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Transcript of the Testimony of Adam Fraley

Date: June 17, 2010

Case:

Printed On: June 22, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH

OF

ADAM J. FRALEY

taken pursuant to Notice by Cynthia Piro Simpson, 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 Thursday, June 17, 2010, beginning at 11:02 a.m.

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A P P E A R A N C E S

DEREK J. BAXTER, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

JOHN GODSEY
Miners' Safety and Health Administration
P.O. Box 560
Norton, VA 24273

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

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CELESTE MONFORTON, MPH, DRPH
West Virginia Independent Investigation
2100 M. Street, NW
Suite 203
Washington, DC 20037

ALSO PRESENT:

DANIEL BERRA

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*exhibit not attached

P R O C E E D I N G S

ATTORNEY BAXTER:

My name is Derek Baxter. Today is June
17th, 2010. I am with the Office of the Solicitor,
U.S. Department of Labor. With me is John Godsey, an
accident investigator with the Mine Safety and Health
Administration, MSHA, an agency of the United States
Department of Labor. Also present are several people
from the State of West Virginia. I ask that they
state their appearance for the record.

MR. FARLEY:

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

MR. BERRA:

Dan Berra (phonetic), West Virginia
Office of Miners' Health, Safety and Training.

MS. MONFORTON:

And I am Celeste Monforton. I'm with
Governor Manchin's special team.

ATTORNEY BAXTER:

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

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

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

1 Miners' Health, Safety and Training. We appreciate
2 your assistance in this investigation.

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

9 MR. FRALEY:

10 No.

11 ATTORNEY BAXTER:

12 Your statement is completely voluntary.

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

20 Your identity and the content of this
21 conversation will be made public at the conclusion of
22 the interview process and may be included in a public
23 report of the accident, unless you request that your
24 identity remain confidential or your information would
25 otherwise jeopardize a potential criminal

1 investigation. If you request us to keep your
2 identity confidential, we would do so to the extent
3 permitted by law. That means that if a Judge orders
4 us to reveal your name or if another law requires us
5 to reveal your name or if we need to reveal your name
6 for other law enforcement purposes, we may do so. We
7 request that you refrain from discussing your
8 statement with others who may be interviewed. Also,
9 there may be a need to use the information you provide
10 to us or other information we may ask you to provide
11 in the future in other investigations into and
12 hearings about the explosion. Do you understand?

13 MR. FRALEY:

14 Yeah.

15 ATTORNEY BAXTER:

16 Do you have any questions?

17 MR. FRALEY:

18 No.

19 ATTORNEY BAXTER:

20 After the investigation is complete, MSHA
21 will issue a public report detailing the nature and
22 causes of the fatalities in the hope that greater
23 awareness about the causes of accidents can reduce
24 their occurrence in the future. Information obtained
25 through witness interviews is frequently included in

1 these reports. Since we will be interviewing other
2 individuals, we request that you not discuss your
3 testimony with any person aside from your personal
4 representative or counsel.

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

11 I would like to thank you in advance for
12 your appearance here. We appreciate your assistance
13 in this investigation. Your cooperation is critical
14 in making the nation's mines safer. After we have
15 finished asking questions, you'll have an opportunity
16 to make a statement and provide us with any other
17 information that you believe to be important. If at
18 any time after the interview you recall any additional
19 information that you believe might be useful, please
20 contact Norman Page at the telephone number or e-mail
21 address provided to you.

22 MR. FARLEY:

23 Adam, on behalf of the West Virginia
24 Office of Miners' Health, Safety and Training, I want
25 to advise you that the state Coal Mine Health and

1 Safety Regulations also protect miners against
2 discrimination. Should you encounter such treatment,
3 I'll just give you a memo and some business cards with
4 some contact information, should you file a claim if
5 you are not properly treated for participating in this
6 interview.

7 MR. FRALEY:

8 Okay.

9 ATTORNEY BAXTER:

10 Will you please swear the witness?

11 -----

12 ADAM J. FRALEY, HAVING FIRST BEEN DULY SWORN,

13 TESTIFIED AS FOLLOWS:

14 -----

15 EXAMINATION

16 BY MR. GODSEY:

17 Q. Good morning, Adam. Thank you for coming in this
18 morning. Could you state your full name?

19 A. Adam Joseph Fraley.

20 Q. Spell your last name, please.

21 A. F-R-A-L-E-Y.

22 Q. Your home address?

23 A. (b) (7)(C)

24 COURT REPORTER:

25 How do you spell that?

1 A. (b) (7)(C) .

2 BY MR. GODSEY:

3 Q. Your telephone number?

4 A. (b) (7)(C) .

5 Q. Are you appearing here today voluntarily?

6 A. Yes.

7 Q. Has anyone made any promises to you for giving
8 this statement or offered you any rewards in exchange
9 for making this statement?

10 A. No.

11 Q. Has anyone threatened you or warned you not to
12 provide this statement?

13 A. No.

14 Q. Has anyone from the company or persons
15 representing the company talked to you concerning the
16 explosion?

17 A. Yes.

18 Q. Who were they?

19 A. It was lawyers for Massey.

20 Q. When did this happen?

21 A. I would say about a month or better.

22 Q. Did you receive any direction for how to give your
23 testimony today?

24 A. No.

25 Q. Did the company suggest that you contact them

1 after the interview, they want you to get back in
2 touch with them?

3 A. No.

4 Q. Are they calling you back to talk to ---?

5 A. I have two interviews, but they've all been
6 previous to this.

7 Q. Have they ever called --- do you know if they've
8 called anybody, that's been here, back?

9 A. Not that I'm aware of.

10 Q. How many years of mining experience do you have?

11 A. About eight-and-a-half.

12 Q. Just give us a brief description of your mining
13 experience.

14 A. I started in the mines shortly after high school,
15 and I went into the maintenance program. And they had
16 a layoff and I worked belts for a little while. Most
17 of my mining career has been on the hoot owl. And I
18 became a certified electrician in 2004, and I've
19 worked as an electrician since.

