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**Transcript of the Testimony of **Bobbie Pauley****

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**Case:**

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STATEMENT UNDER OATH

OF

BOBBIE PAULEY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, July 1, 2010, beginning at 8:15 a.m.

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson, and

I'm an attorney with the Office of the Solicitor,  
United States Department of Labor. With me is Erik  
Sherer, an investigator with the Mine Safety and  
Health Administration. Today is July 1, 2010. We're  
here this morning with Bobbie Pauley, who has  
previously been interviewed by the investigation teams  
and has requested to provide additional information.

There are individuals present with the

State of West Virginia, and I'll ask that they state  
their appearance for the record. Terry?

MR. FARLEY:

I'm Terry Farley, with the West Virginia

Office of Miners' Health, Safety and Training.

MR. O'BRIEN:

John O'Brien, with the Office of Miners'

Health, Safety and Training.

MR. MCGINLEY:

Pat McGinley with the Governor's

independent investigation team.

ATTORNEY WILSON:

There are also additional members in the



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

20 Ms. Pauley, you may have an attorney or a  
21 personal representative present with you during the  
22 taking of your statement. Do you have a  
23 representative or attorney with you?

24 MS. PAULEY:

25 No, I do not.

1 ATTORNEY WILSON:

2 This is completely voluntary on your  
3 part. You may refuse to answer any question. You may  
4 terminate the interview at any time. If you need to,  
5 at any time, please let me know and we can take a  
6 break.

7 Your identity and the content of this  
8 interview will be made public at the conclusion of the  
9 interview process and may be included in a public  
10 report of the accident, unless you request that your  
11 identity remain confidential or your information would  
12 otherwise jeopardize a potential criminal  
13 investigation. If you request us to keep your  
14 identity confidential, we, meaning MSHA, will do so to  
15 the extent permitted by law. If a judge orders us to  
16 reveal your name or if another law requires us to  
17 reveal your name, we may need to do so. Also, there  
18 may be a need to use information you provide to us or  
19 other information that you may provide in the future  
20 in other investigations and hearings concerning the  
21 accident. Do you have any questions or do you have  
22 anything to say about your right to give a  
23 confidential statement?

24 MR. PAULEY:

25 No.

1 MR. MCGINLEY:

2 Let's go off the record for a second.

3 OFF RECORD DISCUSSION

4 ATTORNEY WILSON:

5 We're back on the record. The court

6 reporter will be recording the interview today, so

7 please speak loudly and clearly. If you do not

8 understand a question asked, please ask us to rephrase

9 the question. As before, we request that you not

10 discuss your testimony with anyone outside of this

11 room because we will be interviewing additional

12 witnesses later. I want to thank you for appearing

13 here again today this morning, and at this time I'll

14 turn it over to Terry Farley.

15 MR. FARLEY:

16 Ms. Pauley, I want to let you know that

17 the West Virginia Code, Chapter 22A, Article 1,

18 Section 22, also provides protection for miners

19 against potential discrimination for participating in

20 this type of interview and investigation. I want to

21 give you some contact information along with a

22 business card for myself and Bill Tucker, our other

23 lead investigator. And should you suffer any such

24 treatment or discrimination, you know who to contact.

25 I would caution you that if anything occurs, that you

1       have a 30-day limit in which you have to file a  
2       complaint.

3   MS. PAULEY:

4   Thank you.

5   ATTORNEY WILSON:

6   And of course, you have MSHA's contact  
7       information.

8   MS. PAULEY:

9   Yes, I do.

10   ATTORNEY WILSON:

11   Okay. Pat, anything?

12   MR. MCGINLEY:

13   I just wanted to say, and I'm sure it's  
14       been said before, but what we want to do is to find  
15       out what happened at Upper Big Branch. And if someone  
16       ought to be held responsible based on what we find,  
17       we're going to pursue that. And when you and others  
18       come in and tell us the truth to the best of their  
19       knowledge, that goes a long way to assisting us in  
20       this difficult job. So thanks for being here.

21   MS. PAULEY:

22   Okay.

23   ATTORNEY WILSON:

24   Okay. This is a continuation of a prior  
25       interview, but I will ask that the court reporter

1       again swear you in.

2       -----

3       BOBBIE PAULEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED

4       AS FOLLOWS:

5       -----

6       ATTORNEY WILSON:

7       Again, Ms. Pauley, thank you for coming

8       in here again this morning. I understand that,

9       following the conclusion of your prior interview, you

10      thought of some additional information that you wanted

11      to provide to the investigation teams; is that

12      correct?

13      A. That is correct.

14      ATTORNEY WILSON:

15      All right. So I'm just going to let you

16      go ahead and provide us with whatever information it

17      is that you wanted to provide.

