

STATEMENT UNDER OATH

OF

JAMES BRIAN MILLS

Taken pursuant to Notice by Miranda
D. Elkins, a Court Reporter and
Notary Public in and for the State of
West Virginia, at the U.S. Bankruptcy
Court, 324 West Main Street,
Clarksburg, West Virginia, on
Thursday, March 23, 2006, at 1:27
p.m.

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1 A P P E A R A N C E S (continued)

2

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P R O C E E D I N G S

MR. SWENTOSKY:

My name is Dennis Swentosky. I'm an accident investigator with the Mine Safety and Health Administration, an agency of the United States Department of Labor.

With me is James Crawford from the Solicitor's Office, Mike Rutledge and Dave Stuart, with the West Virginia office of Miners' Health, Safety & Training. I've been assigned to conduct an investigation into the accident that occurred at the Sago Mine on January the 2nd, 2006, in which 12 miners died and one was injured.

The investigation is being conducted by MSHA and the West Virginia Office of

1 Miners' Health, Safety &
2 Training, to gather
3 information to determine the
4 cause of the accident. And
5 these interviews are an
6 important part of the
7 investigation.

8 At this time the
9 accident investigation team
10 intends to interview a number
11 of people to discuss anything
12 that may be relevant to the
13 cause of the accident. After
14 the investigation is
15 completed, MSHA will issue a
16 written report detailing the
17 nature and causes of the
18 accident.

19 MSHA accident reports
20 are made available to the
21 public in the hope that
22 greater awareness about the
23 causes of accidents can reduce
24 their occurrence in the
25 future. Information obtained

1 through witness interviews is
2 frequently included in these
3 reports. Your statement may
4 also be used in other
5 enforcement proceedings.

6 I would like to thank
7 you in advance for your
8 appearing here today. We
9 appreciate your assistance in
10 the investigation. The
11 willingness of miners and mine
12 operators and state agencies
13 to work with us is critical to
14 our goal of making the
15 nation's mines safer. We
16 understand the difficulty for
17 you in discussing the events
18 that took place and we greatly
19 appreciate your efforts to
20 help us understand what
21 happened.

22 This interview with Mr.
23 Brian Mills is being conducted
24 under Section 103(a) of the
25 Federal Mine Safety and Health

1 Act as part of an
2 investigation by the Mine
3 Safety and Health
4 Administration and the West
5 Virginia Office of Miners'
6 Health, Safety & Training into
7 the conditions, events and
8 circumstances surrounding the
9 fatalities that occurred at
10 the Sago Mine owned by
11 International Coal Group in
12 Buckhannon, West Virginia on
13 January the 2nd, 2006.

14 This interview is being
15 conducted at the U.S.
16 Bankruptcy Court in
17 Clarksburg, West Virginia on
18 March 23rd, 2006. Questioning
19 will be conducted by
20 representatives of MSHA and
21 the Office of Miners' Health,
22 Safety & Training.

23 Mr. Mills, this
24 interview is being conducted
25 - - - will begin by my asking

1 you a series of questions. If
2 you do not understand a
3 question, please ask me to
4 rephrase it. Feel free at any
5 time to clarify any statements
6 that you make in response to
7 the questions.

8 After we have finished
9 asking questions, you will
10 also have an opportunity to
11 make a statement or to provide
12 us with any information that
13 you believe may be important.
14 If at any time after the
15 interview you recall any
16 additional information you
17 believe may be useful in the
18 investigation, please contact
19 Richard Gates at the phone
20 number or e-mail address
21 provided to you. Here's his
22 business card.

23 Your statement is
24 completely voluntary. You may
25 refuse to answer any question

1 and you may terminate your
2 interview at any time. If you
3 need a break at any time,
4 please let me know.

5 A court reporter will
6 record your interview and will
7 later produce a written
8 transcript of the interview.
9 Please try to respond to all
10 questions verbally since the
11 court reporter cannot record
12 nonverbal responses. Also,
13 please try to keep your voice
14 up. Copies of written
15 transcripts will be made
16 available at a later time.

17 If at any time your
18 statement is based not on your
19 own firsthand knowledge but on
20 information that you learned
21 from someone else, please let
22 us know. Please answer each
23 question as fully as you can,
24 including any information you
25 have learned from someone

1 else.

2 We may not ask the
3 right question to learn the
4 information that you have, so
5 do not feel limited by the
6 precise question asked. If
7 you have any information about
8 the subject area of a
9 question, please provide us
10 the information.