20 Q. Are you presently employed?

21 A. Yes.

22 Q. Where are you employed at?

23 A. I'm still employed with Performance, but I'm
24 working at Elk Run.

25 Q. And when did you start there, at Elk Run?

1 A. About two weeks after the accident.

2 Q. And your present job is ---?

3 A. An electrician.

4 Q. Now, the following questions I'm going to be
5 asking you just pertain to Upper Big Branch, not to
6 Elk Run. Okay? What was your first date of
7 employment at Upper Big Branch?

8 A. I don't know exactly. It was about the middle of
9 March.

10 Q. March of what? What year was it at Upper Big
11 Branch?

12 A. '09. I've been there a year.

13 Q. And what was your first job assignment at UBB?

14 A. Hourly electrician on the --- no, I take that
15 back. I worked two weeks of production as an
16 electrician, then went to the midnight.

17 Q. What areas of the mine did you visit on the first
18 day that you went to UBB?

19 A. We walked the intake and went to what they call
20 the Number Four section. That was the section that we
21 was starting up.

22 Q. Exactly where was the Number Four section?

23 A. It was on the north side, at Plumley Switch, about
24 ten breaks underground.

25 Q. You was at the UBB Portal?

1 A. Yeah.

2 Q. What training did you receive prior to being
3 assigned a job at UBB?

4 A. They went over the maps, took us --- traveled the
5 intake, went over the mines with us, and showed us
6 where everything was at.

7 Q. And did you receive the Massey initial training,
8 MIT, whatever they call it?

9 A. Actually, well, no, not whenever I started at
10 Performance because we was still under Marfork's
11 payroll. But then they signed us over, and we had
12 to --- I think that they got a violation for Marfork
13 employees working at Performance, and they made us all
14 sign over to Performance.

15 Q. Did you have to sign a contract for
16 electrician --- or the program, electrical program?

17 A. Not whenever I got in it. They had some
18 incentives that I signed about two-and-a-half years
19 ago.

20 Q. What if you was to have left, would you have to
21 pay them back?

22 A. You would have just lost the bonus that they was
23 offering.

24 Q. Okay. When did you have your last annual
25 refresher training?

1 A. I think it was in February.

2 Q. Of this year?

3 A. Yes.

4 Q. Okay. On April 5th what was your job title?

5 A. Hourly electrician on the midnight.

6 EXAMINATION

7 BY MR. FARLEY:

8 Q. Adam, you started at UBB in March of '09, and I
9 think you indicated you worked two weeks as a
10 production electrician.

11 A. Right.

12 Q. Now, did I understand you to say you worked on
13 what they called Four section at the time or some
14 other section?

15 A. Four section.

16 Q. Okay. Now, you indicated Four section was near
17 Plumley Switch; ---

18 A. Right.

19 Q. --- is that right? Now, Plumley Switch, if I'm
20 correct, would be somewhere in the extreme southeast
21 portion of the mine; is that correct? Could you point
22 it out to me, please, if you don't mind? Or even
23 better, mark it with a marker for me.

24 A. Plumley Switch was right here on the north side.

25 There was a belt head ---.

1 MR. GODSEY:

2 Mark that with a green pen.

3 A. This was Plumley Switch. We started the Number
4 Four section right here. The head was already set
5 when we got there, and we mined this block of coal
6 right here.

7 BY MR. FARLEY:

8 Q. Okay. Do me a favor. Draw a line out here and
9 write Plumley Switch.

10 WITNESS COMPLIES

11 ATTORNEY BAXTER:

12 And we'll mark this map as Fraley Exhibit

13 One, please.

14 (Fraley Exhibit One marked for
15 identification.)

16 BY MR. FARLEY:

17 Q. Facing the belt head, just draw a line out and
18 write set belt head here or whatever you did.

19 A. Actually, the head was already set. We started
20 loading when we came.

21 Q. All right. That's fine. Or you can indicate
22 where you started mining.

23 A. Yeah.

24 Q. That's where you started mining?

25 A. Right.

1 Q. Before you get too far from the map, after your
2 two weeks on the production section there, you went to
3 the midnight shift?

4 A. Right.

5 Q. What area of the mine did you go to then?

6 A. Same place, ---

7 Q. Same place?

8 A. --- just different shift.

9 Q. Okay. How long would you stay there --- or did
10 you stay there up until ---?

11 A. I was on Four section probably up through July.

12 Q. Where did you go then?

13 A. I went to what they call the Number Three section.

14 Q. Can you show me where Number Three section is?

15 A. Whenever I started on Number Three section, we
16 went in on this side, on the south side.

17 Q. Okay. Why don't you use another marker there,
18 please?

19 MR. FARLEY:

20 The green markings indicate the area
21 where he worked initially, in production for a couple
22 weeks. And he's going to indicate where he
23 transferred to then on the midnight shift. Okay.
24 Just circle a section and draw it out there.

25 A. The Number Three section?

1 MR. GODSEY:

2 And that will be with the pink marker.

3 WITNESS COMPLIES

4 BY MR. FARLEY:

5 Q. How long did you work on the Number Three section?

6 A. I worked there pretty much until the accident. I
7 worked --- we've mined this area right here, and we
8 got in real big rock ---.

9 Q. Now, this area here, is that going to --- can you
10 identify that? Would that have a particular
11 section ---?

12 A. That really --- it was Number Three section. It
13 was Number Three, and they changed the name whenever
14 they started it. After a while we was there, they
15 called that the portal section.

