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Transcript of the Testimony of **Richard Ashby**

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Case:

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STATEMENT UNDER OATH
OF
RICHARD ASHBY

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Saturday, August 14, 2010, beginning at 10:04 a.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

Green Card

9*

* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. Today is August 14, 2010. We're here to conduct an interview of Richard Ashby. With me is Tim Watkins, an investigator with the Mine Safety Health Administration. I'll ask that the representatives of the State of West Virginia identify themselves for the record.

MR. FARLEY:

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

MR. KOERBER:

And I'm Barry Koerber. I'm the Assistant Attorney General assigned to represent the Office of Miners' Health, Safety and Training.

MS. SPENCE:

I'm Beth Spence with the Governor's independent investigation.

ATTORNEY WILSON:

Mr. Ashby, can you state your --- well, first of all, I'll ask you to face the court reporter and have her to swear you in.

1 -----

2 RICHARD ASHBY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----

5 ATTORNEY WILSON:

6 And Barry Koerber's going to go over some
7 matters pertaining to the subpoena.

8 ATTORNEY KOERBER:

9 Would you please state your full name and
10 spell your last name for the record?

11 A. Richard Dean Ashby, A-S-H-B-Y.

12 ATTORNEY KOERBER:

13 And what is your address?

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

15 ATTORNEY KOERBER:

16 And what city and state?

17 A. (b) (7)(C) .

18 ATTORNEY KOERBER:

19 Okay. What's your telephone number?

20 A. It is (b) (7)(C) .

21 ATTORNEY KOERBER:

22 Do you have an attorney that you want
23 representing you here today?

24 A. No, sir.

25 ATTORNEY KOERBER:

1 Do you have any other personal
2 representative that you would like to be here with you
3 today?

4 A. No, I do not.

5 ATTORNEY KOERBER:

6 Are you here because of a subpoena?

7 A. Yes, sir.

8 ATTORNEY KOERBER:

9 Okay. I'd like you to take a look at
10 this real quickly and tell me whether that's a copy of
11 the subpoena you received.

12 A. Yes, it is.

13 ATTORNEY KOERBER:

14 I'd like that to be marked as Exhibit
15 One.

16 (Ashby Exhibit One marked for
17 identification.)

18 ATTORNEY KOERBER:

19 And this is a copy of the green card that
20 you signed, showing that you received the certified
21 mail subpoena?

22 A. Yes, sir.

23 ATTORNEY KOERBER:

24 I'd ask that that be marked as Exhibit
25 Two.

1 (Ashby Exhibit Two marked for
2 identification.)

3 ATTORNEY KOERBER:

4 Sir, pursuant to the statute that
5 authorizes the director to issue subpoenas compelling
6 people to appear and give testimony at interviews such
7 as this, the statute requires the director to offer to
8 you a \$40 a day witness fee and mileage at the rate of
9 15 cents a mile, plus any --- plus reimbursement for
10 any tolls that you may have had to and from your home,
11 here. In order to receive that money, I have forms
12 that would need to be filled out.

13 One form is an IRS form that would
14 require your providing us with your Social Security
15 number so that the \$40 witness fee would be reported
16 to the IRS as income to which you would receive a 1099
17 miscellaneous sometime later in the year. That is
18 money that you can accept and we can fill out the
19 forms after this interview is over so that you can get
20 that money by mailing these sometime in the future, or
21 you can decline. Which do you choose to do?

22 A. I'll decline.

23 ATTORNEY KOERBER:

24 Okay. Thank you, sir.

25 ATTORNEY WILSON:

1 All members of the Mine Safety Health
2 Administration Accident Investigation Team and all
3 members of the State of West Virginia Accident
4 Investigation Teams shall keep confidential all
5 information that is gathered from witnesses until
6 witness statements are officially released.
7 Everyone's participation in this interview constitutes
8 their agreement to maintain confidentiality.

9 The government investigators and
10 specialists have been assigned to conduct an
11 investigation of the circumstances surrounding the
12 explosion that occurred at the Upper Big Branch Mine
13 on April 5th, 2010. That investigation is being
14 conducted by MSHA pursuant to Section 103(a) of the
15 Federal Mine Safety and Health Act and by the West
16 Virginia Office of Miners' Health, Safety and
17 Training. As part of that investigation we're
18 interviewing witnesses. We appreciate your assistance
19 in that process.

