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Transcript of the Testimony of Kermit Bennett

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STATEMENT UNDER OATH
OF
KERMIT BENNETT

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 19, 2010, beginning at 2:45 p.m.

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EXHIBIT PAGE

PAGE

NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	9*
Two	United States Postal Services Website Printout	11*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name's Derek Baxter. Today is August
5 19th, 2010. I am with the Office of the Solicitor,
6 U.S. Department of Labor. With me is Erik Sherer, an
7 accident investigator with the Mine Safety and Health
8 Administration, MSHA, an agency of the United States
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearances for the record.

12 MR. O'BRIEN:

13 John O'Brien with the West Virginia
14 Office of Miners' Health, Safety and Training.

15 MR. KOERBER:

16 Barry Koerber, Assistant Attorney General
17 representing the West Virginia Office of Miners'
18 Health, Safety and Training.

19 MS. MONFORTON:

20 And I'm Celeste Monforton with the
21 Governor's independent team.

22 ATTORNEY BAXTER:

23 And Mr. Eric Silkwood from Performance
24 Coal Company, representing them, is present right now.
25 He intends to make a brief statement. We've had some

1 conversations with Mr. Silkwood prior to the
2 interview, and MSHA and State of West Virginia has
3 decided to not permit him to attend the interview
4 based on the fact that it's a former employee, and Mr.
5 Silkwood asked to make a statement prior to the start
6 of the interview.

7 ATTORNEY SILKWOOD:

8 I'm Eric Silkwood from Allen, Guthrie and
9 Thomas, Counsel for Performance Coal Company. Based
10 on discussions with representatives from the
11 Solicitor's office and the State, I'm going to
12 cordially leave the interview and have been asked to
13 do so and just wanted to note our disagreement with
14 the disposition regarding this witness being a former
15 fire boss, which is an agent of the company and a
16 management employee. And we will, I guess, address
17 the issue further in a letter to the Department of
18 Labor shortly.

19 ATTORNEY BAXTER:

20 Okay. Thanks, Eric. Please swear the
21 witness.

22 -----

23 KERMIT BENNETT, HAVING FIRST BEEN DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 -----

1 ATTORNEY KOERBER:

2 Sir, would you please state your full
3 name for the record and spell your last?

4 A. Okay. My name is Kermit Ray Bennett,
5 B-E-N-N-E-T-T.

6 ATTORNEY KOERBER:

7 Okay. Would you state your address and
8 telephone number for the record?

9 A. My address is (b) (7)(C)

10 (b) (7)(C)

11 (b) (7)(C)

12 ATTORNEY KOERBER:

13 Sir, do you have your own personal
14 attorney with you here today?

15 A. No, sir.

16 ATTORNEY KOERBER:

17 And the attorney that was here present
18 previously, that was not your personal attorney;
19 correct?

20 A. No, sir.

21 ATTORNEY KOERBER:

22 Do you have a personal representative
23 with you here today?

24 A. No, sir.

25 ATTORNEY KOERBER:

1 Okay.

2 A. Well, my son.

3 ATTORNEY KOERBER:

4 Yeah. Okay. Young man, would you please

5 state your name for the record?

6 MR. ADKINS:

7 My name is Gerald Logan Adkins. I live

8 with my father.

9 ATTORNEY KOERBER:

10 Okay. Mr. Bennett, are you appearing

11 here today because of the fact that you received a

12 subpoena?

13 A. Yes, sir.

14 ATTORNEY KOERBER:

15 Okay. And we'll hand you a copy of the

16 subpoena and ask whether or not you believe that to be

17 a copy of the subpoena you received.

18 A. Yes, sir.

19 ATTORNEY KOERBER:

20 That's a copy?

21 A. Yes, sir.

22 ATTORNEY KOERBER:

23 Okay. I'd like that to be marked as

24 Exhibit One.

25 (Exhibit K. Bennett One marked for

1 identification.)

