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**Transcript of the Testimony of Joshua Massey**

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**Case:**

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STATEMENT UNDER OATH

OF

JOSHUA MASSEY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Saturday, August 21, 2010, beginning at 12:47 p.m.

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

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

8\*

Two

Return Receipt

8\*

\* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY BAXTER:

My name is Derek Baxter. Today is August 21st, 2010. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Erik Sherer, 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.

ATTORNEY KOERBER:

I'm Barry Koerber, Assistant Attorney General, representing the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

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

ATTORNEY BAXTER:

There are also members of the investigation team present in the room today. And Mr. Farley, Mr. Sherer and Ms. Monforton will be

1 conducting the questioning. Would you please swear  
2 the witness in?

3 -----

4 JOSHUA MASSEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
5 AS FOLLOWS:

6 -----

7 ATTORNEY KOERBER:

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

10 A. Joshua Devin Massey, M-A-S-S-E-Y.

11 ATTORNEY KOERBER:

12 And what is your address and telephone  
13 number?

14 A. (b) (7)(C)

15 (b) (7)(C)

16 ATTORNEY KOERBER:

17 And do you have an attorney or a personal  
18 representative that you want here with you today?

19 A. No.

20 ATTORNEY KOERBER:

21 Mr. Massey, are you appearing here today  
22 as a result of receiving a subpoena?

23 A. Yes.

24 ATTORNEY KOERBER:

25 And would that be a copy of that

1 subpoena?

2 A. Yes.

3 ATTORNEY KOERBER:

4 Could you mark that as Exhibit One,  
5 please?

6 (J. Massey Exhibit One marked for  
7 identification.)

8 ATTORNEY KOERBER:

9 And this is a copy of the return receipt  
10 signed by you on August 9th. I'd like that to be  
11 Exhibit Two.

12 (J. Massey Exhibit Two marked for  
13 identification.)

14 ATTORNEY KOERBER:

15 Mr. Massey, the statute that authorizes  
16 the Director to issue subpoenas to individuals to  
17 compel them to interviews such as this requires the  
18 Director to offer a \$40-a-day witness fee, together  
19 with mileage at the rate of 15 cents a mile to and  
20 from your house to here and back, so long as you have  
21 driven in your own personal vehicle, and reimbursement  
22 for any tolls that you may pass along the way. In  
23 order to receive that money, there are two forms that  
24 you must fill out. Prior to the interview I provided  
25 you with those forms. Did you complete them?

1 A. Yes.

2 ATTORNEY KOERBER:

3 And did you return them to me?

4 A. Yes.

5 ATTORNEY KOERBER:

6 No other questions.

7 ATTORNEY BAXTER:

8 All members of the Mine Safety and Health

9 Accident Investigation Team and all members of the  
10 State of West Virginia Accident Investigation Team  
11 participating in the investigation of the Upper Big  
12 Branch Mine explosion shall keep confidential all  
13 information that is gathered from each witness who  
14 provides a statement until all the witness statements  
15 are officially released. MSHA and the State of West  
16 Virginia shall keep this information confidential so  
17 that other ongoing enforcement activities are not  
18 prejudiced or jeopardized by a premature release of  
19 information. This confidentiality requirement shall  
20 not preclude investigation team members from sharing  
21 information with each other or with other law  
22 enforcement officials. The team members'  
23 participation in this interview constitutes their  
24 agreement to keep this information confidential.  
25 Government investigators and specialists

1 have been assigned to investigate the conditions,  
2 events and circumstances surrounding the fatalities  
3 that occurred at the Upper Big Branch Mine South on  
4 April 5th, 2010. The investigation is being conducted  
5 by MSHA under Section 103(a) of the Federal Mine  
6 Safety and Health Act and the West Virginia Office of  
7 Miners' Health, Safety and Training. We appreciate  
8 your assistance in this investigation.

9 You may have your personal attorney  
10 present during the taking of this statement or another  
11 personal representative, if MSHA has permitted it, and  
12 may consult with your attorney or the representative  
13 at any time. Your identity and the content of this  
14 conversation will be made public at the conclusion of  
15 the interview process and may be included in the  
16 public report of the accident unless you request that  
17 your identity remain confidential or your information  
18 would otherwise jeopardize a potential criminal  
19 investigation. If you request us to keep your  
20 identity confidential, we will do so to the extent  
21 permitted by law. That means that if a judge orders  
22 us to reveal your name or if another law requires us  
23 to reveal your name or if we need to reveal your name  
24 for other law enforcement purposes, we may do so.  
25 Also, there may be a need to use the information you

1 provide to us or other information we may ask you to  
2 provide in the future in other investigations into and  
3 hearings about the explosion. Do you understand?