18      A. Okay. In my last interview I was questioned as to

19      injuries that I was aware of that had occurred at UBB

20      that had not been reported as lost-time accidents. At

21      that time I believe I gave several names as to

22      individuals who had been injured, yet they were

23      brought back on light duty to avoid a lost-time

24      accident being reported. I believe at that time I

25      mentioned the name of Danny Ferrell, F-E-R-R-E-L-L.

1 And I was questioned as to when I thought the date of  
2 the injury was, and I thought --- and as best as I can  
3 recall --- at that time I didn't recall. As best as I  
4 can recall, it seems to me that that injury occurred  
5 in September of '09. He had some sort of eye injury,  
6 and he indicated to my fiancé, ██████████, that the  
7 safety director, Berman Cornett, was contacting him at  
8 home, harassing him about coming back to work the next  
9 day so that he would not be reported as an LTA.

10 Another person that was brought back on light duty  
11 to avoid a lost-time accident name was Chuck Smith.  
12 At the time, if my memory serves me correctly, he was  
13 working on Three section as a roof bolter. I believe  
14 the injury was a hand injury. And I know that he  
15 worked outside, sweeping the offices and the  
16 warehouse, because I was working in the office at the  
17 time. He eventually did go back underground after a  
18 period of time.

19 A third name was Rodney Osborne. I  
20 believe I also testified to his injury. He was  
21 working at a scoop on the longwall. I think he was on  
22 an outby crew, assisting in outby roof bolting for the  
23 longwall. He was running a scoop. Something happened  
24 that a board came in the scoop can --- within the  
25 canopy, struck him in his rib area. He was brought

1 outside. I was working in the office when he was  
2 brought outside. Went to the hospital. Rodney told  
3 me that he was there the next day, dispatching, light  
4 duty, in the office. And I basically asked him, you  
5 know, what in the world he was doing there, and he  
6 said that Berman had come to the emergency room and  
7 that he had told the doctor what kind of pain he was  
8 in, the rib area, you know, soreness and pain, and  
9 that Berman went out in the hallway and talked to the  
10 emergency room doctor, and when the doctor came back  
11 in he released him to go back to work the next day,  
12 and he was upset about it. And I was questioned as to  
13 when that was. I previously mentioned his name in my  
14 last testimony, and I'm pretty sure that also occurred  
15 in September of '09, because again, I was working out  
16 in the office.

17 One other name that I did not mention in my last  
18 interview that came to mind was William Griffith. He  
19 was a continuous miner operator on Headgate 22. He  
20 died in the explosion. He had a hand injury March of  
21 2010, required stitches. They brought him outside.  
22 He went on his own to the emergency room. And to  
23 avoid light duty --- and this comes to me from my  
24 fiancé again, Boone, who was on his crew. To avoid a  
25 lost-time accident, at some point they made an

1 agreement with him that he was to come to work every  
2 day, not on dayshift, as he normally worked, but on  
3 evening shift. And after the crews went underground  
4 on evening shift, he stayed out in the bath house.  
5 Once the crews were under, he was sent home and paid  
6 full wages to avoid an LTA. That's all the  
7 information I have with regards to injuries not  
8 reported as lost-time accidents.

9 ATTORNEY WILSON:

10 All right. Any follow-up questions  
11 concerning that?

12 EXAMINATION

13 BY MR. SHERER:

14 Q. I've got one, Ms. Pauley. Do you feel that there  
15 was pressure on the employees to not only do light  
16 duty instead of taking time off but pressure just not  
17 to report accidents, period? In other words, somebody  
18 who's injured, that under normal circumstances may try  
19 to seek medical attention, but because of the pressure  
20 and the atmosphere that they think, I just need to get  
21 home and bandage this up and, you know, just put up  
22 with it? Do you think that pressure was prevalent?

23 A. I think it was always in everyone's mind, if that  
24 answers your question. There seemed to be a lot of  
25 pressure on employees to not be reported as a lost-



1 time accident. I know that for a fact. I know on  
2 several occasions I was told by people that were  
3 injured that Berman would call them and would say, you  
4 know, you could come back tomorrow. Now, if this is  
5 reported as a lost-time accident, you're going to lose  
6 your Raymond points. He would give them the downside  
7 of it all and try to get them --- you know, we can  
8 give you light duty out in the office. We can give  
9 you light duty outside until you feel like you're  
10 better, you know, and you can go underground.

11 In a meeting that I had with --- and I worked  
12 light duty when I broke my leg and my ankle  
13 underground for like five, six months even, and in a  
14 meeting at one time that I had with Chris Blanchard  
15 and Chris Adkins, there was a roomful of people on a  
16 different issue. Chris Adkins said to me one time ---  
17 I had mentioned me working outside light duty. And he  
18 said, let me make one thing clear, at Massey we don't  
19 have light duty. And I said, you had light duty when  
20 I --- because I worked outside light duty. You've had  
21 several men that's worked light duty. So whether you  
22 recognize --- you know, whether they recognize it or  
23 not, it was a fact. They worked people light duty,  
24 yet he told me in that meeting that we don't have  
25 light duty here. I don't know, you know, whether ---

1 but to answer your question, there was pressure, you  
2 know, for us to hurry up and get back to work, whether  
3 it be outside, you know, or --- to avoid a lost-time  
4 accident being reported.