20 Your identity and the content of this
21 interview will be made public at a later date, unless
22 you request that your identity remain confidential.
23 If you make such a request, we will hold that
24 information confidential to the extent permitted by
25 law.

1 In other words, if a judge orders us to
2 reveal your identity or if some other law such as the
3 Freedom of Information Act requires us to reveal that
4 information, we may be required to do so. Also, the
5 information that you provide may be used in other
6 investigations or hearings concerning the explosion.
7 Do you understand your right to request
8 confidentiality?

9 A. Yes, sir.

10 ATTORNEY WILSON:

11 Do you have any question concerning that?

12 A. No.

13 ATTORNEY WILSON:

14 All right. After the investigation is
15 complete, MSHA will be issuing a public report
16 detailing the nature and the causes of the fatalities
17 in the hope that greater awareness of their causes can
18 prevent their occurrence in the future. Information
19 obtained through witness interviews is frequently
20 included in those reports. We will be interviewing
21 additional witnesses, and so we ask that you not
22 discuss your testimony with anyone.

23 A court reporter will be recording the
24 interview, so please speak loudly and clearly so that
25 she can take everything down. If you do not

1 understand a question that we ask, please ask that we
2 rephrase the question. Please answer each question as
3 fully as you can, including any information that you
4 may have learned from anyone else.

5 If you would like to take a break at any
6 time, please let me know and we'll go off the record
7 and do that. Again, I want to thank you for your
8 appearance here today and your cooperation with this
9 investigation.

10 After we have finished asking questions,
11 we will give you an opportunity on the record to add
12 anything else that you would like to add or even just
13 make a statement if you would like to do that. We'll
14 give you that opportunity at that time.

15 I'm going to give you a letter from MSHA
16 requesting your appearance here today. And that
17 letter includes contact information for Norman Page,
18 who is the lead accident investigator located here at
19 the Mine Academy, so if at any time you want to get in
20 touch with us, you have any additional information
21 that you would like to pass on, you can contact us at
22 that information.

23 And also, the letter contains information
24 concerning your rights as a miner under the Mine Act.
25 Terry, is there anything you want to add before

1 we ---?

2 MR. FARLEY:

3 Yes. Mr. Ashby, on behalf of the West

4 Virginia Office of Miners' Health, Safety and

5 Training, I'd like to advise you that the West

6 Virginia State Law also provides protection against

7 discrimination for miners who participate in these

8 type interviews. And I want to pass along some

9 contact information to you for the West Virginia Board

10 of Appeals. They hear complaints from miners

11 regarding discrimination.

12 Should you have any problem, you can

13 certainly contact the Board at that address. Also

14 included is my phone number, along with a phone number

15 for Mr. Bill Tucker --- he's our lead underground

16 investigator --- in case you have any questions of us.

17 A. All right.

18 ATTORNEY WILSON:

19 All right. Mr. Ashby, you've been sworn

20 in. Now I'm going to turn it over to Tim to begin the

21 questioning for MSHA.

22 EXAMINATION

23 BY MR. WATKINS:

24 Q. Good morning. Do you go by Richard, Rich?

25 A. Richey.

1 Q. Richey?

2 A. I go by Richey, yeah.

3 Q. Okay. I can remember that. Is it okay if I call
4 you Richey, then?

5 A. Yeah. Yeah, that's fine.

6 Q. Okay, good. Let me take just a few background
7 questions to ask you before we get actually started
8 here. Have you been interviewed or give any
9 statements to anyone prior to --- prior to this
10 meeting?

