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Transcript of the Testimony of Dustin Ross

Date: June 14, 2010

Case:

Printed On: June 17, 2010

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STATEMENT UNDER OATH
OF
DUSTIN ROSS

taken pursuant to Notice by Alicia R. Brant, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Monday, June 14, 2010, beginning at 8:04 a.m.

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

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NUMBER	DESCRIPTION	IDENTIFIED
One	Marked Mine Map	15*
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*exhibits not attached

P R O C E E D I N G S

ATTORNEY BAXTER:

Let's go on the record. My name is Derek
Baxter. Today is June 14th, 2010. I'm with the
Office of the Solicitor, U.S. Department of Labor.
With me is Bob Bates, an accident investigator with
the Mine Safety and Health Administration, MSHA, an
agency of the U.S. Department of Labor. Also present
are several people from the State of West Virginia. I
ask that they state their appearance for the record.

MR. FARLEY:

I'm Terry Farley with the West Virginia
Office of Miners' Health, Safety and Training.

MR. SCOTT:

John Scott with the West Virginia Office
of Miners' Health, Safety and Training.

ATTORNEY BAXTER:

There are also members of the
investigation team present in the room today. Mr.
Bates and Mr. Farley will be conducting the
questioning today.

All members of the Mine Safety and Health
Accident Investigation Team and all members of the
State of West Virginia Accident Investigation Team

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

16 Government investigators and specialists

17 have been assigned to investigate the conditions,
18 events and circumstances surrounding the fatalities
19 that occurred at the Upper Big Branch Mine-South on
20 April 5th, 2010. The investigation is being conducted
21 by MSHA under Section 103(a) of the Federal Mine
22 Safety and Health Act and the West Virginia Office of
23 Miners' Health, Safety and Training. We appreciate
24 your assistance in this investigation.

25 You may have your personal attorney

1 present during the taking of this statement, or
2 another personal representative if MSHA has permitted
3 it, and may consult with your attorney or the
4 representative at any time. Do you have a personal
5 representative with you here today?

6 MR. ROSS:

7 No.

8 ATTORNEY BAXTER:

9 Your statement is completely voluntary.

10 You may refuse to answer any question. You may
11 terminate your interview at any time or request a
12 break at any time. Since this is not an adversarial
13 proceeding, formal Cross Examination will not be
14 permitted. However, your personal legal
15 representative may ask clarifying questions as
16 appropriate.

17 Your identity and the content of this
18 conversation will be made public at the conclusion of
19 the interview process and may be included in the
20 public report of the accident, unless you request that
21 your identity remain confidential or your information
22 would otherwise jeopardize a potential criminal
23 investigation. If you request us to keep your
24 identity confidential, we will do so to the extent
25 permitted by law. That means that if a judge orders

1 us to reveal your name or if another law requires us
2 to reveal your name or if we need to reveal your name
3 for other law enforcement purposes, we may do so.

4 We request that you refrain from
5 discussing your statement with others who may be
6 interviewed. Also, there may be a need to use the
7 information you provide to us or other information we
8 may ask you to provide in the future in other
9 investigations into and hearings about the explosion.
10 Do you understand?

11 MR. ROSS:

12 Yes.

13 ATTORNEY BAXTER:

14 And do you have any questions?

15 MR. ROSS:

16 No.

17 ATTORNEY BAXTER:

18 After the investigation is complete, MSHA
19 will issue a public report detailing the nature and
20 causes of the fatalities in the hopes that greater
21 awareness about the cause of accidents can reduce
22 their occurrence in the future. Information obtained
23 through witness interviews is frequently included in
24 these reports. Since we will be interviewing other
25 individuals, we request that you not discuss your

1 testimony with any person aside from your personal
2 representative or counsel.

3 A court reporter will record your
4 interview. Please speak loudly and clearly. If you
5 do not understand a question asked, please ask us to
6 rephrase it. Please answer each question as fully as
7 you can, including any information you've learned from
8 someone else.

9 I'd like to thank you in advance for your
10 appearance here. We appreciate your assistance in
11 this investigation. Your cooperation is critical in
12 making the nation's mines safer.

13 After we've finished asking questions,
14 you'll have an opportunity to make a statement and
15 provide us with any other information you believe to
16 be important. If at any time after the interview you
17 recall any additional information that you believe
18 might be useful, please contact Norman Page at the
19 telephone number or e-mail address provided to you.

20 MR. FARLEY:

21 Mr. Ross, on behalf of the West Virginia
22 Office of Miners' Health, Safety and Training, I also
23 need to advise you that the West Virginia Coal Mine
24 Health and Safety regulations also protect miners
25 against potential discrimination, and I want to

1 provide you with some contact information in the event
2 you should encounter such treatment. Let's go off the
3 record.

4 ATTORNEY BAXTER:

5 Okay. We'll just --- we'll go off the
6 record just a minute.

7 OFF RECORD DISCUSSION

8 ATTORNEY BAXTER:

9 Let's go on the record. Please swear in
10 the witness.

11 -----

12 DUSTIN ROSS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
13 AS FOLLOWS:

14 -----

15 ATTORNEY BAXTER:

16 Okay.

17 EXAMINATION

18 BY MR. BATES:

19 Q. All right. Hi, Dustin. My name's Bob Bates with
20 MSHA. Would you please state your full name and spell
21 your last name for us?

22 A. Dustin Daniel Ross, R-O-S-S.

23 Q. Okay. Can you state your address and your
24 telephone number?

25 A. (b) (7)(C) . And what else

1 do you want?

2 Q. Your telephone number.

3 A. My telephone? Oh, (b)(7)(C) 4.

4 Q. Are you appearing here today voluntarily?

5 A. Yes.

6 Q. Okay. Have you been offered any compensation for
7 appearing here today?

8 A. No.

9 Q. Okay. Has anyone else interviewed you concerning
10 the accident and your knowledge of conditions in the
11 mines?

12 A. Yes.

13 Q. Okay. Can you state who interviewed you?

14 A. I don't remember the names specifically, but it
15 was an FBI investigator and a guy from the Department
16 of Labor.

17 Q. Okay. Were you interviewed by the company?

18 A. I spoke with company attorneys on two different
19 occasions.

20 Q. Okay. Can you describe who interviewed you on
21 those cases and what was the nature of the interview?

22 A. The nature of the interview was --- the first time
23 was to tell them basically what I knew of the mines
24 and basically what I thought may have possibly caused
25 the explosion. The second time it turned out to be

1 methane monitors. They wanted to know how they
2 operated and whether we had bridged them out and
3 things of that nature.

4 Q. Okay. You'd indicated that in one of the
5 interviews that they'd ask you what your opinion was
6 as to what caused the accident?

7 A. Right.

8 Q. Can you tell us today what you told them?

9 A. I can tell you what I told them, yes.

10 Q. Yes.

11 A. Yes, I can.

12 Q. Would you?

13 A. Okay. Since the explosion happened on a Monday,
14 Sunday was an idle shift. That's the first time we'd
15 been idle in probably a couple weeks, I would guess.
16 The last time that we were idle was due to
17 ventilation, but as far as I know, no one actually was
18 working on Sunday. I don't know if fire bosses were
19 there --- you know, whether they had a day off or
20 what. I could just speculate.

21 Q. Okay.

22 A. But we had been having trouble behind the
23 longwall. There were supposed to be regulators back
24 in this general area.

25 Q. Okay. For the record, can you state the area of

1 the mine that you're talking about?

2 A. This would be where the longwall start --- began.

3 Q. Okay.

4 A. This would be the tailgate entry of the longwall
5 start.

6 Q. Okay. And you're talking about the current panel
7 that's being mined?

8 A. The current panel.

9 Q. Okay.

10 A. Okay. I'm trying to think when we had --- and you
11 may have to help me on the dates here. I'm thinking
12 it was sometime in March that we had --- we were shut
13 down over ventilation, somewhere in that ---.