5 MR. SHERER:

6 All right.

7 EXAMINATION

8 BY MR. MCGINLEY:

9 Q. I've got a couple follow-up questions for you. In  
10 working underground, there's some injuries that don't  
11 involve breaking the skin or breaking of bones but are  
12 serious, for example disc problems, lower back/disc  
13 problems, rotator cuff, shoulder injuries. To look at  
14 a miner, you couldn't tell that they were injured,  
15 except that they were favoring that injury. Would ---  
16 are those kind of injuries less likely to be reported  
17 or more likely to be reported? Do you have any sense  
18 of that in terms of the understanding of the people  
19 you were working with?

20 A. I know of people that have, you know, pulled a  
21 muscle, you know, strained a muscle, that didn't  
22 report it. Now, whether --- let me back up --- did  
23 not fill out an accident report. Whether they  
24 reported it to the boss, I don't know. I know that  
25 there was a period in time where one of the bosses I

1 think got in a little bit of trouble because some of  
2 his crew members had reported accidents to him and he  
3 did not complete an accident report. And  
4 subsequently, when issues came up, health issues came  
5 up at a later time, those guys were just, you know,  
6 out of luck. Everything came out of their pocket.  
7 They had no compensation with regards to, I guess, the  
8 health issue, you know, and the recuperation process  
9 of their injuries.

10 Q. Well, I was thinking beyond the sort of muscles,  
11 you know, the sprain or --- I'm thinking of more  
12 serious sort of things, where --- you know, lower back  
13 problems from lifting or shoulder problems can be  
14 really difficult to deal with. Did you have any ---  
15 do you know anyone who had those kind of injuries that  
16 were hiding it from management ---

17 A. I know ---.

18 Q. --- and trying to get through the day, so to  
19 speak?

20 A. The right continuous miner operator on my crew, on  
21 Headgate 22, pulled a muscle in his back. I don't  
22 know what the extent of his injury was, but it's  
23 ongoing for him. I think he felt like he shouldn't  
24 report it. I know I was told one time by my fiancé  
25 that because --- I broke my leg and then I came back.

1 When I went back underground, it wasn't even maybe  
2 three or four months a rock fell and hit me, fell on  
3 top of me, and he jokingly but seriously indicated to  
4 me that, you know, you can't report very many  
5 accidents. They'll get rid of you.

6 Q. Who was this? Who said this?

7 A. He's my fiancé, ---

8 Q. Oh, yeah.

9 A. --- [REDACTED]

10 Q. Right.

11 A. He was there a lot longer than I was, so I usually  
12 listened to him. And he wasn't saying that as a  
13 negative towards me. I think he was making a general  
14 statement with regards to, you know, you have to be  
15 careful about how many times, you know, you report  
16 accidents and that they be relevant or that they be  
17 significant in injury.

18 Q. Were there any circumstances relating to the  
19 situation where you broke your leg where the  
20 management --- were there any repercussions with  
21 regard to your injury or anything that was said to you  
22 that --- about your injury that might make you more  
23 reluctant to report injuries or --- anything in that  
24 context?

25 A. With regards to was anything said to me directly,

1 no. With regards to was anything done to me, yes. I  
2 worked for a period of time light duty. As I said, I  
3 was injured in August of 2008.

4 Q. I do remember. I did read your testimony ---

5 A. Correct.

6 Q. --- about what happened.

7 A. And then I came back and I worked underground and  
8 --- or I'm sorry, I worked in the office. In about  
9 February or March of 2009 I was approximately two  
10 weeks --- I had to take rehabilitation every day or  
11 every other day, and I did that after work on my way  
12 home from working.

13 Q. I recall your testimony. You said that you had  
14 --- you cut off the rehab.

15 A. Because Chris Blanchard cut my pay. And he cut it  
16 from my --- at that time I was either --- I think I  
17 was considered a continuous miner operator. I may be  
18 wrong. It was either a continuous miner operator or a  
19 shuttle car operator. I think I was a miner operator.  
20 And he told the president --- I'm sorry, he told the  
21 superintendent, Homer Wallace, that he was not paying  
22 me underground wages to work in the office and that  
23 effective immediately my pay would be cut to \$14 an  
24 hour, my title would be changed to a warehouse clerk,  
25 and if I didn't like it, I could either go back on

1 compensation or go home.

2 Q. And your testimony was that you said you --- you  
3 just discontinued physical therapy and you said I want  
4 to go ---.