11 A. No, sir.

12 Q. You haven't talked to the company ---?

13 A. No, not at all.

14 Q. Okay. How long have you been in the mining
15 industry? How long have you worked ---?

16 A. Well, let's see. Right before all this stuff
17 happened to me where I was not here because of some
18 things I've done, let's see. August, I believe,
19 would've made three years. It was almost three years
20 right before I actually got fired. That's what
21 happened, but it was over an incident with a woman on
22 the section, you know. I said some things I shouldn't
23 halve said and she heard, and I didn't lie about it
24 and that's why. But if it wasn't for that, I would've
25 been there ---

1 Q. Okay.

2 A. --- so I look at everything happens for a reason,
3 so ---.

4 Q. So you wasn't employed at UBB at the time of the
5 accident?

6 A. No, sir.

7 Q. Okay. Do you remember when you were --- well,
8 when were you discharged or fired?

9 A. Let's see here. It was April, I believe of '09
10 there.

11 Q. April '09?

12 A. Yeah.

13 Q. Okay.

14 A. I'm pretty sure. My date's a little off, but
15 I ---.

16 Q. That's okay.

17 A. Okay.

18 Q. That's okay, close enough. Okay. Are you working
19 for any other mining company now or ---?

20 A. I work for Taggart Global Electric right now doing
21 electrical conduit for prep plants.

22 Q. Okay.

23 A. Been doing that for about eight months now.

24 Q. How long had you worked at UBB before your
25 discharge?

1 A. Over a year. I would say about a year and a half,
2 give or take a few.

3 Q. Okay. And what did you do for them?

4 A. Well, let's see. I run a buggy most part of the
5 time, run a scoop, supplied the section and stuff like
6 that, a bit of track maintenance, a lot of outby work
7 here and there. I've done a little bit of everything,
8 really.

9 Q. Did you start off as a contractor first, and
10 then ---?

11 A. No, I got hired on with Elk Run when I first
12 started.

13 Q. Okay.

14 A. And then I went to Performance and tried them out.
15 I was mainly on the buggy, most part of the time in
16 the mines.

17 Q. Okay. Which section were you on?

18 A. I was on Number One section.

19 Q. Okay. But One section, are you referring ---
20 would that be the Headgate 22 section?

21 A. Yeah.

22 Q. Okay. And which shift did you work?

23 A. Evening shift, second shift.

24 Q. Looking at the map, looking at Headgate 22,
25 approximately how far in was the --- had the headgate

1 advanced when you left?

2 A. When I was there?

3 A. Yeah, when you was there.

4 Q. That's what I was trying to figure out. That's
5 what I was trying to think. When I come back in here
6 I was trying to get that all down. Right off I don't
7 want to say right off, because I'm not for sure.

8 Q. Okay. Can you just give us a ballpark? You
9 don't ---.

10 A. Yeah. That's what I'm trying to think now here,
11 what you got. Is this where it ended right here?

12 Q. Fairly close. It may be up a little bit. This is
13 the last markup we had.

14 A. Yeah, I was in a good little ways, I guess, there.
15 I had to say 15 Breaks in. It was more than that, I
16 believe, to be honest with you.

17 Q. So approximately halfway into what's shown on
18 here, about?

19 A. Yeah.

20 Q. Give or take a break?

21 A. Every bit of it.

22 Q. Okay.

23 ATTORNEY WILSON:

24 Let's go off the record for a second.

25 OFF RECORD DISCUSSION

1 ATTORNEY WILSON:

2 Okay. We're back on the record now.

3 BY MR. WATKINS:

4 Q. So this Number One section that you was on would
5 actually be headgate of the active longwall panel?

6 A. Yes, sir.

7 Q. Not the Headgate 22 panel that I referred to it
8 as, but it was actually the headgate of the active
9 longwall panel?

10 A. Yeah.

11 Q. Okay. Now, that might help us to start off on a
12 better foot now that we know where you was at. Again,
13 do you remember where you was at on that panel? It
14 might look familiar ---

15 A. Right off ---

16 Q. --- to you.

17 A. --- as far as giving you a break number, I can't
18 give you that, because I'm not for sure.

19 Q. Okay.

20 A. And like I said, it's been a year. I'm not right
21 off sure where I was at.

22 Q. Do you remember by any chance if the setup room
23 was at the back?

24 A. No, I didn't. I wasn't that far advanced.

25 Q. You wasn't that far? So you left before the setup

1 rooms?

2 A. Correct.

3 Q. Okay. Was that the only area that you've worked
4 in at UBB or was there another area?

5 A. I also worked on Three section, Three section the
6 lower part where we pillared out.

7 Q. Okay.

8 A. That's where I started actually when I went to
9 Performance, was over there ---

10 Q. Okay.

11 A. --- at Three section.

12 Q. So looking at the big map, it'd be to the south of
13 the UBB Portals then?

14 A. Right.

15 Q. Okay. So when you was driving the --- getting
16 back on the headgate of the active panel, do you
17 remember who all was in your crew, who you worked
18 with?