11 At this time, Mr.
12 Rutledge, do you have anything
13 you'd like to add on behalf of
14 the Office of Miners' Health,
15 Safety & Training.

16 MR. RUTLEDGE:

17 Yes. I'm sure Brian's
18 aware that the office of
19 Miners' Health, Safety &
20 Training is conducting this
21 interview session jointly with
22 MSHA and are in agreement with
23 the procedures outlined by Mr.
24 Swentosky for these interviews
25 that are conducted today.

1 But he is also aware
2 that the Director reserves the
3 right, if necessary, to call
4 or subpoena witnesses or
5 require the production of any
6 record, document, photograph
7 or any other relevant
8 materials necessary to conduct
9 this investigation.

10 Thank you.

11 MR. SWENTOSKY:

12 Mr. Mills, are you
13 aware that you may have a
14 personal representative
15 present during the taking of
16 this statement?

17 MR. MILLS:

18 Yes, sir.

19 MR. SWENTOSKY:

20 And do you have a
21 representative with you today?

22 MR. MILLS:

23 No, sir.

24 MR. SWENTOSKY:

25 Do you have any

1 questions regarding the manner
2 in which this interview will
3 be conducted before we get
4 started?

5 MR. MILLS:

6 No, sir.

7 MR. SWENTOSKY:

8 Would you swear in Mr.
9 Mills, please?

10 -----

11 JAMES BRIAN MILLS, HAVING FIRST BEEN
12 DULY SWORN, TESTIFIED AS FOLLOWS:

13 -----

14 BY MR. SWENTOSKY:

15 Q. Could you please state your
16 full name and spell your last name
17 for us, please?

18 A. James Brian Mills, M-I-L-L-S.

19 Q. And could we have your address
20 and telephone number, please?

21 A. Okay. My home address is
22 Route 1, Box 290-A, Fairmont, West
23 Virginia 26554. My home number is
24 area code 304-592-2724.

25 Q. And you're appearing here

1 voluntarily?

2 A. Yes, sir.

3 Q. And what is your present
4 position?

5 A. Present position, I'm an
6 inspector at large, Region One for
7 the Office of Miners' Health, Safety
8 & Training.

9 Q. And who is your immediate
10 supervisor?

11 A. At this time it's acting
12 director, Jim Dean.

13 Q. And on the day of the accident
14 your ---?

15 A. My supervisor was Doug
16 Conaway.

17 Q. Okay. Did you work on the day
18 of the accident?

19 A. That was a scheduled holiday,
20 but once I was notified of the
21 accident, I started to work.

22 Q. Okay. And who notified you of
23 the explosion?

24 A. John Collins.

25 Q. And what was the extent of

1 that conversation?

2 A. He called me at home,
3 approximately 8:00 a.m., and told me
4 that we had an event at the Sago
5 Mines. We discussed it a little bit.
6 I told him I'd start making phone
7 calls to let other folks know.

8 Q. Who did you call?

9 A. I called some of the other
10 inspectors that worked for us in the
11 Buckhannon area. I called Doug
12 Conaway.

13 Q. What time did you leave for
14 the mine?

15 A. Well, I made several phone
16 calls before I left. I'm going to
17 guess I left 8:45.

18 Q. And you went straight to the
19 mine?

20 A. On the way to the mines, I
21 made a couple of stops to make cell
22 phone calls.

23 Q. And who was at the mine when
24 you arrived, like the state and
25 company and federal representatives

1 or whoever else?

2 A. I went directly to get with
3 John Collins. I don't recall the
4 federal people being there at that
5 time.

6 Q. Okay. And approximately what
7 time was that?

8 A. I would imagine I got there
9 about 10:00 a.m.

10 Q. And what information did he
11 provide to you at that time?

12 A. We had a discussion and he
13 brought me up to date to what he had
14 learned up until that point.

15 Q. What was that information?

16 A. The status of the people to
17 get out of the mines. There was some
18 missing people, unaccounted for. And
19 that there was another group of
20 individuals that had went into the
21 mines to make a rescue attempt, and
22 that ---. I believe they were on
23 their way out at that time.

24 Q. They weren't on the surface
25 yet they were just on their way out?

1 A. I don't remember seeing them.

2 Q. What other activities were
3 going on when you arrived, if you can
4 recall?

5 A. My focus was getting with John
6 and finding out what step we had to
7 take next.

8 Q. Just in general, starting at
9 the time, then, that you arrived at
10 the mine and just explain your
11 involvement in the mine rescue and in
12 recovery. Can you do that for me,
13 please?