5 A. I went to the doctor the next day. I told the  
6 doctor to release me. He didn't like it, but he did.  
7 And then they held me outside for about another day  
8 and then sent me --- you know, I went back  
9 underground.

10 Q. Okay. Thank you.

11 MR. MCGINLEY:

12 I don't have any other questions.

13 EXAMINATION

14 BY MR. FARLEY:

15 Q. Did the Massey companies have some type of annual  
16 award that the companies compete for, some type of  
17 annual safety award?

18 A. I think they do, but we never qualified for that  
19 at UBB because we didn't have a lot of --- personally,  
20 I didn't have a lot of knowledge of it.

21 Q. Okay.

22 A. I know there's an annual award. They give it in  
23 Charleston. They make a big deal out of it. I think  
24 they, you know, have representatives from the company.  
25 There's some type of a trophy or something given.

1 Q. Okay. Do you know if when they determine the  
2 winner of this award, do you know if they consider  
3 lost-time accidents --- a company's lost-time  
4 accidents in determining who the winner is, meaning  
5 the company with the fewest wins or something like  
6 that?

7 A. I don't know for a fact what the parameters are,  
8 but I would think that they would consider lost-time  
9 accidents.

10 Q. Okay. Do you think the light duty in some  
11 instances was offered to reduce their insurance rates  
12 with BrickStreet?

13 A. I never really thought about it, but I would say  
14 that that may be a possibility.

15 Q. Okay. Did anyone ever indicate to you that  
16 BrickStreet had encouraged the company to offer light  
17 duty?

18 A. I was not aware, no.

19 Q. Okay. All right.

20 A. It was --- I was under the impression that certain  
21 upper-level management personnel's year-end bonuses  
22 were based on accidents, things like that. I don't  
23 know if that's true or not.

24 Q. Okay. You don't know who ---?

25 A. I don't know. I don't know --- what was your

1 question?

2 Q. You don't know who these individuals are that  
3 would have performance bonuses based on the number of  
4 lost-time accidents?

5 A. Don Blankenship.

6 Q. Okay. Anyone else?

7 A. That's the only name that was ever mentioned.

8 Q. Okay. All right.

9 MR. FARLEY:

10 I don't think I have anything else.

11 EXAMINATION

12 BY ATTORNEY WILSON:

13 Q. Just a little clarifying point. You mentioned  
14 earlier Raymond points. Could you just explain what  
15 that is?

16 A. Raymond points are --- it's an award system, and  
17 you are rewarded for no injuries, no lost time  
18 injuries. You're given or awarded so many points per  
19 month. If you are an EMTM, you would receive  
20 additional points for being an EMTM in addition to  
21 your safety points. Basically they're safety points.  
22 It's a point system. You get so many points per month  
23 that are put in an account for you, and then  
24 periodically you receive a catalog of merchandise.  
25 And it can range from anything from trips to purses to



1 jewelry to TVs, you know, anything, rifles, sporting  
2 goods, tents. And each thing, each item in that  
3 catalog is assessed a certain amount of points, and  
4 you purchase those items with your safety points.

5 Q. You may not be able to answer this question, but  
6 this practice of discouraging the reporting of  
7 injuries that you've been talking about, do you know  
8 if this was unique to Performance and UBB or do you  
9 know, was this something that took place at other  
10 mines and other operators as well?

11 A. I don't know for a fact that it's common procedure  
12 at other mines because I've never worked at any other  
13 Massey mine besides UBB. I think as a general rule  
14 it's Massey wide.

15 RE-EXAMINATION

16 BY MR. SHERER:

17 Q. One question about the Raymond points you  
18 mentioned, Ms. Pauley. Is there some component for  
19 more than the individual, in other words, a crew  
20 shares some of those points so if I'm on a crew with  
21 everybody sitting at this table and I get injured, it  
22 affects their points?

23 A. I believe --- and again, I'm not --- I've never  
24 really asked a lot of questions about Raymond. It's  
25 just there. I know there was a period of time, it

1 seems to me, that there was some discussion as to how  
2 they had the teams coordinated. There were several  
3 people on like a safety team, if you will, and if  
4 anyone on that team was injured, then nobody on that  
5 team received their safety points or their Raymond  
6 points for the month or they didn't receive as many as  
7 they should have. There was some type of penalty.  
8 And this is just general discussion. And I wondered  
9 as a new miner, you know, why my injury, breaking my  
10 leg, would affect someone that I've worked with's  
11 points, you know, possibly, or someone that I may not  
12 work with on a different crew if I was on his team's  
13 points. And then you also questioned --- you always  
14 have people who habitually get hurt, whether it's, in  
15 your opinion, relevant or not, you know, or an actual  
16 injury or not. And there was some discussion as to,  
17 you know, certain guys would say, we'll never get any  
18 points, so and so is on our team, you know, something  
19 like that, you know. So I believe, yes, that there  
20 are times that --- or there is a situation where it is  
21 a team thing. But you can't find out who's on your  
22 team. You don't --- and I've asked that, you know,  
23 who's --- how do you know who's on whose team, you  
24 know, so that you can kind of keep in your mind, you  
25 know, if you hear Joe Schmo was injured, you know,

1 you're going to receive lesser points that month. But  
2 you can't ever find out who's on your team or  
3 anything.

