

STATEMENT UNDER OATH

OF

JOSE LUIS PAYAN

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 Tuesday, October 30, 2007 beginning at 1:28 p.m.

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Juanito Patino, Interpreter

INDEX

1		
2		
3	INTRODUCTION	7 - 12
4	WITNESS: JOSE LUIS PAYAN	
5	QUESTIONS	
6	By Mr. O'Donnell	12 - 77
7	CONCLUDING REMARKS	77 - 79
8	QUESTIONS	
9	By Attorney Mortensen	79 - 80
10	CERTIFICATE	81
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBIT PAGE

PAGE

NUMBER DESCRIPTION IDENTIFIED

NONE OFFERED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
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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 & Health Administration (MSHA), an agency of the United States Department of Labor. With me is Derek Baxter, with the Solicitor's Office, and Sherrie Hayashi, with the Utah Commission of Labor. We will be conducting the questioning 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 2007. The investigation is being

1 conducted by MSHA under
2 Section 103(a) of the Federal
3 Mine Safety & 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. And your statement
19 may 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 your
25 representative at any time.

1 Your statement is completely
2 voluntary. You may refuse to
3 answer any question. You can
4 terminate your interview at
5 any time. And if you need a
6 break, just ask for it. This
7 isn't an adversarial
8 proceeding, so formal cross-
9 examination will not be
10 permitted; however, your
11 personal representative may
12 ask clarifying questions as
13 appropriate.

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

24 And I would like to
25 thank you in advance for your

1 appearance here today. We
2 appreciate your assistance in
3 the investigation. Your
4 cooperation is critical in
5 making the nation's mines
6 safer.

7 After we have finished
8 asking questions, you will
9 have an opportunity to make a
10 statement and provide us with
11 any other information that you
12 believe to be important. If
13 at any time after the
14 interview you recall any
15 additional information that
16 you believe might be useful,
17 please contact Mr. Richard
18 Gates at the telephone number
19 and email address that I gave
20 you on that card there.

21 Ms. Kirkwood, would you
22 swear in the witness?

23 MS. KIRKWOOD:

24 Please raise your right
25 hand.

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JOSE LUIS PAYAN, HAVING FIRST BEEN
DULY SWORN, TESTIFIED AS FOLLOWS:

MR. BAXTER:

Could you please answer
yes or no so we can hear your
answer?

A. Yes.

MR. O'DONNELL:

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

MS. KIRKWOOD:

I am.

MR. O'DONNELL:

And when does your
commission expire?

MS. KIRKWOOD:

August 15th, 2008.

MR. O'DONNELL:

Have you sworn in Mr.
Payan?

MS. KIRKWOOD:

I have.

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MR. O'DONNELL:

Will you please swear
in the interpreter?

JUANITA PATINO, INTERPRETER, CALLED
AND SWORN

BY MR. O'DONNELL:

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

A. Jose Luis Payan, (b) (7)(C)
(b) (7)(C) .

Q. Mr. Payan, do you have any
questions about the interview process
as I described it?

A. No.

Q. Do you have a personal
representative with you today?

A. Yes.

MR. O'DONNELL:

Would your personal
representative identify
himself by name and address
for the record.

ATTORNEY MORTENSEN:

1 Alan Mortensen, from
2 the Law Firm of Dewsnap, King
3 & Olsen, 36 South State
4 Street, Suite 2400, Salt Lake
5 City, Utah, 84111, personal
6 representative and attorney
7 for Jose Luis Payan.

8 MR. O'DONNELL:

9 Mr. Mortensen, would
10 you state whether --- for the
11 record, whether you represent
12 the mine operator in these
13 matters?

14 ATTORNEY MORTENSEN:

15 I do not represent the
16 mine operator. I represent
17 solo --- I only represent Jose
18 Luis Payan.

19 MR. O'DONNELL:

20 Thank you.

21 BY MR. O'DONNELL:

22 Q. Luis, are you appearing here
23 voluntarily today?

24 A. Yes.

25 Q. And how many years of mining

1 experience do you have?

2 A. Nine.

3 Q. Okay. And just give us a
4 brief description of your coal mine
5 employment history.

6 A. I started at the co-op in
7 1998. I worked there until 2003,
8 then I got a job with Andalex. And
9 I've been working there since then,
10 doing the miner operator job.

11 Q. Okay. So your whole time was
12 there then?

13 A. Yeah.

14 Q. Okay.

15 A. Well, I started at the Tower
16 Mine, ---

17 Q. Okay.

18 A. --- then they sent me over to
19 Genwal. I was there for like
20 probably around three years or so.

21 Q. Okay. And you were a miner
22 operator you said; right?

23 A. Uh-huh (yes).

24 ATTORNEY MORTENSEN:

25 Just so the record is

1 clear, instead of saying uh-
2 huh or uh-uh, please say yes
3 or no.

4 A. Yes.

5 MR. BAXTER:

6 And maybe I guess we
7 should just clarify, do you
8 want to use the interpreter?
9 I know you're responding in
10 English now to the questions.

11 A. If you want, I can talk in
12 Spanish, too. It doesn't matter.
13 It's good to have an interpreter here
14 because if I'm having trouble with my
15 English or something, I can ask her
16 something.

17 BY MR. O'DONNELL:

18 Q. If you feel like you need ---
19 if you don't understand, then we'll
20 go with the interpreter. How does
21 that sound?

22 A. Okay.

23 Q. Very good. Thank you. Let's
24 see. Do you have any mining
25 certificates, Luis, miner's papers,

1 foreman papers?

2 A. No.

3 Q. Okay.

4 A. I got my training and my paper
5 for checking methane and stuff, but I
6 don't have no foreman or nothing.

7 Q. How long have you been a
8 miner, a continuous miner operator?

9 A. Probably since --- probably
10 '98 or so.

11 Q. Okay. And what was your shift
12 --- what shift did you work before
13 the accident?

14 A. Before the accident?

15 Q. Yeah.

16 A. I was on graveyard.

17 Q. Okay. Were you on the four on
18 and three off shift?

19 A. Yeah.

20 Q. So you were at what stage of
21 the --- was this your last day to
22 work or were you just beginning?

23 A. We worked Thursday, the week
24 before that happened.

25 Q. Okay.

1 A. We were supposed to come back
2 down Monday morning to start
3 dayshift, and I was there that
4 morning when that happened.

5 Q. Okay. So if you would, how
6 about walking me through the day of
7 the accident, what you did, where you
8 went, what you saw.

9 A. I showed up for work again,
10 like I normally do in the morning,
11 and they --- I went all the way to
12 the mine door and they told me they
13 had a collapse in the mine. I called
14 my family back and I went back home
15 to take care of my family. And they
16 wouldn't let me go back in the mine
17 for nothing, so ---.

18 Q. So you didn't go in the mine
19 anymore?

20 A. Uh-uh (no).

21 ATTORNEY MORTENSEN:

22 No?

23 A. No.

24 BY MR. O'DONNELL:

25 Q. And have you returned to

1 mining?