14 Well, anyways, after they decided to pressurize
15 the returns, I don't think that there was enough
16 volume for the air to escape out of the tailgate
17 entry. And again, that's just my opinion, just based
18 on what other --- you know, other miners say, that
19 this area right in through here were a regulator was
20 supposed to have been, the top had became so weak that
21 it was kind of hard to travel through there, so ---.

22 Q. When you're pointing to the regulator, ---

23 A. Uh-huh (yes).

24 Q. --- can you describe this area of the mine you're
25 pointing to specifically?

1 A. It's the longwall start on the tailgate entry.

2 Q. Okay. And can you circle that area you're talking
3 about and ---

4 A. Yes.

5 Q. --- put longwall start? Just write in beside of
6 it, longwall start.

7 WITNESS COMPLIES

8 ATTORNEY BAXTER:

9 The witness is circling with the blue
10 marker and we'll base mark this as Ross Exhibit One.
11 (Ross's Exhibit One marked for
12 identification.)

13 BY MR. BATES:

14 Q. Okay. Continue on with your description.

15 A. Okay. Well, anyways, based on what I had heard
16 from, you know, different miners, you know, in between
17 shifts that it was hairy, to say the least. So I
18 don't think --- I don't know if anyone had been going
19 back and checking that roadway and seeing whether
20 there was --- if it was blocked. And again, this is
21 all speculation.

22 ATTORNEY BAXTER:

23 Okay.

24 A. So what I thought happened was that there was just
25 enough airflow going back, you know, behind our gob

1 line, that there could've been an accumulation of
2 methane.

3 ATORNEY BAXTER:

4 And when you say you heard from other
5 miners, do you remember any of the other miners you
6 spoke with?

7 A. Not specifically, no.

8 MR. FARLEY:

9 You mean an accumulation throughout the
10 tailgate entries?

11 A. Again, that's my belief, because they decided to
12 change, you know, all the stopping lines from the
13 regulator at the longwall stop all the way back to the
14 active longwall face. We went --- I don't think there
15 was any stoppings built for over a series of three
16 entries, three to four entries. We didn't have any
17 problems with it, and then as soon as we built all the
18 stoppings back to the longwall face, that's when the
19 explosion occurred.

20 BY MR. BATES:

21 Q. Okay. After the ventilation change was made, in
22 March, you said, ---

23 A. Uh-huh (yes).

24 Q. --- did you experience any problems with
25 ventilation in the interim?

1 A. Yeah, there was problems, to the best of my
2 knowledge. It seemed like the velocity would
3 change ---

4 Q. Okay.

5 A. --- on a weekly basis. Sometimes, you know, every
6 two to three days you would --- you'd notice the
7 difference. It's a drastic change, like, where you
8 would come into work and you would have to wear a coat
9 all day long because, you know, the velocity of wind.
10 And then you would come in, you know, three days ---
11 after your three days off and then you would, you
12 know, could break a sweat just walking down the pan
13 line.

14 Q. And when you're talking about the velocity would
15 change drastically, you're talking about across the
16 face of the longwall?

17 A. Yes.

18 Q. Okay. Okay. Mr. Ross, when was the last shift
19 you worked prior to the accident?

20 A. I'm not a hundred percent positive on this. I
21 came to work Monday on evening shift and we had a 6:00
22 to 3:00 schedule, so it would have been maybe Thursday
23 night or maybe Saturday night. I'm not positive.

24 Q. On the last shift you worked, did you have any
25 ventilation problems that you remember?

1 A. Not that I can recall.

2 Q. Okay. You'd mentioned earlier there were drastic
3 changes in the ventilation. On that shift, was it one
4 of the shifts when you had to wear the coat or when
5 you sweated? Can you recall?

6 A. It's been almost two months now. I can't really
7 tell. Nothing --- there's nothing that sticks out in
8 my mind that anything was, you know, really different.

9 Q. Okay. Well, let's get back on track with the
10 prior question. You stated earlier that you were
11 interviewed by attorneys representing the company on
12 two occasions; is that correct?

13 A. Yes.

14 Q. Okay. And you said at least one of the questions
15 was to describe what you thought was the cause. You
16 indicated that there were some questions about methane
17 monitors?

18 A. On the second turnaround.

19 Q. Okay. Can you tell me what the question was and
20 how you answered?

21 A. The question was, you know, have I ever bridged
22 out a methane monitor, how they worked, where they
23 were at on the equipment, ---

24 Q. Okay.

25 A. --- the location of the, you know, the devices.

1 Q. Okay. Can you describe what --- how you answered
2 to the best of your memory?

3 A. Uh-huh (yes). I told them, yes, I do know how to
4 bridge it --- bridge out a methane monitor. And I
5 explained to him exactly where they were at on our
6 equipment and what would be, you know, failures as far
7 as our, you know, methane monitors.

8 Q. Okay. While we're on methane monitors, let's ask
9 a few questions there. You stated that you knew how
10 --- you told them that you knew how to bridge out a
11 methane monitor. Have you ever, on occasion, bridged
12 one out?

13 A. Yes, I have.

14 Q. Okay. Can you describe how and why?

15 A. Well, first off, I've never bridged out a methane
16 monitor at UBB. I've had to do it at prior --- well,
17 Logan's Fork, basically.

18 Q. Okay.

19 A. And the reason why we'd have to bridge it out
20 would be because there's a cable that runs from the
21 headgate box all the way to the tail drive. And
22 sometimes during operation, as you'd pull shields in,
23 it would crush the backboards, and that would pinch
24 the cables together. So what you would do is just
25 jumper that out in the readout on the headgate box.

1 Q. Okay.

2 A. But again, you know, it wasn't like, you know ---
3 it wasn't a situation ever where we were picking up
4 methane, so ---.

5 Q. But you said you'd never bridged one out at UBB?

6 A. No.

7 Q. Okay. Have you ever heard of anyone bridging one
8 out at UBB?

9 A. No.

10 Q. Okay.

11 A. No. Anytime we had problems with methane
12 monitors, like on the shearer, you would shut down and
13 fix it.

14 Q. Okay.

15 A. Because the shearer --- it just --- it won't run
16 unless it's right, so ---.

17 Q. Okay. Okay. Who's responsible for --- I want to
18 stay with methane monitors for a minute while we're
19 there.

20 A. Okay.

21 Q. At UBB Mine, who's responsible for maintaining the
22 methane monitors on the longwall?

23 A. As far as calibration goes?

24 Q. Maintenance and/or calibration, either one.

25 A. Maintenance would fall upon whoever's shift it

1 was. Like, during the production shift it was ---
2 obviously it would --- you know, I would have to take
3 care of it to make sure it operated properly.

4 Q. Okay. And as far as the calibration goes, who's
5 responsible?

6 A. As far as I know, the hoot owl shift was taking
7 care of the calibration.

8 Q. Okay. And do you know the name of the electrician
9 on the hoot owl shift?

10 A. There's chief.

11 Q. Or on the hoot owl shift?

12 A. There were two different chiefs on the hoot owl.
13 Shannon Dickens was one and Robert Hale.

14 Q. Okay. How many methane monitors do you have along
15 the longwall face?

16 A. Two.

17 Q. Two? Two sensors; okay. Have you had any
18 problems with the methane monitors on the longwall?

19 A. Sometimes the sniffer on the shearer would ---
20 would ground out because it was obviously exposed and
21 rocks would sometimes pour in between the pan line and
22 the shearer and would damage cables. But again, like
23 I said, you would have to replace the sniffer.

24 Q. Is that the corrective action you would take when
25 that would happen? You would replace the sniffer?

1 A. Right. Replace the sniffer and then calibrate the
2 machine.

3 Q. Okay.

4 A. These interviews that you have with the company
5 attorneys, when did they take place?

6 A. My second interview --- or the second time I met
7 with them was last week.

8 Q. Okay.

9 A. And the first one was probably two weeks after the
10 explosion.

11 Q. During those interviews, were you cautioned about
12 or prepared in any way for statements you would make
13 in your interview with MSHA?