2 ATTORNEY KOERBER:

3 Sir, I have yet to get the green card

4 back, but I have from the United States Postal

5 Services website, when I track the certified mail

6 number ---

7 A. Uh-huh (yes).

8 ATTORNEY KOERBER:

9 --- a little printout that says it was

10 delivered to you on August 14th. Does that sound

11 legitimate? August 14th would probably have been ---

12 A. There was one ---

13 ATTORNEY KOERBER:

14 --- last Saturday.

15 A. --- sent to my old address ---

16 ATTORNEY KOERBER:

17 Yeah, and it got forwarded to you.

18 A. --- and then it got forwarded.

19 ATTORNEY KOERBER:

20 Yeah.

21 A. So I didn't get it until, I think last Friday, I

22 think it was.

23 ATTORNEY KOERBER:

24 Could it possibly have been Saturday? I

25 think this says August 14th.

1 A. It might've been Saturday.

2 ATTORNEY KOERBER:

3 Okay, okay. Anyway, I just would like
4 this to be Exhibit Two.

5 (Exhibit K. Bennett Two marked for
6 identification.)

7 ATTORNEY KOERBER:

8 Sir, prior to the interview, you filled
9 out a couple of forms to receive the statutorily
10 required witness fee and mileage at the rate of 15
11 cents per mile; correct?

12 A. Yes, sir.

13 ATTORNEY KOERBER:

14 Okay. And I have that here now. And I
15 will provide that to the appropriate parties for
16 processing for payment today.

17 A. Okay.

18 ATTORNEY KOERBER:

19 But I make no promises as to when the
20 check comes.

21 A. Okay.

22 ATTORNEY KOERBER:

23 Okay? Back to you, Derek.

24 ATTORNEY BAXTER:

25 Okay. I'm going to read something about

1 the ground rules for the interview now. All members
2 of the Mine Safety and Health Accident Investigation
3 Team and all members of the State of West Virginia
4 Accident Investigation Team participating in the
5 investigation of the Upper Big Branch Mine explosion
6 shall keep confidential all information that is
7 gathered from each witness who voluntarily provides a
8 statement until the witness statements are officially
9 released.

10 MSHA and the State of West Virginia shall
11 keep this information confidential so that other
12 ongoing enforcement activities are not prejudiced or
13 jeopardized by a premature release of information.
14 This confidentiality requirement shall not preclude
15 investigation team members from sharing information
16 with each other or with other law enforcement
17 officials. Team members' participation in this
18 interview constitutes their agreement to keep this
19 information confidential.

20 Government investigators and specialists
21 have been assigned to investigate the conditions,
22 events and circumstances surrounding the fatalities
23 that occurred at the Upper Big Branch Mine-South on
24 April 5th, 2010. The investigation is being conducted
25 by MSHA under Section 103(a) of the Federal Mine

1 Safety and Health Act and the West Virginia Office of
2 Miners' Health, Safety and Training. We appreciate
3 your assistance in this investigation.

4 You may have your personal attorney
5 present during the taking of this statement or another
6 personal representative if MSHA has permitted it. You
7 may consult with your attorney or the representative
8 at any time. Your statement is completely voluntary.
9 You may refuse to answer any question and you may
10 terminate your interview at any time or request a
11 break at any time. Since this is not an adversarial
12 proceeding, formal Cross Examination will not be
13 permitted. However, your personal legal
14 representative may ask clarifying questions as
15 appropriate.

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

25 That means that if a judge orders us to

1 reveal your name or if another law requires us to
2 reveal your name or if we need to reveal your name for
3 other law enforcement purposes, we may do so. Also,
4 there may be a need to use the information you provide
5 to us or other information we may ask you to provide
6 in the future in other investigations into and
7 hearings about the explosion. Do you understand or
8 have any questions?