4 A. Yes.

5 ATTORNEY BAXTER:

6 Do you have any questions?

7 A. No.

8 ATTORNEY BAXTER:

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

19 A court reporter will record your  
20 interview. Please speak loudly and clearly. If you  
21 do not understand a question asked, please ask us to  
22 rephrase it. Please answer each question as fully as  
23 you can, including any information you've learned from  
24 someone else. I'd like to thank you in advance for  
25 your appearance here. We appreciate your assistance

1 in this investigation. Your cooperation is critical  
2 in making the nation's mines safer. After we have  
3 finished asking questions, you will have an  
4 opportunity to make a statement and provide us with  
5 any other information that you believe to be  
6 important. If at any time after the interview you  
7 recall any additional information that you believe  
8 might be useful, please contact Norman Page of MSHA at  
9 the telephone number or e-mail address provided to  
10 you.

11 Any statements given by miner witnesses

12 to MSHA are considered to be an exercise of statutory  
13 rights and protected activity under Section 105(c) of  
14 the Mine Act. If you believe any discharge,  
15 discrimination or other adverse action was taken  
16 against you as a result of your cooperation with this  
17 investigation, you're encouraged to immediately  
18 contact MSHA and file a complaint under Section 105(c)  
19 of the Act. Terry?

20 MR. FARLEY:

21 Mr. Massey, on behalf of the Office of  
22 Miners' Health, Safety and Training, I'd like to  
23 inform you that the West Virginia Mine Health and  
24 Safety Regulations also provide protection against  
25 potential discrimination for participating in these

1 type of interviews. I'd like to pass along some  
2 contact information for the West Virginia Board of  
3 Appeals. It's a board which hears complaints from  
4 miners concerning discrimination. Should you  
5 experience any problems as a result of participating  
6 in these interview, you should contact the Board at  
7 that address. Also, you have my business card and  
8 there's a phone number there for Bill Tucker, our lead  
9 underground investigator, should you have any  
10 questions.

11 A. Okay.

12 EXAMINATION

13 BY MR. FARLEY:

14 Q. Mr. Massey, I know we sent you a subpoena, but we  
15 appreciate you coming in anyway. Our thanks for that.  
16 And our primary purpose here is to find some answers  
17 and provide some closure for the families of the  
18 deceased and hopefully get to the bottom of this thing  
19 and make sure we don't have another one sometime in  
20 the future. So let me begin by asking you, have you  
21 been interviewed by Massey, Performance Coal or  
22 anybody concerning this?

23 A. Massey's lawyers interviewed me.

24 Q. When were you interviewed?

25 A. It's been about four months.

1 Q. Four months back?

2 A. Yeah.

3 Q. Okay. Apparently not too long ago?

4 A. It was right after the explosion that I was  
5 interviewed.

6 Q. Okay. All right. A little background  
7 information. How long have you been a coal miner?

8 A. About four years.

9 Q. Okay. Where are you working now?

10 A. Brody Mining.

11 Q. How long have you been with Brody?

12 A. About three months.

13 Q. Now, the time prior to April 5th, did you spend  
14 all of that time with Massey?

15 A. No. I was at Upper Big Branch as a red hat. I  
16 left there and went to Marfork. I left Marfork to  
17 Jupiter Coal, then back to Upper Big Branch.

18 Q. When did you first start with UBB? Was it about  
19 four years ago?

20 A. Yes. It was 2006.

21 Q. How long did you stay with them?

22 A. About five months and they moved the longwall and  
23 transferred us to Marfork.

24 Q. Okay. So you left with the longwall?

25 A. Yeah.

1 Q. How long did you work on the longwall in 2006?

2 A. I was just working outby. But when the longwall  
3 moved to Elk Run, they transferred most of the workers  
4 to a different mines.