16 Q. Okay. All right. Why don't you circle that one
17 and write portal section out here and Three section
18 out here.

19 A. Three section was the portal section.

20 Q. Okay.

21 A. It's the same thing.

22 Q. All right. They're one and the same. Now, did I
23 hear you correctly, you started on the Three section,
24 the portal section area, July '09 and continued to
25 work there until the time of the accident?

1 A. Right.

2 Q. Is that right. Okay.

3 A. I went where the Ellis Portal is over here ---

4 Q. Okay.

5 A. --- probably --- I probably worked two shifts
6 underground right here. We was going to start setting
7 a head.

8 Q. When did you work there?

9 A. I worked there Sunday night. And I got out Monday
10 morning of the accident and probably worked one shift
11 before that at the end of the other week.

12 Q. Okay. Now, why don't you indicate where you
13 worked there on ---?

14 A. I really don't remember what that was called. It
15 would have been a new section. We hadn't even
16 started ---.

17 Q. If you would just draw a circle around the area,
18 and we'll figure out the name later. You worked there
19 you say Sunday night into the Monday morning preceding
20 the accident?

21 A. Right.

22 Q. Okay. Just put a date up here, if you would, the
23 date you worked there.

24 WITNESS COMPLIES

25 BY MR. FARLEY:

1 Q. Okay. So you indicated 4/3/10 and 4/5/10. 4/3/10
2 would be Saturday before the accident you were up
3 there. When you worked in that area, where did you
4 portal? Where did you go inby ---?

5 A. Actually, the crews were taking a mantrip from the
6 UBB Portal, but instead of going all the way through
7 the mine and out to the other side, there was only
8 three of us working maintenance over there, and we
9 took personal vehicles to that portal and went
10 underground from the Ellis side.

11 Q. So you entered at the Ellis Portal?

12 A. Right.

13 Q. All right. Now, let's back up a little bit now.
14 Prior to April 3rd, 2010 and April 5th, 2010, had you
15 ever entered the Ellis Portal before?

16 A. No.

17 Q. Okay. Now, during the time of March of 2009 until
18 April of 2010, had you ever advanced inby the Ellis
19 Switch area?

20 A. Yes, I have.

21 Q. Okay. Where did you go?

22 A. I really don't know the name of the head. I
23 helped the chief electrician change a bearing out on a
24 head on a tailpiece. I know it was past 78, but that
25 was --- that's probably been, I'd say, five or six

1 months prior to the accident.

2 Q. So sometime in 2009; is that ---?

3 A. Right. Whenever they were shorthanded, I probably
4 worked up in this area outby, not on the section, ---

5 Q. Uh-huh (yes).

6 A. --- probably four or five times with the outby
7 electricians whenever they needed help.

8 Q. Can you identify where they were mining at the
9 time when you were there five, six months ago?

10 A. I really don't know because I didn't go to the
11 section.

12 Q. Okay. Very well. But you helped do some work
13 around the belt head inby 78?

14 A. Right.

15 Q. Okay. All right. Was this for a day or ---?

16 A. Just one shift.

17 Q. One shift.

18 A. And then I went back to the portal section.

19 Q. Okay. Now, any time between March of 2009 and
20 April 2010 --- now, you identified this one area where
21 you worked on the belt head. Did you advance inby 78
22 Crosscut at any other time?

23 A. I probably made it inby that switch maybe five or
24 six times, just helping out as far as working on the
25 section and in the section ---.

1 Q. You were there to do some type of outby work?

2 A. Yeah. A lot of times doing permissibility on kVA
3 boxes or I might have changed a bearing on a tail
4 welder. Just pretty much working on belt heads and
5 boxes.

6 Q. Outby electrical installations ---?

7 A. Correct.

8 Q. Okay. Did you visit any of the sections --- any
9 of the working sections that might have been inby 78
10 Switch between March of '09 and April 5th, 2010?

11 A. I think I was on --- up in here and over here, but
12 the section was not running. They was in the middle
13 of a section move.

14 Q. Okay. Now, you're pointing to the tailgate and
15 headgate entries for the longwall in operation at the
16 time of the accident?

17 A. That was before the longwall even came back to
18 Performance from Elk Run.

19 Q. Would this have been at the time the headgate and
20 tailgate entries were being developed?

21 A. Actually, they were pulling off of them and moving
22 some equipment out of there.

23 Q. All right.

24 A. They was not mining whenever I was in the area.

25 Q. Okay. But were you there to do any work on any

1 producing section?

2 A. No, not producing section. I had to move some
3 equipment.

4 Q. Okay. All right. When you were in the area of
5 what would now be the One North longwall, headgate and
6 tailgate entries, did you observe any bottom hooving?

7 A. No, I did not.

8 Q. Okay. Did you notice any bad roof or rib
9 conditions that you can recall?

10 A. No. Up this panel here they had a lot of jacks
11 set. But as far as seeing any dangerous conditions,
12 there were some jacks up in there, but you know, they
13 had set the jacks and taken care of the problem.

14 Q. Have you been inby 78 Crosscut since this longwall
15 panel started? I think this longwall panel started
16 September 2005.

17 A. Then that's whenever I was talking about --- I
18 guess would this right here be called the Mother Drive
19 for the longwall?

20 Q. It's in that vicinity.

21 A. I was right around the Mother Drive. That's
22 whenever we changed a bearing out on a tailpiece.

23 Q. Do you recall when that was?

24 A. I'd say it had been probably five or six months
25 prior to the accident.

1 Q. Okay. All right. Now, overall, in the year or 13
2 months that you worked at UBB, is it fair to say that
3 you spent the vast majority of your time in the portal
4 section, Three section area?

