

STATEMENT UNDER OATH
OF
FOSTER MCCARTHER

Taken pursuant to Notice by Richard J. Lipuma, CCR, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the Southeastern Utah Association of Governments, 375 South Carbon Avenue, Price, Utah, on Monday, September 24, 2007, beginning at 8:01 a.m.

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23 ALSO PRESENT: Kelly C. Kirkwood

24

25

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P R O C E E D I N G S

MR. O'DONNELL:

My name is Joe O'Donnell. I'm an accident investigator with the Mine Safety and Health Administration, an agency of the United States Department of Labor. With me is Derek Baxter from the Solicitor's Office and Sherrie Hayashi with the Utah Commission of Labor. We'll be conducting the interview today.

I, together with other government investigators and specialists, have been assigned to investigate the conditions, events and circumstances surrounding the fatalities that occurred at the Crandall Canyon Mine in Utah in August of 2007. The investigation is being

1 conducted by MSHA under
2 Section 103(a) of the Federal
3 Mine Safety and Health Act and
4 the Utah Commission of Labor.
5 We appreciate your assistance
6 in this investigation.

7 After the investigation
8 is complete, MSHA will issue a
9 public report detailing the
10 nature and causes of the
11 fatalities in the hope that
12 greater awareness about the
13 causes of accidents can reduce
14 their occurrence in the
15 future. Information obtained
16 through witness interviews is
17 frequently included in these
18 reports. Your statement may
19 also be used in other
20 proceedings.

21 You may have a personal
22 representative present during
23 the taking of this statement
24 and may consult with the
25 representative at any time.

1 Your statement is completely
2 voluntary. You may refuse to
3 answer any question and you
4 may terminate your interview
5 at any time, or request a
6 break. Since this is not an
7 adversarial proceeding, formal
8 Cross Examination will not be
9 permitted. However, your
10 personal representative may
11 ask clarifying questions as
12 appropriate.

13 A court reporter will
14 record your interview, so
15 please speak loudly and
16 clearly. If you do not
17 understand a question, please
18 ask me to rephrase it. Please
19 answer each question as fully
20 as you can, including any
21 information you've learned
22 from someone else.

23 I'd like to thank you
24 in advance for your appearance
25 here today. We appreciate

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your assistance in this investigation. Your cooperation is critical in making the nation's mines safer.

After we've finished asking questions, you'll have an opportunity to make a statement and provide us with any other information that you believe to be important. If at any time after the interview you recall any additional information that you believe might be useful, please contact Mr. Gates, Richard Gates, at the telephone number and e-mail address on this card.

Ms. Kirkwood, would you swear in the witness?

FOSTER MCCARTHER, HAVING FIRST BEEN
DULY SWORN, TESTIFIED AS FOLLOWS:

1 MR. O'DONNELL:

2 Ms. Kirkwood, are you
3 empowered as a notary in the
4 State of Utah?

5 MS. KIRKWOOD:

6 I am.

7 MR. O'DONNELL:

8 And when does your
9 commission expire?

10 MS. KIRKWOOD:

11 August 15th, 2008.

12 MR. O'DONNELL:

13 Have you sworn in Mr.
14 McCarthy?

15 MS. KIRKWOOD:

16 I have.

17 BY MR. O'DONNELL:

18 Q. Would you please state your
19 full name and address for the record?

20 A. Foster Carl McCarthy, **(b) (7)(C)**
21 **(b) (7)(C)**

22 Q. Mr. McCarthy, do you have a
23 personal representative with you
24 today?

25 A. Yes.

1 Q. Would your personal
2 representative identify himself by
3 name and address for the record?

4 ATTORNEY MEANS:

5 Yes. I'm Thomas C.
6 Means of Crowell & Moring in
7 Washington, D.C. 1001
8 Pennsylvania Avenue,
9 Northwest, Washington, D.C.
10 And I go by the nickname Tim,
11 in case that comes up, so the
12 record doesn't get confused.
13 I'd just like to clarify that
14 as Mr. McCarther and I have
15 discussed, I'm the company's
16 attorney, not his personal
17 lawyer, but he has the right
18 to have anybody here he wants
19 to assist him in this
20 interview, and I'm here at his
21 request.

22 MR. O'DONNELL:

23 Okay.

24 BY MR. O'DONNELL:

25 Q. So Mr. McCarther, you're aware

1 that your representative may have a
2 conflict of interest in representing
3 you while being provided by someone
4 else, such as the company?

5 A. Yes.

6 Q. Okay.

7 MR. O'DONNELL:

8 And for the record,
9 then, would you please state
10 whether you represent the mine
11 operator in these matters?

12 ATTORNEY MEANS:

13 Yes, I do.

14 MR. O'DONNELL:

15 Okay.

16 BY MR. O'DONNELL:

17 Q. With this understanding, do
18 you still want this person as your
19 representative?

20 A. Yes.

21 Q. Okay. And Mr. McCarther, are
22 you appearing here today voluntarily?

23 A. Yes.

24 Q. Now, how many years of mining
25 experience do you have?

1 A. Twenty-eight (28).

2 Q. Twenty-eight (28)?

3 A. Yes.

4 Q. And just a brief description
5 of your employment history, where
6 have you worked?

7 A. I worked for Energy West
8 Mining for 25 years and Crandall
9 Canyon for the past three.

10 Q. The past three years at
11 Crandall Canyon. And what's your
12 position at the mine?

13 A. Fireboss.

14 Q. Fireboss. You mean pre-shift
15 and weeklies and ---?

16 A. Weeklies, yes.

17 Q. Okay. And did you have the
18 same job on August 6th, 2007, the day
19 of the accident?

20 A. Yes.

21 Q. Okay. Have you been a weekly
22 examiner pre-shifter for the last
23 three years or did you have other
24 jobs?

25 A. I had other jobs.

1 Q. And what were those?

2 A. It started out as a belt man
3 and then I stepped up for a while and
4 then I went to this weekly examiner
5 job.

6 Q. So how long have you been
7 doing weeklies?

8 A. Approximately two and a half
9 years.

10 Q. Oh, so most of your time
11 you've been ---

12 A. Yes.

13 Q. --- stuck in the air course?

14 A. Yes.

15 Q. Okay. Do you have any mining
16 certificates?

17 A. Yes.

18 Q. And what are those?

19 A. Firebossman foreman, surface
20 foreman and underground electrical.

21 Q. Are all those for the State
22 of Utah?

23 A. Yes.

24 Q. And who's your supervisor at
25 the mine?

1 A. The shift foreman, whichever
2 one was there that week.

3 Q. Okay. And that week who was
4 your supervisor?

5 ATTORNEY MEANS:

6 Can I just clarify, are
7 we talking about the Crandall
8 Canyon Mine? He's at a
9 different mine now.

10 A. Yes. I've been transferred
11 this past week.

12 BY MR. O'DONNELL:

13 Q. Oh, just this week your
14 employment has changed. And where do
15 you work now?

16 A. West Ridge.

17 Q. West Ridge. Is that the same
18 company?

19 A. Yes.

20 Q. Okay. So let's just talk
21 about your employment at Crandall
22 Canyon. Since West Ridge came after
23 the fact, we'll just ---.

24 A. Okay.

25 Q. So at Crandall Canyon, who was

1 your supervisor?

2 A. That week, that day?

3 Q. Yes.

4 ATTORNEY MEANS:

5 And can we clarify that
6 day being ---?

7 BY MR. O'DONNELL:

8 Q. What was your last day of
9 work?

10 A. Last Thursday at Crandall.

11 Q. Let's go back to the week of
12 August 6th. And what was your last
13 workday on the week of August 6th?
14 Did you work the day before?

15 A. No. It would have been the
16 Friday before.

17 Q. So it would have been the
18 Friday before. And when were you
19 scheduled to come back?

20 A. 6:00 a.m. that morning.

21 Q. 6:00 a.m. on the 6th?

22 A. Yes.

23 Q. That was your day back?

24 A. Yes.

25 Q. Okay. And that was your

1 starting time. Is that your normal
2 shift? Tell me about your shifts.
3 What was your rotation?

4 A. I worked straight days since
5 I've done all weeklies from 6:00 to
6 4:00.

7 Q. 6:00 a.m. to 4:00 p.m.?

8 A. Yes.

9 Q. Is that Monday through Friday?

10 A. Yes.

11 Q. So you weren't on --- you had
12 every weekend off; is that right?

13 A. Yes.

14 Q. Okay. And do you conduct all
15 the weekly exams at the Crandall
16 Canyon Mine?

17 A. Yes.

18 Q. So how were you notified that
19 an accident had happened? Did you
20 just show up that day and find out
21 or ---?

22 A. When I got to work, there was
23 sheriffs at the bridge. And then
24 they let me through and I went on up
25 and there was people gathered down by

1 the warehouse that told me.

2 Q. Okay. So let's just go
3 through your whole day, how that
4 shift played out in as much detail as
5 you can.

6 ATTORNEY MEANS:

7 So we're focused on
8 Monday, the 6th?

9 MR. O'DONNELL:

10 Yes.

11 A. I got there, pulled up in the
12 parking lot. I got out. Well,
13 before I knew the sheriff had told
14 me. Got up there. There was some
15 people by the warehouse. I don't
16 remember exactly who all was there.
17 They told me there had been an
18 accident, go in and get dressed so we
19 could go underground. And got ready
20 to go underground and they had not
21 done a pre-shift, because MSHA was
22 holding them up. So we waited around
23 for, I don't know, two or three
24 hours.