5 Q. All right. So you didn't actually work on the  
6 longwall ---

7 A. No.

8 Q. --- at UBB then?

9 A. No. I was putting in the Glory Hole belt.

10 Q. Now, when did you make it back to UBB then?

11 A. About March, first of March of this year.

12 Q. First of March of this year?

13 A. Yes.

14 Q. Okay. 2010?

15 A. Yes.

16 Q. Okay. Now, when you came back to UBB this year,  
17 what part of the mine did you work in?

18 A. The Headgate 22.

19 Q. What did you do up there?

20 A. I bolted top.

21 Q. Which shift were you on?

22 A. I was on the swing crew. I worked three days day  
23 and three days evening and three days off.

24 Q. Okay. Did that make you kind of confused?

25 A. Yeah.

1 Q. Three days of this and three days of that.

2 A. You don't know whether to sleep or ---.

3 Q. Three days of something else. Okay. Who was your  
4 immediate supervisor?

5 A. Brandon Bowling.

6 Q. Okay. What was the last shift you worked prior to  
7 April 5th?

8 A. Saturday night we worked evening shift.

9 Q. Okay.

10 A. We was off Sunday for Easter.

11 Q. Okay. Were you at the mine on April 5th?

12 A. No. It was our first scheduled day off, then  
13 Monday, Tuesday and Wednesday.

14 Q. All right. So you worked for Brandon Bowling;  
15 right?

16 A. Yes.

17 Q. Do you have confidence in Mr. Bowling?

18 A. Yeah.

19 Q. Do you feel like he made an honest effort to  
20 comply with health and safety requirements?

21 A. He did, but you can only do so much when you're  
22 only given so much to work with.

23 Q. Well, do you think he did the best he could with  
24 what he had?

25 A. Yes.

1 Q. Is that fair?

2 A. Yes.

3 Q. Who were the other members of your crew? Can you  
4 name some of them?

5 A. Arles Cozart, Korteia Hall, James Griffith, Chris  
6 Allen, Tracy Lambert, Bobbie Pauley, Daniel Davis,  
7 Richard Gray.

8 Q. Okay. All right. Now, who was your partner on  
9 the roof bolt machine?

10 A. Chris Allen.

11 Q. Chris Allen. Okay. Did Mr. Bowling typically go  
12 over some part of the roof control plan with you every  
13 day?

14 A. Every day.

15 Q. Okay. What was your overall impression of the  
16 ventilation on the 22 Headgate section?

17 A. There wasn't no air.

18 Q. Okay.

19 A. It's hard to ventilate a place when you ain't got  
20 nothing to ventilate it with.

21 Q. All right. Can you give me some details on that?  
22 Can you elaborate on it?

23 A. Your intake come up over your power box, and you  
24 could stand right at the intake and you just couldn't  
25 feel nothing.

1 Q. There was a sign there, I believe, a round sign.

2 A. A stop sign at the end of the track. We worked  
3 Tuesday, Wednesday, Thursday dayshift and worked  
4 Friday evening shift.

5 Q. Now, this is a week before the accident?

6 A. Yeah. And all through our dayshift we worked, you  
7 could pull up to the end of the track and that stop  
8 sign would be beating off the top. Friday and  
9 Saturday we worked the evening shift, and it wasn't  
10 moving. It was just hanging there.

11 Q. Just limp?

12 A. Yeah.

13 Q. Any idea why?

14 A. Somebody had to do something somewhere. I mean,  
15 there had to be a stopping knocked out or something.

16 Q. All right. So a week before the accident,  
17 Tuesday, Wednesday and Thursday, ---

18 A. Good air.

19 Q. --- the sign is banging off the top?

20 A. Right.

21 Q. Friday and Saturday it's just hanging?

22 A. Just hanging, won't move.

23 Q. Did Mr. Bowling report those circumstances to  
24 anybody on the surface?

25 A. I'm not sure of that.

1 Q. Okay. Did you have any conversations with Mr.  
2 Bowling about it?

3 a. I didn't myself.

4 Q. Okay. Did you shut down at any time during  
5 Tuesday, Wednesday and Thursday ---

6 A. No.

7 Q. --- because of the ventilation?

8 A. No.

9 Q. Did you hear anybody complain to Mr. Bowling about  
10 the ventilation?

11 A. Yes, Chris Allen. We had two bolt crews. We  
12 didn't have no scoop men, so he made me and Chris take  
13 the scoop down and get supplies to the bolter. In  
14 order to get down to the supply hole, you had to go  
15 down the return. And once the dust got in the return,  
16 it just hung there. There wasn't no air to push it.  
17 And you had to take the scoop down there and eat all  
18 the dust. And they were cutting sandstone top, and he  
19 was complaining about it.