14 A. No. The attorneys told me to be 100 percent
15 honest.

16 Q. Okay. Did they ask you to report back to the them
17 about this interview?

18 A. No.

19 Q. Okay. Did they give you any other instructions?

20 A. No.

21 Q. Okay. Let's talk about your mining experience for
22 a little while here. How many years of mining
23 experience do you have?

24 A. Five.

25 Q. Okay. Can you give a brief description of your

1 employment record ---?

2 A. I started out with Performance in July of 2005. I
3 started out laying track for a couple months and then
4 moved on to setting belt heads and Mother Drive for
5 the longwall. I transferred to Logan's Fork when the
6 longwall left UBB to go to Logan's Fork. I worked
7 there for probably three or four months. I then quit
8 and went to Speed, worked at Speed for probably eight
9 months and came back to Performance again.

10 And that's when I started in the maintenance
11 program, then ended up quitting again and going back
12 to Speed, and then came back from Speed to
13 Performance. And I've been with Performance since
14 October of 2008.

15 Q. When you said Performance, are you indicating the
16 Upper Big Branch Mine?

17 A. No, the longwall.

18 Q. The longwall.

19 Q. Yeah, I always came back to the longwall.

20 Q. Okay. But at the Upper Big Branch Mine; right?

21 A. Well, when I came back in 2008, it was at Logan's
22 Fork.

23 Q. Okay.

24 A. That was not at Upper Big Branch.

25 Q. Okay. Well, when did you first come to Upper Big

1 Branch?

2 A. May of 2009, and I worked outside there rebuilding
3 shields for, you know, two months.

4 Q. And what's your current title?

5 A. An electrician.

6 Q. Okay. And how long have you had this current job?

7 A. Two and a half years.

8 Q. Okay.

9 ATTORNEY BAXTER:

10 And were you at Upper Big Branch from May
11 of '09 up until the accident?

12 A. Yes.

13 BY MR. BATES:

14 Q. You indicated you worked outside for a couple of
15 months. After that time, where was the majority of
16 your time spent?

17 A. After my time ---?

18 Q. Yeah.

19 A. After we finished up outside we started going to
20 do the longwall setup, so we would have been ---.

21 Q. Okay, okay. So have you been working on the
22 longwall since ---?

23 A. Oh, yeah, since.

24 Q. Okay. Can you describe the type of training that
25 you received when you started at Upper Big Branch?

1 A. Like job training?

2 Q. Yes.

3 A. Well, like I said, I started out laying track, you
4 know, so ---. I don't really know how to elaborate as
5 far as, you know, other than laying track. Whenever I
6 went to setting belt heads, I learned how to weld. I
7 use a torch, learned how to run a scoop, all the
8 basics, you know, came about, you know, in that job.

9 Q. Okay. You were given on-the-job training?

10 A. Yes.

11 Q. Okay. Past training?

12 A. Uh-huh (yes).

13 Q. Have you received any electrical training programs
14 from Massey?

15 A. Yes.

16 Q. Okay. Can you describe that?

17 A. Well, I'd have to go to class a few times a week
18 for six months. And we just went over all seven of
19 the parts of the test that we would take. And he
20 would go into great detail as far as, you know, trying
21 to explain how electrical mining equipment worked.

22 Q. Do you have any Federal or State mining
23 certifications?

24 A. No.

25 Q. Okay.

1 A. Other than --- I mean, I guess you mean my
2 electrical ---?

3 Q. Yes.

4 A. Yes. Yeah, I'm a certified state electrician.

5 Q. Okay. To get into this electrician's program at
6 Massey, did you have to sign a contract or any type of
7 agreement?

8 A. No.

9 Q. Okay. Dustin, who's your immediate supervisor?

10 A. I think it's Jack Roles.

11 Q. Okay. And what's his ---?

12 A. He's the longwall coordinator.

13 Q. Okay. And you report directly to him; is that
14 correct?

15 A. That would be equated into like superintendent,
16 okay, over the longwall. But that was just the title
17 is, you know, coordinator.

18 Q. Okay.

19 A. I guess my immediate supervisor would have been
20 the section boss, and that would be Kevin Medley.

21 Q. Okay. Who does your performance evaluation?

22 A. Kevin Medley, the section boss.

23 Q. Okay. Who normally directs the maintenance work
24 on the longwall? In other words, who makes up the
25 list, the to-do list for each shift?

1 A. Danny Laverty.

2 Q. In your estimation, how often does the longwall
3 break down?

4 A. I'd say you're due for two good breakdowns a
5 shift, like where production has to stop and you have
6 to do repairs.

7 Q. And based on your experience at UBB, what are some
8 of the major causes, or common causes of these
9 breakdowns?

10 A. Shields, busting hoses on shields.

11 Q. Okay.

12 A. That will, you know, either allow them not to
13 lower or not to advance. The cutter torque shaft is a
14 common breakdown. I would say that would be your most
15 common breakdowns right there.

16 Q. Okay. Let's elaborate here. In addition to
17 breakdowns, are there other reasons that the longwall
18 stops?

19 A. Belts.

20 Q. Okay.

21 A. Belts.

22 Q. Okay. When you say belts, just belts going off?

23 A. Yeah, the belts would go off, and ---

24 Q. Okay.

25 A. --- you know, whatever it would be, you know.

1 Q. Okay.

2 A. Didn't really look into it.

3 Q. Have you ever had --- in your experience, had to
4 stop production due to ventilation being insufficient?

5 A. Yes.

6 Q. Okay. Can you elaborate on that?

7 A. Well, we would have to stop because an inspector
8 would show up, possibly, but never --- you know, never
9 other than that reason. Most specifically, the day
10 that they came in, in March they shut us down in
11 ventilation.

12 Q. So you never had ventilation problems that caused
13 you to voluntarily shut down? Is that what you're
14 saying?

15 A. Yes.

16 Q. Okay. In your experience on the longwall, have
17 you detected methane in ---

18 A. Nothing ---.

19 Q. --- in any amount?

20 A. Nothing higher than .02.

21 Q. Okay. Do you carry a personal detector?

22 A. No. No, just sometimes you could see it bubbling
23 out every now and again, like, through the water in
24 the bottom.

25 Q. Okay. So you don't carry a handheld ---

1 A. Spotter? No.

2 Q. --- Solaris?

3 A. No.

4 Q. Okay. Are you required to work alone in
5 areas ---?

6 A. Sometimes I do, yeah.

7 Q. Okay. But you're not assigned a detector; is that
8 correct?

9 A. No.

10 Q. Okay. In your experience at the mine, have you
11 ever been required to work alone in an area of the
12 mine by yourself?

13 A. Yes.

14 Q. Okay. And did you have a detector during those
15 times?

16 A. No.

17 Q. Okay. Dustin, have you observed welding or have
18 you welded on the longwall?

19 A. Yes.

20 Q. Okay. Can you describe the process you use?

21 A. To weld?

22 Q. Yes.

23 A. Well, it depends on which area you're welding at,
24 on the longwall face or outby. If it's on the
25 longwall face, we have a welder hooked up to the

1 monorail, and we have a cable that runs from the
2 welder across the longwall face. Kind of looks like a
3 flat cable with two pretty big conductors in there.

4 Q. Okay. On this cable that runs across the longwall
5 face, is it equipped with Miller plugs or other plugs
6 for attaching your leads?

7 A. No, but we have the plugs available for ---. What
8 you would have to do is remove a backboard, strip the
9 cable of its jack and then use split nuts in order to,
10 you know, attach your stinger and ground.

11 Q. Okay.

12 A. But anyways, whenever you have to weld on the
13 longwall face, there's a couple different procedures
14 you have to do before it will actually work. First
15 off, you have to hit the emergency stop on a shearer
16 to prevent, you know, stray current from going into
17 the JNA system, JNA, J-N-A.