25 And then they had me haul

1 material in and out, as close as we
2 could get in there for the people
3 that was doing whatever they was
4 doing in there. That's what I done
5 the day, was haul things in and out.
6 They let me in.

7 BY MR. O'DONNELL:

8 Q. The entire day?

9 A. Yes.

10 Q. Did you ever go up to the ---
11 how far did you get into the mine?

12 A. I believe that day it was 117.

13 Q. 117. And did you travel with
14 anyone?

15 A. Mark Cornett. He and I was
16 hauling stuff in on the pickup.

17 Q. And what kind of material were
18 you hauling in?

19 A. Shovels, axes, just brattice,
20 mainly brattice and stuff to replace
21 them stoppings that had blown out.

22 Q. And do you remember where that
23 was at?

24 A. That was from crosscut 95
25 inby.

1 Q. And do you recall who the
2 workers were that you were delivering
3 material for?

4 A. No.

5 Q. So you say you got in as far
6 as 117 crosscut. And what were they
7 doing? Where were they installing
8 this curtain?

9 A. They had people working on
10 various stoppings through there. We
11 was just delivering material to there
12 and through. Somebody would give us
13 more things to pick up and we'd go
14 get other material and stuff to them.

15 Q. Did you ever actually get up
16 into the area and see any of the ---
17 other than ventilation damage, did
18 you see any other damage on the
19 pillars?

20 A. I did take some axes, picks,
21 what not, to that ceiling was
22 breaching at 118. I crossed the
23 beltline and went over to that seal
24 and seen what had blown back that
25 far.

1 Q. What did you see?

2 A. Just fine coal.

3 Q. Into crosscut --- did you see
4 inby the seal or ---?

5 A. Oh, no. This would have been
6 over there in the beltline. And
7 number 383 was returned, ribs had
8 rolled.

9 Q. Let me get a map here so we
10 could better understand your
11 location. Let me just slide this in.

12 A. Uh-huh (yes).

13 Q. Do you recognize this as a map
14 of the Crandall Canyon Mine? That
15 being the south barrier pillar, the
16 west main section and the north area
17 pillar.

18 ATTORNEY MEANS:

19 Could we just clarify,
20 where did this map come from?
21 Is this an MSHA map or a mine
22 operator map?

23 MR. O'DONNELL:

24 This is a mine operator
25 map taken from the AutoCAD

1 that was provided to us. We
2 printed it from the AutoCAD.

3 ATTORNEY MEANS:

4 Thank you.

5 MR. O'DONNELL:

6 Let's mark this

7 McCarther Exhibit One.

8 (McCarther Exhibit One

9 marked for

10 identification.)

11 BY MR. O'DONNELL:

12 Q. And if you would, Mr.

13 McCarther, just show me where ---

14 show us where the location of the

15 seal was.

16 A. The seals at 123 to 118 had

17 been breached. Everything was

18 breaching ---.

19 Q. Okay. Now, we're pointing to

20 the --- is that the number one entry

21 of the old west main?

22 A. Yes.

23 Q. And crosscut ---?

24 A. Yeah. We call it 118 seal.

25 Q. 118 seal. Now, tell me, where

1 did you --- how far did you get into
2 that?

3 A. I come to this point right
4 there where the men was. They had
5 not gotten through the seal when I
6 was there.

7 Q. So you were at the outby
8 corner of the crosscut?

9 A. Yes.

10 Q. Okay. And tell me where ---
11 what you saw there.

12 A. This area here was fine here.

13 Q. Here being ---?

14 A. Number one entry of the old
15 west main.

16 Q. Between number 17 and 18
17 crosscut?

18 A. Yes.

19 Q. Okay. And that was fine
20 there. Where did you say you saw
21 some pillar damage?

22 A. You could see some damage just
23 looking inby here, running a belt
24 through these mine doors at 117.

25 Q. Okay. And that is --- now

1 we're down on the south barrier or
2 the southwest barrier section of 117
3 crosscut in number two entry, you
4 say?

5 A. Yes.

6 Q. Okay.

7 A. And also, the ribs had rolled
8 in this number three entry.

9 Q. Okay. Number three entry at
10 number 117 crosscut again?

11 A. Yes.

12 Q. Okay. And that's as far as
13 you went in that day?

14 A. Yes.

15 Q. And you found that to be
16 different than the last time you were
17 there; is that right?

18 A. Yes.

19 Q. Okay. So that was the --- did
20 you --- what time did you get
21 outside?

22 A. At quitting time or ---?

23 Q. Which was what time?

24 A. I believe I worked a 12-hour
25 day that day.

1 Q. Okay.

2 A. So it would have been
3 approximately 6:00 p.m.

4 Q. And who was outside when you
5 got there?

6 A. I can't remember. So many
7 days rolled together there.

8 Q. Did you get debriefed by
9 anyone?

10 A. I don't ---.

11 Q. Did MSHA talk to you or the
12 company or anybody and ask you and
13 say, hey, Foster, how did it look in
14 there?

15 A. No.

16 Q. How far did you get? What was
17 the progress?

18 A. No. There was people in by me,
19 but no, I was just running material
20 parts, whatnot, to people in there.

21 Q. Okay. And before you left,
22 did --- were you given a work
23 schedule for the rest of the time?

24 A. They just said show up
25 tomorrow.

1 Q. And tell me about your work
2 schedule, what you did from the 6th
3 to the 16th. Were you in the mine on
4 the 16th? That was the day of the
5 second accident.

6 A. I was, but I had just left the
7 property. Apparently at the time I
8 had left it ---.

9 Q. Okay. Well, let's talk about
10 what you did between the first
11 accident and the second accident,
12 what your work schedule was, and kind
13 of roughly what you did.

14 A. I have a weekly. Every day of
15 the week, I would do my weekly. And
16 then I --- after my weekly, at that
17 time, I would just do whatever after
18 my weekly was done.

19 Q. So your regular normal work
20 schedule was the same. You conducted
21 weekly exams?

22 A. Yes.

23 Q. Okay. And after that, did you
24 ever go and assist with the rescue
25 operation?

1 A. No.

2 Q. What did they have you doing?

3 A. Some days I would pre-shift
4 and other days just --- I don't
5 remember now.

6 Q. Did you ever get into the
7 section where the work was being
8 done?

9 A. Yes. On one occasion, I made
10 it to the miner, and on the day I
11 came in on the 16th, I had made it to
12 120 to take a gas check in the return
13 mark.

14 Q. Where would that be, 120? Is
15 that the return coming out of the
16 section?

17 A. Yes. And that would have been
18 from these seals at 107. MSHA had
19 run a pipe up for intake and dumped
20 it in the return there. It went
21 through at 120 and it was outby one
22 crosscut, 119.

23 Q. That's at the old west main
24 section?

25 A. Yes.

1 Q. Okay.

2 A. No. In this section here.

3 Q. That's these ---.

4 A. Not the old one. This here is
5 the ---.

6 Q. The south barrier pillar
7 section return?

8 A. Yes.

9 Q. And that would also be air
10 coming off of the seals, too; is that
11 what you said? Or no, that's
12 straight off the return?

13 A. They had a pipe --- they had
14 piped through the seal at 107, dumped
15 it there. They was monitoring. MSHA
16 had two different pumps. I don't
17 know for sure if they was running
18 through these seals out the other
19 end. I'm not sure.

20 Q. When you're talking about the
21 seal ---.

22 A. 107 would have been in this
23 --- the west.

24 Q. That was the last panel ---
25 that would be the panel 13?

1 A. Yes.

2 Q. Okay. Seal. And what did you
3 find that day? What were your
4 observations as far as quality and
5 quantities go?

6 A. I don't remember the exact,
7 but they were not unusual.

8 Q. Were they normal?

9 A. Yes.

10 Q. And normal being what?

11 A. It depends on the barometer,
12 really.

13 Q. Okay. But can you then give
14 me --- what were they the worst that
15 you ever found there?

16 ATTORNEY MEANS:

17 There being where?

18 MR. O'DONNELL:

19 At the 107.

20 ATTORNEY MEANS:

21 On that day?

22 MR. O'DONNELL:

23 At any time. Because
24 we're trying to figure out
25 what normal is.

1 A. We had not been --- MSHA
2 plugged in that seal and run it up.
3 We had no way of monitoring that
4 seal ---.

5 BY MR. O'DONNELL:

6 Q. Okay. So it was just a
7 regular exam at the seal?

8 A. Yes.

9 Q. There was no sample tube in
10 it?

11 A. No.

12 Q. So you said that it depends on
13 the barometer. So at times, did it
14 ingas or outgas?

15 A. That particular seal, no.

16 Q. It didn't? So then normal
17 there would be ---?

18 A. Whatever I'd get that day, and
19 I don't recall exactly what that was.

20 Q. 20.8, 20.9? I mean, normal
21 oxygen?

22 A. You guys had that --- or
23 someone came and took that book we
24 had from the seals. I've not seen
25 that at the coal mine for some time.

1 Q. Yeah, we have. Whatever is in
2 the book?

3 A. What it was then.

4 Q. Okay. But I was just asking
5 because you've done it for two and a
6 half years, and I just was trying to
7 get a grip of what normal is there.