14 A. Okay. Once I arrived at the
15 mines, I got with John. And there
16 was some other guys there. Mark
17 Wilfong was there. I believe Jeff
18 Bennett, Barry Fletcher, maybe John
19 Scott, I'm not sure.

20 We had a discussion. Probably
21 looked at the map and got an overview
22 of what we thought may have occurred.
23 Right after that, the crew of guys
24 that went in the mine after the
25 explosion came out and we had a

1 meeting with those people. We got
2 some more information off of those
3 guys and just proceeded through the
4 rest of the mid morning, you know,
5 making several other phone calls,
6 discussions with other people.

7 I'm going to guess about early
8 afternoon a guy by the name of Kevin
9 Wetzel who works for Consol got to
10 the property with a chromatograph.
11 So I spent a good bit of time with
12 him trying to get it set up so that
13 we could take more accurate samples.

14 I believe a mine rescue truck
15 had arrived by then. And we were
16 making --- I spoke to Mike and other
17 guys about getting people ready to
18 enter the mines. Had conversations
19 with John Meadows, another inspector
20 of ours, that related to the
21 possibility of drilling a bore hole.

22 That progressed until we took
23 some samples and we got a trend of
24 the samples. And it was a joint
25 decision made somewhere around 5:30

1 p.m. that we felt comfortable at that
2 time with starting to proceed into
3 the mines with mine rescue teams.

4 That process went on through
5 the night. I did various things. I
6 was in and out of the command center,
7 making phone calls to schedule relief
8 for the people that I had there for
9 oncoming shifts.

10 I stayed at the mines
11 throughout that night, through the
12 next morning. I believe John had
13 left early Tuesday morning. I waited
14 until he got back Tuesday afternoon.
15 And I left and went home about 2:30
16 p.m. on Tuesday. I went home and
17 slept a few hours and left home, I'm
18 thinking, about 9:30 p.m. Tuesday
19 evening and got back to the mines.

20 I believe I stopped and
21 talked to C.A. Phillips, Deputy
22 Director and some other people. I
23 know I stopped at the state mine
24 rescue truck to see if we had people
25 available if they were needed to do

1 anything there. And I headed toward
2 the command center.

3 I don't know what time it was.
4 It was late --- late in Tuesday. As
5 I went into the command center, I
6 heard almost like a celebration
7 occurring, so I proceeded on. And as
8 I was traveling that way, there was a
9 lot of communication about --- you
10 know, information was passed on about
11 survivors.

12 I spent some time there in the
13 command center. Went through that
14 process there, what took place after
15 that. Then for the rest of Wednesday
16 morning I stayed close to the command
17 center.

18 Some of my time there I was in
19 the command center. I actually sat
20 at the desk and acted as the lead
21 person at the command center.

22 I don't know what time I left
23 Wednesday. I know I was there until
24 all the victims were out of the mines
25 and transported. I believe there was

1 a tent set up outside for the victims
2 to go to first. Again, I had some
3 conversations with Deputy Director
4 C.A. Phillips.

5 And later that day, I attended
6 a meeting at the Buckhannon Hampton
7 Inn with members of the International
8 Coal Group, Anker of West Virginia
9 Mining, MSHA and state officials.

10 Q. Okay. Going back to whenever
11 you met John there. And the
12 information that he provided you,
13 were there people down in the pit
14 taking CO levels or ---? You know,
15 who was established to do that?

16 A. I'm not sure. But I believe
17 through the conversation, we had had
18 a couple guys or one guy from our
19 agency taking some readings. And
20 later on in the day I can recall
21 seeing a couple of gentlemen that I
22 believe worked for Barbour County
23 Mine Rescue Team with apparatus,
24 taking air readings at the return
25 opening.

1 Q. Okay. And what were those CO
2 levels, do you recall, at that time
3 when you arrived?

4 A. I know they increased after I
5 got there.

6 Q. But you don't know what those
7 levels were?

8 A. No, I don't. They were
9 recording I'm wanting to think in the
10 neighborhood of 2,000 parts per
11 million.

12 Q. Were you ever involved in the
13 actual monitoring for gases?

14 A. My involvement was with ---
15 mostly with Kevin Wetzel, the guy
16 setting up the chromatograph. We
17 provided him with space and got him
18 electricity and, you know, went
19 through that procedure. Made sure we
20 were getting vital samples to him
21 early on.