18 And secondly, you'd have to remove the power off
19 of the --- I don't remember what it's called, but it's
20 the voltage that feeds the shields across the face.
21 It's like a computer system, so you would unplug the
22 cable there. Then you can weld.

23 Q. Okay. Can you describe the precautions that are
24 taken prior to welding? Are there any other --- other
25 than the ---

1 A. As far as gas ---?

2 Q. --- the ones you listed?

3 A. As far as gas checks?

4 Q. Yeah. Can you describe any safety precautions
5 that ---?

6 A. Oh, yeah, you would, you know, do an examination
7 of your environment. And if everything was clear, you
8 know ---.

9 Q. Okay. When you weld --- when you perform welding
10 operations, who conducts those safety examinations?

11 A. Typically the section foreman, because he
12 definitely has a Solaris.

13 Q. Uh-huh (yes). And does he stay with you the
14 entire --- through the process, stay present while
15 you're doing the welding?

16 A. Yes. Whenever --- if it's on production, then the
17 boss is going to be right there until the job is
18 basically done.

19 Q. Okay. Let me get back to this welding table
20 again.

21 A. Uh-huh (yes).

22 Q. You stated that this cable stays stretched out
23 across the longwall face; am I correct?

24 A. Yes.

25 Q. Okay. And you stated that there are no

1 connectors, plugs, or anything attached to it?

2 A. Yes, there is connectors attached to it.

3 Q. Okay. Now, where are they? Where are they
4 located, and how many of them?

5 A. How many, I can't tell you. I know that there's
6 one somewhere in the area in between the crusher and
7 the stage loader. There's several grounds attached
8 from, I think at the head drive and at the tail drive.

9 Q. Are there any intermediate plugs located across
10 the face of the longwall ---

11 A. I can't tell you.

12 Q. --- that are left in place?

13 A. I cannot answer that question. I don't know
14 whether there are or whether there aren't.

15 Q. Okay. I'm a little bit confused about how you
16 make the attachments when you weld. For example, if
17 you ---?

18 A. If I had to weld ---.

19 Q. If you had to weld somewhere in mid face or ---
20 how do you make the attachments ---

21 A. What I would do, ---

22 Q. --- for welding?

23 A. --- if I had to weld at mid face, and if --- just
24 depending on where the spot is, instead of, like,
25 trying to, you know, look all over the place to try to

1 find one, I would just pull the backboard off, and I
2 have split nuts --- attach a split nut and then just
3 start welding.

4 Q. Okay.

5 A. You know, as close as I could ---

6 Q. Okay.

7 A. --- you know, as long as my cords would allow me
8 to weld.

9 Q. And this welder cable has two conductors? It has
10 a ---

11 A. Positive and a negative.

12 Q. --- positive and a negative; correct?

13 A. Exactly.

14 Q. And you ground the negative; correct?

15 A. Yes.

16 Q. The work side. Okay. When you finish welding,
17 when you use a split nut or split bolt to make your
18 attachments, when you finish and you're done, how do
19 you reinsulated that? Do you reinsulated?

20 A. Yes, you reinsulated with rubber tape.

21 Q. Okay. Just rubber tape?

22 A. Rubber tape, then vinyl.

23 Q. Okay. So well, let, let me make sure I
24 understand. You've indicated that there are
25 connectors or plugs present on the longwall, but you

1 don't always use them; correct? Depending on ---

2 A. Correct.

3 Q. --- where they're located? Okay.

4 A. But when you're not welding --- this is pretty
5 important. When you're not welding the leads are
6 pulled out of the welder and are locked out. So
7 that's a completely de-energized cable during
8 operation.

9 Q. Okay. These plugs that are located along the
10 face, are they insulated in any way when they're not
11 in use?

12 A. The ones that I have seen, the ends were taped up.

13 Q. Okay. All right. Okay.

14 A. Okay. Can we take a time out for a second?

15 Q. Sure.

16 OFF RECORD DISCUSSION

17 ATTORNEY BAXTER:

18 Back on the record.

19 BY MR. BATES:

20 Q. Dustin, when you entered the mine to go to the
21 longwall, how did you travel to the section?

22 A. The shack entry.

23 Q. Okay. Which portal did you normally enter?

24 A. The Ellis entry.

25 Q. Okay. Do you recall traveling through any

1 equipment doors or airlock doors?

2 A. Yes.

3 Q. Okay. Can you take this green pen? Can you
4 circle the airlock doors of which we're talking?

5 ATTORNEY BAXTER:

6 We'll mark this as Ross Exhibit Two.

7 (Ross's Exhibit Two marked for
8 identification.)

9 A. Which is our track entry, the yellow or the ---?

10 It should be the red; right? Yes, the red. Yeah. So
11 it would run down and --- yeah.

12 MR. BATES:

13 Okay. All right.

14 A. Well, if I knew where 78 Break would be on
15 here ---.

16 MR. BATES:

17 It's right here.

18 MR. FARLEY:

19 You're right on it.

20 A. Okay. Right. I knew that there was a turn.

21 There should be a set --- or two sets.

22 MR. BATES:

23 Yeah, they're right here.

24 A. Right. And I knew one of them that had the main
25 intake going across it.

1 BY MR. BATES:

2 Q. Okay. Can you put a circle around those and put
3 doors?

4 WITNESS COMPLIES

5 BY MR. BATES:

6 Q. Okay. Now that we know which area of the mine
7 we're talking about, can you recall the process for
8 going through the doors? Can you describe how your
9 mantrip would proceed through the doors?

10 A. You would have to stop and guys would have to get
11 out and manually open them, go through. They'd close
12 the doors. Then they open the next set.

13 Q. Okay. Do you recall any, any instances when you
14 --- when any of the doors were open?

15 A. Not that --- I mean, I'm sure that it's happened,
16 but nothing is sticking out in my mind. If they were
17 open, it would be, you know, if you'd run into, oh, a
18 mantrip that was trying to come inby and you're ---
19 and they would back up and go to 78 Break and get in
20 the spur.

21 Q. Okay. In your estimation, were these doors
22 maintained in good condition?

23 A. No.

24 Q. No? Okay. Can you describe what you mean by
25 that?

1 A. They were repeatedly hit with mantrips, motors.
2 The doors were bent. They used to be electric doors,
3 but you know, obviously slamming into them has torn
4 them up so where, you know, you had to manually open
5 and close them. The blocks that were around the frame
6 of the door typically would become loose after --- a
7 couple days after being fixed. Typically they were
8 repaired with spray foam.

9 Q. Uh-huh (yes). Do you recall any instances when
10 you came to the doors and saw holes ---

11 A. Oh, yes. Yes.

12 Q. --- that would permit airflow?

13 A. Yes. They were an embarrassment to look at.

14 Q. Okay. So in your estimation, did they perform the
15 function they were designed for in a ventilation
16 sense?

17 A. Well, by law, I guess that they did, ---

18 Q. In your estimation ---?

19 A. --- because MSHA traveled through it every single
20 time coming to the longwall face. So apparently they
21 were good.

22 Q. Okay. Well, let me back up to the question. In
23 your estimation, was there significant leakage through
24 the ---?

25 A. There had to have been, because you can't seal

1 airlock doors, so ---.

2 Q. You indicated that they were --- that they had at
3 one time been automatic or electrically operated?

4 A. Uh-huh (yes).

5 Q. And how long ago did the electric or the
6 automatic ---?

7 A. Motors work?

8 Q. Yeah, how long ago did they become ---

9 A. Before the ---.

10 Q. --- in operation?

11 A. Before longwall production started.

12 Q. On the current panel?

13 A. On the current panel. So this would have been
14 summer of last year that they worked.

15 Q. So they would have been in operation for almost
16 two years?

17 A. Well, they would get tore up. Then they would get
18 fixed.

19 Q. Okay.

20 A. And then it just kind of came to a point to where
21 I think that it just became a lost cause, so they just
22 kept them manual.