5 A. Yes. I spent roughly four months or so on the
6 Number Four section.

7 Q. Okay. I hope I'm not repeating this question.
8 You said five or six months ago ---

9 A. Right.

10 Q. --- would have been the last time you were in by 78
11 Switch; is that correct?

12 A. Yes. Well ---.

13 Q. Or is that ---?

14 A. I'm trying to think. There was one other shift
15 that they had some people go --- I don't even know
16 where I would be at. I know that it was towards the
17 Glory Hole. There was some of us went up there for
18 roughly a half a shift, and that was probably a couple
19 months prior to the accident.

20 Q. Was the section now called 22 Tailgate in
21 operation when you were in that area?

22 A. I don't think that they had even started.

23 Q. Okay. All right. I think you can probably have a
24 seat now, if you want. We've got more maps ---.

25 Now, five or six months ago, last year, when you

1 visited the longwall headgate and tailgate entries in
2 the area, did anybody indicate to you that they had
3 detected any quantities of methane in that area?

4 A. No, not that I was aware of.

5 Q. Okay. Did you carry a methane detector with you?

6 A. I had one at the time. There was a foreman up
7 there that had one.

8 Q. No, back to the Three section, the area where you
9 spent most of your time. Now, did you work on section
10 equipment or were you dealing with outby electrical
11 installations?

12 A. I worked on the section.

13 Q. Okay. Would that be considered routine
14 maintenance to the section equipment?

15 A. Yes.

16 Q. Did you handle any regular maintenance of methane
17 monitors on mining machines?

18 A. Well, yeah, we calibrated them weekly on the
19 midnight shift. That was the down shift. We done all
20 the maintenance, which permissibility was split up
21 between dayshift, evening shift, and midnight. And we
22 calibrated the methane monitors weekly.

23 Q. Okay. Now, can you run through that for me, how
24 you went about that, how you calibrated the methane
25 monitors on the mining machines weekly? Did you use a

1 known gas mixture to do it?

2 A. Yes. We had calibration kits that contained zero
3 air and 2.5 percent mix of methane.

4 Q. Okay. Did you do any welding or cutting?

5 A. Yes, I did.

6 Q. How did you normally go about that? Did you have
7 a methane detector to make an exam before you did the
8 welding?

9 A. Yes.

10 Q. Did you use any type of floor cutter when you did
11 the welding and cutting?

12 A. What do you mean by floor cutter?

13 Q. Some type of spreading ---?

14 A. We usually cleaned the area. We had fire
15 extinguishers, rock dust. We always had all that on
16 hand.

17 Q. Okay. Were you involved in maintaining
18 permissibility on the section equipment?

19 A. Yes, I was.

20 Q. Okay. Did you ever detect any methane on the
21 portal section when you worked there?

22 A. No, I never did.

23 Q. Did anybody else, as far as you know?

24 A. Not that I'm aware of.

25 Q. Okay. The last couple of shifts you worked, I

1 think you indicated earlier on the map on April 3rd
2 and April 5th of this year in an area near Ellis
3 Switch, did you notice anything --- any unusual dust
4 in the air while you were working there?

5 A. No.

6 Q. Any difficulty breathing?

7 A. Uh-uh (no).

8 Q. Any burning sensation in your eyes?

9 A. No.

10 Q. Anything unusual that seemed out of the ordinary
11 or out of place?

12 A. Everything seemed normal.

13 Q. During your last shift, which starts Sunday night,
14 April 4th; is that right?

15 A. Right.

16 Q. Okay. What time did you start Sunday night, April
17 4th?

18 A. 11:30.

19 Q. Okay. Who can you remember, UBB management team,
20 that night? Who was on site? Who did you see that
21 night?

22 A. In the area that I was working in?

23 Q. Yes, sir. Or at the Ellis Portal. That's where
24 you entered the mine; is that correct?

25 A. Right.

1 Q. Ellis Portal. Who do you recall seeing that
2 night?

3 A. I really didn't see many people other than the
4 crew that was working in the area. There was only
5 three on maintenance. There was a belt crew. And
6 other than that, really we didn't see any of the upper
7 management until, you know, in the morning other than
8 the fire --- I think there were a couple fire bosses
9 in the area.

10 Q. Now, when you say you saw management in the
11 morning, give me an approximate.

12 A. We was on our way out and there was Wayne
13 Persinger and I think a couple fire bosses. They was
14 going to the new setup where we was working that
15 previous shift.

16 Q. Okay.

17 A. We was in the middle of a section move.

18 Q. And when you say you saw them on your way out, do
19 you mean at the end of your shift?

20 a. Right.

21 Q. What time did your shift end?

22 A. 8:30.

23 Q. And you made it outside at about that time?

24 A. Yeah, probably --- between 8:15 and 8:30 we made
25 it outside.

1 Q. So during the night you didn't see Mr. Persinger
2 or anyone else from --- such as the mine
3 superintendent, mine foreman or ---?

4 A. No.

5 Q. Okay. Do you know if any type of ventilation
6 changes might have been made during your last shift on
7 April 5th?

8 A. Not that I knew of.

9 Q. Okay. Did you hear any conversations or any talk
10 about a ventilation change being made on Sunday, April
11 4th?

12 A. No.

13 Q. Okay. One more thing. I'm sorry if I'm repeating
14 this, but who did you work with during that night?
15 Who was working?

16 A. My maintenance foreman, Jody Price.

17 Q. Jody Price.

18 A. And there was a trainee electrician, Jay Adame,
19 and the belt crew. That was pretty well all of them
20 there.

21 Q. Was Jody Price your normal supervisor?

22 A. Yes.

23 Q. How long had Jody been your supervisor?

24 A. Since probably July of '09, whenever I went to
25 Three section. Because whenever I went to the Ellis

1 Portal side with those couple shifts, we was moving
2 portal section over there to start driving some short
3 longwall panels.