2 A. No.

3 Q. You don't work in the mining
4 industry at all anymore?

5 A. I do right now, but I barely
6 started.

7 Q. Where at?

8 A. At --- it's the same company,
9 but the West Ridge Mine.

10 Q. Oh, okay. If you would, the
11 last day that you worked on the
12 section, could you tell me ---? I
13 have a map over here that I'd like to
14 lay out and just kind of get a feel
15 of where you were mining the last day
16 that you worked, which would have
17 been the Thursday before the
18 accident; right?

19 A. Uh-huh (yes).

20 Q. This was taken from the
21 AutoCAD files that the company
22 provided to us so we can reproduce
23 this map. Are you familiar, Luis,
24 with this section map?

25 A. Yeah. But I can't really tell

1 --- well, yeah. I can at the last
2 day we worked. I know we were on the
3 belt line that day. This entry right
4 here it would be.

5 Q. Let me get my glasses. See,
6 they don't know where we're at, so we
7 have to say what crosscut and what
8 entry, too; okay?

9 A. All right.

10 Q. And I have some pencils here
11 that we can use to mark. So you were
12 in the Number One entry?

13 A. Number Two.

14 Q. Number Two entry?

15 A. Uh-huh (yes).

16 Q. And do you have any --- could
17 you remember where you were at?

18 A. Let's see. I can't really
19 tell.

20 Q. Okay.

21 A. I know we were in this entry
22 right here, but I can't remember if
23 it was this place right here.

24 Q. Which is around 143 or 144?

25 A. 144. You know, we was cutting

1 this side right here.

2 Q. That would be the right side
3 --- the north side of the --- in the
4 Number Two entry. Okay.

5 A. That was the last place we
6 mined, when we went home that day.

7 Q. Okay. Let me just ask you
8 some general questions about how you
9 mined in the section. All right?
10 Coming out of the section, all right,
11 just show me in this area here how
12 you would mine that by taking the
13 cuts with the ---.

14 A. With the miner?

15 Q. Yeah. You can mark on that.

16 A. We usually would start on this
17 end right here. We set two MRSs
18 right here at the very end of the
19 pillar.

20 Q. Okay.

21 A. And we cut the right side
22 first, take away from the right side,
23 going like ---.

24 Q. Could you mark it with that
25 pen there?

1 WITNESS COMPLIES

2 A. Go like this area over here.

3 BY MR. O'DONNELL:

4 Q. Okay.

5 A. Then all this. Then we set
6 our MRSS kind of like at an
7 angle, ---

8 Q. Okay.

9 A. --- and you cut this other
10 side.

11 Q. Now, when you took your
12 barrier, how deep of a cut did you
13 take?

14 A. Well, it wasn't --- the top
15 wasn't in very good condition right
16 here. We was only taking like
17 probably --- if you get lucky, you
18 could take like 30 feet, so all the
19 way down 30, 40 feet.

20 Q. What were the conditions like?

21 A. It was pretty heavy. It was
22 bouncing. The rib was blowing up.
23 And it was pretty heavy.

24 Q. Was it?

25 A. And the top was pretty solid,

1 but the ribs and everything was blown
2 out all the time.

3 Q. Was it throwing coal a lot ---

4 A. Yeah.

5 Q. --- or was it sloughing?

6 A. It was blowing into the
7 entries and stuff, yeah.

8 Q. Okay. So let's just get back
9 to this, and then we'll jump back
10 into some of that. So you took ---
11 when you took your barrier pillar
12 cuts, were you taking single lifts?

13 A. Single lifts?

14 Q. Single miner lifts? Or did
15 you take like a regular full cut?

16 A. It's kind of like when you're
17 making a crosscut, kind of like that,
18 and you make your turn, start your
19 turn probably about right like that.
20 You start your turn and after you
21 make your turn and go --- you want to
22 go this way, you start turning this
23 corner.

24 Q. And left the peg on the right?

25 A. Yeah.

1 Q. Did you leave the peg on the
2 right?

3 A. Yeah.

4 Q. Okay. So then you would ---
5 then what would you do?

6 A. You work the other side again.

7 Q. Did you take --- where did you
8 take the bottom coal at?

9 A. Bottom coal?

10 Q. Yes.

11 A. Everywhere I can.

12 Q. Everywhere you could?

13 A. Yeah.

14 Q. Was that common everywhere you
15 pillared that you would take the
16 bottom coal? I mean, whether you
17 were mining in the north or the
18 south, anywhere you were at ---?
19 Well, here you left top coal; right?

20 There wasn't any bottom coal?

21 A. The north side, no. There
22 were some places where you had some
23 bottom coal.

24 Q. Okay. But if I had bottom
25 coal here, where would I take it?

1 Would I take it on the straights,
2 too?

3 A. Yeah. Well, what I do all the
4 time, as soon as I start my turn, I
5 start going down on the floor.

6 Q. But I mean, you would make
7 your bend down into your pillar
8 split; right? You would take the
9 bottom there? But could you take it
10 on a straight, where the MRS was?

11 A. No.

12 Q. Okay. That's what I was
13 trying to get at.

14 A. No, we wouldn't do that
15 because the MRSS wasn't very high or
16 nothing, which is ---. Keep the
17 height for them.

18 Q. And you left the bottom to get
19 them out; right?

20 A. We just tried to get the floor
21 coal in this area right here inside
22 the pillar.

23 Q. Right. And the same way on
24 the right side?

25 A. Yeah. You took the floor coal

1 there, okay. So there was never any
2 occasion, tell me if I'm wrong, where
3 you would take the bottom coal out of
4 the entries, straight entries?

5 A. No. Pretty much I wouldn't do
6 that. But sometimes when you're
7 finished with this part right here,
8 you go to the next one, this pillar
9 right here gets so bad in there, we
10 have to get the miner in there and
11 probably cut a little bit of floors
12 just to get some room for the MRSs.
13 But we won't cut it all.

14 Q. Just enough to ---?

15 A. Just enough to get in there.

16 Q. Okay. And that's the process
17 you used, ---

18 A. Uh-huh (yes).

19 Q. --- right, left, right, left?
20 When you got out to your crosscut,
21 did you take your last ---?

22 A. No. You took your last one
23 straight.

24 Q. Okay.

25 A. When you cut this one, you had

1 some timbers on that side, too.

2 Q. Right. And then you move your
3 miner over, move the MRS out, and go
4 straight up to it; right?

5 A. And you use four of them MRSs,
6 two right here and two right here.

7 Q. Okay. But you would jump
8 them?

9 A. Yeah.

10 Q. Now, you were involved in the
11 development of the south main; right?

12 A. (Indicates yes).

13 ATTORNEY MORTENSEN:

14 That's a yes?

15 A. Yes.

16 BY MR. O'DONNELL:

17 Q. During your development of the
18 south main barrier block, was there
19 anything --- what can you tell me
20 about the development of that block?