23 Q. Okay.

24 A. But again, like the --- whether they were the ---
25 if they have electric motors hooked to them or not,

1 either way, they, in my opinion, did not work.

2 Q. Okay.

3 A. There should have been a overcast built here.

4 Q. Okay. And you just pointed to the ---

5 A. Airlock doors.

6 Q. --- same area where the airlock doors are? Okay.

7 A. Right. Where the intake goes straight across.

8 Q. Okay. Can you describe how much force was
9 required to open the doors by manual means? I mean,
10 was it difficult?

11 A. Not really, no.

12 Q. Okay. Was there a lot of ventilation pressure
13 against the doors when you opened them?

14 A. Not really, no.

15 Q. Okay.

16 A. I mean, it wasn't like what you would expect.

17 Q. Okay.

18 A. But we also had another set of airlock doors on
19 the longwall, the --- matter of fact, two sets.

20 Q. Okay. Can you indicate the other locations of the
21 airlock doors that you're talking about with the green
22 pen?

23 A. Yes.

24 WITNESS COMPLIES

25 A. Okay. That is going to have to be the track

1 entry. This is the track entry; correct? That would
2 seem to be ---.

3 BY MR. BATES:

4 Q. Yes.

5 A. Okay. After we turn the turn, it should have been
6 one --- yeah. There should have been a set right
7 here.

8 Q. Okay.

9 A. And as we went up --- let's see. Was it right ---
10 okay. Well ---.

11 Q. I don't know. I'm just ---.

12 A. Yeah, I'm going to say it probably wasn't maybe
13 four or five breaks that there was another set. And
14 on the inby set there was a quarter of the blocks
15 missing, and I was told that it was a regulator.

16 Q. Okay.

17 A. So at that point I kind of just ---.

18 Q. Okay.

19 A. Yeah.

20 Q. For the record, can you indicate other airlock
21 doors in green? Okay. Thank you.

22 WITNESS COMPLIES

23 MR. FARLEY:

24 I got several things. Everybody ready?

25 MR. BATES:

1 Yeah.

2 EXAMINATION

3 BY MR. FARLEY:

4 Q. Bear with me. I'm probably going to be all over
5 the place here with some clarifying questions.

6 A. Okay.

7 Q. Okay. Maybe start backwards here first. The
8 doors you just pointed to where there were some blocks
9 missing, who told you that was a regulator?

10 A. Timmy Davis.

11 Q. Okay. And did you believe that?

12 A. I don't know if he was joking with me or ---
13 because that was the kind of guy he was. He was a ---

14 Q. Okay.

15 A. --- pretty --- he was a pretty funny guy.

16 Q. Okay. Your class, your job classification is
17 longwall electrician; is that right?

18 A. It was.

19 Q. Was, back at the time of the explosion?

20 A. Yes, it was.

21 Q. Okay. Were you considered a member?

22 A. Yes.

23 Q. Okay. Or do you supervise anybody?

24 A. No.

25 Q. Okay. Now, I don't want to be redundant, but I

1 want to make absolutely certain I understand your
2 opinion on how this explosion might have occurred,
3 because you seem like a pretty bright guy, and you
4 don't seem to be shooting from the hip. If I
5 understand you correctly, you felt like you were
6 having trouble at the back end of the longwall. You
7 feel like that the tailgate entries may have
8 constricted to a point where there was not significant
9 velocity coming to the tailgate, ---

10 A. Yes.

11 Q. --- thereby creating a methane build-up?

12 A. Yes.

13 Q. Is that your ---?

14 A. That is my opinion, yes.

15 Q. Okay. Now, other than the normal things which
16 would occur in tailgate entries such as roof falls,
17 floor hooving, so on and so forth, ---

18 A. Uh-huh (yes).

19 Q. --- what do you think might have contributed to
20 this lack of air velocity?

21 A. That I can't tell you.

22 Q. Okay.

23 A. I really don't know that much about ventilation.

24 Q. Okay. All right.

25 A. But as far as, like, what's back here, like,

1 whether there's stopping lines built, you know, who
2 knows? Who knows what it was like back there.

3 Q. Okay. Do you know if --- do you know if those
4 entries were traveled regularly?

5 A. Again, I don't know what --- you know, whether
6 fire bosses were supposed to go back there.

7 Q. Okay. All right. Now, expanding on your
8 opinion ---

9 A. Uh-huh (yes).

10 Q. --- and theory here as to what might have led to
11 this explosion ---.

12 A. Plus --- and on the ---.

13 Q. Okay.

14 A. We also had water problems from, I'm going to say,
15 55 Break.

16 Q. In the headgate entry?

17 A. In the headgate entry to somewhere back along
18 where the longwall started back there.

19 Q. Okay.

20 A. We had significant water problems.

21 Q. Okay. All right. Now, have you given any thought
22 to what ---? You know, you've explained, you know,
23 how you think a methane buildup might have occurred.

24 A. Uh-huh (yes).

25 Q. Have you given ay thought to what the ignition

1 source might have been?

2 A. That one has stymied me --- I'm not going not lie
3 to you --- because from what I've heard, I don't ---.

4 Q. Well, you're not alone there, so ---.

5 A. Well, from what I heard, the ignition source was
6 at the tailgate --- the end of the block that's on the
7 tailgate entry. So as the shearer was cutting out on
8 the tail, that's where the ignition occurred.

9 Q. Now, when you say that's what you've heard, ---

10 A. It's rumors.

11 Q. --- what's the source? Is that general rumor or
12 does that come from any, any particular individual?

13 A. This came from just rumors I've heard around the
14 bath house that came from mine investigators through
15 MSHA and Massey.

16 Q. Okay.

17 A. So again, I don't know how credible this is.

18 Q. Okay. All right. Now, I think you indicated the
19 last shift you worked on the longwall panel would have
20 been maybe Thursday or Friday before the April 5th
21 explosion?

22 A. Uh-huh (yes).

23 Q. Or Saturday? A couple --- three days before;
24 right?

25 A. Right.

1 Q. Was it necessary to cut any top and bottom to
2 facilitate enough room to --- for the longwall?

3 A. Yes.

4 Q. Okay. Now, how much were you --- how much top and
5 bottom were you cutting?

6 A. There was probably 30 inches above and below the
7 coal seam, because it really shrunk on the tail end of
8 the block.

9 Q. Okay. Now, what was the nature of the strata?
10 What was it? Was it shale, sandstone or what?

11 A. It was sandstone, and that's just speculation.
12 I'm not a geologist, so I'm just going to guess. I
13 mean it was solid grey.

14 Q. Okay. Well, let me ask this. As this top and
15 bottom material was being cut, did it produce sparks?

16 A. Yes.

17 Q. Now, when you say yes, is that a few or what you
18 would consider many?

19 A. There was a good amount of sparks.

20 Q. Yeah.

21 A. I mean, and it didn't ---.

22 Q. Okay. All right.

23 A. But back to my theory on how this thing happened,
24 the point of the explosion, that kind of --- I don't
25 see how that could take place, because if there was a

1 methane buildup and you have a pressurized return
2 that's blowing clean, fresh air into your tailgate
3 entry, I don't see how a spark 20 foot away could have
4 ignited.

5 Q. Okay.

6 A. So that's what I thought from the get-go, and then
7 after everything that I've kind of heard and whether
8 it's true or not true, I think my theory is kind of
9 not plausible. And again, who knows?

10 Q. Remains to be seen.

11 A. Right.

12 Q. I think we're still --- you know, not to get off
13 on a tangent here, but we're --- everything's
14 reasonable at this point.

15 A. Right.

16 Q. We're not going to toss anything aside at this
17 point. You mentioned at Logan's Fork that you had
18 occasion to bridge or override a methane monitor. Was
19 that done to facilitate repairs or production?