9 A. I understand. No questions.

10 ATTORNEY BAXTER:

11 After the investigation is complete, MSHA
12 will issue a public report detailing the nature and
13 cause of the fatalities in the hope that greater
14 awareness about the causes of accidents can reduce
15 their occurrence in the future. Information obtained
16 through witness interviews is frequently included in
17 these reports. Since we will be interviewing other
18 individuals, we request that you not discuss your
19 testimony with any person aside from your personal
20 representative or Counsel. And I understand your son
21 is your personal representative today?

22 A. Yeah.

23 ATTORNEY BAXTER:

24 And what is his name?

25 A. Gerald Adkins.

1 ATTORNEY BAXTER:

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

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

12 After we have finished asking questions,
13 you'll have an opportunity to make a statement and
14 provide us with any other information you believe to
15 be important. If at any time after the interview you
16 recall any additional information that you believe
17 might be useful, please contact Norman Page at the
18 telephone number or e-mail address provided to you.
19 And just to clarify one other thing, Mr. Bennett, Mr.
20 Silkwood, who was here on behalf of the company
21 earlier, you did not request him to attend this
22 interview?

23 A. No, I didn't request him, but it didn't matter to
24 me whether he did or not.

25 ATTORNEY BAXTER:

1 Okay. Thank you.

2 MR. SHERER:

3 Okay. First of all, I want thank you for
4 coming down here this afternoon, Mr. Bennett.

5 MR. O'BRIEN:

6 Mr. Bennett, on behalf of the West
7 Virginia Office of Miners' Health, Safety and Training
8 I'd like to inform you that you have certain rights
9 against protection from participating in these
10 proceedings. What I'd like to do is give you some
11 information. If you would experience any such
12 discrimination you can contact the Board of Appeals at
13 this address.

14 A. Okay.

15 MR. O'BRIEN:

16 One think I would like to let you know up
17 --- right up front, you must do it within 30 days of
18 the time that any alleged discrimination takes place.
19 Also, here's a business card for Terry Farley, who is
20 our lead interviewer, one of our lead investigators.
21 Also, here's a number for Bill Tucker there, who's
22 also the lead underground investigator. Thank you.

23 Okay.

24 MR. SHERER:

25 Sorry about that.

1 EXAMINATION

2 BY MR. SHERER:

3 Q. Again, I'd like to thank you for coming down.

4 Roughly how many years of coal mine experience do you
5 have?

6 A. Fourteen (14).

7 Q. Fourteen (14). When did you start with the Massey
8 organization?

9 A. I started with Massey organization back in '97 as
10 a contractor.

11 Q. Okay. Did you get hired on by Massey at some
12 point in time?

13 A. Yes, sir, 2001 in July.

14 Q. Okay. Now, we understand that you worked at Upper
15 Big Branch Mine until sometime in 2009; is that
16 correct?

17 A. Yes, sir.

18 Q. When did you leave Upper Big Branch?

19 A. I left Upper Big Branch April the 16th of 2009.

20 Q. Okay. What did you do at Upper Big Branch?

21 A. I fire bossed, fill in the section bossing, done
22 some belt work.

23 Q. Let me first ask you about your fill-in section
24 work as a section boss. Where's the last place you
25 did that at Upper Big Branch?

1 A. The last place I done that was on Section One,
2 somewhere about --- I want to say 50, 55 Break,
3 somewhere right in there. I can't remember exactly
4 what break we was at at the time.

5 Q. Sure. Okay. That's close enough. And we
6 actually have been referring to Section One as the
7 headgate.

8 A. Right.

9 Q. Or 21 Headgate of the ---

10 A. Right.

11 Q. --- current longwall panel. And you started doing
12 some fill-in section bossing around 55, maybe 60
13 Break?

14 A. Uh-huh (yes).

15 Q. How far did that continue?

16 A. What continued, sir?

17 Q. The fill-in section bossing.

18 A. The fill-in section bossing lasted maybe a shift.
19 We may've drove maybe a break at the time ---

20 Q. Okay.

21 A. --- you know.

22 Q. As the section progressed out toward the Bandytown
23 fan, was there some point where you possibly stopped
24 being a fill-in section boss?

25 A. Yes. I didn't fill in no more after that right

1 there.

