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STATEMENT UNDER OATH

OF

JAMES A. SMITH

taken pursuant to Notice by Danielle Ohm, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the National Mine Health and Safety Academy, 1301 Airport Road, Beaver, West Virginia, on Thursday, June 24, 2010, beginning at 1:10 p.m.

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor. Today is June 24, 2010. We're here to conduct an interview of James Smith. With me is John Godsey, an accident investigator with the Mine Safety and Health Administration. Also present are individuals with the State of West Virginia. I'll ask that they state their appearance for the record.

MR. FARLEY:

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

ATTORNEY KOERBER:

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

MR. MCGINLEY:

I'm Patrick McGinley with the Governor's independent investigation team.

ATTORNEY WILSON:

Barry, did you want to address the subpoena?

ATTORNEY KOERBER:

1 Yes.

2 -----

3 JAMES A. SMITH CALLED TO TESTIFY

4 -----

5 EXAMINATION

6 BY ATTORNEY KOERBER:

7 Q. First of all, Mr. Smith, could you please state
8 your name for the record and spell your last name?

9 A. James Anders Smith, S-M-I-T-H.

10 Q. Okay. And what is your home address?

11 A. (b) (7)(C)

12 (b) (7)(C)

13 Q. Give me a second here. Is it Toney,
14 T-O-N-E-Y, ---

15 A. Yeah.

16 Q. --- apostrophe, S, or just T-O-N-E-Y?

17 A. The first thing you said.

18 Q. Apostrophe S?

19 A. Yeah.

20 Q. Okay. What's your home telephone number?

21 A. (b) (7)(C) .

22 Q. Mr. Smith, were you served with a subpoena
23 compelling your attendance here today?

24 A. Yes, sir.

25 Q. What I have here is a copy of that subpoena. And

1 although you have not seen this before, this is the
2 return of service that the Boone County Sheriff's
3 Office completed and returned to me, showing that
4 they, in fact, served you. And on that document is
5 also another copy of the same subpoena. I'm going to
6 have these admitted as Exhibits One and Two as part of
7 your transcript.

8 ATTORNEY WILSON:

9 I'm marking the subpoena as Exhibit Smith
10 One and the return of service as Exhibit Smith Two.
11 (Smith Exhibits One and Two marked for
12 identification.)

13 BY ATTORNEY KOERBER:

14 Q. Mr. Smith, do you have an attorney or other
15 personal representative here with you today?

16 A. No, sir.

17 Q. I have a form here that will allow you to be paid
18 the statutorily mandated witness fee for appearing
19 here today, together with your round-trip mileage and
20 any tolls that you may have incurred on your way down
21 and back. Can you give me your best guess as to how
22 many miles you ---? First of all, did you come here
23 in your own personal vehicle?

24 A. Yes, sir.

25 Q. How many miles --- your best guess, how many miles

1 is a round trip from your house to here and back?

2 A. Sixty (60), maybe.

3 Q. Round trip?

4 A. Yeah, I think so. It's close enough.

5 Q. Did you go through any toll booths on the way down
6 here?

7 A. Two.

8 Q. Okay. And you'll go through two on the way back?

9 A. Yes.

10 Q. So that'll be \$8. And you think 60 miles round
11 trip is relatively close?

12 A. Yeah.

13 Q. The mileage comes out to be \$24.30.

14 A. Gas is expensive.

15 MR. FARLEY:

16 Pardon me?

17 A. Gas is expensive.

18 MR. FARLEY:

19 Take your gas money.

20 A. Yeah. For my old truck.

21 BY ATTORNEY KOERBER:

22 Q. Total that you would be compensated for is \$72.30.
23 Feel free to look at this form. Feel free to double
24 check my math. I have one day, \$40. Sixty (60) miles
25 at 40.5 cents a mile comes out to be \$24.30. Four

1 tolls, \$2 each, is \$8. And I added them up with a
2 calculator, \$72.30. To receive this money, you must
3 put in your Social Security number here and then sign
4 your name here and put the date.