4 Q. Okay. All right. Is there anything that you can
5 tell us about the last few days you worked at UBB?
6 Any experiences you had during those last few days or
7 any conversations with anyone you had during those
8 last few days that can shed any light on what might
9 have happened? Can you think of anything at all?

10 A. I have no idea what would have caused that and
11 haven't heard of anything that anybody was talking
12 about.

13 Q. Okay.

14 MR. FARLEY:

15 John?

16 RE-EXAMINATION

17 BY MR. GODSEY:

18 Q. You was talking about you spent the last around
19 the portal section there where they were cutting
20 overcasts and rehabilitating that area?

21 A. Right. Well, yeah. They was putting a beltline
22 up in what they called the LBB area. And my last
23 shift, the belt crew was breaking the belt, which they
24 had had to put back together by the time for dayshift.
25 But we'd set a flow-through in and had to weld legs on

1 it, and they was going to put the belt back together.
2 But that's what we was doing that shift, was putting a
3 flow-through in to start setting the first head for
4 that section. There had to be two heads set before it
5 could even run.

6 Q. You said you went over to Ellis Portal to enter
7 that night. Do you remember which way the air on the
8 belt or track was traveling, what direction it was
9 going in?

10 A. Which way the air ---?

11 Q. If it was going inby or outby?

12 A. I really don't know.

13 Q. Could you tell any difference from the previous
14 night that you was there other than the last night?

15 A. Uh-uh (no).

16 Q. Did anybody ever mention anything to you about the
17 ventilation there on that --- when they were cutting
18 overcasts?

19 A. No.

20 Q. What about the mainline? You said you worked over
21 on the UBB side and on the Ellis side. How did they
22 maintain the track and belt? What kind of condition
23 did they keep it in?

24 A. It seemed to be in good condition. Whenever they
25 found a problem, they always set timbers. The track

1 entries and everything was good. I hadn't traveled a
2 whole lot of the mine, but what I had been in --- I
3 mean, when something was wrong, it seemed to be
4 corrected.

5 Q. When you entered these portals, a lot of them have
6 man --- equipment doors in them. Do you ever find any
7 of them's been left open?

8 A. No. Actually, on the portal section and the
9 barrier section both, we had automatic doors going to
10 our section. I know that some people had said on the
11 other end of the mines there was a lot of manual doors
12 that you had to get out and open, but those sections I
13 worked on, we had automatic doors.

14 Q. Okay. You said you traveled up inby Door 78 to
15 the crosscut a couple times. How were the doors
16 maintained up there?

17 A. They seemed to be fine whenever I was up there,
18 but I think somebody said that they had put some more
19 doors in line since I was up in that area last. I
20 don't know how many doors was on the mainline track,
21 but there was --- there was a set of doors inby 78
22 that was going toward One section I think where the
23 longwall was set. I remember that there was a set of
24 doors there, I think, but they had ended up putting a
25 lot more in line. I really don't know what area they

1 were in.

2 Q. Have you heard of anybody talk to you about
3 finding those doors being open and worrying about
4 working up there with those doors open?

5 A. No.

6 Q. And you said that you worked up there on the ---.
7 What was the condition of the beltline?

8 A. The beltline was in pretty good condition. Where
9 I was working on the bearing, there was a lot of mud
10 and water. But as far as coal spillage or anything
11 like that, there really wasn't.

12 Q. What about float dust? Did you see much float
13 dust in that area?

14 A. Not really. It was really wet in that area.

15 Q. What about the structure, the belt structure, what
16 did it look like?

17 A. It seemed to be in good condition.

18 Q. Did you see anything up there or anything that's
19 out of the ordinary that you didn't expect to see?

20 A. No.

21 Q. And I think you spent your --- probably your
22 entire career up there over on the south side and
23 north side of the belt that you worked as an
24 electrician.

25 A. Yeah.

1 Q. Let's talk about that a little bit. Did you
2 maintain the methane monitors on the miners?

3 A. I have, but it just depended. Somebody off of my
4 crew did weekly. But I mean, it varied from week to
5 week. I mean, I was not assigned to do that, but, you
6 know, sometimes we would take turns about, you know,
7 just depending on, you know, what kind of jobs we had
8 going on, on a section. But there was somebody off of
9 my crew that done it.

10 Q. Who took care of that? Who's the person that took
11 care of that?

12 A. Most of the time it was my maintenance foreman.
13 And I've calibrated the methane monitors sometimes.
14 Like I said, it just depended on, you know, what we
15 --- I done a lot of welding on the section. It just
16 depended on who was doing what on it, who would take
17 care of them that week.

18 Q. What was your maintenance foreman's name?

19 A. Jody Price.

20 Q. The same one you had? Did you ever, on a section
21 when they were developing up there, kept mining coal?
22 Did you ever work when they were cutting coal?

23 A. Up where?

24 Q. Up on your section down there in the south?

25 A. Yes.

1 Q. Do they always use line curtain?

2 A. Yes.

3 Q. Did you ever see any line curtain that may have
4 fell down and they kept continuing to operate?

5 A. No. They usually took care of it pretty well. I
6 did not work a whole lot of production. You know, I
7 was --- I mainly been on the down shift.

8 Q. What kind of roof bolters did they have up there?

9 A. Roof Ranger IIs.

10 Q. Did they have methane monitors on those?

11 A. No.

12 Q. How did they --- what was the particulars when
13 they took a 20-minute gas check on a miner when they
14 were cutting? What would they use? How would they do
15 that? Say they were cutting for an extra 20 minutes,
16 then they stopped. How would they take a gas check on
17 the miner when they ---?