21 A. Well, I was getting employed
22 in this area right here, between 120
23 to 140, because it was bouncing. You
24 know, when you're developing in other
25 areas, you don't see that much weight

1 like you had right there. And the
2 ribs, you know, was blowing up and
3 all that. It was kind of scary.

4 Q. Between where now?

5 A. About 120 to 147, 148,
6 something like that. After you
7 passed this area right here, it
8 settled down more.

9 Q. And you're pointing to the 142
10 area?

11 A. Yeah, somewhere around here.

12 Q. So in this area here, it is
13 different than other areas?

14 A. It was a lot different in this
15 area right here than what it was back
16 here.

17 Q. Okay. And you're saying the
18 pillar pressure got heavy?

19 A. Yeah, real heavy.

20 Q. Were you getting many bounces?

21 A. Yeah, usually --- it wasn't
22 real bad when you would go in on the
23 straight. But after you started
24 cutting the crosscut, it was getting
25 real bad, bouncing and blowing the

1 ribs and all that.

2 Q. Just for clarification, so
3 everybody understands what you mean
4 by a bounce, tell me what a bounce
5 is.

6 A. A bounce, a bump or whatever
7 you want to call it, like big, loud
8 noise, boom. It blows the ribs and
9 everything.

10 Q. And it threw coal?

11 A. Yeah.

12 Q. Did it heave the bottom up,
13 throw bottom coal, too?

14 A. Well, there was actually a
15 couple places right here where you
16 make the turns, a lot of people had a
17 lot of troubles going --- making the
18 turn because every time you tried to
19 turn, that miner would just sink down
20 because the floor was broken up and
21 stuff.

22 Q. So it would crumble and the
23 Cats would spin?

24 A. Yeah.

25 Q. Okay. Through this area here,

1 I mean, was it different than other
2 areas that you mined?

3 A. Yeah.

4 Q. So did anybody say anything?
5 Did they have concern over the
6 conditions because of the --- it was
7 a deep cover area; right?

8 A. Yeah. That's what they told
9 us. There's a lot of weight in
10 there, but everything will be all
11 right, is what they told us, and just
12 keep going.

13 Q. They is who?

14 A. A lot of people talked about
15 it.

16 Q. Okay.

17 A. People that had more
18 experience, like bosses and stuff. I
19 just talked to them and they said,
20 yeah, it's going to be a lot of
21 heavier right there. Hopefully,
22 nobody will get hurt and we'll get
23 through it.

24 Q. Did the coal cut easier?

25 A. No. Actually, all the coal

1 was pretty much the same. But in
2 this area right here, like I was
3 saying, when you --- it seemed like
4 you're taking a little bit of coal in
5 the floor or you're cutting the face,
6 and it seemed like it had too much
7 weight because every time you tried
8 to cut, that would just blow out
9 through the miner and stuff.

10 Q. And that was in the 132 area,
11 130?

12 A. That was in the whole ---
13 pretty much the whole area right
14 here, in this part. It was probably
15 a little bit less in this end right
16 here and probably a little bit less
17 in this other area. But all right
18 here was pretty heavy.

19 Q. Did you have any hits that
20 were strong enough where it filled
21 the entries in or covered the machine
22 up or stopped you from mining?

23 A. When I'd break a crosscut,
24 sometimes it blew up and covered the
25 sides of the miner. I'd have to get

1 out and clean up again. But it
2 wasn't real bad going in. I mean,
3 after you're going in, there were a
4 couple entries right here that were
5 pretty bad, that have too much coal
6 in the entry where people can't park
7 a trailer or nothing in there. They
8 have to clean it before they park
9 something.

10 Q. And every time you're saying
11 here, you're talking about in that
12 middle high cover area?

13 A. Yeah, all this.

14 Q. Okay. So you developed it all
15 the way out. You say around 140 or
16 so it started to quiet down a bit?

17 A. Yeah.

18 Q. Then you started to pillar
19 then. Tell me about when you began
20 pillaring, how conditions changed, if
21 they did.

22 A. It was pretty good, all this
23 area right here, since we started
24 because I worked on this section the
25 whole time.

1 Q. Okay.

2 A. So we started right here and
3 we started pulling. About this area
4 right here ---.

5 Q. Which is what crosscut, Luis?

6 A. Probably 145 or somewhere in
7 there. It was taking more weight.
8 It was --- you could feel it. When
9 you're running the miner, you know
10 when it's taking a little bit more
11 weight and stuff because it bounces
12 harder and all that. All this part
13 right here, we would pull pillars and
14 it was pretty good. It was having
15 pretty good caves and everything, so
16 it doesn't have very much pressure in
17 the back.

18 But when we passed this
19 --- actually, that day that we mined,
20 the last day that we mined right
21 here, I think it was right here, it
22 bounced pretty hard. And we set a
23 couple trees. I don't know if
24 somebody told you, we actually put
25 some trees on the right side, where

1 the miner operator was, and built
2 them two ---. We set two trees just
3 around the corner where I was going
4 to be standing, and then it blew them
5 two right in half and blew the whole
6 rib off. I have to --- we were
7 having some troubles getting the
8 miner out of there because it was too
9 much sloughage, coal.

10 Q. That's in that Number Two
11 entry where you said you were
12 mining, ---

13 A. Yeah.

14 Q. --- in 140 --- what is it, 142
15 or so?

16 A. Yeah. I'm not real sure I can
17 say, but I'm pretty sure it was in
18 this area right here because them
19 guys mined all this all three days.
20 I think it was about right in here
21 somewhere. I would have to take the
22 miner out and come back and clean the
23 whole entry. After I cleaned the
24 whole entry, the entry was about 25
25 feet wide, so we started setting

1 trees on the side because it was too
2 wide.

3 Q. On the operator's side?

4 A. Yeah. That's when we left and
5 went home.

6 Q. About how long did it take you
7 to clean that up? I mean, were you
8 down ---?

9 A. That was probably four cars,
10 I'd say, three or four cars.

11 Q. So half an hour?

12 A. Yeah. It wouldn't take very
13 long.

14 Q. Okay.

15 A. There wasn't a lot of coal in
16 there.

17 Q. Did the bottom heave anywhere
18 in there?

19 A. Well, it was right here. And
20 the shuttle car, I can remember where
21 they have the feeder breaker,
22 somewhere around here.

23 Q. Which is where, about 140?

24 A. I can't really tell. I can't
25 really tell for sure, but I know them

1 shuttle cars usually would come
2 around this. One of them left and
3 run straight up in the belt line.

4 Q. Okay.

5 A. And the other one has to go
6 around Number One entry and go back
7 the Number Two to get to the miner.

8 Q. They switched at the last
9 crosscut?

10 A. Yeah.

11 Q. Okay.

12 A. And they have a lot of trouble
13 in this area right here because the
14 floor was breaking up. And there was
15 a waterhole right here somewhere.

16 Q. And that's between 140 what?
17 I can't see without my glasses.

18 A. I can't really tell for sure,
19 but they had a lot of trouble because
20 with the water and the floor was ---
21 keep breaking up and the shuttle car
22 was getting stuck in there. The
23 other shift had a lot of trouble.
24 They had to pull it with the miner,
25 bring the miner back and ---.