20 Q. Okay. I understand. Were there a couple of  
21 supply doors that you could access the track from in  
22 the return down there?

23 A. Yes. It was right as soon as you started up onto  
24 the section.

25 Q. Okay. I assume you had to go down the return

1 every day if you wanted to get supplies; correct?

2 A. Yes.

3 Q. Was the scoop permissible, as far as you know?

4 A. Yes, as far as I know.

5 Q. Okay. Now, let's go to Saturday night, Saturday  
6 night, before April 5th. You've got --- you described  
7 you don't have any air that night. Did anybody detect  
8 any methane anywhere on that section during that  
9 shift?

10 A. That shift, I wasn't in the face. We had --- me  
11 and my partner outby with the scoop, loading the  
12 bucket duster and the bolt duster to dust the section  
13 before we left. So I wasn't up there to --- that I  
14 can tell you yes or no, either one.

15 Q. No conversations with anybody? Nobody mentioned  
16 anything like that?

17 A. Uh-huh (yes).

18 Q. Okay. In approximately the month that you worked  
19 on Headgate 22, now, did you ever detect any methane?

20 A. Yeah.

21 Q. How much? What's the most you ever detected?

22 A. Off of the back of the miner I've seen it get up  
23 to .7, .8.

24 Q. Okay. Now, would that have been while they were  
25 cutting coal?

1 A. Yes.

2 Q. And you saw this on --- on the readout on the  
3 methane monitor on the continuous mining machine?

4 A. On the back of the --- yes.

5 Q. Do you remember the last time you saw it that  
6 high?

7 A. It was probably two weeks before the explosion.

8 Q. Okay. Who normally operated the miner on the  
9 machine?

10 A. James Griffith.

11 Q. Now, your description of the ventilation there the  
12 last couple days on Headgate 22 is pretty clear. Now,  
13 do you recall any instances when your ventilation on  
14 Headgate 22 was not going in the direction it was  
15 supposed to be going?

16 A. I've heard people say that the air was going down  
17 the belt lien backwards before, but I haven't been  
18 over there to actually see it.

19 Q. You didn't --- did that happen on your shift?

20 A. Yeah.

21 Q. Do you recall when that occurred?

22 A. It was within the couple weeks prior to the  
23 explosion.

24 Q. Okay. Any idea why that had happened?

25 A. They were cutting a belt channel out at the Ellis

1 Portal. They were cutting a belt channel out over the  
2 track to set up a longwall panel. And instead of  
3 eating the dist from the belt cutting the sandstone,  
4 they was leaving doors open for the dust to go  
5 straight out the drift mouth.

6 Q. Okay.

7 A. We'd come out a couple times, and they'd still be  
8 propped open with cinderblocks and whatever they could  
9 find to hold the doors open.

10 Q. Okay. Do you think that's what was going on?

11 A. It couldn't have helped it none.

12 Q. I'm sure it didn't.

13 A. It would about blow you down trying to walk into  
14 the drift mouth with the doors open.

15 Q. If you got there around the first of March, did  
16 you hear anybody talk about ventilation changes that  
17 might have been made throughout the mine in February?

18 A. They said that they had changed the air two or  
19 three times in like a month or so.

20 Q. Did anybody give you any details on ---

21 A. No.

22 Q. --- what exactly happened? Okay. Was it pretty  
23 much common knowledge among your crew that there were  
24 ventilation problems on Headgate 22?

25 A. Yeah.

1 Q. Did anybody with your crew ever complain to  
2 anybody other than Mr. Bowling?

3 A. Yes.

4 Q. Who did you talk to?

5 A. Terrey Moore. He was the dayshift mine foreman.

6 Q. What was Mr. Moore's response?

7 A. He said that there had to be some way of getting  
8 the dust out from the belt channel, so they was going  
9 to have to leave the doors open ---

10 Q. Okay.

11 A. --- in order to get the dust out to see what they  
12 was doing.

13 Q. Okay. Was anybody present when you heard Mr.  
14 Moore say that, anybody else?

15 A. I'm thinking it was Daniel Davis that was there.

16 Q. Okay. During the month that you worked on the  
17 Headgate 22 section, are you aware of any problems  
18 with the methane monitors on the mining machines?

19 A. No.

20 Q. Did you hear of any breaking down at any time?

21 A. No, not really.

22 Q. Did you ever hear anything about anybody bridging  
23 a monitor out or trying to defeat it, override it in  
24 any way?