18 A. I was on the down shift.

19 Q. I mean, have you ever worked on it when you were
20 watching them mine coal?

21 A. I've had to work over a little bit, but I really
22 --- you know, I would go look whenever something was
23 down.

24 Q. How often have you heard people talk about --- on
25 the other sections up in 22 Headgate or 22 Tailgate,

1 having not enough air to mine?

2 A. I really haven't talked to anybody up there about,
3 you know, their ventilation or air. I mean, I knew
4 pretty well what we had on our section. But as far as
5 that end of the mines, I was a long ways from it and I
6 didn't know a whole lot about it.

7 Q. Were you aware of anyone making any major
8 ventilation changes up there and people working
9 underground?

10 A. No, not while people were underground. I had
11 heard that they made a couple on the north side, but I
12 think that they had everybody out from underground,
13 other than who was making the ventilation change.

14 Q. When was this?

15 A. I'd say two to three months from the accident ---
16 before the accident had happened. I think that --- I
17 think somebody said that their air was messed up and
18 that the inspectors had wrote some plan for them to
19 change their ventilation. I really don't know who
20 done it or --- like I said, I was on the other end of
21 the mine. I don't know a whole lot about it. I did
22 hear that they made a ventilation change.

23 Q. Did you all use split ventilation or sweep ---?

24 A. We run split on my section.

25 Q. How many continuous miners did you operate at that

1 time?

2 A. Two.

3 Q. Did you all use ---? Did you all use belt air to
4 ventilate with?

5 A. No.

6 Q. Have you ever been on --- how many times have you
7 been on a section when they were running dust ---
8 respirable dust samples?

9 A. Pretty much I see the coal crews come in with
10 them. But as far as being up there while they was
11 running dust, I never was.

12 Q. Have you ever heard anybody talk about someone
13 taking the pump off of one of the men and paint an
14 intake?

15 A. No.

16 Q. What was the usual depth of cut up there on the
17 section in the south?

18 A. They was on 20-foot cuts.

19 Q. Did they ever take any extended cuts?

20 A. Not that I'm aware of.

21 Q. I may have asked you this, but did you ever see a
22 methane monitor bridged out or a plastic bag placed
23 over it?

24 A. No, I did not.

25 Q. Did you run a scrubber up there? Do they run

1 scrubbers on ---? Do you all maintain the scrubbers?

2 A. No. Where they was on 20-foot cuts --- at the
3 mines I was at before there, we had a deep-cut plan
4 and we had to maintain the scrubbers and take the
5 readings. But since we went to Performance, we've
6 done 20-foot cuts. And if they didn't use the
7 scrubbers, we didn't have to maintain them.

8 Q. When would the --- your section foreman or your
9 supervisor, how often would you have safety talks?

10 A. We had them every week, usually on Sunday nights,
11 at the beginning of the week.

12 Q. Did you have them before you went in or had them
13 on the section?

14 A. Well, sometimes we'd have it before we went in. A
15 lot of times we'd have it at the section because
16 that's a generally large mines. There's so many
17 people in the bathhouse, so the crews would kind of
18 split up.

19 Q. How often --- or when's the last time that you
20 walked your primary escapeway?

21 A. It was shortly before we pulled off of Three
22 section. Like I said, we started the section move. I
23 would say it was --- I would say maybe three weeks
24 prior to the portal section shutting down, and then we
25 moved to the other side of the mountain.

1 Q. What condition was it maintained? How was it
2 maintained, the escapeway?

3 A. It was in good condition.

4 Q. Did they have all their SCSRs and caches and
5 stuff in place?

6 A. Yes.

7 Q. Have you been on a section and someone called
8 underground saying there was a Federal or a State
9 inspector coming in and were on the surface?

10 A. No. Usually whenever they came out with us, they
11 was there and went in with us, you know, on the
12 midnight.

13 Q. How would you describe the overall ventilation
14 where you've been?

15 A. The two sections I was on, we had pretty good air,
16 which Massey had started requiring that you had 20,000
17 on both sides before you run on a split-air section.
18 And there was a couple times that it had been down,
19 but it was close to 20, you know, 18, 19. They had to
20 work --- you know, they might have hung a curtain or
21 something to get their 20, but we generally had pretty
22 good air on Three and Four section.

23 Q. How many times have you heard them having to shut
24 down due to a safety concern or something they called
25 outside and were told by upper management to go back

1 to work?

2 A. None that I'm aware of.

3 Q. How about do you know of anybody who's ever made a
4 complaint to management about a safety concern?

5 A. No.

6 Q. Do you know --- how about anybody --- have you
7 ever called the 800 number, the Massey 800 number?

8 A. No, I haven't.

9 Q. What about the MSHA Hotline?

10 A. No.

11 Q. How many times have you came to work and they
12 called off work because of a safety problem they had
13 at the mine?

14 A. There was --- well, actually I didn't --- usually
15 I had to stay. I know one time we came in and the
16 south side fan was down, but we worked on it. You
17 know, a lot of the times they would send other people
18 home, but usually maintenance had to stay. But, you
19 know, we wouldn't be underground. We was doing things
20 outside. Or you know, like that time that fan was
21 down, they pulled everybody out and sent the midnight
22 belt crews and stuff home, and pretty much the only
23 people there was electricians and salary people.

24 Q. Have you had a condition at the mine that required
25 you all to be evacuated? Say you was working up there

1 and called in and said you have a safety problem or
2 something, we have to --- everybody go outside?

3 A. No, not up there. I've been on the section
4 before, you know, when the fan would go off and we
5 would have to go outside.

6 Q. If you was to make a complaint to your supervisor
7 or the vice-president, whatever, what would they do to
8 you? Would they accept it or would you get
9 retaliation for it or ---?

10 A. I think that they would accept it. I mean, I've
11 really not complained to know how they would react to
12 it, but I don't think that you would be punished for
13 it.