1 Q. And those conditions, were
2 they a lot different than what you
3 had been experiencing?

4 A. Yeah. I never had a --- well,
5 you're in a coal mine, you learn
6 something new sometimes. You never
7 have all the experience you need.

8 Q. Right.

9 A. But it feels to me like after
10 I seen all this and I talked to a lot
11 of my buddies, and they said there's
12 too much weight, the floor is heaving
13 up in all this area, in the belt
14 lines and all that. He said,
15 hopefully somebody shuts this place
16 done and move us over into this side,
17 the north side was not so heavy, and
18 we can start pulling pillars.

19 Q. So that was the talk, then,
20 you expected to get pulled out of
21 there?

22 A. Yeah.

23 Q. Just another question while
24 I'm thinking about it. When you had
25 the heavier hits in the 142 area up

1 there, did you ever notice that the
2 roof separated from the top of the
3 pillar or there was a gap?

4 A. Yeah, there was.

5 Q. After that bounce and up here,
6 where I tell you we have to set them
7 trees, there was a gap on top,
8 probably this height, probably ten
9 feet inside of the pillar.

10 Q. Have you ever seen that happen
11 before?

12 A. Yeah.

13 Q. You did? Where did you see
14 that before?

15 A. This other side.

16 Q. The north side?

17 A. Yeah.

18 Q. So was it in just one block?
19 Was it --- which side was it up
20 there?

21 A. It was about this corner right
22 here. It blew out the whole rib
23 right here, and you can see that gap
24 on top in this corner right here.

25 Q. Okay. That's in 141? Are you

1 sure that that's ---?

2 A. I can't really say for sure
3 this area right here. I know I was
4 here when that happened. We was
5 cutting this side right here. I was
6 cutting that area right there.

7 Q. And you're referring to the
8 block to the right of the Number Two
9 entry?

10 A. Yeah. The gap was about right
11 here, in this area right here, about
12 right there.

13 Q. So it would be the outby
14 corner, the south corner?

15 A. Uh-huh (yes).

16 Q. The outby south corner. And
17 that whole corner, is that what ---
18 tell me about that. You were in
19 there when it happened?

20 A. I didn't even have a chance.
21 I was standing right here in this
22 corner. I set them trees right here.
23 It was me and my boss right there.
24 And that rib blew up, it covered my
25 whole legs, about to the middle of my

1 body, all the way down. I didn't get
2 buried or nothing, but I got hit with
3 the rib, and they helped me out to
4 get out of there. And then they have
5 to get the miner cable that was all
6 buried right here in that rib.

7 Q. That's on the north side of
8 the Number Two entry?

9 A. Yeah, right here. It was all
10 right there. I thought we were going
11 to have to get a scoop or something
12 to clean all this before we get the
13 cable out, so we have to wait for the
14 miner ---. But we just backed out
15 the miner and pulled the cable out at
16 the same time. We didn't have no
17 trouble.

18 Q. And that's when you backed up
19 and had to cleaned up four cars?

20 A. Yeah. That's when we cleaned
21 that whole entry, cleaned all this.
22 And after we cleaned all this, we was
23 getting ready to set trees on the
24 right side again. That's when we
25 went home.

1 Q. So it snapped the post right
2 in half?

3 A. Yeah.

4 Q. And how many posts did it
5 break in half?

6 A. Two. We only set two of them
7 right there.

8 Q. And you say you got covered up
9 with coal?

10 A. Yeah. It just knocked me
11 down. I was standing right against
12 the rib. It just threw me down and I
13 had some coal on my back, but it
14 didn't hurt me or nothing.

15 Q. Who was the boss?

16 A. Josh Fielder.

17 Q. And did he get knocked over,
18 too?

19 A. No. He was probably --- he
20 was a little bit farther away, but he
21 was in the middle of the entry.

22 Q. Have you experienced that
23 before?

24 A. Yeah.

25 Q. Where at?

1 A. Some places where we pulled
2 pillars. We pulled pillars the whole
3 --- the whole time I've been in this
4 mine we've been pulling pillars.

5 Q. Okay.

6 A. So we was in other areas where
7 it just bounced and blew a lot of
8 coal, but not that often or nothing,
9 just more or less every week or so.

10 Q. So this was your last shift
11 before you worked and that stuff was
12 happening?

13 A. Uh-huh (yes).

14 Q. And did --- management was
15 there. Did they say or do anything
16 that would --- they said, hey, we're
17 going to stop mining, we're going to
18 take a look at this?

19 A. All they said is just ---
20 well, what they told me at the time,
21 we're going to --- brought the miner
22 out, clean 'em up and set trees and
23 try it again. They didn't say try it
24 again or nothing, but we was going to
25 try it again. Actually, the next

1 shift had come in and they went in
2 there and tried to do it again. They
3 didn't say we're going to stop and
4 look at it or nothing.

5 Q. Nothing changed?

6 A. Uh-uh (no). Nothing.

7 Q. Let me switch gears here and
8 take you into the north barrier.
9 Luis, were you involved in the
10 development of the north barrier?

11 A. Yeah.

12 Q. Let's talk about that
13 development. How was that compared
14 to development in the south barrier
15 block?

16 A. I had been pulling pillars.
17 And I wasn't scared or nothing, than
18 what I was on this other side. I was
19 more scared on this side right here
20 than what I would have been ---.

21 Q. But when you were driving this
22 --- you talked about how heavy it got
23 in the middle here.

24 A. Uh-huh (yes).

25 Q. Did that happen up here, too?

1 A. Not too much. It was --- you
2 have some weight, but I mean, the
3 coal was pretty soft and stuff, but
4 it wasn't blowing up like I told you
5 right here.

6 Q. So there was a noticeable
7 difference between driving the north
8 barrier pillar than the south barrier
9 pillar ---

10 A. Yeah. Yes.

11 Q. --- in the deep cover area?

12 A. Uh-huh (yes).

13 Q. Okay. So I see that the
14 section stopped. There's a reason
15 why it wasn't advanced to the end of
16 the barrier block?

17 A. Yeah. We was finding a lot of
18 water in there, and they had some
19 troubles getting some pumps and all
20 that. And we can --- actually, the
21 top one --- bad in that area right
22 there, too, I think is what it was.

23 Q. Okay. In that area, did you
24 --- we talked about it earlier.

25 There was --- you left top coal in

1 part of the mine in the north, didn't
2 you?

3 A. Uh-huh (yes).

4 Q. Where did you leave the top
5 coal at?

6 A. I can't really tell because we
7 did it a couple times because the top
8 was getting kind of bad. We left
9 like probably a foot of coal on top
10 or so, and they have to put a bigger
11 bolt. But as soon as we came, we
12 tried to go back on the rock dump so
13 they don't have to use them
14 six-footers and use the five-footers.

15 Q. And the reason you left the
16 top coal was to try to control the
17 roof?

18 A. Yeah.

19 Q. Okay. Let's talk about when
20 you began pillaring the north barrier
21 pillar. How was that compared to
22 pulling the south barrier?