25 A. No. Brandon wouldn't --- they wouldn't go for

1 that.

2 Q. Okay. When you traveled in and out of the mine,  
3 other than at Ellis Switch, you've already told us you  
4 found doors open down there, did you encounter doors  
5 left open at other locations?

6 A. They weren't left open, but most of your airlock  
7 doors that they had built were --- the blocks were  
8 missing all around the doors and they wouldn't wedge  
9 them down. They'd just try to spray them in with  
10 foam, and it ain't going to hold. They would just  
11 blow out onto the track.

12 Q. Just stack them and spray them?

13 A. Yeah.

14 Q. What about the doors at 78? Do you know  
15 where ---?

16 A. Seventy-eight (78) Break Switch?

17 Q. Yeah.

18 A. Those were some of the doors that had block  
19 missing out of the sides and the top.

20 Q. Do you recall what those doors looked like on the  
21 last shift you worked at UBB?

22 A. They were the same as always. They just still had  
23 block missing. Even if they did come in and fix them,  
24 they wouldn't be fixed a day or two and they'd hit  
25 them with something and knock your block back out.

1 Q. All right. I've got you. You had two continuous  
2 miners on Headgate 22; is that right?

3 A. Yes. Did you ever see both of them operate at the  
4 same time?

5 A. No.

6 Q. Was the ventilation on Headgate 22 a split or  
7 sweep?

8 A. It was a sweep.

9 Q. I think --- did you indicate before --- which one  
10 was your intake?

11 A. Number Two was the intake. You would come up and  
12 crossed over into One and then come across the faces  
13 and down through.

14 Q. Okay. All right. Did you carry a methane  
15 detector or was one provided for the roof bolt  
16 machine?

17 A. Yes.

18 Q. And what kind was it?

19 A. Most of --- we had the regular silver methane  
20 detector, but we also carried a Solaris because we had  
21 to go outby to get the bolt supplies, too.

22 Q. Did you guys charge them on the section or take  
23 them outside?

24 A. Took them outside.

25 Q. Do you have any idea who calibrated them?

1 A. I have no clue.

2 Q. As far as you know, they functioned right?

3 A. Yes, as far as I know they did.

4 Q. If you were working outby on the scoop Friday  
5 night before April 5th, who was operating the roof  
6 bolter that night?

7 A. Arles Cozart and Korteia Hall.

8 Q. Okay. And Mr. Griffith was operating the miner?

9 A. Yes.

10 Q. Okay.

11 A. They were training Daniel Davis on the miner.

12 Q. Do you know the shuttle car operators were that  
13 night?

14 A. Richard Gray and Bobbie Pauley.

15 Q. Okay. Can you remember if you had a crosscut  
16 turned to the right at the start of your evening shift  
17 on April the 3rd, that Saturday evening? When you  
18 first arrived, was the crosscut turned to the right at  
19 the face that was not punched through yet?

20 A. I don't remember.

21 Q. Okay. Did Mr. Bowling usually examine his faces  
22 at the start of the shift?

23 A. Yeah.

24 Q. Okay. Do you know if he examined the faces at the  
25 start of your evening shift on Saturday, April 3rd?

1 A. I don't really remember. I'm pretty sure he did.  
2 He always walked the faces before he'd let us start  
3 our equipment.

4 Q. Okay. Did you usually talk to the people on the  
5 dayshift, the other shift, before you came in the  
6 mine?

7 A. We'd pass them on the mantrip. We'd usually  
8 switch out at 78 Break Switch.

9 Q. Okay. Do you remember any conversation with them  
10 prior to your last shift there on Saturday?

11 A. No.

12 Q. Okay. Now, I think you described your ventilation  
13 on Headgate 22 your last week, Tuesday, Wednesday and  
14 Thursday. The sign was swinging in the breeze and the  
15 last two days it was just sort of dangling there.

16 During the month of March was there any improvement  
17 from the beginning of the month toward the end of the  
18 month, other than those last two days?

19 A. It depended on where the inspector was. They'd  
20 take air from one place and put it in another in order  
21 to have it.

22 Q. Do you know how they did that?

23 A. I don't know how they done it, but if they said  
24 that there was an inspector going to the longwall, you  
25 could tell a big change in your air in just a matter

1 of minutes.