4 Q. Do you have any knowledge of peer pressure to not  
5 report, because if I get injured and you're on my  
6 team --- if you knew that you were on my team, let me  
7 qualify that, would you say, hey, buddy, don't report  
8 that because I want this shotgun?

9 A. Well, I don't think --- I think with regards to  
10 the guys that worked there, if you're hurt, you're  
11 hurt. Okay. I think they --- you know, we try to  
12 watch out for each other. And you know, there's been  
13 times that I've said, you know, this may be very  
14 irrelevant to you, but you need to fill out an  
15 accident report in case something would happen and,  
16 you know, and they've done that. And sometimes they  
17 don't, you know. If you smash a thumb or you, you  
18 know, pop something in your wrist and guys can be men  
19 sometimes, I don't think, to answer your question,  
20 peer pressure so much member to member as it is  
21 management to member.

22 Q. Okay.

23 MR. SHERER:

24 Thank you.

25 ATTORNEY WILSON:

1 Terry, do you have follow-up?

2 RE-EXAMINATION

3 BY MR. FARLEY:

4 Q. Do you know if any employee was ever refused light  
5 duty? In other words, if John Doe had an injury and  
6 asked management if he could go on light duty, do you  
7 know if anybody in particular was ever refused?

8 A. Yes.

9 Q. Was that a common occurrence?

10 A. No. He's the only one I ever knew.

11 Q. Who was that?

12 A. Ricky Workman. He was killed in the explosion,  
13 Headgate 22.

14 Q. Okay. Do you know what type of injury he had that  
15 caused him to request light duty?

16 A. He --- Ricky had hernias, reoccurring hernias.

17 Q. Yes.

18 A. And if I'm correct, he was on Headgate 22 evening  
19 shift at that time and he had had --- I think he had a  
20 history of hernias and had another one. I don't know  
21 if it was a re-injure, but I know that he asked for  
22 light duty and he was told no. I don't know the  
23 reason he was sent home. He was upset about it. And  
24 that would have been, geez, in 2000 --- mid to late  
25 2008. It was sometime in 2008.

1 Q. Okay. Is that a problem that he would eventually  
2 have some type of surgery to correct?

3 A. It seems to me that Ricky had surgery at some  
4 point and was off for a period of time later.

5 Q. Okay. All right.

6 RE-EXAMINATION

7 BY MR. MCGINLEY:

8 Q. With that injury to Ricky, would that --- do you  
9 have any idea whether that was reported as a lost-time  
10 accident or whether it was treated simply as a  
11 physical problem that he had unrelated to work?

12 A. I don't know. I want to say it was reported. I  
13 knew they had --- I'm pretty sure they had to bring  
14 him out. But I don't know if it was considered a  
15 re-injury from a previous injury as opposed to a new  
16 lost-time accident. I think there's a difference. I  
17 may be wrong about that.

18 Q. Let me ask you just a couple questions about  
19 Raymond points. Do you get a monthly statement  
20 relating to these points?

21 A. There is a website, a Raymond safety website, that  
22 everyone is assigned a password to and --- it's a  
23 portion of your hire date and your last four digits of  
24 your Social, I believe. And you go on that website  
25 and it tells you how many points you have. But

1       there's --- like, I don't know how you check that. I  
2       don't know how you --- if you don't know who's on your  
3       team and you don't know who was on your team in order  
4       to determine whether anybody on your team was injured  
5       or not, then you can't possibly know how many points  
6       you're supposed to have as opposed to the points that  
7       you were awarded.

8       Q. Can you print whatever appears on the website  
9       about your points on an attached printer to the  
10      computer you have?

11     A. I think you can because I believe Boone asked me  
12     to print his one time, and I think I did. I may be  
13     wrong.

14     Q. Do you order --- you make orders via the website,  
15     too, if you wanted to turn in your points for, you  
16     know, a microwave or hunting rifle?

17     A. You can order online or you can --- I believe  
18     there's a 1-800 number that you can also call.

19     Q. Did you at any point get any written material  
20     relating to the Raymond points and how the system  
21     operated?

22     A. It seems like to me that it maybe was briefly gone  
23     over upon hire maybe in our orientation. You just  
24     kind of learn, you know, as you go through. I'd ask a  
25     lot of questions.