8 A. But not that seal.

9 Q. Not that seal?

10 A. See, we had no test pipe in
11 that seal prior to ---.

12 Q. Oh. But you took an exam at
13 the seal; right?

14 A. Oh, it would be 20.9 there.

15 Q. That's what I'm asking. Not
16 behind the seal. There's no way you
17 can get behind the seal. Now, the
18 other seal, which would be the old
19 west main seal, where you did have a
20 sample line in; right?

21 A. Yes.

22 Q. Did you ever open the line and
23 see what you had behind it?

24 A. Well, that's how I would take
25 them tests that went in that book.

1 Q. Okay.

2 A. Yes, I did.

3 Q. And what was normal --- did it
4 ingas more than outgas, I mean,
5 depending on the barometer?

6 A. It would depend on the
7 barometer. Yeah, it would ingas more
8 than it would outgas.

9 Q. Okay. And did you find low O2
10 there on occasion?

11 A. Yes.

12 Q. Okay. And how low would it
13 be? What was the normal low? I'm
14 not going to --- if you say 15 or 16
15 and it's 14 in the book --- I'm just
16 trying to get a feel.

17 A. If you'd show me that book, I
18 can tell you what it would be.

19 Q. Okay. If you would, how many
20 weekly runs were there? How many
21 separate runs did you take, did you
22 go on?

23 A. I had one every day of the
24 week.

25 Q. So there were five separate

1 runs? And where did your --- if you
2 would, let's go to the big map.

3 A. There would not be five in
4 this mine.

5 Q. Okay.

6 A. That would have been five,
7 counting both mines.

8 Q. Okay. How many just in this
9 mine? Everything that I refer to is
10 just going to be Crandall Canyon.

11 All right.

12 A. Okay. Three.

13 Q. Three runs, three days?

14 A. Yes, sir.

15 Q. And if you would, could we
16 mark on --- we're going to use this
17 map, and we'll call this McCarther
18 Exhibit Two.

19 (McCarther Exhibit Two
20 marked for
21 identification.)

22 BY MR. O'DONNELL:

23 Q. This map. And this is also
24 taken from the mine record AutoCAD
25 map. We have a colored pen here, and

1 if you would --- was it Monday,
2 Tuesday and Wednesday? What days of
3 the week did you have your runs?

4 A. It would have been Monday,
5 Wednesday and Thursday.

6 Q. Okay. Let's use one color for
7 Monday, one color for Wednesday ---
8 why don't we do that? So let's use
9 the green pen and mark your first run
10 of the week and what day it was.
11 Just color in the whole run.

12 WITNESS MARKS MAP

13 A. The first one would be --- the
14 first south here --- everywhere I
15 went?

16 BY MR. O'DONNELL:

17 Q. Yes. On the first south
18 bleeder; is that right?

19 A. Yes.

20 Q. Okay. What we're going to do
21 on the map here, because we can't
22 describe every location, we're going
23 to say that everything that was
24 marked with the blue marker was the
25 run for this day.

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ATTORNEY MEANS:

The green marker.

BY MR. O'DONNELL:

Q. The green marker. Okay. Take your time.

WITNESS MARKS MAP

BY MR. O'DONNELL:

Q. Now I know why you didn't do anything else the rest of the day. That's a pretty big run.

A. This is only two and a half foot high.

Q. Oh, is it?

A. Yes.

Q. Okay. Why don't we just mark it here the Monday run? Okay. That's good. And let's get the other colored pen and we'll do the Wednesday; right?

A. Yes.

Q. The Wednesday run will be marked on the map in orange.

WITNESS MARKS MAP

A. Okay. I would do that and then I would get in my truck. This

1 was just the pillar line and the air
2 ratings and the return for the south
3 mains that goes into this bleeder.
4 Then I would go up to --- depending
5 on the day, close to the section,
6 wherever I could, get out.

7 BY MR. O'DONNELL:

8 Q. Okay. Just mark the run.

9 A. Get in here. The last time I
10 got in ---?

11 Q. Yeah. The last time you made
12 the run would be fine.

13 A. It would be the Wednesday
14 before that.

15 Q. Okay.

16 WITNESS MARKS MAP

17 A. We come --- parked here, got
18 in that that door right there. Come
19 up to this very end, where you guys
20 had old timber, just had a look and
21 come back out. I don't remember
22 exactly which way this here went.

23 BY MR. O'DONNELL:

24 Q. Just roughly where you went
25 there. I know sometimes you got to

1 zigzag around.

2 A. Okay. I'd have to back track.
3 Come up and crossed all the seals.
4 Crossed them seals at 107 and come
5 down this escape way to 92, then
6 backtracked back up to where they had
7 mined this.

8 Q. Okay. These are the belt
9 entries? That's the belt ---?

10 A. Yes. The seals here that ---.

11 Q. You know what to do? Just put
12 a squiggly through that. That means
13 you did not ---. Okay.

14 WITNESS MARKS MAP

15 A. That was Wednesday's.

16 BY MR. O'DONNELL:

17 Q. Okay. Just mark it anywhere
18 you want in there. Okay. And the
19 next one is the Friday run?

20 A. Thursday.

21 Q. Thursday run. And the
22 Thursday run is going to be marked on
23 the map in pink.

24 WITNESS MARKS MAP

25 A. That would have been

1 Thursdays.

2 BY MR. O'DONNELL:

3 Q. Okay. And that covers the
4 weeklies, all the runs?

5 A. Yes.

6 Q. Okay. Thanks. And other than
7 the weekly exams, then you just did
8 --- you said you also did some
9 pre-shift work?

10 A. Occasionally.

11 Q. Okay.

12 A. When there wasn't enough
13 people there.

14 Q. Okay. So up until --- that's
15 what you did all the way to the 16th,
16 you said?

17 A. Yes.

18 Q. And then the day of the
19 accident, you said you were scheduled
20 to work that morning; is that right?

21 A. The 16th or ---?

22 Q. The 16th, the day of the
23 second accident?

24 A. I did work that.

25 Q. Okay. Let's talk about the

1 day of the second accident then.

2 Tell me about that day.

3 A. Which day of the week was that
4 on?

5 Q. I believe it was a Thursday.
6 It was a Thursday, the 16th.

7 A. Okay. I would have went to
8 work and I would have done this
9 weekly right here first thing. When
10 I get done with this weekly, I have
11 the belts to do in south Crandall. I
12 would have went and done that. After
13 that --- I can't say for sure. I
14 don't remember.

15 Q. Were you involved in any of
16 the recovery or any part of the
17 accident?

18 A. No.

19 Q. Nothing. So you came in, you
20 did your run?

21 A. Yes.

22 Q. Okay. So were you ever
23 involved in any of the mining that
24 was occurring in the sections at all
25 during your three years at the mine?

1 A. I stepped up a time --- I was
2 a faceboss when they was in first
3 right and a time or two in south
4 Crandall, but never up in this area.
5 That would have been prior to when I
6 started doing ---.

7 Q. Okay. One thing I forgot to
8 ask you, are you hourly or salary?

9 A. I'm hourly.

10 Q. You're an hourly worker?

11 A. Yes.

12 Q. Okay. All right. Well, what
13 we're going to do now, we're going to
14 take a five-minute break and we'll go
15 back and we'll start getting into the
16 development of the mine and what it
17 looked like; all right?

18 A. Yeah.

19 Q. Thank you.

20 SHORT BREAK TAKEN

21 BY MR. O'DONNELL:

22 Q. Mr. McCarther, let's talk
23 about your --- we'll start outby
24 towards the portal first and we'll
25 work our way in. So you said that

1 you'd been doing these weekly air
2 course runs now for the last two and
3 a half years; is that right?

4 A. Yes.

5 Q. And let's just talk about the
6 Thursday run right now, and that
7 being the run that's outby towards
8 the portal, covers the east main
9 inactive area, the panel 22 and some
10 of the seals in the third north
11 mains; is that right?

12 A. Yeah. Well, the seals include
13 first north, second north to the
14 outside.

15 Q. Okay. And in the two and a
16 half years that you've been making
17 this run, what changes have you seen
18 as far as pillar deterioration, if
19 any?

20 A. No. No.

21 Q. None there. What about the
22 integrity of the seals that you were
23 examining? Have you on occasion had
24 to have any repaired?

25 A. No.

1 Q. That you can recall?

2 A. These seals, they would need
3 plastered occasionally.

4 Q. Okay. Well, what about any
5 --- your qualities, your air
6 qualities? What would you say, any
7 --- I know you referred earlier to
8 the barometer, it's whatever the
9 barometer was, whether it was
10 ingassing or outgassing, but what
11 about the --- each set of seals has a
12 sample tube; is that right?

13 A. Yes.

14 Q. And as part of your weekly
15 exam, do you open that sample tube?

16 A. Yes.

17 Q. And was there a reason you
18 open the sample tube?

19 A. For an MSHA check.

20 Q. Just recently?

21 A. Yes.

22 Q. Okay. But prior to that?

23 A. Yeah. Occasionally I would to
24 see what the difference was, one side
25 to the other.

1 Q. And overall, what would you
2 say you had behind --- let's just
3 talk about the quality on the exam
4 side of your seals. Was it all ---
5 did you ever have on occasion a low
6 O2 on your run?