2 Q. Okay. Now, we've heard a story that people were  
3 stationed at some doors at strategic locations to make  
4 adjustments when inspectors go from one part of the  
5 mine to another. Any idea --- did you ever hear of  
6 who or where these doors might have been where people  
7 might have been ---?

8 A. I wouldn't have a clue.

9 Q. But does that --- that sort of sounds like what  
10 you just described.

11 A. Yeah. I mean, I wouldn't know where it would be  
12 or nothing, but if they said the inspector was going  
13 to the longwall, then in just a matter of a few  
14 minutes you could tell you lost some air from  
15 somewhere and it went somewhere.

16 Q. Can you give me a source of that information, who  
17 you heard that from?

18 A. I felt it myself.

19 Q. Okay. Now, you felt that on Headgate 22?

20 A. Yes.

21 Q. If you heard that an inspector was coming to  
22 Headgate 22, did you then feel a change in the air?

23 A. We usually kept good air. That's what I don't  
24 understand. We usually had the better air. That's  
25 one of the reasons they'd I guess take it from us to

1 put it other places where it was needed.

2 Q. Okay. Do you know anybody that might be able to  
3 help us answer that question as to how this  
4 manipulation might have occurred?

5 A. If I can remember his name. He was an outby boss  
6 on dayshift.

7 Q. Outby boss on the dayshift. Burdoff?

8 A. No. He's an older feller. I can see his face  
9 plain as day.

10 MR. SHERER:

11 Kiblinger?

12 BY MR. FARLEY:

13 Q. Kiblinger?

14 A. No, it wasn't Mike.

15 Q. Hager?

16 MR. SHERER:

17 Delbert Bailey?

18 A. What was it?

19 MR. SHERER:

20 Delbert Bailey?

21 A. No. They sent him to Hunter Peerless after UBB  
22 blew up.

23 BY MR. FARLEY:

24 Q. Okay. I never --- he worked like two shifts and  
25 he never come back. I don't know if he was off --- I

1 heard that they sent him back to Performance. I don't  
2 remember his name.

3 Q. Okay. I'll tell you what, if that happens to come  
4 to you, if you happen to remember that at any time in  
5 the not too distant future, I think you've got my card  
6 there.

7 A. Yes.

8 Q. Can you just give us a quick call? I'd appreciate  
9 that.

10 ATTORNEY KOERBER:

11 Is your cell phone on that card?

12 MR. FARLEY:

13 I'm sorry?

14 ATTORNEY KOERBER:

15 Is your cell phone on that card?

16 MR. FARLEY:

17 Every phone I got is on that card, e-mail  
18 and everything else.

19 BY MR. FARLEY:

20 Q. That's an interesting story. Do you remember the  
21 last --- can you give me a time frame the last time  
22 you had that experience?

23 A. It would have probably been a couple weeks before  
24 the explosion. They had inspectors coming in from the  
25 UBB portal going to the tailgate and to the longwall,

1 going to the tailgate section on the longwall.

2 Q. Okay. All right.

3 A. There were inspectors there just about on a daily  
4 basis.

5 Q. Okay. That's a pretty big mine, isn't it?

6 A. Yeah. Uh-huh (yes). It's hard to cover all of  
7 it.

8 Q. Do you know if any ventilation changes were made  
9 while you guys were working underground? When I say  
10 ventilation changes, I mean major mine ventilation  
11 changes.

12 A. Not to my knowledge.

13 Q. Okay. On your last shift on that Saturday  
14 evening, when you came outside that night, did you see  
15 anybody running around that you didn't ordinarily see,  
16 like upper management people?

17 A. Glenn Ullman was there. The hoot owl wasn't  
18 working that night. We was supposed to put two bags  
19 of bulk dust in front of each drift mouth so that way  
20 they could see if anybody had been in or out while we  
21 was off. And Glenn was there and Billy Campbell.  
22 They were both hoot owl --- Glenn was the hoot owl  
23 foreman and Billy was the hoot owl fire boss.

24 Q. What was their purpose in being there, do you have  
25 any idea?

1 A. I have no clue.

2 Q. Now, was it your job --- the job of your crew to  
3 put the bulk bags on the track?

4 A. Yeah, in front of the track and the return and the  
5 intake, too.

6 Q. Did you do that?

7 A. Yes.

8 Q. Okay. Were they --- were Ullman and Campbell  
9 still around after you put the bags in place?

10 A. Yes.

11 Q. Were they still around when you left?

12 A. Yeah.

13 Q. Okay. But the midnight shift was not scheduled to  
14 work?

15 A. No, nobody was working on the 4th.

16 Q. Did you see anybody besides those two?

17 A. Uh-uh (no).

18 Q. Did that strike you as a little bit odd that a  
19 couple midnight people were out there when there was  
20 nobody supposedly scheduled to work?