1 Q. Are there any --- on the website, is the rules  
2 relating to how Raymond points work, is that available  
3 so you can review it?

4 A. I don't know.

5 MR. MCGINLEY:

6 Okay. That's all. Thanks.

7 ATTORNEY WILSON:

8 All right. Ms. Pauley, were there any  
9 other areas that you wanted to discuss today?

10 A. One other injury that I'll add that just came to  
11 mind, a fire boss by the name of Terry Peterson. He  
12 told me that he had injured his shoulder. I think at  
13 some point it was determined --- I believe he came  
14 right back to work because he was told at the hospital  
15 nothing showed up, you know, and he should be fine,  
16 probably bruised and stoved. He came back to work,  
17 and I believe he told me that he worked for like a  
18 week or so and his shoulder kept bothering him, so he  
19 went back to the hospital and had, I believe he said,  
20 an MRI. And it was determined that he had torn  
21 ligaments and muscle and rotator cuff and --- a lot of  
22 damage in his shoulder and had to be scheduled for  
23 surgery.

24 And he told me that he came --- I believe he said  
25 he came back to the mine site with his arm in a sling,

1 left arm, and that Berman told him that he could work  
2 the next day because he's a fire boss and he was  
3 right-handed and he could still write on the  
4 chalkboard. He could still date up with his right  
5 hand. And he said that he indicated to Berman, I will  
6 come back to work when my doctor releases me. And  
7 there was, I think, more conversation with regards to  
8 him --- he could come back tomorrow. And he, once  
9 again, indicated, I will come back to work when my  
10 doctor releases me.

11 That is --- I don't know when that injury  
12 occurred. I know he told me the injury occurred when  
13 he was coming outside. The automatic doors, airlock  
14 doors, wouldn't open, and he had to climb through one  
15 of the airlock doors to try to get it open from the  
16 other side on the automatic switch. And when he was  
17 coming back through, I guess the air pressure knocked  
18 him off balance and he fell through the door, got his  
19 foot hung in the door, and I guess the weight of his  
20 body came down on that one shoulder. And he said that  
21 he --- I think he said he crawled to the telephone and  
22 called, and a couple of other fire bosses, George  
23 Curry and someone else, got to him about --- I think  
24 he said he laid for about ten minutes.

25 RE-EXAMINATION



1 BY ATTORNEY WILSON:

2 Q. You were saying that there was a disagreement  
3 between Mr. Peterson and Berman about whether or not  
4 he would go back to work the next day. Do you know  
5 how that was resolved?

6 A. I know --- we call Terry Peterson Petey. I know  
7 Petey said he went home and at some point very soon  
8 after that he was scheduled for surgery. And he did  
9 tell me that he told Gary may that he was going in for  
10 surgery and, you know, didn't know when he'd be  
11 released. I don't know how it ended up, but I know he  
12 indicated that Berman kind of hammered him about  
13 coming back the next day even though his arm was in a  
14 sling.

15 Q. Okay. Thank you.

16 ATTORNEY WILSON:

17 Any follow-up?

18 MR. MCGINLEY:

19 No.

20 ATTORNEY WILSON:

21 Is there anything else?

22 A. I was also questioned that last interview with  
23 regards to dangerous working conditions, working under  
24 unprotected top, and I don't recall if I testified as  
25 to --- this would have been early 2008. I was a red

1 hat. I came in January to UBB, got my black hat in  
2 May. So it had to --- and it was very early when I  
3 came, I would say within the first month, January or  
4 February of '08. Several red hats had been contracted  
5 through Dave Stanley. There was approximately five to  
6 seven of us that were placed with a gentleman by the  
7 name of Lacey Cox. We were on midnight shift, outby  
8 crew, and that particular night all of --- several of  
9 us red hats went with Lacey, and we were --- our job  
10 was to --- over on the UBB South Portal, which is to  
11 the left, over where Three section is now or over that  
12 way, not into the main portal that takes you into the  
13 big mine, but over on the south side.

14 We got on the mantrip, went in. We spurred up. I  
15 remember there being a danger tape, a yellow  
16 dangered-off area, and we --- and it was across the  
17 spur to the left. And we --- he had us hold up the  
18 dangered-off tape and pull the mantrip underneath it.  
19 We proceeded into the dangered-off area and we  
20 shoveled belt all night long. There was a point in  
21 time when I had to go to the restroom, and we had  
22 taken a 30-minute break for lunch sometime in the  
23 night. And Lacey had all of us together, and --- all  
24 of us red hats. I mean, we --- you know, I mean, I  
25 knew a little more than the rest of them did only

1 because I went to school longer, but --- so we were  
2 sitting there. And someone had told me that Lacey was  
3 not a boss, that he used to be a fire boss but had had  
4 his card pulled for --- I may be mistaken, but I think  
5 he was dating up too soon. He was pre-dating so that  
6 he didn't have to make two trips. Anyway, he was  
7 caught. And he was in the process of --- I don't know  
8 if he was in the process of --- he couldn't be a boss  
9 at that time. I think it was still up in the air  
10 whether he was going to get it back or not or if they  
11 were going to reinstate him. So I had been told that,  
12 that he wasn't a boss. So we were sitting there, and  
13 I said to lacey, Lacey, why is your hat black? And he  
14 just looked at me. And I said, you're a boss. Why  
15 don't you wear a white hat. And he said, I'm not a  
16 boss, Miss Bobbie. And I said, well, you have to be,  
17 you have five red hats with you. And he just looked  
18 at me.