7 A. No. Not below 19.5, no.

8 Q. Okay. So are all these seals
9 winged out?

10 A. Yes.

11 Q. Okay. And you never had to
12 record any low O2?

13 A. These intake seals there would
14 not be. They was fairly close to the
15 roadway.

16 Q. And we're talking about the
17 seals that were in the third north
18 main return?

19 A. They would be intake seals.

20 Q. Okay. Those are intake seals?

21 A. Uh-huh (yes).

22 Q. Okay. We're talking about on
23 the gate entries of panel two?

24 A. Yes.

25 Q. Okay. So there was really ---

1 so the area stood pretty consistent;
2 is that right?

3 A. Yes.

4 Q. And it was always --- you
5 could always travel it, you didn't
6 ever have to --- did you ever have to
7 re-support areas or ---?

8 A. There was an area that would
9 be set for timbers at crosscut 26
10 along the rib.

11 Q. Crosscut 26 along the rib, and
12 that's about it. So it stood pretty
13 well then?

14 A. Yes.

15 Q. Okay. Let's get into your
16 Monday run then, the green run, which
17 travels down to panel 19, panel 20,
18 panel 21 in the first south mains and
19 the first west head gate; is that
20 correct?

21 A. Yes.

22 Q. Okay. The same questions
23 there. Did you travel in the
24 perimeter of the --- for the
25 wraparound bleeder there of the

1 panels, 20 and 21? Any occasions of
2 any low O2 in the area?

3 A. No.

4 Q. How about the condition of the
5 seal? Or there's no seals there.

6 A. No seals.

7 Q. How about the deterioration of
8 pillars?

9 A. Pillars, they stayed, but
10 there would be a little flaking at
11 the top because they would leave like
12 a small amount of coal, and that
13 would fall.

14 Q. Uh-huh (yes). Any of the
15 areas that you traveled on Monday or
16 Thursday, were any of them ever
17 bottom mined or ---?

18 A. What do you mean by bottom
19 mined?

20 Q. Where the lower part of seam
21 was taken?

22 A. They took the whole seam.

23 Q. The whole seam. So out in
24 this area of the mine, it was ---
25 what was the mining height?

1 A. Three and a quarter on
2 average. The high spots would be six
3 foot.

4 Q. The high spots would be six
5 foot?

6 A. Yes.

7 Q. So the seam is lower in this
8 area of the mine; is that right?

9 A. Yes.

10 MR. BAXTER:

11 And what is that this
12 area that you're referring to?

13 A. That would be the bleeder.

14 BY MR. O'DONNELL:

15 Q. We're still into the Monday
16 run, around the panel of 20 and 21.
17 So the mining height here was lower
18 than --- it was six foot in this
19 area?

20 A. Yes.

21 Q. What about on the Thursday
22 run, the pink run? What was the
23 mining height in that area?

24 A. It varied.

25 Q. Was it also lower?

1 A. You could stand up from this
2 point outside, this point there.

3 Q. And that's around the east
4 mains to the fan?

5 A. It's probably five, five and a
6 half foot.

7 Q. That would be on the south
8 side of panel 22?

9 A. The rest of it, five and a
10 half to six foot.

11 Q. That would be in the third
12 north mains then; is that right?

13 A. Yes.

14 Q. Okay. So two and a half years
15 of weekly exams and the run stayed
16 open? I mean, you didn't --- was it
17 ever blocked or ---?

18 A. No.

19 Q. Okay. So let's talk about the
20 --- what run would the next run be,
21 the ---?

22 A. Wednesday.

23 Q. Wednesday run. Okay. Let's
24 roll this out of the way. So let me
25 just go back to these two runs. Did

1 you ever make any entries in the book
2 for hazardous conditions that you
3 could recall?

4 A. Yeah. When I would need a
5 timber, well, I would put that in
6 there.

7 Q. Okay. So the next run ---
8 sorry ---.

9 ATTORNEY MEANS:

10 So did that last
11 question involve all the
12 different runs?

13 MR. O'DONNELL:

14 No. That was just the
15 first two runs that we
16 discussed.

17 BY MR. O'DONNELL:

18 Q. Okay. So now we're into the
19 Wednesday run. Let's just start out
20 by the first north inactive area and
21 talk about those seals.

22 A. Okay.

23 Q. Anything unusual? Could you
24 access these seals for the past two
25 and a half years?

1 A. Yes.

2 Q. So you could get to them?

3 A. Yes.

4 Q. And what about the --- let's
5 see, you traveled the return of the
6 main west; is that right?

7 A. Yes.

8 Q. And what about the rib
9 conditions in that area of the mine?

10 A. They was good.

11 Q. These were all good. Now, in
12 this part of the run here, and the
13 Monday and Thursday, from here, here
14 being south of section 36, did you
15 ever hear any what you call the
16 bounces? Have you heard any of that
17 or seen any of that occur from the
18 main west crosscut 90 outby to the
19 portal?

20 A. No.

21 Q. And for the record, what is a
22 bounce?

23 A. In my opinion, it's when it's
24 relieving pressure.

25 Q. What relieves pressure?

1 A. The ribs, the pillar, the
2 roof.

3 Q. Do you hear it?

4 A. Yes.

5 Q. And what does it sound like?

6 A. Rock and coal exploding.

7 Q. Rock and coal exploding. So
8 you hear it. Do you ever feel it?

9 A. Not these, no.

10 Q. A bounce in general, I mean,
11 do you feel it?

12 A. Depends on the size of the
13 bounce.

14 Q. I mean, have you?

15 A. Yes.

16 Q. Okay. And what about --- does
17 coal always move with a bounce or
18 does it ever move with a bounce?

19 A. Pieces of the coal, yes.

20 Q. Pieces of coal. Do you ever
21 see it thrown?

22 A. I don't know what that is.

23 Q. Okay. So that's what a bounce
24 is then. It's a --- you said a
25 release of energy from the roof then,

1 from the pillars; is that right?

2 A. Yes.

3 Q. Okay. And from that area that
4 we just discussed outby, have you
5 ever heard a bounce or have you ever
6 experienced a bounce?

7 A. In this area?

8 Q. Yes.

9 A. No.

10 Q. Okay. Let's move into the
11 west mains area now. Now, were you
12 familiar with the north mains barrier
13 pillar development?

14 A. Yes.

15 Q. Okay. And did you do the
16 weekly exam in that area ---

17 A. Yes.

18 Q. --- when it was --- before it
19 was sealed?

20 A. Yes.

21 Q. Tell me about --- let's just
22 talk about on development. I take it
23 then you did the return; right?

24 A. Yes.

25 Q. Then how would you describe

1 the conditions in the barrier pillar?

2 A. You want me to think back now.

3 Q. Well, you were here for the
4 whole development; right, then before
5 they started pillaring?

6 A. Yes. Yes.

7 Q. What were the conditions like?

8 A. Just normal mining conditions.

9 Q. You traveled that right rib,
10 which would be the number four entry
11 of the north main barrier. Did you
12 notice --- how did the barrier react?
13 Did you notice any --- did you hear
14 any bumps or bounces in that area
15 when you were in at the mine any
16 time?

17 A. When they was pulling back,
18 yes.

19 Q. When they were pulling back
20 where? Oh, that. Let's just talk
21 about development right now. When
22 they were developing?

23 A. No.

24 Q. And what about --- and how
25 long of a time did --- how many

1 months was it that you had to run the
2 return out of the north mains
3 barrier?

4 A. Well, from the time they
5 developed until they sealed.

6 Q. Okay. So you ran it the whole
7 time?

8 A. Yes, sir.

9 Q. And on development, did they
10 experience any ground problems? Did
11 you notice any heaving anywhere in
12 that barrier pillar?

13 A. Not on development.

14 Q. Not on development. No
15 heaving at all. What did the ribs
16 look like? How were they reacting?

17 A. You would get your normal
18 sloughage.

19 Q. Which is --- what's normal?
20 How does it look?

21 A. Small pieces coming down here
22 and there.

23 Q. Okay. And on your
24 examinations, did you ever detect any
25 low oxygen?

1 A. No. Not ---.

2 Q. Not on development?

3 A. No.

4 Q. Okay. Is there a reason why
5 they stopped mining here?

6 A. I don't know why they done
7 that.

8 Q. Were there any changing
9 conditions, like increases in water
10 or any of that in that area?

11 A. They had hit some water, but
12 they had pumps to take care of that.

13 Q. Yeah. Where was the water
14 coming out of? Was it top, bottom
15 or ---?

16 A. I'm just not real sure,
17 because it was not in that return
18 that I walked.

19 MR. BAXTER:

20 What area are you
21 referring to on that?

22 MR. O'DONNELL:

23 We're into the north
24 barrier.

25 MR. BAXTER:

1 And what part of the
2 area?

3 MR. O'DONNELL:

4 In the end of the
5 barrier.

6 BY MR. O'DONNELL:

7 Q. Now, as you pulled back, did
8 --- as pillaring began in the north
9 main barrier, did conditions change?

10 A. Yes.

11 Q. And how did they change?

12 A. We would get water that would
13 come over into there.

14 Q. There being crosscut --- what
15 is that?

16 A. I'm not sure on the crosscuts,
17 but it did come back a ways.

18 Q. In the return?

19 A. Yes.

20 Q. In the return --- I can't read
21 that. That's 156; is that correct?

22 A. Yes.

23 Q. Okay. So around there you
24 started getting water in the return?

25 A. Yes.

1 Q. And how did that affect your
2 examination?

3 A. If could only go to that
4 point, it was wrote up as such.

5 Q. Which would be to the water's
6 edge?

7 A. Yes.

8 Q. As it followed the section
9 back?

10 A. Yes.

11 Q. And that would --- where did
12 that start, at 156 crosscut?

13 A. It started on the corner.

14 Q. Of 157?

15 A. Yes.

16 Q. Okay. So from 157 all the way
17 back to --- how far did the water's
18 edge follow you out?

19 A. I just don't remember for sure
20 how far it came back there.

21 Q. Okay. But at a point, did it
22 stop, I mean, the water's edge?

23 A. This went downhill, so there
24 was more area for it to fill, so it
25 would have slowed.

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MR. O'DONNELL:

He's indicating from
150 crosscut inby.