21 A. At the time it didn't, but I didn't think nothing  
22 about it. But when you look back at it, it looks a  
23 little funny.

24 Q. That's interesting. Okay. Have you heard  
25 anything about any kind of an air change made in the

1 UBB Mine on Sunday, April 4th?

2 A. No.

3 Q. Okay. Now, if you were off on Monday, April 5th,  
4 were you back to UBB any time after that?

5 A. I came over, but I mean, they wouldn't let us on  
6 the property.

7 Q. All right. Did you do any work at all during the  
8 rescue and recovery?

9 A. No.

10 Q. Did they transfer you to another mine after that?

11 A. Yes.

12 Q. Where did you go?

13 A. Hunter Peerless.

14 Q. How long were you there?

15 A. Like a month, not even a month.

16 Q. And then you moved to Brody; is that right?

17 A. Yeah.

18 Q. Okay.

19 EXAMINATION

20 BY MR. SHERER:

21 Q. I've got a few follow-up questions, Mr. Massey.

22 I'll jump around a bit, so I apologize for that. When  
23 you guys were having trouble with air on the section,  
24 do you think that Mr. Bowling called that out?

25 A. I don't know for sure whether he did or not.

1 Q. Do you know if he had to call out when the section  
2 started running coal?

3 A. Yes.

4 Q. Were you delayed any because of the lack of air?

5 A. No.

6 Q. Just went ahead and started running?

7 A. Yes.

8 Q. Did you ever hear anybody call back in and say  
9 something like, open up some airlock doors or  
10 something like that to get the air?

11 A. Uh-uh (no). No.

12 Q. Did you ever hear anybody talk about something  
13 like that?

14 A. No.

15 Q. Okay. Now, you said you were working outby  
16 Saturday night. Were you running the bolter on Friday  
17 night?

18 A. Yes.

19 Q. Do you happen to recall what the methane readings  
20 you were getting on Friday night were?

21 A. No. I don't really remember.

22 Q. Do you remember any problems with methane?

23 A. It was funny. Sometimes you would start driving  
24 and you would hit a pocket. You could find a lot of  
25 methane. And you would drive up a break and all of a

1 sudden it would just disappear.

2 Q. Sure. You find that when you don't have much air  
3 moving. Did you ever hear anybody calling or anybody  
4 tell you that inspectors were coming or inspectors  
5 were on the property?

6 A. Every time an inspector come on the property, they  
7 called underground and said there was one in the  
8 parking lot or one on the property.

9 Q. Now, you and Mr. Farley spoke quite a bit about if  
10 an inspector was coming, the air would get better. If  
11 an inspector was on the longwall, the air would get  
12 better there. And you talked about the doors and  
13 such. Do you know anybody who might have been  
14 involved in that?

15 A. The ones that were down there doing all the  
16 calling was Wayne Persinger.

17 Q. Thank you.

18 A. He was calling all the shots, setting up the new  
19 longwall section and everything.

20 Q. Sure. Now, you mentioned out where they were  
21 working on that new section that they would leave the  
22 doors open because they just didn't want you to dust.  
23 About how long did that go on?

24 A. I'd say over a period of a week.

25 Q. Was that the week immediately prior to the

1 explosion?

2 A. Yes.

3 Q. Okay. Did you guys keep the curtain up pretty  
4 close to the rear bumper of the bolter?

5 A. Yeah.

6 Q. Did you have to?

7 A. We always kept our curtain up. Whether it done us  
8 any good or not I couldn't ---.

9 Q. What about the miner being on that section, did  
10 they keep the curtain up pretty good?

11 A. Yeah. There was a lot of times we would have to  
12 hang curtains and only be able to run one buggy.

13 Q. Did you have to hang diagonal curtains?

14 A. Yeah.

15 Q. We talked quite a bit about ventilation on the 22  
16 Headgate. What did you think about the ventilation  
17 other places in the mine? Do you think that was  
18 adequate or were they having trouble, too?