20 A. Production.

21 Q. Okay. How long did it --- how long did it
22 operate? How long did it produce?

23 A. Until the midnight shift would arrive.

24 Q. Okay. Did that happen --- how frequently did that
25 happen?

1 A. It wasn't a common thing.

2 Q. Okay. You said you were interviewed twice with
3 the Massey attorneys. Did you give any thought to why
4 they interviewed you the second time, other than the
5 particular questions they asked?

6 A. Yeah, because I was kind of under the impression
7 that people were going to be looking to point fingers,
8 and obviously a methane monitor would be an easy first
9 guess. But in my opinion, that is nowhere near or
10 even close to what has caused this.

11 Q. Okay. All right. Now, based on what you just
12 said, have you --- I want to give you the opportunity
13 to say whatever you like in terms of your opinion. So
14 have we heard all that --- we've heard everything that
15 you believe caused this so far?

16 A. Yes.

17 Q. Okay. All right. When you went to Speed Mine,
18 what was your job there?

19 A. The first time I was there I worked outby. The
20 second time I worked there I was a longwall
21 electrician.

22 Q. Okay. How long did you work there each time?

23 A. Eight months the first time and maybe two months
24 the second time around.

25 Q. Okay. Now, since you've been working on the

1 longwall panel in existence at UBB at the time of this
2 explosion, did you notice any floor hooving at any
3 time during the mining of this panel?

4 A. No, I did not notice any floor hooving.

5 Q. Okay. I think you indicated that the most methane
6 that you had seen detected on this longwall panel was
7 about 0.2 percent? Does that mean you were ---?

8 A. Or maybe it was .2.

9 Q. That's what I mean, .2.

10 A. Yeah, .2.

11 Q. Less than one percent?

12 A. Yes.

13 Q. Okay.

14 A. Absolutely.

15 Q. Would that also mean that you have not experienced
16 any type of outburst or inundation of methane from the
17 floor or ---?

18 A. No, no. I read that in the newspaper yesterday,
19 and that was the first time I had ever heard of any
20 methane gas coming through the bottom.

21 Q. Okay.

22 A. And if it would have been that severe, I think it
23 would've been talked about. You know, we would have
24 made precautions or provisions, you know, if that
25 would've occurred, so ---.

1 Q. Okay. In regard to those events, did you hear any
2 stories about such events in 2003 and 2004 at UBB?
3 Obviously you weren't there, but did you ever hear
4 about ---?

5 A. Right. But again, you know, a lot of the guys
6 that I have worked with in the past, you know, they
7 all tell stories of what's happened before, you know.
8 And that was never one of them.

9 Q. Okay.

10 A. One that sticks out in my head is they, you know,
11 set a charge off on a strip mine up above them while
12 they were underground working and everyone evacuated.
13 Now, a story like that is told, you know, to every new
14 guy that ever comes there, so ---.

15 Q. Okay. Is it standard --- was it standard
16 procedure on the UBB longwall section to report
17 production and downtime periodically throughout the
18 shift?

19 A. Yes.

20 Q. How frequently was it reported?

21 A. It would change from every hour. Sometimes we
22 would come in. Every half hour they would want a
23 production report.

24 Q. Okay. Who would usually make that call?

25 A. The headgate operator ---

1 Q. Okay.

2 A. --- was the one who reported to outside.

3 Q. Okay. Now, if you reported out at noon and had a
4 breakdown 15 minutes later, you'd probably call again;
5 right? Would that be fair?

6 A. No, they would wait and just --- whatever downtime
7 that you had ---

8 Q. Okay.

9 A. --- between the last call out point ---.

10 Q. All right. Every 30 minutes?

11 A. Basically.

12 Q. You indicated that during --- after you had your
13 electrician's training with Performance that it was
14 not necessary for you to sign a contract agreement; is
15 that correct?

16 A. We may --- I think we may have signed a contract.

17 Q. Okay.

18 A. But not just to be an electrician. It was a
19 contract that all members signed in order to get the
20 higher rate of pay.

21 Q. Okay. Did the contract also indicate that if you
22 left before the expiration of the contract, you would
23 have to pay back certain amounts ---

24 A. I think.

25 Q. --- a month?

1 A. Yeah, there was a couple different contracts ---

2 Q. Okay.

3 A. --- that stated that.

4 Q. All right. Do you have any knowledge of the UBB
5 longwall being down, out of production on April 5th,
6 2010 before the explosion?

7 A. Do I have any knowledge of it being down?

8 Q. Yes.

9 A. Prior?

10 Q. Yes, throughout the --- anytime during the
11 dayshift prior to the explosion?

12 A. I don't know, because like I said, I came on the
13 evening shift on April the 5th, so ---.

14 Q. Okay. Okay. I want to make sure I follow you on
15 the cutting and welding procedure. You've got a
16 welder hooked up to the monorail and the cable across
17 the longwall face; is that right? Now, if I
18 understand that correctly, that allows you to weld at
19 any, just about any location along the face?

20 A. Yes.

21 Q. Okay. And this cable was, of course, de-energized
22 when not in use?

23 A. Absolutely.

24 Q. Okay. Do you use any type of floor covering when
25 you do welding and cutting on the longwall face? Or

1 did you?

2 A. No.

3 Q. Okay. If you had to weld on the shearer, would
4 you typically return it to the headgate side or just
5 do it wherever it was --- happened to be on the
6 longwall face?

7 A. Wherever it happened to be. Typically what you
8 would do is take a separate stinger, which would be in
9 excess of, you know, 15 to 50 foot ---

10 Q. Uh-huh (yes).

11 A. --- of conductor, so ---.

12 Q. During the month of March 2010, did you notice ---
13 let's say from the first two weeks in March as
14 compared to the last two weeks of March, did you
15 notice a significant change in the quantity of air
16 passing across the longwall face?

17 A. I can't really recall. But I would say 60
18 percent, yes, because that is when the MSHA team came
19 in and we had to change our tailgate ventilation.

20 MR. FARLEY:

21 Okay. All right. I don't know that I
22 have any more ---.

23 EXAMINATION

24 ATTORNEY BAXTER:

25 Q. By 60 percent --- what do you mean by 60 percent,

1 yes?

2 A. I'm going to say 60 percent that we did have
3 problems.

4 Q. Yeah, that's your ---. You're saying 60 percent
5 --- you're not talking about the volume there? You're
6 talking about your ---

7 A. Opinion.

8 Q. --- opinion as to ---

9 A. Yes.

10 Q. --- whether that was? Okay.

11 A. And might I add, when the MSHA team came up, that
12 was the first thing that they went to. They came in
13 with four or five inspectors. Some were staged at the
14 headgate area. And I don't know if it was one or two
15 guys just wanted to go straight to the tailgate entry
16 and check the air, and when they did that, just, you
17 know, raised a red flag in my head of, like, okay.
18 Why did they just go directly to there and then now
19 all of a sudden there's a huge problem here?

20 So it's just --- and again, this is my opinion.

21 It seemed like someone had called MSHA or someone had
22 been looking at a mine map and they were like, you
23 know, what exactly is going on here and is it correct?
24 And whatever was done on that day, that, in my
25 opinion, has 100 percent contributed to this

1 explosion, because we managed to go this far this long
2 with no problems until the ventilation change was
3 made.

4 RE-EXAMINATION

5 BY MR. BATES:

6 Q. Dustin, you indicated --- this is Bob Bates with
7 MSHA. You had indicated earlier that you were aware
8 of water problems, or accumulations on the headgate
9 entry of the longwall near --- and you had indicated
10 near the start point?

11 A. Yeah, there had been some water?

12 Q. Have you had occasion to travel up into that area?

13 A. On several different occasions, yeah, we'd have to
14 go inby maybe five, ten breaks to set pumps.

15 Q. Can you clarify what you mean by water
16 accumulation? I mean, how deep? Was it knee-deep,
17 waist-deep, ankle-deep?

18 A. Chest-deep.

19 Q. Chest-deep? Okay.

20 A. In certain occasions.

21 Q. Okay. Was the accumulation to the extent that it
22 could interfere with ventilation?

23 A. Absolutely.

24 Q. What remedial actions did you take?

25 A. The sent guys from the miner sections to go up

1 there and set pumps and pump the water. There was
2 supposed to be a turbine pump set somewhere back.