BY MR. O'DONNELL:

Q. When you say that the
conditions other than water changed,
how did they change?

A. What did they say there?

Q. You said that the conditions
changed. They were not the same
coming out as they were going in.

A. When we was pulling.

Q. Yeah. Tell me, did you
experience any bounces in that area?

A. Not while I was in there, but
you would get more rib sloughage when
I would walk it the next week.

Q. Okay. And that would be going
to the evaluation point in number
four entry?

A. Yes.

Q. Did it ever get to a point
where you couldn't travel it?

A. No, not before they decided to
pull back and they would leave the

1 section.

2 Q. Okay. So the entire time, you
3 were able to get to the evaluation
4 point?

5 A. Yes.

6 Q. What about bottom heave in the
7 area?

8 A. I don't remember any heavage
9 in there.

10 Q. Did you ever get into the
11 section?

12 A. No, I would walk the return in
13 and walk it out.

14 Q. You would walk the return in?

15 A. Yes, and walk it out.

16 Q. Okay. And you say that you
17 didn't experience any bottom heave
18 there. But what about --- did you
19 work on the date of, like around
20 March, whenever they decided to give
21 the section up?

22 A. That was on the weekend when
23 they made that decision, so no, I
24 would not have been working then.

25 Q. Okay. Were you up there

1 whenever they were working in the
2 area of 137?

3 A. No, I did not spend much time
4 on the miner sections.

5 Q. Okay. But you know they did
6 --- why did they leave these two
7 blocks? Why did they stop here and
8 then restart pillaring again? Is
9 there any reason for that?

10 A. I don't know that.

11 Q. Did you hear why they did it?

12 A. No.

13 Q. You didn't hear of a bump or a
14 bounce that occurred in that area
15 sometime in March?

16 A. No.

17 Q. And then they started
18 pillaring again and then took out
19 three blocks and then gave the
20 section up. Do you know why they did
21 that?

22 A. No, I do not know.

23 Q. Why all that coal was left?
24 Was there anything that happened, an
25 event?

1 A. Not that I'm aware of. I
2 just ---.

3 Q. Did you hear that they had a
4 bounce there and they had some
5 equipment buried or ---?

6 A. I never heard that.

7 Q. They lost the entries and had
8 to pull out?

9 A. I never heard that.

10 Q. When they pulled out of the
11 section, before it was sealed, did
12 you continue to make your weekly
13 examination in that area?

14 A. By the time they pulled out
15 the evaluation point and I do not
16 remember where it was for sure, but
17 it was around the area of 125.
18 That's as far as I would go.

19 Q. Okay. Would you just travel
20 that return entry?

21 A. Yes.

22 Q. And how was it? Did you hear
23 anything in there or see anything?

24 A. No.

25 Q. And how long did you make your

1 run in that weekly exam before it was
2 sealed?

3 ATTORNEY MEANS:

4 Are we talking about
5 after it was abandoned, before
6 it was sealed?

7 MR. O'DONNELL:

8 Yes.

9 A. It couldn't have been more
10 than two, maybe three weeks.

11 BY MR. O'DONNELL:

12 Q. So it was sealed by the end of
13 March?

14 A. Yes.

15 Q. Okay. What about in the west
16 main section, this area before it was
17 sealed? Did you make an exam in that
18 area?

19 A. I had just started when they
20 was getting ready to seal that.

21 Q. How far did you make it into
22 the main west section before it was
23 sealed? It was sealed in November of
24 '04, so ---.

25 A. I started the 25th of October.

1 I would have went in with the
2 fireboss once, maybe twice to check
3 some pumps. And I'm not real sure at
4 this point. It would have been the
5 first day or two after it started to
6 wherever the last pump was.

7 Q. Now, let me ask you, did a
8 waterline, did they pump that water
9 all the way from the Jones Valley
10 Fault on the main west section before
11 it was sealed? Was there a waterline
12 that came all the way out of that
13 section?

14 A. I don't know that.

15 Q. Where were the pumps pumping
16 to?

17 A. There would have been a water
18 discharge line that would have pumped
19 out and down to around that seal
20 there at --- is that 67 or 69?

21 Q. 66, 67 --- 67 crosscut,
22 there's a seal there that pumps to
23 the number three panel; is that
24 right?

25 A. Yes.

1 Q. Okay. So the waterline ---
2 how many pumps were in there?

3 A. I do not remember.

4 Q. Okay. Now, could you drive
5 into the pumps in the --- was that an
6 intake split that went to the pumps?

7 A. Yes. It was on the intake
8 roadway.

9 Q. Okay. And you drove that all
10 the way into the pumps, or could you
11 drive all the way to the pumps?

12 A. I did not drive. I was with
13 another guy when we went there to
14 wherever it was. It was the first
15 week I was there, so ---.

16 Q. So you walked in?

17 A. No, we drove.

18 Q. You drove. Who was the other
19 guy; do you remember?

20 A. Clark Atwood.

21 Q. Clark Atwood. Does he still
22 work at the mine?

23 A. No.

24 Q. Where does he work now, if you
25 know?

1 A. I believe it is the Co-Op.

2 Q. Co-Op. Okay. So you traveled
3 there for two weeks. What did ---?

4 A. No, it would have been less
5 than two weeks.

6 Q. Okay. Two trips?

7 A. Yes.

8 Q. Two trips. Okay. So what can
9 you tell me about the conditions in
10 the main west as far as, was there a
11 lot of material on the roadway, was
12 there just a narrow passageway to get
13 through, did it look like, you
14 know ---?

15 A. The roadway was open.

16 Q. Okay. It was open. What
17 else?

18 A. There would have been some
19 cribs in spots. That was just a
20 section that they had left and mined
21 in other places.

22 Q. Was there pressure on the
23 cribs? Did they look like they were
24 taking any weight?

25 A. I did not stop and look at any

1 of them.

2 Q. Okay. Did you hear anything
3 in the area?

4 A. No.

5 Q. So it was pretty quiet?

6 A. Yes, as I recall.

7 Q. What about bottom heave?

8 A. I don't remember seeing any.

9 Q. Okay. Now, let's --- so the
10 area was sealed after --- in November
11 of 2004, and you say that there was a
12 water discharge line that discharged
13 out of the mine into panel three. Is
14 there any way that you can check the
15 amount of water that was --- what was
16 it, a gravity feed after they sealed
17 the area?

18 A. Yes.

19 Q. So there was a way that you
20 could monitor how much flow was still
21 coming out?

22 A. No gauges on it.

23 Q. Not gauge, but I mean, could
24 you see half a pipe?

25 A. No. You would walk along and

1 you couldn't see through it, into it.

2 Q. But what about at the
3 discharge end?

4 A. No. It went straight behind
5 the seal.

6 Q. Straight behind the seal. But
7 how did you know that the water was
8 still running?

9 A. I didn't. There was none
10 coming out the seal, so if there was
11 water back there, it would have been
12 going out the pipe.

13 Q. Could you hear the water in
14 the pipe at all, a little gurgling?

15 A. Yes, but also, that same line
16 was tied into the seals at 107.

17 Q. Okay. Do you know if at any
18 time after the area was sealed, that
19 the water stopped?

20 A. I don't know that it ever ---
21 no, I don't know that it ever
22 stopped.

23 Q. Okay. What about the --- you
24 say there --- was there a trap in
25 that stopping? Any of those seals

1 that were into the west main, was
2 there a water trap?

3 A. No. The only seal I know of
4 was this new seal, this number six
5 seal.

6 Q. The number six seal had a trap
7 in it?

8 A. A trap, yes.

9 Q. Okay. And these five seals
10 --- four seals for the west mains,
11 none of them had a trap?

12 A. No. Three seal had a pipe
13 running through it.

14 Q. How big was the pipe?

15 A. Six-inch, I believe.

16 Q. So there was a six-inch
17 straight pipe coming out of the
18 number three seal of the west mains?

19 A. Yes, with a valve on it.

20 Q. With a valve on it. Was the
21 valve open?

22 ATTORNEY MEANS:

23 At what point in time?

24 BY MR. O'DONNELL:

25 Q. After it was sealed, for the

1 two and a half years that you
2 examined it?

3 A. I don't really know that I
4 ever looked for sure.

5 Q. But at that pipe, you could
6 probably hear water running at that
7 valve; couldn't you?

8 A. I don't remember hearing none.

9 Q. Okay. So what I'm getting at
10 is, did the water stop at any time
11 that you know of, somewhere, whether
12 it was any time after it was sealed,
13 that you noticed a difference where
14 you found water on the seal?

15 A. I found no water on no seals.

16 Q. Okay. There was never an
17 accumulation of water at the seal
18 area?

19 A. No.

20 Q. Okay. Did you notice those
21 seals in the last two and a half
22 years have any deterioration on the
23 ribs around the seals or outby the
24 seals and the pillars?

