indicates that
11 you, on April 5th, went to the Ellis Portal and that
12 you had some notes that you took, and I'm just asking
13 whether that's part of the record.

14 A. I don't believe they're part of the record. I
15 believe they're still within my possession, but I can
16 tell that they're very, very limited as I was engaged
17 in the activity of rescue and recovery as opposed to
18 the documentation of it. So my notes are likely so
19 thin that it may be laughable, but it was just enough
20 to allow me to remember something in order to pass it
21 on to the next important person. So it's not done as
22 a narrative per se.

23 Q. Understood.

24 A. It's very small bullets, very few at that.

25 Q. Just another clarification. Did you indicate the

1 last time you appeared here that you noticed Wayne
2 Persinger at the mine and that he was --- that he was
3 dirty, that ---?

4 A. Yes, and that was the night of the 5th at the
5 Ellis Portal.

6 Q. And what did you attribute that to?

7 A. I didn't ask, ma'am. I'm sure he had something to
8 do mining related, whether at that site or another.
9 I'm not aware of ---.

10 Q. Okay. I just want to clarify. Did you indicate
11 that you thought that he had come out of the mine?

12 A. He may have. Now, whether he told me that ---

13 Q. Right.

14 A. --- or not, again, I'm not for sure.

15 Q. Okay. That's fair enough.

16 MS. MONFORTON:

17 That's all I have.

18 RE-EXAMINATION

19 BY MR. FARLEY:

20 Q. Joe, a couple. Help me understand the
21 relationship between an MSHA district and the
22 technical support. Would the technical support group
23 undertake such a project as this only at the request
24 of the district manager?

25 A. Or assistant district manager, generally, yes.

1 Q. Okay. They wouldn't necessarily --- technical
2 support wouldn't necessarily get involved in the
3 district's business without first being asked; is
4 that ---?

5 A. Generally, yes. Now, again, I've only done this
6 for almost two years, so I wouldn't say that I'm
7 the ---

8 Q. Okay.

9 A. --- know all here.

10 Q. All right. This memorandum aside, is there a
11 normal procedure to be followed when the technical
12 support group sends a memorandum of such --- of this
13 type, let's say, to the district? Is it a situation
14 where the district may accept their recommendation,
15 not accept it, or is there a particular protocol?

16 A. Not that I'm aware of.

17 Q. This calls for an opinion. Do you think this
18 memorandum before you should have prompted some type
19 of revision to the Upper Big Branch ventilation plan
20 to address floor outbursts?

21 A. Yes.

22 MR. FARLEY:

23 Thank you.

24 RE-EXAMINATION

25 BY MR. WATKINS:

1 Q. Just to clear something up, Joe. I think Terry
2 asked you earlier who the DM was on the one that we've
3 got marked. Is that the same as on the other --- the
4 one in July?

5 A. No, sir, the July 15th, 2004 memorandum was for
6 Steven J. Gilotti. It also says acting district
7 manager, so that would lead me to believe that it was
8 a temporary position for him as well.

9 Q. Okay.

10 MR. WATKINS:

11 That's all I have.

12 ATTORNEY WILSON:

13 Mr. Mackowiak, again, on behalf of all
14 the parties, I want to thank you for coming back in.
15 I'll remind you that we require that you not discuss
16 your testimony with anyone since we're going to be
17 interviewing additional witnesses. And again, if you
18 think of any additional information that you would
19 like to provide to us, please contact Norman Page here
20 at the Academy. Unless there's anything else from
21 anybody, again, thank you. And we can go off the
22 record.

23 SHORT BREAK TAKEN

24 ATTORNEY WILSON:

25 We're back on the record with Joe

1 Mackowiak. It is still June 7. After we went off the
2 record, Mr. Mackowiak indicated that there were a
3 couple of items that he wanted to clarify. Let the
4 record reflect that everyone who was present earlier
5 is present at this time, and I'll remind you, Mr.
6 Mackowiak, that you are still under oath.

7 EXAMINATION

8 BY ATTORNEY WILSON:

9 Q. Joe, when you were being questioned, I think
10 Celeste had asked you if you had had any conversations
11 with anybody concerning floor outbursts of methane,
12 and you had indicated no. And I think you were
13 probably thinking before the accident; is that right?