3 Q. Okay.

4 A. And it was supposed to all pump inby.

5 Q. Okay. In your opinion, did the presence of water
6 affect ventilation on the longwall face?

7 A. I can't answer that question honestly because I
8 don't have the ventilation knowledge to know whether
9 it did or didn't.

10 Q. Okay. As electrician, are you required to do any
11 of the required weekly exams or monthly electrical
12 examinations?

13 A. I didn't do any of them.

14 Q. Okay. Did you assist anyone in doing
15 examinations?

16 A. No, I did not. I done permissibility during the
17 lonwall setup to some of the outby equipment, being,
18 like, scoops, scoop chargers. During the time that we
19 started up I may have done permissibility a time or
20 two, but nothing --- I didn't have anything assigned
21 or I didn't do it on a --- like, a weekly or even
22 monthly basis.

23 Q. But if I understand correctly, you have done
24 permissibility examinations on ---

25 A. But not in ---.

1 Q. --- enclosures on the longwall; correct?

2 A. Yes, I have.

3 Q. Okay. During these examinations, whenever you did
4 them, did you notice any excess openings in XP ---

5 A. No.

6 Q. --- enclosures?

7 A. No. We never had any problems as far as that was
8 concerned, because we had all brand new equipment,
9 refurbished equipment at the startup. And typically,
10 even though we moved, it's not like other mining
11 machinery. It's a humongous motor mounted on a steel
12 platform. It doesn't get much wear and tear.
13 Nobody's tearing into the motors. We didn't have any
14 problems.

15 Q. In your opinion, did you have a lot of cable
16 problems ---

17 A. No. Oh ---.

18 Q. --- with cables being cut or ground faults or
19 short circuits or ---

20 A. Yes.

21 Q. --- anything of that type?

22 A. Shearer cable, yes.

23 Q. Okay. Can you describe the types of problems you
24 have with the shearer cable?

25 A. There would be --- rocks would come into the

1 britby.

2 Q. Yeah.

3 A. As the shearer cable would roll over, sometimes a
4 rock would become fouled and tear the britby apart.
5 And of course the britby, even though it was plastic,
6 did have steel parts in it, and sometimes it would
7 penetrate the jacketing of the cable.

8 Q. Okay. Have you ever, in your experience on the
9 longwall, noticed inter-machine arcing, say, between
10 the shearer and any surrounding metal components?

11 A. No.

12 Q. Okay.

13 A. Unless it was a ground fault, then, you know, that
14 would just be in the cable, not in the machine itself.

15 Q. Okay. But you never saw any visible electrical
16 arcs between the shearer and ---

17 A. No.

18 Q. --- any other metallic surfaces?

19 A. No.

20 Q. Okay. I have a few remaining questions just to
21 make sure I've covered everything. And these may seem
22 unrelated questions, but I need to ask them. To your
23 knowledge, was advance notice of MSHA inspections
24 given by the mine operator at any time?

25 A. Yes.

1 Q. Okay. Can you describe what you mean by that?

2 A. If inspectors arrived on the property, they would
3 typically know where they were going to underground.
4 And they would just let us know that inspectors are on
5 the property. They may or may not be headed your way,
6 because they could stay outside. Well, they're
7 supposed to go to One section, for instance, and
8 instead of going to One section they may walk the
9 belts and ---.

10 Q. And this notification was made by the mine
11 telephone system; is that correct?

12 A. Yes.

13 Q. Okay.

14 A. But again, that wasn't a hundred percent
15 guaranteed, like, okay. We know they're definitely
16 coming here.

17 Q. Okay. In your estimation, was this done to avoid
18 enforcement actions or ---?

19 A. Just to let you know to be on your toes.

20 Q. Okay. And you may have addressed this already,
21 but in your estimation, was mine ventilation adequate
22 at all times?

23 A. The majority of the time, yes, we had enough air
24 coming across the longwall face ---

25 Q. Okay.

1 A. --- or within the wall.

2 Q. Okay.

3 A. But whether it was right elsewhere, I don't know
4 that.

5 Q. Okay. Were major ventilation changes made while
6 miners were underground, to your knowledge?

7 A. Yes.

8 Q. Okay. And can you recall any specific instances?

9 A. Well, at the startup there was a major ventilation
10 change going on, and I was actually one of the guys
11 that was standing there that was wrote up at the time
12 because we weren't technically taking part of the
13 ventilation change, but doing more, like, maintenance
14 work.

15 Q. Okay.

16 A. So with that, yes, we did do a --- you know, a
17 major air change. But as far as, like, after that
18 point, I've heard that there was air changes being
19 made while we were underground, but I have no proof of
20 that. Again, this is bath house rumors.

21 Q. Okay. Did you ever have occasion to work on the
22 continuous miner sections?

23 A. No, not until --- since the explosion I've went to
24 the miner section.

25 Q. Okay.

1 A. In your opinion, were miners subjected to
2 retaliation or threats for reporting safety issues or
3 concerns?

4 A. No.

5 Q. Okay. You may have answered this before. I don't
6 remember. Where are you working right now?

7 A. Round Bottom, Shop Number Two.

8 Q. Okay. And that's still an A.T. Massey Company?

9 A. It's a Massey Energy Company.

10 Q. Okay.

11 A. Yes.

12 Q. Okay.

13 A. It's under Elk Run.

14 Q. Okay. Do you keep any notes or did you keep any
15 notes while underground?

16 A. No.

17 Q. Okay.

18 RE-EXAMINATION

19 BY MR. FARLEY:

20 Q. The ventilation changes you just mentioned, do you
21 know what individual or individuals made the changes?

22 A. I personally do not know.

23 MR. FARLEY:

24 Okay. That's all I have.

25 RE-EXAMINATION

1 BY MR. BATES:

2 Q. One final question. You'd mentioned that they
3 have to call out every 30 minutes to give a downtime
4 report or a production report. Is there a record kept
5 of this?

6 A. There should be. I believe it's --- I'm almost
7 positive that it's e-mailed to the president and Chris
8 Adkins and even to Don Blankenship ---

9 Q. Okay.

10 A. --- every 30 minutes.

11 Q. Okay. And this is electrical question. I know
12 that the longwall's equipped with a data highway
13 communication system. Is that data highway, does it
14 extend to the surface of the mine?

15 A. No. By data highway system, what exactly ---?

16 Q. I guess specifically the question I'm wanting to
17 know is can they monitor the state of the longwall
18 from the surface or from a computer on the surface?

19 A. No, no. It goes from the headgate box to the mule
20 train.

21 Q. Okay. And there's no external communications?

22 A. Once it hits the mule train, that's the furthest
23 outby that it goes.

24 Q. Okay. Based on what you've heard from other
25 miners and your co-workers, are you under the

1 impression that the shearer was cutting at the time of
2 the explosion?

3 A. I haven't heard specifically ---

4 Q. Okay.

5 A. --- what was going on. I just know that the
6 shearer was on the tail. And the last report that was
7 called out was that they were, I think around mid
8 face. So that would have definitely put the shearer
9 on the tail for 30 minutes from ---

10 Q. Okay.

11 A. --- for them to do the shovel.

12 MR. BATES:

13 Okay. I don't have anything else. Do
14 you have anything else?

15 ATTORNEY BAXTER:

16 Okay.

17 BY MR. BATES:

18 Q. Okay. You'd indicated earlier that you sometimes
19 received calls underground that inspectors were on the
20 property and coming underground; is that correct?

21 A. Yes.

22 Q. Okay. Who informed you of this?

23 A. Headgate operator.

24 Q. Okay. Well, who informs him?

25 A. The dispatcher.

1 Q. The dispatcher. And who's the dispatcher? Do you
2 remember his name?

3 A. Don't know. I mean, they had a rotating shift.

4 Q. Okay. Have you ever been informed of this by a
5 section foreman or a longwall foreman or any
6 management official?