25 A. No.

1 Q. What about on the entries, say
2 --- well, there's about nine seals
3 here in the west mains and north
4 mains barrier. Those blocks in that
5 area and outby, did you notice any
6 pillar deterioration, like it was
7 taking any weight?

8 A. Not until I believe the 6th,
9 after whatever had happened here had
10 happened. And there was a little top
11 between the two and three seal that
12 came in, and a little rib had
13 sloughed on the number two seal and
14 also the number three seal.

15 Q. Okay. What about in the
16 number four entries?

17 ATTORNEY MEANS:

18 Excuse me. When was
19 that that you said that was,
20 Foster?

21 A. That would have been the day
22 this --- on the 6th.

23 BY MR. O'DONNELL:

24 Q. After the accident?

25 A. Yes.

1 Q. What about the entry, the
2 number four entry of north mains
3 barrier outby crosscut --- outby the
4 seal 118 to 107? What about that
5 right rib? What did ---?

6 A. That all stayed there the
7 whole time.

8 Q. It did?

9 A. Yes.

10 Q. Okay. Let's talk about the
11 south mains barrier section. Did you
12 do the weekly exam of the return
13 while they were developing the south
14 main barrier?

15 A. Yes.

16 Q. And tell me about the
17 conditions when they were developing
18 it.

19 A. Conditions was good.

20 Q. Good meaning?

21 A. Ribs was good, top was good.

22 Q. Okay. And when they started
23 pillaring that section, did
24 conditions change?

25 A. Not in the return, other than

1 right here, there was a little floor
2 heave.

3 Q. Right here being crosscut ---

4 A. 140.

5 Q. --- 140 in number four entry.

6 A. And they did set cribs there
7 around this dogleg.

8 Q. The dogleg around the sump
9 that was ---

10 A. That's not a sump.

11 Q. --- over here in west mains?

12 A. That was just an entry there.
13 It would have been a very little
14 further than that, maybe less, so
15 they wouldn't miss it --- make sure
16 we did.

17 Q. Okay. And when did that floor
18 heave occur; do you recall?

19 A. The last day I would have been
20 in there, which would have been
21 Wednesday before the 6th.

22 Q. The Wednesday before the 6th.

23 A. And at crosscut 130 there was
24 just small, just a small bit of
25 heavage. Jim Martin and I walked

1 that. It would have been right
2 around the 1st of July, and it looked
3 like a little windmill.

4 Q. And that's also in number four
5 entry of what crosscut?

6 A. 130.

7 Q. And you and who walked that?

8 A. Jim Martin.

9 Q. Who is Jim Martin?

10 A. He's an MSHA inspector.

11 Q. Okay. And what was the
12 discussion about the floor? How long
13 was the floor heave?

14 A. Approximately 15 foot to start
15 with. I thought that it was the one
16 roll left by a scoop, until we got
17 digging, and then you could see that
18 it was just a small heave.

19 Q. How high was the heave?

20 A. Approximately six inches.

21 Q. Six-inch heave. And is that
22 unusual?

23 A. No, not when everything's been
24 pulled all the way around you.

25 Q. But did you notice heave at

1 other times?

2 A. No.

3 Q. So it was something different
4 that was happening; is that right?

5 A. Yes.

6 Q. Okay. Let's go back to when
7 they started --- when they were
8 pulling the section. Now, your MP
9 point, tell me about that.

10 A. My MP point would have been at
11 149.

12 Q. 149. Now, when you were
13 examining the south main barrier
14 pillar section, did you ever
15 experience any low oxygen?

16 A. No.

17 Q. Any methane?

18 A. No.

19 Q. And what about the conditions
20 in that number four entry? Did they
21 deteriorate?

22 A. In my opinion, number four
23 entry was the best entry out of the
24 four.

25 Q. So you were in the other

1 entries then?

2 A. I would drive up --- I had to
3 take people in at crosscut 121. I
4 would drive up and park my truck out
5 by the feeder and move to the return,
6 to that MP point at 149.

7 Q. So the number four entry was
8 better than the number one, two and
9 three entry?

10 A. In my opinion, yes. The ribs
11 was standing straighter.

12 Q. So what was the difference? I
13 mean ---.

14 A. There was more sloughage in
15 the intake roadway.

16 Q. Would that be in number one
17 entry?

18 A. Yes.

19 Q. And about when did you first
20 start noticing that?

21 A. The time would have been
22 approximately 140 on development.

23 Q. Okay. And was it more coming
24 off the barrier side or the pillar
25 side?

1 A. About the same on both ribs.

2 Q. About the same. What about
3 any floor heave there? If the number
4 four entry was good and you had floor
5 heave in the number four entry, did
6 you have any floor heave in the
7 number one entry or two entry?

8 A. I did not walk in. I would
9 drive in, so I did not notice any, if
10 there was.

11 Q. Okay.

12 A. And they would be moving the
13 scoop or whatever, getting material,
14 Isuzus.

15 Q. Did the south main barrier
16 pillar section sound any different
17 than the north barrier pillar as far
18 as ground or roof activity?

19 A. No, because I would start at
20 6:00. The graveyard shift would be
21 getting outside at 6:00. So I would
22 be in and be about out of there, so
23 there would be no mining when I was
24 there.

25 Q. Did you experience any

1 should have been sent?

2 A. Since I had to walk there, I
3 feel it should have been cribbed,
4 since I had to walk inby where that
5 miner was.

6 Q. Well, did you --- so you felt
7 that it wasn't safe for you to
8 travel?

9 A. I didn't feel that it was
10 necessarily unsafe. It's just I
11 would have felt safer had there been
12 a crib line.

13 Q. Did you tell management that
14 you felt that you needed additional
15 supports in that area?

16 A. I don't believe I did.

17 Q. Okay. But the supports that
18 were set in the area you felt were
19 adequate; is that right?

20 A. Yes. The last time I was in
21 there, it was really not taking no
22 weight.

23 Q. Okay. Why do you think that
24 happened?

25 A. I don't have no idea, other

1 than everything has been pulled on
2 both sides and it's right in the
3 middle.

4 MR. O'DONNELL:

5 Let's take another
6 five-minute break.

7 SHORT BREAK TAKEN

8 MR. O'DONNELL:

9 Let's go back on the
10 record.

11 BY MR. O'DONNELL:

12 Q. Just a few follow-up questions
13 here. When you call your exam out,
14 your weekly exam, do you call it out
15 or do you write it in the book
16 yourself?

17 A. I come out and put it in the
18 book myself.

19 Q. Okay. So everything that's in
20 the book is what you write?

21 A. Yes.

22 Q. Have you ever been given any
23 instructions what to put in the book
24 and what not to put in the book?

25 A. No.

1 Q. So have you ever endangered an
2 area off?

3 A. Yes.

4 Q. Okay. And then when you
5 danger it off, you put it in the
6 book?

7 A. Yes.

8 Q. Did you think the floor heave
9 at number four entry was a hazard?

10 A. No.

11 Q. No? So that wouldn't have
12 been entered in the book even
13 though ---?

14 A. I still had a six-foot
15 walkway.

16 Q. Okay. And you said they put
17 cribs in there, though, so ---.

18 A. Walkway down the center.

19 Q. What would the cribs be put in
20 there for then? Would it be put in
21 there for --- to what?

22 A. It would have been on this
23 beltway here just for added support,
24 just --- straight up to that entry.

25 Q. Add support so that you could

1 continue your run?

2 A. Well, also, right here they
3 had one in the top when they had
4 mined it, left a couple of foot, and
5 that was starting to slack a little
6 bit. So they cribbed that all around
7 it.

8 Q. About how many cribs did they
9 put in?

10 A. The last time I was in there,
11 ten or so, but also, there was
12 trailers out there that they had
13 mined past with more cribs for that
14 area.

15 Q. Okay. So you told somebody
16 about the conditions that needed
17 additional support?

18 A. Gary had seen this a week or
19 two prior, this top that was starting
20 to slack in between my weekly, and
21 seen that area. So he had started on
22 that before.

23 Q. So it was his observation
24 that ---

25 A. Yes.

1 Q. --- caused him to increase the
2 roof support in the area?

3 A. Yeah, in between my weekly and
4 the time he'd been there.

5 Q. Okay. There was one question
6 I had on the --- we talked about the
7 weekly exam in the north barrier.
8 And you said earlier that there was
9 --- the conditions never --- they
10 were pretty good through there, but
11 there's an entry in the book here
12 where we have --- and you don't
13 remember a bounce, but the number
14 four entry of west mains and crosscut
15 130 outby was not safe to travel.
16 The stoppings were damaged from 131
17 to 147 at the water's edge. It was
18 dangered off with a breaker rail at
19 128, stoppings, leaking, area from
20 130 not safe to travel, dangered off,
21 holes in stoppings. Are you familiar
22 with that page that you --- is that
23 your writing?

24 A. Down here is not. Right there
25 where it says dangered off is not

1 mine.

2

ATTORNEY MEANS:

3

Let's mark this as

4

Plaintiff's --- or sorry, as

5

McCarther Exhibit Three.

6

(McCarther Exhibit

7

Three marked for

8

identification.)

9

A. That is not my writing.

10

BY MR. O'DONNELL:

11

Q. Okay. Who would that be?

12

A. Gary Peacock also signed that,

13

so I don't know, but I would assume

14

it would be his.

15

Q. Foster, what did you enter?

16

A. Right there. This right here

17

would have been me.