19 A. Ronny Wickline was the boss. Had Richard, the
20 buggy man. Ronny Wickline. Richard was another buggy
21 man's name. Right off, the last name I'm not for
22 sure. A lot of --- everybody had nicknames and that's
23 what everybody went by, so ---. We had Bobbie up
24 there. Her name was Bobbie. I don't know her last
25 name. She run a buggy, also. A few of the other

1 guys, I don't have the names right off.

2 Q. Okay.

3 A. Like I said, everybody had nicknames there. I
4 wasn't on that section too long, you know. I don't
5 have their names right off, though.

6 Q. When you were advancing that section up, was there
7 any kind of problem? What was the conditions like on
8 the roof, ribs and so on?

9 A. The ribs were bad. The top was --- it wasn't too
10 bad. Now, I mean the ribs would collapse on you here
11 and there. The conditions were fairly good, though, I
12 thought.

13 Q. What about the methane? Catch any methane?

14 A. Not really. Here and there a slice of it, but
15 nothing to where I was concerned.

16 Q. Water?

17 A. Yeah, there was a little bit of water. Not bad,
18 though, you know.

19 Q. Did it hinder your production at all or ---

20 A. No, sir.

21 Q. --- anything like that? Not that much?

22 A. No.

23 Q. What about the maintenance on the section as far
24 as rock dusting? When was that cleaned up? When and
25 how was that performed? Do you know?

1 A. Most of the time there at the end of the shift we
2 would take care of it there, what we didn't get
3 beforehand, and you know, run coal. I ain't going to
4 lie.

5 Q. Okay.

6 A. But yeah, it was performed. We did everything
7 that we was supposed to do. Everything was rock
8 dusted. We wouldn't leave a section until it was
9 finished. Ronny was pretty stout about that, you
10 know, so we did do that.

11 Q. How many miners were on that section? You had
12 three entries.

13 A. Uh-huh (yes).

14 Q. Do you know how many miners were on that section?

15 A. It was two miners.

16 Q. How many shuttle cars would you have?

17 A. We had two, two of the Super Tens.

18 Q. Now, did you have two miner men or just ---?

19 A. Two miner men.

20 Q. Okay.

21 A. Yes.

22 Q. So how would that work? Would you just go from
23 one to the other or did you stay at one for ---?

24 A. Well, when I was on that section I was mainly a
25 scoop operator.

1 Q. Okay.

2 A. I supplied the bolt machine and supplied ---

3 Q. Okay.

4 A. --- the miner men with oil. I mean, mainly I was

5 ---. I run a buggy off and on ---

6 Q. Okay.

7 A. --- not that much on that section.

8 Q. So with the scoop. Then you would be in charge of
9 cleanup, then, I guess?

10 A. Yes.

11 Q. Can't hardly clean it up with ---

12 A. It's hard to clean.

13 Q. --- all that equipment sitting up there?

14 A. Yeah, it is hard to clean. I'd get right in it
15 right after they come out after they bolt it, go in.

16 Q. So you'd do that between cuts or ---

17 A. Yes.

18 Q. --- at the end of the shift or ---?

19 A. After they get done bolting, I go right in there,
20 try to be waiting on them and of course supply the
21 bolt machine.

22 Q. What about the --- did you also do the rock
23 dusting? Did you ever ---?

24 A. Yes. Yes, I did. Every now and then, you know,
25 the miner man would help me if he was down, of course.

1 The bolt men, they'd help me, but yeah.

2 Q. Did you have a scoop mounted hand duster or do you
3 have to hand dust or ---?

4 A. Hand dust.

5 Q. Hand dust; okay. Did you ever go back afterwards
6 and use a machine duster?

7 A. Yes, I have, off and on. It wasn't daily.

8 Q. It wasn't on a routine schedule as far as ---

9 A. No.

10 Q. --- as far as that goes? Who decided when you
11 went back and dusted with a machine duster?

12 A. Usually Ronny.

13 Q. Ronny?

14 A. Ronny had me do that. I dusted what I knew needed
15 to be dusted with hand dust, you know.

16 Q. Did you ever help work on any ventilation changes
17 or anything to do with ventilation?

18 A. No, sir.

19 Q. You never helped build any stoppings or overcasts?

20 A. Yeah, build stoppings; as far as changing the
21 ventilation from what it was, no.

22 Q. Stoppings you built were just up on the section as
23 you advanced the section?

24 A. Right.

25 Q. Okay. You never worked anywhere outby, helping

1 --- helping with any of the stoppings outby or
2 anything like that?