14 Q. Do you know anybody that has?

15 A. No.

16 Q. Have you ever been injured at UBB?

17 A. No.

18 Q. Have you worked with anybody that has been
19 injured?

20 A. No.

21 Q. On the longwall, having experienced a problem the
22 day of the accident, have you heard anything on maybe
23 what could have been wrong that day, about the tail
24 heading down ---?

25 A. No.

1 Q. You never worked on the longwall?

2 A. No. I've never seen one operate.

3 A. How do you feel that your company or UBB is ---
4 are they more production oriented or are they more
5 safety oriented?

6 A. They are safety oriented. I mean, we always have
7 safety meetings. I mean, any time anything is found,
8 they seem to take care of things rather than letting
9 things go.

10 Q. Have you ever --- how many times have you talked
11 to a State inspector or Federal inspector on a
12 section?

13 A. I've talked to them several times on the section
14 but more outside. You know, I don't see them on the
15 section unless they go in with us. And they don't
16 come out on the hoot owl all the time. They come out
17 more on production.

18 Q. What kind of concerns ---? Did you ever ask them
19 for --- any questions about the plans you all have
20 that's required or safety issues?

21 A. No.

22 Q. Since the accident, have you talked to any other
23 of your fellow miners about what you all thought may
24 have happened or what could have happened?

25 A. We talked about it at work, but I mean, pretty

1 much everybody's on the same page, really don't know
2 what could have caused it.

3 Q. Were you surprised this happened?

4 A. Yes, I was.

5 Q. Why was you surprised?

6 A. Because I worked in there for the last year and
7 never seen any hazardous conditions to lead up to
8 something like this happening.

9 Q. Did you provide Massey's attorneys with the same
10 information that you've given us today?

11 A. Yes.

12 Q. Is there anything else that you would like to tell
13 us that --- anything else that you have that you want
14 to share with us?

15 A. Nothing else I can think of.

16 Q. Okay.

17 EXAMINATION

18 BY MS. MONFORTON:

19 Q. I just have a couple of follow-up questions.

20 Normally when your hoot owl shift was over, what was
21 the procedure for informing the dayshift crew on what
22 was going on in the section or anything that they
23 should look out for? How did that get handled?

24 A. While I was on the maintenance end, we always
25 called out and anything that was needed to be brought

1 in or anything, there was always call-out time. That
2 way the oncoming shift knew what was going on or if
3 there was something down or if they needed to bring
4 anything in for it.

5 Q. And on the morning of April 5th, before you came
6 out, do you remember anything particular that was ---
7 that you would have wanted to let the dayshift know
8 about?

9 A. No.

10 Q. Nothing stands out in your mind?

11 A. No, nothing.

12 Q. You mentioned very early on in your testimony here
13 about some incentive program. Was that the Enhanced
14 Employment Agreement?

15 A. No. He was talking about the electricians. They
16 had offered the electricians some money --- you know,
17 if you stayed three years with the company without
18 leaving, that you would get it. But there was no
19 punishment. If you left, you just lost out on the
20 bonus.

21 Q. Okay. So I have a copy of a document here called
22 Enhanced Agreement and Covenant not to Compete. Is
23 that the agreement you're talking ---?

24 A. No.

25 Q. Okay.

1 A. I'm talking about a different one.

2 Q. A different one, okay. What can you tell me about
3 the training that you got on the electronic tracking
4 system? Do you remember getting training?

5 A. Yeah. When they handed them out, they went over
6 the system with us and the radios because it was all
7 new to us. Before they handed them out, they talked
8 to us, you know, about, you know, the different
9 channels on the radios and the tracker and kind of
10 explained the system to us because it was new to
11 everybody.

12 Q. And as an electrician, did you have a role in
13 installing that system?

14 A. No. There was outby crews that that was all they
15 done in that mine was worked on leaky feeder lines and
16 maintained them and kept up with that.

17 Q. And what was your understanding of, if there was
18 an emergency, what you were supposed to do with that
19 tracker?

20 A. There was a button that would let them know
21 outside if something was wrong, you know, in case of
22 an emergency.

23 Q. Were you aware of citations that were issued by
24 State or Federal inspectors?

25 A. I was probably aware of some of them, I'm sure,

1 you know, because that was a really large mines, and
2 nobody would be able to keep up with everything that
3 was going on. There was four miner sections and a
4 longwall. I mean, I knew a lot of what was going on,
5 you know, in the area I was working in. But as far as
6 other areas of the mines, I didn't know.

7 Q. Was there a part of the safety talk or other
8 discussions with management about citations that have
9 been received?

10 A. Sometimes they went over, you know, previous
11 citations and talked about them and how to prevent
12 them and, you know, just things that they had done
13 wrong. But other than that, I mean, you know,
14 sometimes we had discussions on them.

15 Q. Did you participate in a survey of employees that
16 was given by Massey earlier this year?

17 A. Yes, I did.

18 Q. Can you tell us a little bit about that survey and
19 what type of questions were asked?

20 A. I really did not --- I mean, I read into that
21 survey a little bit and a lot of the questions they
22 asked I didn't think that it --- you know, I started
23 filling it out, and whenever I seen --- because you
24 didn't have to put your name on it, and it was --- you
25 know, nobody knew who was filling it out, and I really

1 didn't even finish ---.

2 Q. So you didn't finish it? You didn't do it?

3 A. No.

4 Q. Okay. Did you ever hear any results from that
5 survey?

6 A. No. Not --- they talked about --- somebody said
7 that, you know, how the people felt about upper
8 management and stuff like that, that they got, I
9 think, a good recommendation and I think some of the
10 foremans had gotten bad. Or it might have been vice-
11 versa. I really didn't hear a whole lot on that.