23 A. It wasn't --- it was getting
24 pretty heavy on all this, all that
25 area, but they said it was because it

1 doesn't have a lot of space to have a
2 cave, is what they told us. And it
3 was heavy. You know, when you're
4 first starting, you don't even feel
5 it, you know. You just have an open
6 area and it doesn't get no weight or
7 nothing.

8 Q. Right.

9 A. And after you pass a couple
10 breaks you start feeling it, start
11 getting some weight and stuff. And I
12 went --- I can't remember if I went
13 on vacation or I went on my days off
14 or something, but they have to leave
15 a couple rows of pillars. That's
16 right here.

17 Q. Yeah.

18 A. Yeah. They have to leave them
19 rows of pillars. And I know every
20 time we done that, all the weight
21 jumped on the backside.

22 Q. You've done that before, where
23 you had to jump a couple blocks?

24 A. Yeah.

25 Q. Do you remember where you did

1 that at?

2 A. I did that lots of time at the
3 co-op. I pulled pillars at the co-
4 op, too. And I can't really remember
5 if we done that, too, on the other
6 sides of the 60s or whatever.

7 Q. There's a larger map that
8 might help you.

9 A. Yeah. I can see that ---.
10 There was --- used to be a river
11 somewhere, where they told us we'd
12 have to leave a couple blocks or
13 something. And after we would leave
14 them blocks, it would give us a lot
15 of weights on the backside, but it
16 wasn't too bad in there.

17 Q. Were you talking about the
18 south?

19 A. I pulled pillars on the south
20 and the Six East, too. That's when I
21 first started. This is the south.

22 Q. That's the south.

23 A. That's the south. There was
24 another section going this way or
25 somewhere, far down.

1 Q. Okay.

2 A. So you left them there for
3 that reason?

4 A. I can't really remember. I
5 don't know if it was for the reason
6 or not. But there was a place on Six
7 East where we had to leave a couple
8 rows of pillars because of that
9 weight on top. And then after we get
10 them back and start pulling them, it
11 was a lot of weight.

12 Q. It would jump behind you?

13 A. Yeah.

14 Q. So whenever you were working
15 in the north barrier, what about the
16 bounces that happened there? Tell me
17 about the bounces that were --- you
18 know, you started getting them ---
19 were getting hit pretty heavy here in
20 the deep cover area. How was it over
21 here in the north?

22 A. It was bouncing, but nothing
23 like this other side. It was
24 bouncing, but I never got hit with
25 the coal or nothing. But I wasn't

1 there when they had that big bounce.
2 We don't have on this side.

3 Q. What did you hear about that?
4 Was it your days off?

5 A. Yeah. The day that that
6 happened, I went in there one shift
7 and probably a couple hours later
8 after the bounce happened on the same
9 day. I went in there and had to
10 clean all that up, tried to get the
11 machines out of there.

12 Q. Let me ask you this. So the
13 two blocks had already been left.
14 When they started mining, it bounced?
15 Was that in March sometime?

16 A. Yeah, somewhere around there.
17 I can't really tell.

18 Q. Now, when you went in, do you
19 remember what shift you were on?
20 Were you on daylight or ---?

21 A. I think, if I remember right,
22 we were on swing shift. The dayshift
23 was the one that had the bounce.

24 Q. Okay. So you came in that
25 evening?

1 A. Yeah. Three o'clock or
2 something, two or three o'clock.

3 Q. Do you know when it happened
4 in the shift?

5 A. They showed me there was a
6 couple --- probably two or three
7 hours before we got in there,
8 probably by noon or something like
9 that.

10 Q. Okay. Do you know, when the
11 bounce hit, were you --- you were in
12 there, you saw what had happened;
13 right?

14 A. Uh-huh (yes).

15 Q. Could you kind of describe
16 what those entries looked like?

17 A. You can't even get the miner
18 in there with all the coal there was
19 piled up in the middle of the entry.

20 Q. Did all the entries fill up?

21 A. No. It was --- well, this
22 Number Two was the worst, I think.
23 Number Three probably got this in
24 right here.

25 Q. And you're up there between

1 135 and 134?

2 A. This is that area where they
3 start pulling. They have two MRSS
4 right here. And I can't remember for
5 sure if they had --- I think they had
6 them other two right here, yeah, in
7 this entry.

8 Q. That's in 135, Number One?

9 A. Yeah. They was getting
10 started with those pillars, both
11 sides. And when I got there, I
12 didn't even have the time to look at
13 those two MRSSs. I don't know for
14 sure if they got them out or
15 something. But I spent almost the
16 whole night cleaning this part right
17 here, all this area.

18 Q. Okay. That's the 134
19 crosscut?

20 A. Uh-huh (yes). Cleaning that,
21 cleaning this, cleaning this and
22 cleaning this right here.

23 MR. O'DONNELL:

24 So Luis is marking from
25 132 to 134, Number Two entry,

1 Crosscut 133 to Number Three
2 entry.

3 BY ATTORNEY O'DONNELL:

4 Q. So you had quite a bit to
5 clean. You cleaned the whole shift?

6 A. Yeah, pretty much. I probably
7 had left probably an hour or two. We
8 have to clean and set trees at the
9 same time because it was too wide
10 everywhere. We had to set some trees
11 before we went in.

12 Q. What kind of activity was
13 happening when you were doing this?
14 Was it still bouncing?

15 A. No, not too bad. It was
16 probably little bounces, but it
17 wasn't hard enough to roll coal or
18 anything like that.

19 Q. So when you went in there on
20 that shift, was the intention to
21 clean up and move or clean up and
22 mine?

23 A. They're supposed to clean up
24 and they're going to have them guys
25 from the mine go in there and look at

1 it and see what they decide to do.

2 Q. Okay. So no decision had been
3 made yet?

4 A. No.

5 Q. And what about the other
6 shift? Did they do any --- the
7 bounce happened on their shift;
8 right?

9 A. They cleaned this area right
10 here. They started this area. I
11 guess they have the miner on this
12 side. I started getting ready to
13 start mining this side right here.

14 Q. So they were in Number One,
15 and they were between what two
16 crosscuts when it hit?

17 A. 134 and 135.

18 Q. So they were all the way up in
19 here. So this coal really hadn't
20 been taken out?

21 A. Uh-uh (no).

22 Q. Those blocks were still in?

23 A. I can't really tell for sure
24 if they cut none of this coal right
25 here. I don't know if they cut this

1 sides at all or not because I did not
2 have a chance to go look at it.

3 Q. Okay. Do you know if they
4 lost the MRS?

5 A. They lost it.

6 Q. They did? They couldn't get
7 it out? It was buried?

8 A. We cleaned it with the miner
9 to get it out.

10 Q. So they were covered?

11 A. The entry was covered.

12 Q. The entry was covered. The
13 MRS was stuck inside.

14 A. Yeah.

15 Q. And then you had to clean coal
16 up to get them?

17 A. Uh-huh (yes).

18 Q. Okay. And that took you your
19 whole 12-hour shift?

20 A. I can't remember. I don't
21 think we worked 12 hours at that
22 time.

23 Q. Okay.

24 A. I think it was nine hours or
25 something like that. I can't really

1 tell.