2 Q. Oh, okay, okay. So it was just a few shifts,
3 probably?

4 A. Few shifts at that prior time, but before that, I
5 filled in section boss for six months. And that was
6 on the other side of the mountain up on Headgate 18
7 and 20.

8 Q. Oh, okay, okay. Well, let me ask you this. When
9 you were up on Section One or the 21 Headgate, what
10 were the conditions like in there?

11 A. Well, the conditions wasn't --- the top was bad
12 and we was trying to timber along the ribs, because
13 ribs was rolling out. But other than that, conditions
14 was no more dangerous than ay other coal mine.

15 Q. Okay. What was the ventilation like?

16 A. Ventilation, we had a hard time keeping
17 ventilation up through there.

18 Q. And this is before the Bandytown fan was
19 connected, so I guess they're still being ventilated
20 from the fans down at UBB?

21 A. Right.

22 Q. Just not enough air?

23 A. That's right, there was not enough air.

24 Q. Was methane a problem back there?

25 A. We had methane a couple times, but it wasn't

1 really a whole lot, you know, a whole lot of times.
2 We might've had two or three percent, maybe --- you
3 know, different periods of time.

4 Q. Sure. What'd you do when it hit two or three
5 percent?

6 A. We hung curtain up, trying to get the gas out of
7 there, put the backups up and ---.

8 Q. Sure. Did you knock the power?

9 A. Knocked the power.

10 Q. Okay. Anything stand out as unusual while you
11 were working on that headgate?

12 A. Not really. I mean at that time we was still
13 trying to put the beltline in and going a lot of work
14 to the four-foot beltline for the miner sections. But
15 other than anything out of the ordinary, no. It just
16 was ordinary miner day life.

17 Q. Okay, sure. Now, let's go to a little later when
18 you started the fire bossing.

19 Q. Okay.

20 Q. Was there any particular part of the mine that you
21 fire bossed?

22 A. I fire bossed everything from Ellis Creek Portal
23 all the way down to the Gory Hole and everything from
24 the Glory Hole to outside UBB.

25 Q. That's an awful long distance.

1 A. Yeah.

2 Q. Did you do all of that at the same time or did you
3 possibly split it up?

4 A. We split it up at --- most of the time we had two
5 people. And I would take care of it from the Glory
6 Hole up to 77 Break or up to what they called 52 Break
7 on the main line.

8 Q. Okay. Who were you working for at that point in
9 time?

10 A. Performance Coal.

11 Q. Who was your immediate boss?

12 A. Immediate boss was Homer Wallace.

13 Q. Okay. And we understand that Mr. Wallace was
14 retired?

15 A. What I understand. He was there when I left.

16 Q. Now, when you were fire bossing, which shift did
17 you work?

18 A. I worked in the 8:00 to 6:00, the hoot owl shift,
19 evening hoot owl shift.

20 Q. Okay. Did you also do pre-shifts?

21 A. Done pre-shifts, yes, sir.

22 Q. How many pre-shifts?

23 A. Done, well, quite a few. Every day I was there we
24 done pre-shifts for the hoot owl and then dayshift.

25 Q. Okay. So you did two pre-shifts ---

1 A. Per shift.

2 Q. --- per shift, then?

3 A. Uh-huh (yes).

4 Q. You guys got the heavy part of the load.

5 A. Yeah.

6 Q. Let me ask you this, Mr. Bennett. Did you think
7 you had enough time to do an adequate exam?

8 A. No, sir, I did not.

9 Q. Could you elaborate that a little?

10 A. Well, for two people trying to take care of that
11 big a size of mines, you was pretty much on a dead run
12 just trying to get your initials up, much less trying
13 to stop and take gas tests or air checks or anything
14 like that, you know, like you're supposed to.

15 Q. Sure.

16 A. I mean, you was at a dead run and you didn't have
17 time for nothing.

18 Q. Sure. I understand that. Now, if you found a
19 hazard --- well, let's say there was area with bad top
20 or something, what would you do?