19 A. Twenty-two (22) is the only place that I've been  
20 since I came back.

21 Q. Did you hear anybody talking about problems with  
22 air anyplace else?

23 A. Well, the Ellis Portal, the only ones that  
24 portalled there were some outby guys, Headgate 22 and  
25 the longwall.

1 Q. Okay. You've been working on 22 Headgate for a  
2 while. Did you ever feel unusually tired at the end  
3 of the shift?

4 A. Yeah. It's so hot at the face. You bolt 50 foot  
5 up there, it was like you bolted 200 anywhere else.

6 Q. Did you ever smell anything odd on that section,  
7 any kind of petroleum smell or kerosene smell?

8 A. No.

9 Q. Did any of your co-workers complain about being  
10 unusually tired or fatigued at the end of the shift?

11 A. About the only ones that you heard would be the  
12 bolt crew.

13 Q. I heard somebody say you had to carry at least a  
14 gallon of water in with you.

15 A. Always.

16 Q. That's tough work. One last question. What do  
17 you think caused this explosion?

18 A. It could be a number of things. Right here where  
19 the Glory Hole is is --- going down the ridge next to  
20 Twilight there's a couple seams up there that are  
21 burning. If the longwall failed --- back behind the  
22 longwall, if it failed and methane went up into one of  
23 those burning cracks you could get an ignition there.

24 Q. We've heard that. Those seams are several hundred  
25 feet above where you're at, aren't they?

1 A. They're --- it don't really look that far. When  
2 you look at where the return air shaft is, it really  
3 don't look that far.

4 Q. Okay. We'll certainly check into that. Anything  
5 else?

6 A. No, not that I know of.

7 Q. I appreciate your information.

8 EXAMINATION

9 BY MS. MONFORTON:

10 Q. I just have a couple of clarifying questions. So  
11 when you --- you were here at UBB this last time for  
12 about a month, and so when you were assigned up to  
13 Headgate 22 what did you hear or know about working up  
14 on that section? Did anybody fill you in on what you  
15 were going to expect, what to expect?

16 A. They said that I'd regret coming up there because  
17 it was so hot and putting up --- see, we was putting  
18 six-foot torque tensions in the ribs, six-foot torque  
19 tensions in the top, eight-foot cable bolts and then  
20 wire mesh.

21 Q. So it sounded like the roof bolting job itself was  
22 going to be a tough job?

23 A. Yeah.

24 Q. At one point when you were talking with Mr. Farley  
25 about the inspectors and the air you noted they were

1 moving some air to the longwall. At one point you  
2 said what you couldn't understand is we usually had  
3 good air on Headgate 22. So was that your experience  
4 over that month-like period you were there?

5 A. Yeah. Usually we would have fairly decent air,  
6 but as soon as an inspector would come in, we'd lose  
7 it. And that's why I didn't understand about us  
8 losing it for two whole days. I mean, I'd understand  
9 if they lost it for a shift or something, but usually  
10 you didn't lose it for, you know, two whole days.

11 Q. Okay. So it was your experience there was good  
12 air on there, except when the inspectors were there,  
13 then you would lose the air?

14 A. Yeah.

15 Q. Okay. And you're also testifying that just the  
16 roof bolting job, it was hot and it was just a lot of  
17 bolting ---

18 A. Yes.

19 Q. --- you were doing?

20 MS. MONFORTON:

21 That's the only questions I have.

22 MR. FARLEY:

23 Let's take a short break.

24 SHORT BREAK TAKEN

25 ATTORNEY BAXTER:

1 On behalf of MSHA and the Office of  
2 Miners' Health, Safety and Training, I want to thank  
3 you for appearing and answering questions today. Your  
4 cooperation is very important to the investigation as  
5 we work to determine the cause of the accident. We  
6 request that you not discuss your testimony with any  
7 person aside from your personal representative. After  
8 questioning other witnesses, we may call you if we  
9 have any follow-up questions. If at any time you have  
10 additional information regarding the accident that you  
11 would like to provide to us, please contact us at the  
12 contact information that was previously provided to  
13 you.

14 If you wish, you may now go back over any  
15 answer you've given during this interview and you may  
16 also make any statement that you'd like to make at  
17 this time. Again, I want to thank you for your  
18 cooperation in this matter.

19 \* \* \* \* \*

20 STATEMENT UNDER OATH CONCLUDED AT 1:38 P.M.

21 \* \* \* \* \*

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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.

20



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*Alison Salyards*

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