2 Q. But a full day of loading?

3 A. Yeah. Yeah, we cleaned this
4 side right here. And I went all the
5 way to the stopping right here
6 because it blew, you know, a whole
7 bunch of stoppings in this side, on
8 the return side. And I went all the
9 way to the stopping because they told
10 me you have to clean it over there
11 and get ready to set another stopping
12 right there to get air circulating.

13 Q. So 134 was out, wasn't it?

14 A. Uh-huh (yes).

15 Q. How many more were out, Luis?

16 A. I can't tell you because I
17 cleaned all this. When I went to the
18 other side, me and one of my friends,
19 we went to the other side to look at
20 them stoppings in here.

21 Q. That would be on the bleeder
22 side?

23 A. In the bleeder side. And we
24 walked probably one or two, I can't
25 remember, but I seen them stoppings

1 just knocking down. And we was kind
2 of scared to be in there. We just
3 got out of there. I don't remember
4 having some time checking these other
5 ones right here.

6 Q. Let me ask you, did you ever
7 have any low O2?

8 A. Low O2?

9 Q. Low oxygen?

10 A. Low oxygen.

11 Q. With your detector.

12 A. No.

13 Q. What about methane, when you
14 were mining? Did you ever hit any
15 methane?

16 A. No.

17 Q. What about --- okay. All
18 right. You answered that. So the
19 shift where you cleaned up, were you
20 scheduled to work the next shift?

21 A. Yeah.

22 Q. And tell me about that. Did
23 you go back in the mine?

24 A. By the time I got back in the
25 next day, I think they already have

1 everything pulled out of there, if I
2 remember right. They have a --- they
3 have lots of people there working and
4 getting the equipment out. And I
5 can't remember, but I think they put
6 me and some other guys getting ready
7 to set up this other area right here
8 to start the south side.

9 Q. What area are you referring
10 to?

11 A. Crosscut 110, I think it was.

12 Q. So you were getting set up to
13 start development right then ---

14 A. Yeah.

15 Q. --- on the south barrier?

16 A. Uh-huh (yes).

17 Q. Okay. When did you start
18 that? How soon after you got pulled
19 back did you start developing the
20 south?

21 A. It wasn't very long, I think.
22 I think it takes longer to set them
23 seals in there. Again, they have to
24 make a plan for the seals and all
25 that stuff. It might take a couple

1 weeks, I think. They said as soon as
2 we get them seals down, we're going
3 to be ready to start developing the
4 north side. And they sent us over to
5 Third North.

6 Q. So you went to a spare section
7 then?

8 A. Yeah.

9 MR. O'DONNELL:

10 Okay. Let's take a
11 short little break.

12 SHORT BREAK TAKEN

13 BY MR. O'DONNELL:

14 Q. When you were --- you talked
15 about when you saw the pillar
16 separation in the north --- or in the
17 south barrier pillar that your
18 foreman was with you, when you got
19 hit with the coal. Was there anybody
20 else that saw that, too?

21 A. I can't remember if there was
22 somebody else or not. That was ---
23 yeah, I think it might have been
24 another guy, but I can't remember who
25 it was.

1 Q. A guy in your crew?

2 A. A shuttle car driver or
3 someone who showed up to help with
4 them timbers.

5 Q. Do you remember who the buggy
6 men were?

7 A. I can't really.

8 Q. Okay.

9 A. They had some --- there's some
10 people there that sometime have to
11 replace somebody else and I can't
12 remember for sure.

13 Q. Okay. That's fine. Okay. In
14 the March bump in the north, were you
15 cleaning towards a scoop or another
16 piece of equipment?

17 A. Cleaning towards the scoop.

18 Q. Was the scoop covered up?

19 A. Uh-uh (no). I heard it was,
20 but I heard they don't have no
21 troubles getting them out. They said
22 there was coal on the sides pretty
23 good, and they said they'd just drive
24 it out. I didn't even look at it or
25 nothing.

1 Q. Okay.

2 A. That's what the people were
3 saying.

4 Q. But the ones you know for sure
5 were the MRSs you had to clean up?

6 A. The MRSs, there were --- the
7 whole entry was covered. And I have
8 to get the miner and straighten ---
9 clean it straight right there so
10 they'd be able to get them out.

11 Q. That would be in Number Two?

12 A. Number Three entry.

13 Q. Number Three and ---?

14 A. Two and Three.

15 Q. Two and Three. Okay. Thanks.
16 You said that you were in the barrier
17 in the south and that the conditions
18 were getting heavy, so you had to
19 reduce the depth of the cut to, you
20 said, 30 feet?

21 A. Yeah, 20, 30 feet.

22 Q. Whenever you worked --- what
23 was the deepest cut you took?

24 A. Probably 30, 40, probably a
25 little bit over 30.

1 Q. How did you know how deep you
2 were taking the cut? What was your
3 mark? How did you know ---?

4 A. I know what's the name on the
5 miner. I know how far I got to go to
6 get 40 feet.

7 Q. How far would the buggy go?

8 A. I'd just look at the --- the
9 cab was always on the support.

10 Q. So the buggy would go to the
11 last row?

12 A. To the second row.

13 Q. To the second row back?

14 A. Uh-huh (yes).

15 Q. Okay. And that was the
16 deepest cut that you would take?

17 A. Or making shortcuts on that
18 side, like he said, 30 feet. You get
19 30 feet, you barely got the miner in
20 there. You still have the tailbone
21 and the support ---?

22 Q. So was it because the bottom
23 was heaving, you couldn't get in or
24 was it just because the number of
25 bounces or?

1 A. Yeah, because the heavy
2 bouncing. And one time I got kind of
3 scared because I make my turn to the
4 right, to the left. And I was trying
5 to go down on the floor, and I just
6 seen the top going down with me, too.
7 I said, what the hell? I talked to
8 my boss about it. I said, what's
9 going on here? I don't know. He
10 said the seam probably comes down or
11 something. They have some places
12 where the tops go down and then go
13 up.

14 Q. It just dipped down?

15 A. Yeah.

16 Q. Did you have any trouble with
17 the MRSs reaching the roof anywhere?

18 A. No.

19 Q. So about how high did they go?

20 A. The MRSs?

21 Q. Yeah.

22 A. I think about nine-footers.

23 Q. Okay. Do you know if they
24 ever used extensions on them?

25 A. Yeah. We used them on the

1 other section.