21 A. Like I say, I'd write it in the book. That's
22 about the only time you had to do, that you had. I
23 mean, you didn't even have time to even stop and
24 check, to timber a piece of roof or a rib or pull it
25 down or you know, like you're supposed --- like the

1 law requires you to do. But you didn't have time.

2 Q. Sure. So you write it down in the book. Did
3 those things generally get taken care of?

4 A. Sometimes they'd look at you and it wouldn't get
5 took care of, like down here at the Glory Hole. I
6 went and told --- they had bad top down there at this
7 --- over in this area.

8 Q. You're pointing south of the Glory Hole.

9 A. Well, yeah, it's right down Seven Tail.

10 Q. Okay.

11 A. But right in here is where we was at, by the Seven
12 Tail between the Glory Hole and Seven Tail. There was
13 bad top over there. And I went and told them upstairs
14 about it and they come back and told me it wasn't that
15 bad.

16 Q. Did they go down there?

17 A. They went down there and checked it and they said
18 it wasn't that bad, but then it fell.

19 Q. Well, I'd say you were right, sir. How often did
20 you report what you thought was a hazard and basically
21 you were told that it wasn't? Was that common?

22 A. It wasn't very common. It was at times. It
23 wasn't very common. I mean it was ---.

24 Q. Okay. Now, as I understand it, the examiner is an
25 expert. You're required to ---.

1 A. Yeah, he's over top of everybody. You're required
2 --- you're over top even the superintendent at the
3 time of your pre-shift.

4 Q. Sure. Do you feel that mine management was --- do
5 you think they were paying adequate attention to what
6 you examined, what you reported?

7 A. Didn't seem like it to me.

8 Q. What about if you noticed an area where you had
9 some belt spillage or the belt was gobbing off? Were
10 you able to take care of that?

11 A. Not when you had two people there, no. The only
12 thing you could do is maybe go to a phone and call the
13 shift foreman and tell him about it and he would tell
14 you, well, okay. I know where it's at. I got belt
15 splices here to do, because they was short handed,
16 too.

17 Q. Sure. Did you ever shut any of these belts down?

18 A. Yep.

19 Q. Did you get any trouble because of that?

20 A. They wanted to know why, you know, but after I
21 told them why then they understood.

22 Q. Okay. What about rock dust? How good a job was
23 the --- how adequate was the rock dust when you were
24 doing this work along the belts?

25 A. Not very good, not very good. The belts stayed

1 pretty much, well, black most of the time.

2 Q. Oh, jeez. Was there float dust on the structure?

3 A. There was float dust on the structure.

4 Q. Did you report that in the pre-shift books?

5 A. Yes, sir.

6 Q. Roughly when did you report that?

7 A. I reported that when I come back from One and when
8 I would call my report out in the evening at, like, 11
9 o'clock, 11:00, 11:30, somewhere like that, at night.

10 Q. I mean, can you give me a rough calendar time?

11 A. Maybe the next --- see, like, if I went in on,
12 say, the 15th of April I would report it on the 15th
13 of April, that night, 11:00, 11:30. And I'd come
14 outside and put it in the book on the 16th about 6:00,
15 6:30, and sometimes I wouldn't get outside until seven
16 o'clock.

17 Q. Okay. Now, what I'm asking for, sir, is was it
18 around the first of 2009, late 2008? Can you give me
19 a calendar type time?

20 A. That's what I'm saying. It was all through that
21 year, you know.

22 Q. Oh, okay, okay. Okay. No specific ---?

23 A. No, I mean it was all through that year. I mean
24 they had one rock dust crew there, and they might rock
25 dust ten breaks at a time. And they was doing all

1 they could do, ---

2 Q. Okay.

3 A. --- but like I said, you still got to report what
4 you find.

5 Q. Sure, uh-huh (yes). Now, you would put that in
6 the books. Who countersigned those books?

7 A. It was Bill Harless countersigned them.

8 Q. Okay. Did Mr. Harless follow up on anything?

9 A. Mr. Harless, he would write it on the board to be
10 rock dusted. It was a board there they had
11 specifically set up that had different belts on it
12 that the rock dust crew looked at and they had to rock
13 dust.