18

Q. Right here ---.

19

A. The stoppings.

20

Q. And what does it say there?

21

A. Stoppings leaking 95, 104.

22

Q. And what's that say there?

23

A. It says done. Ninety-five

24

(95) is done and somebody else ---.

25

Q. What about this here? Did you

1 write that also?

2 A. I observed this.

3 Q. What about stopping holes ---?

4 A. Holes in stoppings, 108,
5 number two and number four, yes.

6 Q. So do you remember that area,
7 what the problem was?

8 A. You're talking March?

9 Q. That would have been ---
10 that's March 13th and 14th. Your
11 entry would be the 14th; is that
12 right?

13 A. Yes.

14 Q. And what would have caused the
15 change in conditions; do you recall?

16 A. No, I don't.

17 Q. I mean, is it normal for the
18 walls to be damaged and ---?

19 A. No, that's not normal.

20 ATTORNEY MEANS:

21 Did he say the walls
22 were damaged or the stoppings?

23 MR. O'DONNELL:

24 Stoppings, walls.

25 ATTORNEY MEANS:

1 Okay.

2 A. Number 108's way outby the
3 outby here. They used to have a
4 regulator right here. I do remember
5 that they did, they started the shift
6 that day. It seems like they had it
7 cave-in by here that blew some
8 stoppings out, if I remember right.

9 BY MR. O'DONNELL:

10 Q. So that would have been when,
11 around ---?

12 A. That would have been the 14th.
13 That was the day I put it in the
14 book.

15 Q. And that was the day that you
16 were doing your weekly?

17 A. Yes.

18 Q. And what happened?

19 A. If I remember right, when I
20 went in that day, they had had a
21 cave-in or whatever, and there was a
22 stopping on the intake, 94 and 104.
23 It would have been returned once.
24 Would have been two stoppings there
25 which could have been in the area of

1 existed?

2 A. Yes. I found them that day.

3 BY MR. O'DONNELL:

4 Q. Okay. And ---.

5 ATTORNEY MEANS:

6 Do you know when they
7 occurred?

8 A. I don't. They was done on
9 that day when I done that weekly.

10 BY MR. O'DONNELL:

11 Q. So then you had to travel into
12 --- where did you travel to then?

13 A. I traveled 128 to 39.

14 Q. So you made it all the way to
15 128 in number four entry of the north
16 mains?

17 A. Yes.

18 Q. And what did you see there?

19 A. In that area, nothing, until I
20 got to 108.

21 Q. Were there any other return
22 walls that were damaged that you
23 noticed?

24 A. Had there been, they would
25 have been in here.

1 Q. Okay. But something happened
2 in the section, you said, but you
3 weren't sure what it was?

4 A. I don't know. When I done
5 that weekly, I found this right
6 here.

7 Q. Okay. And you said it may
8 have been a cave. Is there any
9 reason that you thought it was a
10 cave?

11 A. I'm not sure what it was.

12 Q. Okay. But something happened?

13 A. Yeah.

14 Q. Was anybody working in the
15 section?

16 ATTORNEY MEANS:

17 When you did your
18 weekly exam.

19 A. I can't remember for sure if
20 there would have been or not.
21 Because I would have walked the
22 return.

23 BY MR. O'DONNELL:

24 Q. You didn't talk to anybody
25 about what happened? They don't tell

1 you?

2 A. I remember coming to this
3 point and seeing them stoppings down.
4 I went and got on the phone and I
5 called the shift foreman, which would
6 have been Gale Anderson, and told
7 him. That would have been his
8 signature right there where it says
9 done. He would have sent people to
10 fix the stoppings.

11 Q. And this was the active
12 working section at that time; is that
13 right?

14 A. Yeah.

15 Q. So therefore, the return was
16 affected?

17 A. Yes.

18 Q. So that would have probably
19 had an effect on mining in the area;
20 right?

21 A. Yes, but obviously, it was
22 prior to when I walked this.

23 Q. Oh, yeah. So you came in that
24 day, you saw damaged stoppings, you
25 called out. Did they tell you to go

1 into the section and investigate it?

2 A. No.

3 Q. So just go ahead in and do
4 your weekly?

5 A. 128 to 39.

6 Q. Do you travel up to number
7 four? Did you drive up into the
8 section and go across to the return?

9 A. I would have come across these
10 seals into --- which there would have
11 been the five seals at that time. I
12 would have had an intake MP point at
13 119 that I had on that side. From
14 there I would have walked the return
15 up to --- which would have been 128,
16 and go back out.

17 Q. No one told you that the
18 section bounced?

19 A. No.

20 Q. Causing everybody to be
21 withdrawn and mining to cease in the
22 area?

23 A. No. See, I start in between
24 them guys.

25 Q. Yes.

1 A. So I usually don't see nobody.

2 Q. The mine foreman didn't say,
3 hey, Foster, watch it when you go up
4 there, the section bounced, closed,
5 and we're not going to work it any
6 more? He didn't tell you?

7 A. No. No.

8 Q. Man. Okay.

9 A. Matter of fact, I'm not real
10 sure that when I called them
11 stoppings out, that they even knew
12 about it before that.

13 Q. Yeah. Did anybody tell you to
14 watch yourself when you go up there?

15 A. They tell me that every day no
16 matter where I go, be careful.

17 Q. You would think when a section
18 bumped closed, though, they would
19 have; right?

20 A. It could have been in between
21 shifts, when people was coming and
22 going. I don't know.

23 Q. Okay. I have another entry
24 that was made in the book here. It
25 would have been on August --- 8/1/07,

1 where --- 147 stopping down. Do you
2 recall that, what happened?

3 A. Yes.

4 ATTORNEY MEANS:

5 Let's mark this as
6 McCarther Exhibit Four, a one-
7 page copy of the weekly
8 examination book for ---

9 A. That would have been that
10 Wednesday before this.

11 ATTORNEY MEANS:

12 --- the week of August
13 4, ending August 4th, '07.

14 (McCarther Exhibit Four
15 marked for
16 identification.)

17 A. The stopping or the top had
18 been laid over.

19 BY MR. O'DONNELL:

20 Q. Which way was it laid over?

21 A. I'd say to the return.

22 Q. Towards you?

23 A. Yes.

24 Q. What would cause that?

25 A. Cave, pressure.

1 Q. Did you see any debris there
2 or ---?

3 A. No.

4 Q. Nothing?

5 A. The timbers even was still
6 standing, no sign of taking the
7 weight.

8 Q. They rebuilt the stopping; is
9 that right?

10 A. That's what it said.

11 Q. Or did you rebuild it?

12 A. I didn't.

13 Q. Okay. Did you ever measure
14 any --- detect any low O2 in that
15 area?

16 A. No.

17 Q. So I guess just according to
18 some of the things that occurred in
19 the north and the south, it seems
20 like based on the information that
21 was recorded in the book, that the
22 conditions were deteriorating; is
23 that right?

24 ATTORNEY MEANS:

25 Can you break that

1 question out into the north
2 versus the south?

3 BY MR. O'DONNELL:

4 Q. Let's just talk about the
5 north.

6 A. Okay.

7 Q. So you said that the
8 conditions were normal the whole time
9 you were there, that ---.

10 A. Normal for a pillar section.

11 Q. Okay.

12 A. You're going to get rib
13 sloughage and whatnot.

14 Q. Is it normal to blow out
15 stoppings 800 feet outby?

16 A. No.

17 Q. Okay. But in the south end,
18 let's go to the south, the 147
19 crosscut, would that be normal in
20 that area?

21 A. Just one stopping, I'd say
22 yes, if your top had hung up for a
23 while and then come down.

24 Q. Compared to other areas of the
25 mine that you traveled, would you say

1 that the area of the west mains',
2 north mains', south mains' bleeder
3 --- or barrier pillars was different
4 than other areas of the mine?

5 A. Well, when they started
6 pulling, you'd get sloughage back on
7 the ribs or whatnot, whereas when
8 you're down here not mining, why, you
9 don't want to get that. And that's
10 where it's pillared.

11 Q. Did it concern you at all that
12 the conditions were that the ground
13 and rib conditions were getting ---
14 they were changing? Did it concern
15 you at all?

16 A. No. I had six-inch, and that
17 don't take much of the heave or
18 whatever, cause that much ---.

19 Q. But you said earlier, you said
20 that you thought that it was --- when
21 I asked you what caused this, you
22 said it was because this was pillared
23 and that was pillared and this was in
24 the middle. I mean, did you think
25 maybe that was an area of your

1 concern? I mean, because you said
2 there was an area of concern. Were
3 you more cautious?

4 A. Yes.

5 Q. Okay. So you were concerned
6 that there may be problems in the
7 area; is that right?

8 A. I was more alert, yes.

9 Q. Okay. But you said you didn't
10 hear any bumps or bounces in the
11 area?

12 A. Bumps and bounces, no. When
13 you'd go up here, you'd hear the top
14 cracking. You're going to hear that
15 when you're pulling. The top's got
16 to give somehow.