22 Q. Was that the state
23 chromatograph?

24 A. No. It was furnished, I
25 believe, by Consol Coal Company.

1 Kevin - - - I know Kevin works for
2 Consol.

3 Q. Oh, Kevin works for Consol?

4 A. Yeah.

5 Q. Okay. And where was that set
6 up?

7 A. It was set up in the state
8 mine rescue truck.

9 Q. And did you have any
10 involvement in any contact of the
11 mine rescue teams at all?

12 A. Yes. Early on, I believe from
13 home I made a couple attempts to get
14 ahold of Tri-State Mine Rescue Team.
15 They were probably the closest area
16 of mine rescue teams. And I'm not
17 sure if I tried to communicate with
18 Consol at home or on the road to the
19 mines, but I eventually made contact
20 with Bill Prebola (phonetic) from
21 Tri-State and asked him to get busy
22 and get his people there.

23 Joe was near Wheeling, West
24 Virginia and it would've taken some
25 time for him to get back. And I'm

1 sure he made telephone calls on his
2 way back.

3 I spoke with Consol several times,
4 once I got to the mines, giving them
5 updates of what I was learning as the
6 situation went on.

7 Q. And who was that that you were
8 speaking with?

9 A. Primarily Spike Bane.

10 Q. And you asked Consol to ---
11 did they volunteer or did you ask
12 them to come?

13 A. Well, during the conversations
14 with Spike Bane, you know, somebody
15 from Anker, after the information was
16 relayed back and forth, I said, Spike
17 Bane is a guy from Consol that you
18 guys need to talk to, to get their
19 teams here.

20 Q. What led you to contact
21 Consol?

22 A. Well, I know they're
23 experienced mine rescue teams. I've
24 worked with them a lot in the past.
25 And not knowing exactly what was in

1 front of us, I felt real comfortable
2 asking them to give us additional
3 help, knowing we only had Barbour
4 County and possibly getting Tri-State
5 there.

6 Q. Just someone experienced that
7 kind of knows what they're doing?

8 A. Plus I knew, based on, you
9 know, some past experience, that we
10 were going to need more than two
11 teams.

12 Q. Yeah. And ICG, they're the
13 ones that actually, in the ultimate
14 end, asked Consol to come in?

15 A. Somebody from Anker, yeah.
16 You know, I communicated with Consol,
17 but I felt it was Anker's
18 responsibility to, ---

19 Q. Yeah.

20 A. --- you know, ask that they
21 come.

22 Q. And who from Anker did that,
23 do you know?

24 A. I can't remember if I talked
25 to Johnny Stemple or Tyrone Coleman,

1 somebody in the safety end of
2 Anker's ---.

3 Q. And was there any other mine
4 rescue teams that you had
5 conversations with to ask the
6 possibility of coming in? Did you
7 call any other ones?

8 A. No. I just called Tri-State
9 and Consol, knowing Consol had
10 several teams.

11 Q. Okay. And once you had spoken
12 with John, and then what did you do?

13 A. John Collins?

14 Q. Yes.

15 A. At what time? On the
16 telephone at home or ---?

17 Q. No. Okay. After you arrived
18 at the mine. You arrived at the mine
19 and you spoke with John, John
20 Collins. And then what did you do
21 next?

22 A. I spent most --- a lot of my
23 time on the telephone, gathering
24 other information and passing that
25 along. And there were some other

1 guys that I had working for me there
2 communicating with them. And I even
3 called ---. I believe I called our
4 engineer, Lonnie Heap (phonetic) and
5 I called Mike Rutledge, the guy
6 that's in charge of mine rescue early
7 on.

8 Q. And you were in the command
9 center? You had mentioned there a
10 minute ago that you were in the
11 command center as the State
12 representative?

13 A. On occasions, yeah.

14 Q. On occasions.

15 A. I would go in, on occasions,
16 and give a guy a break. We had
17 different guys assigned to the
18 command center. John Collins was
19 one. Robert True was another guy we
20 had primarily focused on being in the
21 command center. And I believe Bill
22 Tankerslee (phonetic). We tried to
23 create a continuity there that we
24 could pass information on to each
25 other. Plus we had some other guys

1 assigned to other duties outside.

2 Q. And were you involved in any
3 of the decisions to make these bore
4 holes, to put the bore holes in?

5 A. Not directly, but indirectly
6 with Doug Conaway and John Meadows.

7 Q. And that was kind of a joint
8 effort in deciding where to put the
9 holes in or ---?

10 A. Yeah. From what I understand,
11 yeah. Then there was a lot of
12 consideration given to where to put
13 the first one.