14 Q. Okay.

15 A. And after Bill Harless it was Gary May.

16 Q. Okay. Now, after Mr. Harless or Mr. May possibly
17 wrote that up, just on average, how long would it take
18 for somebody to get in there and rock dust it?

19 A. Sometimes it would be that evening ---

20 Q. Uh-huh (yes).

21 A. --- on evening shift. Sometimes it might take
22 them a week or two, you know?

23 Q. Do you think that there was adequate people and
24 equipment, resources at this mine to keep up with rock
25 dusting?

1 A. No. They should've been two crews there to keep
2 up with it, big as that mines was.

3 Q. Would it surprise you to learn that the track
4 mounted rock dust machine had problems with the air
5 compression?

6 A. No, because I've done that at Performance Coal,
7 too, and we had trouble out of their air compressor,
8 too.

9 Q. Okay. Did you ever hear anybody talking about
10 that problem?

11 A. Yes.

12 Q. Do you know who the rock dust crew was?

13 A. I can't remember their names, who they was.

14 Q. Does the name Nate Jeter ring a bell to you?

15 A. No.

16 Q. Okay. Okay. Just a little bit more background.
17 Were you salaried or hourly?

18 A. Hourly.

19 Q. Okay. And did you supervise anybody?

20 A. When I section bossed, yes, sir.

21 Q. Okay. When you first heard of the explosion at
22 this mine, what was the first thing you thought about?

23 A. I thought --- I'm going to be honest with you. It
24 tore me up.

25 Q. Yeah, sure.

1 A. I mean, the men on Dino's crew, that was the men
2 that I supervised. I mean it was just like brothers
3 to me.

4 Q. Sure. It's a shame. Everybody we've talked to
5 has talked about how good those guys were.

6 A. They was good guys. I mean, you asked them to do
7 something, they went and done it.

8 Q. What was the first thing that you thought could've
9 possibly happened as far as this explosion, what
10 could've caused it?

11 A. Gas.

12 Q. Think so?

13 A. Uh-huh (yes).

14 Q. And specific area that you were concerned about?

15 A. The Glory Hole.

16 Q. Okay. Now, we understand that that Glory Hole was
17 shut down sometime in 2009.

18 A. Okay. It must've been after I left.

19 Q. Oh, okay. They were still using it?

20 A. Yes, sir, because the longwall was still up on
21 Logan's Fork at the time.

22 Q. Oh, okay. That's right. Did you notice any
23 methane up around that Glory Hole?

24 A. Yes, sir.

25 Q. Okay. Do you recall what some of the higher

1 levels you saw were?

2 A. I've reached ten percent down there before.

3 Q. What sort of methane detector did you take?

4 A. I took the M40.

5 Q. Okay.

6 A. And then I had a Solaris, too.

7 Q. Okay. And they were both registering high levels
8 of methane?

9 A. Yeah.

10 Q. Any particular reason for that high level of
11 methane that you know of?

12 A. Well, we was told the reason why they had to have
13 a level of methane was because it was staying empty at
14 the time and they was getting some levels from Logan
15 Fork, bring them down to Glory Hole, which I didn't
16 understand that because gas is always up high.

17 Q. Yeah. I agree with you, sir. Exactly where'd you
18 find the methane around the Glory Hole? Was it a
19 break outby or ---?

20 A. No, it's right at that hole.

21 Q. Right at the hole itself. Did you ever notice if
22 the gas was worse when you were feeding out of that
23 Glory Hole or when the coal was just setting in there?