17 Q. So you did hear some roof
18 activity; is that right?

19 A. Yes.

20 Q. And ground?

21 A. I would think it was more roof
22 rock fraction, cracking.

23 Q. Okay. And you said earlier
24 that you said a bounce was a release
25 of pressure?

1 A. Yes.

2 Q. So when you were in the south
3 mains pillar section, you heard that
4 release of pressure?

5 A. Yeah.

6 Q. Okay.

7 A. Small ones, but nothing
8 that ---.

9 Q. But it was occurring?

10 A. Yeah. When you're pulling
11 pillars away, you're going to have
12 some of that.

13 Q. Did you hear any outby the
14 pillar line?

15 A. You're going to hear that, but
16 you're not really sure just where
17 it's coming from.

18 Q. Let's jump back up to the
19 north now. Now, we had this release
20 of pressure going on in the south.
21 Did you have that same kind of
22 release of pressure happening in the
23 north barrier, even though it may
24 have been small?

25 A. You're asking me to think way

1 back when on all this stuff rolled
2 together there for the two weeks.

3 Q. Yeah. I would think, though,
4 that --- you said because you felt
5 that it was an area that gave you
6 more concern, that you may have been
7 more alert to those.

8 A. I was more on my toes on both
9 of them.

10 Q. Okay.

11 A. The fact that they was pulling
12 the pillars and --- I would have
13 preferred that they pulled all three
14 rows so I didn't have to walk up
15 there.

16 Q. You don't like walking up
17 there; did you?

18 A. Would you? Somebody approved
19 it, so I did.

20 Q. Well, it's approved to a
21 point. You would have to decide if
22 it's safe to travel.

23 A. The last time I was there,
24 why, it was standing better than it
25 was in the intake here.

1 Q. So there were some changes
2 then? The change was on the barrier
3 pillar side then?

4 A. A little more of a change.

5 Q. Okay. Is there any reason ---
6 this is the north barrier. Let me
7 jump back. Here's one of the cards I
8 didn't read. Is there any reason why
9 they put the evaluation point at
10 crosscut 125?

11 A. Where's that sheet you had
12 there with the area that you're
13 talking about? It was in one of them
14 weekly ---.

15 ATTORNEY MEANS:

16 Could we go back to
17 clarify? Foster, where did
18 you say there was a small
19 change or some change on the
20 barrier side?

21 A. Just outby where they was
22 mining in here. They would have been
23 mining --- where's your map of where
24 they was mining?

25 BY MR. O'DONNELL:

1 Q. That would be ---.

2 A. They would have pulled past
3 this and then they skipped that row.

4 ATTORNEY MEANS:

5 Out by the dogleg?

6 A. Yes.

7 MR. O'DONNELL:

8 At crosscut 138,
9 somewhere in there.

10 ATTORNEY MEANS:

11 When did you notice
12 this change?

13 A. That Wednesday before when I
14 went in that empty point.

15 ATTORNEY MEANS:

16 And how was it
17 manifested? What did you
18 notice?

19 A. Just getting a little bit more
20 rib sloughage.

21 ATTORNEY MEANS:

22 Thank you.

23 BY MR. O'DONNELL:

24 Q. Okay. We'll go back up to the
25 north. They moved evaluation point

1 to 125. Why did they do that?

2 A. I don't know if it was 125. I
3 can't remember. Gary Peacock had
4 done all that. But it says right
5 there his oxygen was dropping to
6 19.8.

7 Q. Yeah. He put 19.8 in there.
8 So then the evaluation point was at
9 125 then the next time you were
10 there; is that right?

11 A. I'm not sure. It would have
12 been 128 to where I walked from.

13 Q. Okay. So you got to 128, but
14 he moved the point to 125. I'm just
15 wondering if it was because of bad
16 roof or water or the entry was full
17 of coal.

18 A. Yeah. When did we determine
19 it was moved to 125?

20 ATTORNEY MEANS:

21 You know, I'm concerned
22 --- we're over time and I'm
23 concerned the next witness
24 might have to leave. So can
25 we take a break and then see

1 A. It says, area, I believe it
2 says 130, as near as I can tell, inby
3 not safe to travel.

4 Q. Okay. But you looked at it;
5 right? I stop at 128 crosscut.

6 A. He would have had it dangered
7 off.

8 Q. What did you see?

9 A. Danger tape across there.

10 Q. And what about past that? Was
11 the entry full of coal, was the roof
12 down? I don't know. I'm just
13 asking. There was some reason why we
14 stop.

15 A. Oh, I don't know. It would
16 have been some reason that Gary would
17 have ---.

18 Q. Did he tell you?

19 A. Well, oxygen right there,
20 telling me that it's dropping inby
21 there for whatever reason.

22 Q. I just want to know, was it
23 bounced all the way back to 128 where
24 you couldn't get in because of the
25 coal? That's what I'm trying to find

1 out.

2 A. It would have been good to
3 128.

4 Q. Yeah. So inby there, is that
5 where it was bounced?

6 A. I wasn't inby there.

7 Q. But I mean, here's the tape,
8 I'm looking over the tape.

9 A. When I went to that point, I
10 can see inby there.

11 Q. You could?

12 A. Yes.

13 Q. Was there coal on the roadway?

14 A. No, no. Clear back in March
15 trying to remember, and I don't
16 remember.

17 Q. Okay. All right. But it was
18 pretty eventful that whatever
19 happened would cause the section to
20 stop and the mine foreman to say,
21 don't go inby 128, and walls to be
22 blown out. And I would think that
23 --- I'd be curious.

24 A. Gary done this --- it would
25 have been on a Tuesday. That's the

1 day before I do my weekly. Why he
2 was in there checking, I don't know.
3 I don't how he come up with it, not
4 safe to travel.

5 Q. I think it was odd, though,
6 don't you, that something happened?

7 A. Yeah.

8 Q. Okay. Foster, do you keep
9 notes at all of what you do?

10 A. Every note I keep would be
11 just what I put in this book.

12 Q. You don't have a notebook or
13 anything that you keep notes on?

14 A. It would just be the stuff
15 here, what I write in the notebook.

16 Q. Do you have a notebook?

17 A. Yeah, but it's not with me,
18 no.

19 Q. Okay. Would it be possible if
20 we could have a copy of your
21 notebook?

22 A. Sure. But it just would be
23 what's right here.

24 Q. Thank you. So whenever you
25 put a hazard in the book, what do you

1 define as a hazard?

2 A. Something that can hurt
3 someone.

4 Q. Something that can hurt
5 someone. So that's when you make an
6 entry into the book?

7 A. Yeah.

8 Q. Okay. So there was something
9 inby 128 that could hurt somebody?

10 A. I didn't put that in the book.

11 Q. Well, I mean --- but he did?

12 A. I don't know what his
13 definition of that is.

14 Q. But it was dangered off?

15 A. Yes.

16 Q. So he was thinking about your
17 safety; right?

18 A. Yes.

19 Q. Okay.

20 MR. O'DONNELL:

21 Let's just go off the
22 record for one moment.

23 OFF RECORD DISCUSSION

24 MR. O'DONNELL:

25 Back on the record.

1 BY MR. O'DONNELL:

2 Q. Foster, where do you keep your
3 record book, your personal notebook?

4 A. I'd have to go look right now.
5 You don't know how many times we've
6 moved from bathhouse to bathhouse to
7 new mine in the last while. I'd have
8 to dig around and see.

9 Q. Okay. And we would like to
10 have a copy of that book.

11 A. That's no problem.

12 Q. Okay. Thank you. All right.
13 What kind of detector do you use?

14 A. An LTX311.

15 Q. Okay. And when's the last
16 time you had annual retraining?

17 A. Well, pretty much last Friday.

18 Q. Before that?

19 A. You've got all them records.
20 It would have been, oh, it was one of
21 the only Saturdays I'd worked before
22 the --- the only Saturday I worked
23 this year before then.

24 Q. Okay.

25 A. I believe it was in January.

1 Q. All right. In January. Have
2 you given a written statement or an
3 interview to anyone before this
4 interview regarding the accident?

5 A. No.

6 Q. Has anyone offered you
7 anything or made any promise to you
8 in exchange for you to appear or not
9 to appear here?

10 A. No.

11 Q. Do you have anything that
12 you'd like to add that may be
13 relevant to the investigation?

14 A. No.

15 MR. O'DONNELL:

16 On behalf of MSHA, I
17 want to thank you for
18 appearing and answering
19 questions today. Your
20 cooperation is very important
21 to the investigation as we
22 work to determine the cause of
23 the accident.

24 We ask that you not
25 discuss your testimony with

1 any person who may have
2 already been interviewed or
3 may be interviewed in the
4 future. This will ensure that
5 we obtain everyone's
6 independent recollection of
7 the events surrounding the
8 accident.

9 After questioning other
10 witnesses, we may call you if
11 we have any follow-up
12 questions that we feel we may
13 need to ask you. If at any
14 time you have additional
15 information regarding the
16 accident that you'd like to
17 provide us, please contact us
18 at the contact information we
19 gave you earlier.

20 The Mine Act provides
21 certain protections to miners
22 who provide information to
23 MSHA, and as a result, are
24 treated adversely. If at any
25 time you believe that you've

1 been treated unfairly because
2 of your cooperation in this
3 investigation, you should
4 immediately notify us.

5 If you wish, you may
6 now go back over any answer
7 you have given during the
8 interview and you may also
9 make a statement that you
10 would like to make at this
11 time.

12 A. No.

13 MR. O'DONNELL:

14 Okay.

15 A. It was five o'clock yesterday
16 morning when I got up, and I'm ready
17 for bed.

18 MR. O'DONNELL:

19 Foster, thanks for
20 coming forward. We appreciate
21 it. Thanks for your help.

22 * * * * *

23 STATEMENT CONCLUDED AT 10:15 A.M.

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