12 Q. So they didn't have a --- they didn't report back
13 to you what the survey said, at least you don't
14 remember?

15 A. I think that they did, but I really didn't pay
16 much attention to it.

17 Q. Okay. Have you ever been checked for smoking
18 materials?

19 A. Yes.

20 Q. Do you recall the last time?

21 A. Not the exact date.

22 Q. Can you give us some idea of the frequency?

23 A. Probably --- they done it probably every --- I
24 don't know, maybe every couple months they would.

25 MS. MONFORTON:

1 I don't think I have anything else.

2 Thank you.

3 RE-EXAMINATION

4 BY MR. GODSEY:

5 Q. Is there another Adam Fraley working there at UBB?

6 A. Not that I'm aware of.

7 Q. Have you ever worked on the Three section in the
8 past couple months that the leaky feeder system wasn't
9 working?

10 A. No. It worked while I was up there.

11 Q. And have you worked on the silo belt drives or
12 silo MP ---?

13 A. No. I've not been all the way out. I've had to
14 go to where the silo comes out, but I've not worked on
15 those drives.

16 Q. Who takes care of that area?

17 A. That would be the hoot owl maintenance chief and
18 the outby crew. We had about five or six --- probably
19 four or five guys that worked outby and took care of
20 the heads and the boxes and they had that area.

21 Q. What was the chief's name?

22 A. Billy Graham and Greg Shrewsbury.

23 Q. When was the last day that you worked on Three
24 section?

25 A. I don't know exactly. Before we moved over to the

1 Ellis side, we spent a couple shifts pulling like
2 toolboxes and some things out. As far as production,
3 I would say maybe five or six shifts before we moved
4 over.

5 Q. Was there any equipment on the sections then?

6 A. Yeah. Actually, I'd say the equipment is still
7 sitting over there.

8 Q. Is there power on it?

9 A. No.

10 Q. Where were you at the time of the accident?

11 A. I was at home.

12 Q. How did you get notified?

13 A. My wife woke me up and told me what had happened.

14 Q. Do you remember what time you got notified?

15 A. I would say roughly around 5:00 p.m. Monday.

16 Q. Did they call you to come out to work?

17 A. No. Actually, I did not hear from them that whole
18 week. I didn't know what to do, you know, whether to
19 go to work or ---. They finally contacted me ---
20 well, actually my maintenance foreman told me that
21 they had started the schedule, that, you know, we was
22 working. And I worked the week after that had
23 happened, before I transferred to Elk Run.

24 Q. So you went back to UBB to work?

25 A. I worked three 12-hour shifts down there.

1 Q. What did you do there?

2 A. We serviced the mantrips, maintained them ---
3 batteries, done permissibility, you know, pretty much
4 just worked on stuff outside in the shop.

5 Q. What shift did you work?

6 A. I worked 6:00 p.m. to 6:00 a.m.

7 BRIEF INTERRUPTION

8 ATTORNEY BAXTER:

9 Back on the record.

10 BY MR. GODSEY:

11 Q. You said you wanted to say something.

12 A. Looking at those dates on --- when I was over at
13 the Ellis Portal, 4/3 and 4/5, that would have been
14 wrong because I remember that was Good Friday weekend,
15 and I was off Friday, Saturday and Sunday. So that
16 would actually have been 4/1 and 4/5.

17 Q. So you would like to change those dates?

18 MR. FARLEY:

19 Initial it, please.

20 MS. MONFORTON:

21 Good Friday was the 2nd.

22 BY MR. GODSEY:

23 Q. Was there anything else that you remember?

24 A. No.

25 RE-EXAMINATION

1 BY MR. FARLEY:

2 Q. A couple weeks you worked in the area you
3 identified in there the Ellis Portal on April 1st and
4 again on April 5th?

5 A. Right.

6 Q. Now, when you arrived on April 5th, was there
7 anything different about the ventilation in the area
8 where you worked?

9 A. No, not that I noticed.

10 Q. Did everything seem to be moving in the same
11 direction it was the shift before?

12 A. Yes.

13 Q. Was the velocity --- air velocity similar or about
14 the same?

15 A. Yes.

16 Q. Did you get any sense whatsoever that anything
17 might have changed with the mine ventilation based on
18 one day to the next?

19 A. No.

20 MR. FARLEY:

21 All right. Thank you.

22 RE-EXAMINATION

23 BY MR. GODSEY:

24 Q. Did anyone mention something felt different to
25 them that day, this last day you worked?

1 A. No.

2 ATTORNEY BAXTER:

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

16 Any statements given by miner witnesses
17 to MSHA are considered to be an exercise of statutory
18 rights and protected activity under Section 105(c) of
19 the Mine Act. If you believe any discharge,
20 discrimination or other adverse action is taken
21 against you as a result of your cooperation with this
22 investigation, you are encouraged to immediately
23 contact MSHA and file a complaint under Section 105(c)
24 of the Act. Remedies under the Mine Act include back
25 wages and immediate temporary reinstatement to your

1 most recent position with the company, pending a
2 complete investigation of your complaint. In order to
3 file such a complaint, you should contact the MSHA
4 district office in Mount Hope, West Virginia. For
5 more information concerning your rights as a miner
6 under the Mine Act, please visit MSHA's website at
7 www.msha.gov. If you wish, you may now go back over
8 any answer you've given during this interview. You
9 may also make any statement you would like to make at
10 this time.

11 A. No, sir.

12 ATTORNEY BAXTER:

13 Okay. Again, I want to thank you for
14 your cooperation in this matter.

15

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17

STATEMENT UNDER OATH CONCLUDED AT 12:00 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Cynthia Piro Simpson, a Notary Public in
and for the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Cynthia Piro Simpson