7 A. Yes. I've been --- it's typically a standard
8 procedure when we know an inspector is showing up that
9 you pass it along.

10 Q. Okay. And you can recall being told this by a
11 foreman?

12 A. Yes.

13 Q. Okay. Do you remember who?

14 A. Like, are we talking a certain, like, occasion or
15 is this just a ---?

16 A. Yeah, a certain occasion if you have --- if you
17 can recall a certain occasion.

18 Q. Well, it's happened several times, but it just
19 depends on whoever the boss was at the time. I've had
20 probably ten different section bosses since I've been
21 on the longwall.

22 A. Okay.

23 Q. So ---.

24 ATTORNEY BAXTER:

25 Do you remember any of them in particular

1 tell you about that?

2 A. I suppose, yes, which, you know, Kevin Medley, he
3 was the last boss that I had, you know? But it's not
4 that, you know, he had done anything different than
5 anyone prior has ever done, you know?

6 BY MR. BATES:

7 Q. Dustin, where were you when you first learned of
8 the explosion on April 5th?

9 A. I was underground, putting my stuff on the mantrip
10 on the Ellis Portal. It's at the Ellis Portal, I
11 should say.

12 Q. Okay.

13 A. And we pretty much figured out what was going on.
14 So no one actually told us. We kind of knew.

15 Q. Okay. Can you describe what you saw, heard, felt
16 at the time?

17 A. As we were putting our stuff on the ride, there's
18 110 lights strung over the chargers and where the
19 mantrips are. And the lights cut out. And after the
20 lights cut out, the wind slightly started blowing
21 outby.

22 Q. Uh-huh (yes).

23 A. And it gradually picked up to --- I can't even
24 speculate the amount of --- like, miles per hour, how
25 hard that the wind was blowing, but it was severe.

1 And it went from just a slight breeze to wide open
2 within a matter of 10 or 15 seconds to where it was a
3 matter of everybody knew something was up and it was
4 --- everyone was concerned.

5 After I stood there ---. Actually, I got over
6 into the breakthrough. And I was standing there with
7 the boss and couldn't figure out whether --- you know,
8 if we had a major fall in the intake or, you know, if
9 it had been, why is it blowing this --- you know, why
10 is it happening this long? You know.

11 That's when, you know, Kevin told us that we'd had
12 an explosion, that we need to probably put our
13 rescuers on and make our way out. And of course, you
14 know, everybody was fumbling around for their things,
15 --- you know, because it was just, you know, a
16 standard thing to just throw your stuff on the ride.
17 You know, all I have is my hardhat on, and it was
18 blowing off my head, so I was left with, you know,
19 holding my cap light and trying to carry my belt and,
20 you know, have other guys hang onto me as I'm trying
21 to, you know, evacuate the mine.

22 Q. How far inby the Ellis Portal were you located
23 when you noticed this?

24 A. I'm going to say three breaks. And it was just
25 --- it was a bad deal. There was a lot of dust and

1 ballasts. Everything was just coming full force, you
2 know, just peppering you in the face. We'd breath in
3 more dust in that amount of time than it seems like we
4 could have in a whole entire shift.

5 Q. And did you walk to the outside?

6 A. We tried to run.

7 Q. Okay.

8 A. But it was maybe a fast walk.

9 Q. Okay. Do you know who was the responsible person
10 in charge of the evacuation and the initial rescue
11 attempt?

12 A. After we got outside, Everett Hager and Jack Roles
13 and I think Kevin Medley all got together and they
14 went underground, looking to see whatever they could
15 find, because there were --- a mantrip came out, you
16 know. A bunch of miners that, you know, didn't
17 typically portal on that side came out, and they all
18 had their rescuers deployed. And they had said that
19 they had been all the way, I think towards 78 Break.
20 And you know, like I said, typically they would go
21 towards the UBB side. But they came out, like I said,
22 on the Ellis side.

23 After they came out and they had repeatedly tried
24 to call underground for communication to the longwall
25 and One Section, Everett, Jack and I think Kevin,

1 maybe someone else --- I don't remember the other
2 boss's name that was there --- they all went inby.
3 And I think they made it all the way up to where they
4 found the crewmen dead on the mantrip. How far they
5 made it past there, I don't know.

6 Q. You may have told me this, and I'm sorry if I
7 forgot, but you said that you got your rescuer out.
8 Did you actually don it?

9 A. No, because I could see daylight.

10 Q. Okay.

11 A. Once I turned the curtain --- I turned, I could
12 see daylight, and I figured I could definitely make it
13 to there, so ---.

14 Q. Did any of the --- your co-workers ---?

15 A. No, we all just carried our equipment outside.

16 Q. Were you involved in the mine rescue/recovery
17 effort in any way?

18 A. No.

19 Q. Okay.

20 A. No. After we took the inventory, like who was
21 there and what we were ---. After they had
22 accountability, I should say, of who was there, I
23 left, you know.

24 Q. Okay. Is there anything that you would recommend
25 for MSHA and the State to look at or who we should

1 interview in order to better understand this disaster?

2 A. Obviously the supervisors, the fire bosses. I
3 would look to see who has made a fire boss run and who
4 the last person was that has been in this area, who
5 had monitored and taken intake readings.

6 Q. And what would you recommend in order to prevent
7 this type of disaster in the future?

8 A. I couldn't even begin to tell you.

9 MR. BATES:

10 Okay. Do you have anything?

11 MR. FARLEY:

12 I don't think so.

13 MR. BATES:

14 Okay. All right.

15 ATTORNEY BAXTER:

16 Okay.

17 ATTORNEY BAXTER:

18 On behalf of MSHA and the Office of
19 Miners' Health, Safety and Training, I want to thank
20 you for appearing and answering questions today. Your
21 cooperation is very important to the investigation as
22 we work to determine the cause of the accident. We
23 request that you not discuss your testimony with any
24 person, aside from your personal representative.
25 After questioning other witnesses, we may call you if

1 we have any follow-up questions that we feel we need
2 to ask you. If at any time you have additional
3 information regarding the accident that you'd like to
4 provide to us, please contact us at the contact
5 information that was previously provided to you.

6 Any statements given by miner witnesses

7 to MSHA are considered to be an exercise of statutory
8 rights and protected activity under Section 105(c) of
9 the Mine Act. If you believe any discharge,
10 discrimination or other adverse action is taken
11 against you as a result of your cooperation with this
12 investigation, you are encouraged to immediately
13 contact MSHA and file a complaint under Section 105(c)
14 of the Act.

15 Remedies under the Mine Act include back

16 wages and immediate temporary reinstatement to your
17 most recent position with the company pending a
18 complete investigation of your complaint. In order to
19 file such a complaint, you should contact the MSHA
20 District 4 Office. You may also find information at
21 www.msha.gov. If you wish, you may now go back over
22 any answer you've given during this interview, and you
23 may also make any statement you'd like to make at this
24 time.

25 A. I'm good.

1 ATTORNEY BAXTER:

2 Again, I want to thank you for your
3 cooperation in this matter.

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STATEMENT UNDER OATH CONCLUDED AT 9:33 A.M.

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1 STATE OF WEST VIRGINIA)

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4 CERTIFICATE

5 I, Alicia R. Brant, a Notary Public in and
6 for the State of West Virginia, do hereby certify:

7 That the witness whose testimony appears in
8 the foregoing deposition, was duly sworn by me on said
9 date and that the transcribed deposition of said
10 witness is a true record of the testimony given by
11 said witness;

12 That the proceeding is herein recorded fully
13 and accurately;

14 That I am neither attorney nor counsel for,
15 nor related to any of the parties to the action in
16 which these depositions were taken, and further that I
17 am not a relative of any attorney or counsel employed
18 by the parties hereto, or financially interested in
19 this action.



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21
22 *Alicia R. Brant*
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