19 And at some point I needed to go to the restroom,  
20 but I got up and looked down a crosscut, and all of  
21 the top had fallen, and the bolts were hanging down,  
22 and it looked really bad. Even as a red hat, I knew  
23 it wasn't right and I said something. I had to go to  
24 the restroom, and then I took a couple steps and I  
25 said, I don't think so. And so I came back over and

1 sat back down and at some point the conversation  
2 ensued with Lacey, and I asked him --- I said, when we  
3 come through the danger --- across the danger tape, I  
4 said, why is this area dangered off? And he had seen  
5 me get ready to go to the bathroom and turn around and  
6 come back, and he put his light down the crosscut on  
7 the top and he said, don't you see that? and I said,  
8 yeah. He said, roof control. And I said, but I  
9 thought the law was that if you're in a dangered-off  
10 area, that you can't be working in a dangered-off area  
11 unless it's for the sole purpose of correcting what  
12 it's dangered off for. And he said, you're right,  
13 Miss Bobbie. And I said, so why are we up here  
14 shoveling belt? And he said --- and I said, we aren't  
15 even supposed to be up here, are we? And he said, I'm  
16 just doing what I'm told, Miss Bobbie. He said, I  
17 don't make the rules.

18 So I knew at that time --- that was in my first  
19 month. One of the guys that was sitting next to me  
20 said, how did you know that? He said, how did you  
21 know that, Bobbie? And I said, because we learned it  
22 in school. He said, what school did you go to. And I  
23 said, I went --- I was the first female to graduate  
24 from the United Mine Workers' Academy, but we went for  
25 like 360 hours to get our 40-hour. I mean, it was

1 weeks and weeks and extensive training. And he said,  
2 you know, I didn't even know that. I said, you have  
3 to ask questions. You know, you can't let people put  
4 you in situations. But yet I did. You know, you're  
5 afraid to say anything. You know, you might not come  
6 back tomorrow. I was a contractor. So that was one  
7 instance.

8 There was another instance when I was working at  
9 the Glory Hole in what they call the gob pile. I  
10 guess a lot of debris had been gobbled against  
11 stoppings, and a huge, I guess, violation had been  
12 written. I mean, it was, I mean, close to a hundred  
13 breaks that had to be cleaned, and we were sent --- or  
14 I was sent to the gob pile quite often. There was  
15 situations where we had a Bobcat and he had to pick up  
16 the gob, drive it over to the belt and dump it onto  
17 the belt all night long and/or if you had a black hat,  
18 he usually took the bobcat and I either sledgehammered  
19 rock all night or we shoveled all night. So there was  
20 situations where the top had fallen. The bolts were  
21 not good. Some bolts had been spray painted red, and  
22 we would work under that all night. And I remember  
23 specifically asking one time, why is that roof bolt  
24 painted red? And I can't remember what the answer  
25 was. It was some, you know, off --- it was some ---

1       it wasn't --- the answer was not because it's a bad  
2       bolt. It was some other answer. And we worked under  
3       it all night and then back and forth, you know, making  
4       trips back and forth, walking under it. And then the  
5       next night we were one break up. We had moved,  
6       finished up --- or another shift had finished that  
7       break and we were at the next break, and they were  
8       bringing timbers in to go back and set up supports in  
9       the previous break that we had been the prior night  
10      around that roof bolt area that we had worked under  
11      all night. And when I asked --- you know, I said,  
12      well, we worked under it all night last night. Why  
13      did we work under that all night? And I said, why are  
14      you bringing timbers up now? And they said, because  
15      if --- the guys that were bringing them in on the  
16      flatbeds said it's called covering your ass. And I  
17      said, I don't understand. And he said, if MSHA comes  
18      up here and they see that bolt and they see the gob  
19      pile gone and they see red paint, they're going to  
20      know that somebody worked under that. So we were told  
21      to bring timbers in to put around it to make it look  
22      like it had been supported. So that was done.