24 A. It was usually worse whenever you was feeding out
25 of it, when it was empty.

1 Q. Uh-huh (yes).

2 A. And whenever you left it full, it would shove the
3 air back up this way ---

4 Q. Oh, okay.

5 A. --- back outby.

6 Q. Okay. So there was actually a communication of
7 air between the two mines?

8 A. Yeah.

9 Q. Did you ever complain to anybody about that
10 methane?

11 A. We complained to --- we had talked about it
12 upstairs quite often, you know, and that's what they
13 told us. Said, well, if you'd keep the hole filled
14 up, it wouldn't happen. It would shove all your air
15 back outby. And even on weekends when we took off, we
16 was off on, like, Saturday and Sunday or Sunday, when
17 we done our fire run, one of us stayed down at the
18 Glory Hole and we would keep the same communication at
19 Logan's Fork, and let us know when it was done. Well
20 then, we would fill up the Glory Hole to shove the air
21 back outby to keep the gas out of the mines during
22 downtime.

23 Q. Interesting. Now, when you said you went upstairs
24 to complain, who specifically did you talk to about
25 that?

1 A. We talked to Gary May, we talked to Homer, we
2 talked to Dino, we talked to, you know, all the
3 supervisors.

4 Q. And they just said to keep it full of coal?

5 A. They just all said keep it full of coal and it
6 would keep the air coming back out of the mines, back
7 toward Ellis.

8 MR. SHERER:

9 Okay. Appreciate that information.

10 That's all the questions I've got.

11 EXAMINATION

12 BY MR. O'BRIEN:

13 Q. Okay. First of all, please bear with me. I may
14 jump around here a little bit, and I may repeat --- I
15 may not have heard some of your answers, so I'm asking
16 you clarifying questions. At any time, did you have
17 the authority to hire or fire anyone?

18 A. No, not at any time. No. Well, when I section
19 bossed, I guess I may have authority, but I didn't
20 think --- I only filled in, so I didn't feel like I
21 did.

22 Q. Well, let me jump around. You said you found two
23 to three percent on the One section; correct?

24 A. Yes, sir.

25 Q. Where did you find that?

1 A. That was all up and down through One section there
2 we found gas.

3 Q. In the return, in the belt?

4 A. That was up on the face.

5 Q. On the face?

6 A. Yeah.

7 Q. And what did you have to do to take care of this?

8 A. We hung our check curtains up and our backups and
9 tried to flush it out down to the return.

10 Q. Did it generally flush it ---

11 A. It generally flushed it out.

12 Q. --- fairly quickly?

13 A. It'd sometimes take 15, 20, 30 minutes, and that's
14 not ---. I don't feel like that's too bad to flush
15 gas out, get the air up there and flush it out.

16 Q. How far back in the --- from the face into the
17 entry did it fill up?

18 A. You could take it, take it out, you know, just
19 take it on out.

20 Q. And how far back from the face did you have two to
21 three percent?

22 A. Right at the face.

23 Q. Just right at the face?

24 A. Right at the face.

25 Q. All right. Now, all the ---. I understood ten

1 percent at the Glory Hole?

2 A. Yes, sir.

3 Q. Was that in the hole?

4 A. No, it was right at their catwalk at the Glory
5 Hole.

6 Q. So it would've been up high?

7 A. Yeah.

8 Q. Okay. Did you ever take any methane readings out
9 from the Glory Hole?

10 A. Yes, sir, I took it down Seven Belt, Seven Head
11 there.

12 Q. And did you find any ---

13 A. Yes, sir.

14 Q. --- explosives amounts or ---?

15 A. Well, not explosive amounts, but I did find some
16 gas down through there.

17 Q. What kind ---?

18 A. It might reach two, five --- you know, two to five
19 percent going down through there at times, which five
20 percent is explosive, but you didn't find it quite
21 often. It was usually just whenever you found the gas
22 at the Glory Hole. It'd be coming up the beltline.