2 Q. In which section?

3 A. I think in Six East.

4 Q. Okay. How did the extensions
5 work? Did they set them on top ---

6 A. Uh-huh (yes).

7 Q. --- and then it would give you
8 more --- how high would they go?

9 A. I think probably like a foot,
10 a foot-and-a-half or somewhere in
11 there. I can't really remember.

12 Q. More than the maximum it would
13 lift?

14 A. Uh-huh (yes).

15 Q. Okay. Sometimes? Always? Or
16 sometimes did you use it or did you
17 always have them on?

18 A. They usually have them on all
19 the time, pretty much. And they
20 decided to take them out because they
21 have a lot of trouble because they
22 have some chains, two in the back and
23 two in the front, to hold them in.
24 Sometimes them chains just break off
25 or something and they try to lose the

1 canopy on it, and they just decided
2 to take them off. Plus, we were
3 mining on these other sides. We've
4 been doing like seven foot, seven,
5 eight foot, just enough to get the
6 MRSs in place.

7 Q. So you had to take them off so
8 they'd fit?

9 A. They would still fit. They
10 can go down like --- I can't
11 remember, like four or five feet.
12 You got that canopy on top, which is
13 like six foot or something. But you
14 got more trouble with them.

15 Q. Okay. In the south, were
16 there any pillars that you were going
17 to be leaving, you were told not to
18 mine any of the pillars or the
19 barrier?

20 A. Uh-uh (no). He told me in
21 this area right here, where we used
22 to pull them three, pulled the
23 barrier in this one and this one, and
24 that's it.

25 Q. Okay.

1 A. And this area right here, we
2 didn't have to go around this one.
3 We'd only have to be able to take the
4 barrier on this side.

5 Q. And you're talking about ---
6 is that in the --- what crosscut is
7 that, Luis?

8 A. This one is 140, 141.

9 Q. Okay. What was the reason
10 they were going to leave those
11 blocks?

12 A. Because just to protect the
13 area, the return side or whatever.
14 Yeah, that's why we left this pillar
15 right here when we developed it,
16 because they know they had this in
17 there.

18 Q. That was a sump that you're
19 looking at ---

20 A. Yeah.

21 Q. --- or an entry that necked
22 over?

23 A. Uh-huh (yes).

24 Q. That entry, is that why that
25 block was left?

1 A. Yeah, that's why they left
2 that block.

3 Q. Okay. So they told you, don't
4 --- what was there, nine blocks or
5 eight blocks --- eight blocks there;
6 right?

7 A. Eight blocks.

8 Q. How many of these blocks ---
9 if you would, just X them out, which
10 ones you weren't supposed to take.

11 A. They actually --- they give
12 you --- a map to your boss every
13 time, every week or so. They show
14 you where you're going to be able to
15 mine and where you're going to be
16 left.

17 Q. Okay.

18 A. And you're supposed to leave,
19 I think --- I can't really remember
20 for sure. They was going to take
21 half of this one and leave the rest
22 because they want to protect this
23 area right here so the guy can walk
24 through or something.

25 Q. Okay. So they were going to

1 take --- the plan was to take the
2 barrier and half of the block on the
3 right, is that what you said?

4 A. I heard that a couple times.
5 And then they said, too, they're
6 going to leave all this and come back
7 right here and start pillaring
8 again, ---

9 Q. Okay.

10 A. --- the same like we were on
11 the north side. But I didn't see the
12 map or nothing.

13 Q. Okay. So you don't know for
14 sure if they took any of that block?

15 A. Uh-uh (no).

16 Q. But do you know if they took
17 for sure the barrier?

18 A. I can't tell because they
19 changed the plans every time they
20 want, so ---.

21 Q. All right. Did the pillaring
22 in the south mains compare --- how
23 did it compare to the west mains'
24 west barrier pillaring. The south
25 compared to the west mains barriers,

1 what was it like? Tell me about
2 those conditions.

3 A. The south?

4 Q. When you pulled these --- the
5 south mains, ---

6 A. Uh-huh (yes).

7 Q. --- compared to pulling the
8 west mains.

9 A. It was a lot different because
10 I don't know if somebody tell you,
11 they have some top coal in that area
12 there. We --- even with that top
13 coal, we don't have much trouble with
14 it. It wasn't very heavy or nothing.
15 It was pretty good. I got hurt in
16 that area, in the south side.

17 Q. In here?

18 A. Yeah, somewhere in there.

19 Q. How did you get hurt?

20 A. I was making a lip on the
21 right side. We barely started to
22 roll, I went in there and started
23 making my turn. And somebody cut
24 that place when they were developing
25 because they used to develop on the

1 right side a little bit, a couple
2 breaks, and pull a couple rows and
3 developing again. We cut there like
4 probably nine feet, nine-and-a-half
5 something like that. And I went in
6 there to make that turn, and when I'd
7 pull out to cut the corner so that I
8 can get the turn better, and I come
9 back and I looked at my tailbone and
10 I was going back, you know. And when
11 I turned around, I seen the rib
12 crumbling up and hit me right on my
13 foot, (b)(7)(C) .

14 Q. So that's how you broke your
15 (b)(7) or your (b)(7)(C) or ---?

16 A. Uh-huh (yes).

17 Q. Did you ever get hurt in a
18 mine anywhere else?

19 A. No. That was my first time.

20 Q. Okay. So in other words, this
21 area here, other than that corner
22 incident, was, you would say, much
23 better?

24 A. Yeah.

25 Q. And you feel safer here than

1 over here?

2 A. When you have to cut top coal,
3 you kind of worry about that the
4 whole time because you don't know how
5 much it is. You don't know ---
6 actually, we had a cave in our side
7 in one of the crosscuts. I don't
8 know if you ever heard. It was --- I
9 can't remember for sure what crosscut
10 it was. We was pulling, I think, in
11 the belt line and the next one over
12 fell before we could get the MRSS and
13 stuff in there. And they said that
14 was because we had too much top coal.

15 Q. Okay.

16 A. And then we have --- they only
17 got like probably a couple inches of
18 rock on top. And after that
19 happened, they have to start drilling
20 holes in another intersection to make
21 sure how much coal we have on top.

22 Q. But that was more from the
23 roof, not from a bounce?

24 A. Yeah.

25 Q. Okay. You said there was a

1 lot of concern. You said you talked
2 amongst yourselves about the
3 conditions when you pulled this. You
4 said earlier it was because of what
5 had happened here?

6 A. I mean, they're leaving ---
7 well ---.

8 Q. What I'm saying, here, the
9 north barrier, when you bounced and
10 pulled back, did you --- and that was
11 in the heavy cover area, you said
12 that when you went through the heavy
13 cover area, it was heavy again.
14 Luis, did you expect to be pulled
15 out? Did you expect to not be able
16 to finish the section?

17 A. Like I told you, I talked to
18 lots of my friends and they're like
19 experienced people. I talked to Dale
20 Black, one of the guys that got
21 killed. He was one of my best
22 friends. I always talked about it,
23 about the section all the time with
24 him because he had a lot of
25 experience in the mines.

1 And he told me, we'll
2 hopefully get pulled out of there,
3 move over and leave that place right
4 there. It's too heavy to mine it.
5 It's going to be kind of dangerous in
6 there to go in there and try to pull
7 pillars. I was kind of hoping for
8 it. Talking to myself, I was hoping
9 for it, to get pulled out of there.