23     And the only other situation that I questioned  
24     with regards to safety conditions was in 2008 Rick  
25     Hodge was our superintendent. We were going under on

1 evening shift. There was smoke coming out of the  
2 South Portal. We backed our mantrip into the South  
3 Portal, called for the road, and they gave us the  
4 road. And I said something like, stop the mantrip or  
5 something. And I can't remember who our boss was. I  
6 want to say it was Carl Grimmett at the time. I said,  
7 you can't be serious. We're going underground and  
8 there's smoke coming out of the portal. And he said  
9 --- and I said, this is not good. And you know, I  
10 questioned do we even know where the smoke is coming  
11 from? Do we even know what's going on underground.  
12 And if I remember correctly, he went back to the phone  
13 and called again and questioned, and he come back to  
14 the mantrip and said, Hodge said get underground.  
15 It's probably a hot roller. Well, we didn't know  
16 that. But we were dispatched underground, and I know  
17 me and a bunch of the guys were upset. I mean, we had  
18 our conversation the whole way in.

19 ATTORNEY WILSON:

20 Did you ever determine what was causing  
21 the smoke?

22 A. I don't know. I want to say it ended up --- they  
23 told us, I think, that it was a roller, something on  
24 the belt. Something with regards to the beltline was  
25 all we were told. I don't know. But we were sent

1 underground before they knew that. That's all I have.

2 RE-EXAMINATION

3 BY MR. MCGINLEY:

4 Q. Who was it that said --- do you recall who called  
5 underground and said get in?

6 A. I'm sorry. I didn't understand you.

7 Q. You said that you thought and you weren't sure  
8 that Carl Grimmett had called underground to see what  
9 was going on. Who told him to get underground?

10 A. Carl Grimmett had called. We were outside. He  
11 had gotten the road. He went back to the phone,  
12 called up in the office and questioned the smoke.  
13 Rick Hodge, the superintendent, I don't know if Rick  
14 gave the directive or got on the phone, ---

15 Q. Okay.

16 A. --- but he said, Hodge says get underground.

17 MR. MCGINLEY:

18 Okay. That's all I have.

19 RE-EXAMINATION

20 BY MR. SHERER:

21 Q. I have a couple questions, Ms. Pauley. The first  
22 incident you were a red hat. The second two  
23 incidences with the roof bolt and the smoking roller,  
24 were you still a red hat then?

25 A. At the Glory Hole and the gob pile, I was a red



1 hat. I worked beside a gentleman --- my black hat  
2 assigned to me was Billy Massey. When I went under  
3 with the smoke, I may have just become a black hat. I  
4 may --- because I was on the section at that time. I  
5 had to have been a black hat because I became a black  
6 hat in May, and they didn't even hire me on for seven  
7 months. I didn't even get hired until July. So I was  
8 a black hat when I went on the section.

9 Q. Thank you. And that incident with the smoke or  
10 the smoking roller, do you know who pre-shifted that  
11 area?

12 A. No, I do not.

13 Q. Thank you.

14 ATTORNEY WILSON:

15 Terry, anything?

16 MR. FARLEY:

17 No.

18 ATTORNEY WILSON:

19 Ms. Pauley, was there anything else that  
20 you wanted to discuss today?

21 A. No. Thank you.

22 ATTORNEY WILSON:

23 Then, again, I want to thank you on  
24 behalf of MSHA and the other entities here today for  
25 coming back in and talking to us. Your cooperation is

1       very important to the investigation.  
2       I do want to remind you of your rights  
3       under the Mine Act. Any statements given by miner  
4       witnesses to MSHA are considered to be an exercise of  
5       statutory rights and protected activity under Section  
6       105(c) of the Mine Act. If you believe that any  
7       discharge, discrimination or any other type of adverse  
8       action is taken against you as a result of your  
9       cooperation with this investigation, you are  
10      encouraged to immediately contact MSHA to file a  
11      complaint under Section 105(c) of the Act. Remedies  
12      under the Mine Act include back wages and immediate  
13      temporary reinstatement to your most recent position  
14      with the company, pending a complete investigation of  
15      your complaint. In order to file a complaint under  
16      Section 105(c), you should contact the MSHA District 4  
17      office in Mount Hope, West Virginia. The telephone  
18      number there is (304) 877-3900. You can also find  
19      additional information concerning miners' rights at  
20      MSHA's website, which is [www.msha.gov](http://www.msha.gov).

21     Again, I want to remind you that we  
22     request that you not discuss your testimony with  
23     anyone else until after all of the interviewing is  
24     completed. Again, you know, if you think of any  
25     additional information, please contact Norman Page at

1 the contact information that was provided to you or  
2 contact the State. Before we go off the record, is  
3 there anything else that you wanted to say at this  
4 time?

5 A. No.

6 ATTORNEY WILSON:

7 Okay. Then again, thank you, and we'll  
8 go off the record.

9

10 \* \* \* \* \*

11 STATEMENT UNDER OATH CONCLUDED AT 9:08 A.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*