14 Q. And who made those final
15 decisions?

16 A. I'm not sure if it was a --- I
17 would imagine it was a representative
18 from Anker.

19 Q. Okay. But you don't know who
20 it was?

21 A. No.

22 Q. No? Okay. And I believe you
23 did say --- maybe you said you were
24 in the parking lot. Were you in the
25 command center when the

1 miscommunication came out of the mine
2 about 12 people --- that everyone was
3 alive?

4 A. No. I was approaching the
5 command center.

6 Q. The command center.

7 A. I may have been in the hallway
8 when I heard what I term a
9 celebration.

10 Q. Okay. And after the
11 celebration, who told you the 12
12 people were alive?

13 A. Really, I don't know who
14 actually ---. Nobody really told me,
15 I don't think, that 12 people were
16 alive. There was a lot of hugging
17 and, you know, I heard that through
18 the conversations with other people.

19 Q. Then how long was there ---
20 how did you come to realize that
21 there was only one alive?

22 A. Well, I stayed close to the
23 command center after that, because we
24 had to make some decisions about
25 getting the mine personnel --- I

1 mean, medical personnel, getting
2 that, you know, rescue attempt going.
3 I believe we had Mark Wilfong in the
4 pit making arrangements to get
5 medical personnel transported into
6 mines to give assistance.

7 Q. And when did you come to
8 realize that there was only one
9 alive?

10 A. Through the communication at
11 the command center, I overheard it.

12 Q. Okay. And was there any
13 discussion of --- or what was the
14 discussion of how you finally come to
15 know that?

16 A. I guess it was confirmed
17 through a call from the fresh air
18 base through the command center. I
19 do recall that after the initial word
20 that, you know, somebody said, hey,
21 we got a lot of work to do here,
22 let's go ahead and --- you know,
23 let's get focused and do what we have
24 to do. Who that was, I can't
25 remember.

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MR. SWENTOSKY:

Do you have any
questions up to this point?

BY MR. RUTLEDGE:

Q. Brian, a witness testified earlier that there was a code made up in order to try to protect the families and their privacy and to not let information out to the media before it had been properly confirmed and passed out to the families. What were you aware of with that code? What was your understanding of that code?

A. I believe it was Tyrone Coleman that approached us. And his concern was that there may be some type of eavesdropping from outside the mine site that was available to listen to everything going on in the command center. So he suggested, at that time, that should we happen to find a victim, that it would be referred to as an item.

Q. Okay. And did you know that

1 that had been extended further, even
2 to the point of assigning a number to
3 the missing individuals and to be
4 able to refer to those specific
5 people by item number?

6 A. No, sir. As far as I know,
7 that was never --- that code or
8 whatever you want to call it was
9 never relayed to anybody that I know
10 of in the command center. If there
11 was a code used, I'm not aware of it,
12 as far as numbering individuals with
13 a code number.

14 MR. RUTLEDGE:

15 That's all I have right
16 now.

17 BY MR. SWENTOSKY:

18 Q. You mentioned John Meadows.
19 Is he a person that works for the
20 state?

21 A. Yeah. John Meadows is a
22 surface inspector that works out of
23 our region.

24 Q. Okay. Were you in the command
25 center whenever there was discussion

1 on ---? Let me ask you this. At any
2 time, did you ever inspect the seals
3 or were you ever in the mine during
4 the construction of the seals?

5 A. No, sir.

6 Q. Okay. So you never inspected
7 them ---

8 A. No.

9 Q. --- or never saw them, I
10 guess?

11 A. No.

12 Q. I don't have anything further.
13 Do you have anything you'd like to
14 add?

15 A. No, not at this time.

16 MR. SWENTOSKY:

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

25 We ask that you not

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

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

22 If you wish, you may
23 now go back over any answer
24 you have provided during this
25 interview. And you may also

1 make any statements that you
2 would like to make at this
3 time.

4 A. Can you read that part about
5 not discussing what I've heard at
6 interviews?

7 MR. SWENTOSKY:

8 Okay.

9 A. I don't know that I can follow
10 that guideline.

11 ATTORNEY CRAWFORD:

12 To the extent
13 applicable. Obviously this is
14 mostly for miners, so ---.

15 A. Okay. I think I understand
16 the context of it.

17 MR. SWENTOSKY:

18 Okay. Do you want me
19 to read it again?

20 A. No, I'm okay.

21 MR. SWENTOSKY:

22 All right. We realize
23 that. Okay. Thanks a lot.

24 **SWORN STATEMENT**

25 **CONCLUDED AT 1:57 P.M.**