14 A. Correct.

15 Q. All right. Have you had any such conversations
16 with anyone after the accident?

17 A. Yes.

18 Q. All right. Could you explain what that was?

19 A. During the recovery of Upper Big Branch, which
20 took eight or nine days --- of course, many of us
21 worked a lot of hours in order to accomplish that
22 task. I found myself at sometime when we'd taken a
23 break from the command center in the restroom
24 privately with Bill Ross, who was also employed with
25 Massey Energy, and I asked him specifically just one

1 professional to another if he had any idea as to what
2 may have caused the accident. He indicated he did,
3 and that he thought that the bottom cracked and they
4 had an on-rush of methane. I asked him why in the
5 world that he would think such a thing because that
6 was the first I had ever heard of anything similar to
7 that relative to this mine or any within the district.
8 And he stated very curtly that it had happened before,
9 and he was obviously --- we had both been awake for
10 many, many hours, and it looked difficult for him. I
11 didn't probe or ask any additional questions. It was
12 shocking to me at that time, and I don't know if I was
13 just processing it or it was sleep deprivation, but it
14 certainly was said, and it came out at that time.

15 Q. All right. And with respect to the memos that you
16 had been discussing, let me show you a copy of an
17 e-mail with some writing on it, and this has been
18 marked and introduced during Bob Hardman's interview
19 as Hardman Exhibit Four. Are you familiar with this
20 document?

21 A. Yes. I located that document --- or was shown
22 that document by Pete Stone on May 21st.

23 Q. And is that when he brought to your attention the
24 two memos that we've been discussing?

25 A. Correct. This was attached to the cover of one of

1 those memos.

2 Q. And there's some handwriting. It's an e-mail,
3 shows from a George A-U-I to William Ross and then
4 there's a note, Bill, attached is a copy of the report
5 we completed concerning the meeting at Upper Big
6 Branch on floor gas outburst. On the bottom part of
7 the page, there's a star. It says received 5/21 and
8 then it's got your name there. Did you write this on
9 the document?

10 A. Yes, sir, I wrote that just so that document would
11 have the point in time where I became aware of it
12 because I thought it may be pertinent to the
13 investigation.

14 Q. And during this --- when we started a little bit
15 earlier, you were asked when you became aware of it,
16 and you said 5/21 at 11:16 a.m. Is that how you knew
17 that time so precisely because you had written it down
18 at the time?

19 A. Correct.

20 Q. Okay. The other writing that is on this document,
21 Doris, please put into company file with Performance
22 Coal Company. There's a date there, 6/18/04. Was
23 that writing on the document when you first saw it on
24 May 21st?

25 A. Yes, sir.

1 Q. And there are initials there. Do you know whose
2 initials those are?

3 A. I don't know the first initials. The second are
4 B.R., which would be consistent with Bill Ross, the
5 ventilation supervisor at the time, and also that's
6 who the memorandum in the upper left-hand corner was
7 sent to.

8 Q. And Doris Chambers, do you know who that is?

9 A. Yes, that was the ventilation secretary at the
10 time. It would indicate that Doris --- the message to
11 Doris from B.R. would be that Doris Chambers. She's
12 the only Doris I'm aware of that's been in the
13 district for any perceivable memory.

14 Q. And Doris Chambers, was she Bill Ross' secretary?

15 A. Correct.

16 Q. All right. Was there anything else that you
17 wanted to clarify on the record?

18 A. No, I think that's it.

19 ATTORNEY WILSON:

20 All right. Any follow-up questions,
21 Terry?

22 MR. FARLEY:

23 I don't think so.

24 MR. WATKINS:

25 No.

1 ATTORNEY WILSON:

2 Okay. Then thank you for clarifying

3 those matters for us, and what I said earlier goes as
4 far as not discussing your testimony with anyone else,
5 and we appreciate you coming in today. We're off the
6 record.

7

8 * * * * *

9 STATEMENT UNDER OATH CONCLUDED AT 1:35 P.M.

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CERTIFICATE

I, Danielle Ohm, 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.



Danielle Ohm