10 Q. So he, too, made those
11 statements to you? He said that he
12 was thinking that you would be
13 getting pulled out also?

14 A. He said we might, but he never
15 said for sure or nothing.

16 Q. Okay. Did any of the guys go
17 to higher management or say, you
18 know, based on our experience, based
19 on what we're seeing here, that we
20 think that the area is getting to a
21 point where we think --- we're
22 uncomfortable, we shouldn't be mining
23 here? Did anybody do that?

24 A. I heard about it, but I don't
25 know for sure because I haven't seen

1 them or nothing.

2 Q. Do you know if any of the guys
3 asked to be taken out of the section,
4 they said, I don't want to work
5 there, I want --- put me somewhere
6 else?

7 A. It's kind of hard for me
8 because I worked in this mine. You
9 don't want to go to another mine
10 where they have some methane and
11 stuff. You don't want to go there
12 because of the methane. You don't
13 want to go there because the
14 management is different than what you
15 already know how they are.

16 That's the way that I feel
17 because I have a lot of chances to go
18 work in another mine, and I was going
19 to do it. But I didn't go in there
20 because the management or the --- I
21 was going to go to Wyoming, and
22 everybody said, oh, it's too
23 expensive over there, too cold and
24 --- too expensive to live over there.
25 It's going to be the same deal than

1 what you're doing right here. You're
2 going to be making the same amount of
3 money. So I decided not to go. But
4 I was going to go when we first
5 started that heavy stuff right here.

6 Q. Is there any information,
7 anything that you'd like to share
8 with us that you might know of people
9 making complaints about safety to
10 anyone about the mining?

11 A. Safety complaints?

12 Q. Anybody that said they have
13 concerns that, you know, I don't like
14 working here, I think maybe we
15 should, you know --- what are we
16 going to do to make it better? Can
17 we do anything to make it better?
18 Was there any talk of that?

19 A. I can't remember.

20 Q. Let me ask you this. Did
21 anyone do anything to make it better
22 or was it business as usual?

23 A. Business as usual, what's that
24 mean?

25 Q. I mean, no changes, just keep

1 mining coal and ---.

2 A. Just keep going. I didn't
3 hear any changes at all. They just
4 kept mining. They didn't say
5 nothing, let's do this to get better.
6 I didn't hear nothing like that.

7 MR. O'DONNELL:

8 Let's go off.

9 OFF RECORD DISCUSSION

10 BY MR. O'DONNELL:

11 Q. Luis, you're an experienced
12 coal miner, a miner operator most of
13 your career. What do you think
14 happened here?

15 A. I think --- what I've seen ---
16 after I looked at the map and all
17 that, I think when you're pulling
18 pillars, you cut one side. And after
19 you get closer to the gap where it
20 already had been caved ---. I don't
21 know, but I seen a lot of places
22 where that rock, it's just hanging
23 down long like that, ready to take
24 all this coal and fall down.

25 It seemed like this side is

1 getting a lot closer to get to the
2 gap side. When you pull this side,
3 all you're going to get is more
4 weight because all this is taking all
5 the weight. This barrier right here
6 was taking all the weight for this,
7 is what I'm thinking happened. I
8 don't know if people stand and look
9 --- really look at it before they let
10 the people go in there.

11 When you're a coal miner, you
12 just want to go in there and try to
13 get your paycheck for your family and
14 get your insurance and stuff, but you
15 don't really look at where you are,
16 what you're doing. You feel like
17 other people is going to take care of
18 you before they let you go in an
19 unsafe place and stuff like that. I
20 feel like it didn't happen here. I
21 lost my brother there.

22 Q. Just a couple questions. Do
23 you want to take a short break?

24 A. No. I'm okay.

25 Q. Because we're going to be

1 finished here. Have you given a
2 written statement to anyone about the
3 accident or had an interview with
4 anybody?

5 A. Uh-uh (no).

6 ATTORNEY MORTENSEN:

7 And that includes your
8 Counsel.

9 OFF RECORD DISCUSSION

10 ATTORNEY MORTENSEN:

11 He met with Congressman
12 Miller's crew that came in ---

13 MR. O'DONNELL:

14 Okay.

15 ATTORNEY MORTENSEN:

16 --- a couple months
17 ago, a month ago, but there
18 was no written statement
19 taken.

20 BY MR. O'DONNELL:

21 Q. Has anyone offered you
22 anything or made a promise to you in
23 exchange for you appearing here or
24 not appearing here today?

25 A. No.

1 Q. Okay. Luis, do you have
2 anything that you'd like to add that
3 may be relevant to the investigation?

4 A. No. I just hope this kind of
5 stuff never happens again.
6 Hopefully, that will help prevent
7 another accident to other coal mines.

8 MR. O'DONNELL:

9 On behalf of MSHA, I
10 want to thank you for
11 appearing and answering
12 questions today. Your
13 cooperation is very important
14 to the investigation as we
15 work to determine the cause of
16 the accident.

17 We ask that you not
18 discuss your testimony with
19 any person who may have
20 already been interviewed or
21 who may be interviewed in the
22 future. This will ensure that
23 we obtain everyone's
24 independent recollection of
25 the events surrounding the

1 accident.

2 After questioning other
3 witnesses, we may call you if
4 we have any other follow-up
5 questions that we may need to
6 ask you. If at any time you
7 have any additional
8 information regarding the
9 accident that you'd like to
10 provide to us, please contact
11 Mr. Gates at the contact
12 information that I gave you.

13 The Mine Act provides
14 certain protections to miners
15 who provide information to
16 MSHA and, as a result, are
17 treated adversely. If at any
18 time you believe that you've
19 been treated unfairly because
20 of your cooperation in this
21 investigation, you should
22 notify MSHA immediately.

23 If you wish, you may
24 now go back over any answer
25 that you've given us during

1 this interview and make a
2 statement.

3 BY ATTORNEY MORTENSEN:

4 Q. Do you have anything to add?

5 A. No.

6 Q. Who was your boss that you had
7 said what the hell to?

8 A. It was Josh Fielder. But like
9 I said, you, in that area, have some
10 places where that top goes up or goes
11 down. You never --- I can't really
12 say that it's an ability to have a
13 cave on the other side or something
14 or we get into something. I don't
15 think it was, but it looks like it
16 was going down to me and the floor
17 was going down, too.

18 Q. When you showed up at the mine
19 that morning, after the collapse, did
20 you see your supervisor there?

21 A. Yeah.

22 Q. And who was that?

23 A. It was Phillip Cox.

24 Q. And did you have any
25 understanding as to whether there ---

1 why he wasn't in the mine?

2 A. He was in the mine when I got
3 there. He went in there, he said,
4 about 3:00, 4:00 in the morning, when
5 that happened, and he was working
6 since then. When I seen him, he was
7 out there getting some material to
8 build them stoppings and stuff.

9 MR. O'DONNELL:

10 Okay. Thank you.

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STATEMENT CONCLUDED AT 2:40 P.M.

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