23 Q. Going outby on the beltline or ---?

24 A. Uh-huh (yes), yes.

25 Q. You said you found some bad top at Seven Tail?

1 A. Yes, sir.

2 Q. Okay. And you said someone had told you outside
3 that they'd looked at it and they didn't do anything?

4 A. Yeah, they said it wasn't that bad and it fell. I
5 mean, it didn't fall that day, but it did actually
6 fall.

7 Q. They did not put any support in it ---

8 A. No.

9 Q. --- right after you ---?

10 A. No.

11 Q. Did anyone clear it up in the fire boss book?

12 A. No.

13 Q. The condition?

14 A. No, not that I know of.

15 Q. Did it carry over or just kind of disappear?

16 A. Uh-huh (yes), yeah. A lot of things just carried
17 over.

18 Q. Who told you that wasn't that bad or they'd looked
19 at it and it was okay?

20 A. At that time it was Rick Hodge, the
21 superintendent.

22 Q. Now, you said you fire bossed, I think I heard you
23 say the word everything. Now, was that primarily just
24 the belts?

25 A. That's primarily just the belts and the pumps.

1 Q. Pumps and belts?

2 A. Yeah.

3 Q. Did you do any other entries? Did you examine any
4 other entries?

5 A. No, sir.

6 Q. Like weekly checks or anything?

7 A. No, sir, that was Harley Taylor's job.

8 Q. Okay, all right. Who was Bill Harless?

9 A. Bill Harless? He was our general mine foreman.

10 Q. All right. When you were fire bossing belts did
11 you ever see any or find any strings around the
12 rollers or ---?

13 A. Yes, sir. Yeah, we found quite a few angel hair.

14 Q. Did anybody take care of those?

15 A. We tried to when the belts was off, but usually
16 when the belts were off. They didn't go off until
17 2:00 2:30, and then you had to take off again at 3:30,
18 you know.

19 Q. But did the down shifts --- did anybody on down
20 shift take care of it?

21 A. No, because they was off doing outby work, like
22 making belt splices and they was trying to get the
23 longwall ready.

24 MR. O'BRIEN:

25 All right. That's all I have right now.

1 EXAMINATION

2 BY MS. MONFORTON:

3 Q. I just had on question. When you were fire
4 bossing, you said there were two people that do the
5 fire bossing. Who was the other person you would fire
6 boss with?

7 A. The other person was Terry --- I'm trying to ---.
8 We called him ---. His name was Terry. I'm wanting
9 to say Piniken.

10 Q. Okay. Thank you.

11 A. And then it would be George Curry, too, that I
12 fire bossed with.

13 Q. George Curry.

14 A. Uh-huh (yes).

15 MS. MONFORTON:

16 Thank you.

17 A. You're welcome.

18 ATTORNEY BAXTER:

19 Okay. On behalf of MSHA and the Office
20 of Miners' Health, Safety and Training, I want to
21 thank you for appearing and answering questions today.
22 Your cooperation is very important to the
23 investigation as we work to determine the cause of the
24 accident.

25 We request that you not discuss your

1 testimony with any person aside from your personal
2 representative. After questioning other witnesses, we
3 may call you if we have any follow-up questions.

4 If at any time you have additional
5 information regarding the accident that you would like
6 to provide to us, please contact us at the contact
7 information that was previously provided to you. If
8 you wish, you may now go back over any answer you have
9 given during this interview, and you may also make any
10 statement that you'd like to make at this time.

11 A. Well, the only statement I have is two people fire
12 bossing six miles' worth of mines just ain't enough,
13 you know. You don't have enough time to do an
14 examination. And I felt like we should've had more
15 fire bosses there to take care of it, because then
16 you'd have time to take care of stuff like you're
17 supposed to.

18 And you always felt like, you know he's going to
19 pass this up. You always felt like you're the one
20 going to get in trouble for it, because you would.
21 But your hands was tied, because what else can you do?
22 You were trying to get everything done, and two
23 people's just not enough people. Just not enough men.

24 MS. MONFORTON:

25 Thank you.

1 ATTORNEY BAXTER:

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

4 * * * * *

5 STATEMENT UNDER OATH CONCLUDED AT 3:22 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Alison Salyards, 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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Alison Salyards

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