3 A. No, sir.

4 Q. Okay. How much air would you have on the section?

5 A. I'm not for sure. Yeah, I was just a buggy man,
6 you know. I didn't follow that too much, to be honest
7 with you. I don't know.

8 Q. Did you help them hang curtain on the section, the
9 miners hang curtain?

10 A. Yes, yes, I did that.

11 Q. But you don't remember how much air you had
12 or ---?

13 A. No. I was always running around. Never had time
14 to know what was going on with that.

15 Q. Did you ever recall any problem with methane
16 or ---?

17 A. No. No, sir.

18 Q. What was the normal reading of methane in there?

19 A. .1, .2. I mean if that. It wasn't that much. I
20 hardly ever seen it on that section.

21 MR. WATKINS:

22 Okay. Terry Farley.

23 EXAMINATION

24 BY MR. FARLEY:

25 Q. Mr. Ashby, I know you've been --- you were away

1 from UBB a pretty good long time before the explosion,
2 but when you were there, was there --- what did you
3 hear about what was going to happen with the longwall
4 there? Were there plans in place to put the --- to
5 longwall online at the time? What did you know about
6 that, if anything?

7 A. I mean nothing, really, to be honest with you. I
8 mean I knew they was going to run the longwall up and
9 that, you know, a year beforehand. Put our panels up
10 and --- yeah. I mean that's nothing, but ---.

11 Q. Do you recall when you first heard that they were
12 going to bring the longwall back?

13 A. Not right off, no, sir. I don't.

14 MR. FARLEY:

15 Okay. All right. I don't think I have
16 anything else.

17 MS. SPENCE:

18 I don't have anything.

19 RE-EXAMINATION

20 BY MR. WATKINS:

21 Q. Did you ever hear any talk, you know, when you was
22 up there about people making ventilation changes or
23 anything like that off shift or ---?

24 A. No, sir.

25 Q. Okay.

1 A. After the --- you know, I have been away from the
2 place. I've heard that ventilation changes were made.
3 I even heard it was done during while I was there, but
4 I never knew anything about that.

5 Q. Okay.

6 A. I mean at all.

7 Q. When you mentioned ventilation changes made, are
8 you talking about major ventilation changes that
9 was ---?

10 A. Yes, I've heard people talk about that. That was
11 done.

12 Q. Okay.

13 A. Because I asked questions after this was all done,
14 after it all happened, you know? You know, what's
15 going on? Where'd this come from?

16 Q. Uh-huh (yes).

17 A. How'd it happen? And I have heard that
18 ventilation changes was the cause of this, but who
19 knows? There's so much to go by.

20 Q. Yeah.

21 A. That's just what I've heard.

22 Q. Do you know who you was talking to when you heard
23 that?

24 A. More than one person. Right off I don't have a
25 name for you. I'll be honest with you.

1 MR. WATKINS:

2 Okay. Do you have anything?

3 MR. FARLEY:

4 I don't think so.

5 ATTORNEY WILSON:

6 All right. Then Mr. Ashby, I want to

7 thank you for --- on behalf of MSHA and the Office of

8 Miners' Health, Safety and Training for coming in

9 today. We will be interviewing additional witnesses,

10 so we ask that you not discuss your testimony with

11 anyone.

12 If you think of any additional

13 information, please contact us at the contact

14 information that was provided. Before we finish, is

15 there anything else that you can think of that you

16 would like to add to the record that you believe might

17 be helpful?

18 A. No, sir.

19 ATTORNEY WILSON:

20 Okay. Then again, thank you for your

21 cooperation in this matter, and we'll go off the

22 record.

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 10:26 A.M.

25 * * * * *

1 STATE OF WEST VIRGINIA)

2

3

4

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



21

22

Alison Salyards

23

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25