5 WITNESS COMPLIES

6 A. You have to be quiet.

7 BY ATTORNEY KOERBER:

8 Q. What?

9 A. You have to be quiet. I'm used to all hollering
10 and going crazy.

11 Q. That will not be part of the record. That is
12 simply part of processing the payment.

13 A. Okay.

14 ATTORNEY KOERBER:

15 Bob, do you have any preliminary matters
16 you want to go over with him as well?

17 ATTORNEY WILSON:

18 Yes. Mr. Smith, government investigators
19 and specialists have been assigned to investigate the
20 conditions and circumstances surrounding the
21 fatalities that occurred at the Upper Big Branch-South
22 on April 5th, 2010. That investigation is being
23 conducted by the Mine Safety and Health Administration
24 pursuant to Section 103(a) of the Federal Mine Safety
25 and Health Act and by the Office of Miners' Health,

1 Safety and Training with the State of West Virginia.

2 We appreciate your assistance in this investigation.

3 There are additional members of the

4 investigation teams present in the room. All members

5 of the Mine Safety and Health Administration Accident

6 Investigation Team and the Office of Miners' Health

7 and Safety Investigation Team participating in the

8 investigation shall keep confidential all information

9 that is gathered from each witness who voluntarily

10 provides a statement until the witness statements are

11 officially released. MSHA and the State of West

12 Virginia shall keep this information confidential so

13 that other ongoing enforcement activities are not

14 prejudiced or jeopardized by the premature release of

15 information. This confidentiality requirement shall

16 not preclude investigators from sharing information

17 with each other or with other law enforcement

18 officials. Everyone's participation in this interview

19 constitutes their agreement to maintain

20 confidentiality.

21 To reiterate, again, you may have a

22 personal attorney or personal representative present

23 with you today. Do you have a representative?

24 A. No, sir.

25 ATTORNEY WILSON:

1 Okay. Just to let you know, this is not
2 an adversarial proceeding. This is a fact-gathering
3 process, so formal Cross Examination type questions
4 are not going to be permitted. Follow-up questions as
5 appropriate will be allowed.

6 But your identity and the content of this
7 interview will be made public at the conclusion of the
8 interview process and may be included in a public
9 report of the accident unless you request that your
10 identity remain confidential or if your information
11 would otherwise jeopardize other potential
12 investigations. If you request us to keep your
13 identity confidential, we will do so to the extent
14 permitted by law. In other words, if a Judge orders
15 us to reveal your name or if some other law requires
16 that we reveal your identity, we may need to do that.
17 There may also be a need to use the information that
18 you provide to us today in other investigations into
19 or hearings concerning the accident. Do you
20 understand your right to have a confidential
21 statement?

22 A. Yes, sir.

23 ATTORNEY WILSON:

24 Okay. And do you have any questions or
25 comments about that?

1 A. No, sir.

2 ATTORNEY WILSON:

3 After the investigation is complete, MSHA
4 will issue a public report detailing the nature and
5 the causes of the fatalities in the hope that greater
6 awareness of the causes of these types of accidents
7 will prevent their recurrence in the future.

8 Information obtained through witness interviews is
9 frequently included in those reports.

10 We will be interviewing additional
11 witnesses after you, and so we ask that you not
12 discuss your testimony here today with anyone else.
13 The court reporter will be recording the interview, so
14 please speak loudly and clearly. If you do not
15 understand the question asked, please ask that the
16 question be rephrased. Please answer each question as
17 fully as you can, including any information that you
18 may have learned from someone else. If at any time
19 you need to take a break, just let me know and we'll
20 go off the record and you can take a short break.

21 I would like to, again, thank you in
22 advance for coming in here today and providing the
23 information. Your cooperation is critical in making
24 the nation's mines safer.

25 After we have finished asking questions,

1 we will provide you an opportunity to add any
2 additional information to the record that you believe
3 may be relevant or helpful. We'll also provide you an
4 opportunity at that time just to make a statement if
5 you would like to do so. If at any time after the
6 interview you recall any additional information, you
7 can contact Norman Page, who is the lead accident
8 investigator for MSHA, here at the Mine Academy or you
9 can contact us, from the Office of Miners' Health,
10 Safety and Training. Before we swear you in, do you
11 have any questions?

12 A. No questions.

13 ATTORNEY WILSON:

14 All right. Then I'll ask that you face
15 the court reporter and she'll swear you in.

16 -----

17 JAMES A. SMITH, HAVING FIRST BEEN DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 -----

20 ATTORNEY WILSON:

21 All right. Terry Farley from the State
22 will begin the questioning.

23 EXAMINATION

24 BY MR. FARLEY:

25 Q. Mr. Smith, I want to advise you the West Virginia

1 Coal Miners' Health and Safety Regulations, West
2 Virginia Code Chapter 22(a), Article 1, Section 22
3 protects miners against discrimination for
4 participating in these interviews. I'll give you some
5 contact information should you experience any such
6 discrimination. I would advise you and encourage you
7 to file a claim within 30 days. I have given you my
8 business card or you can contact Bill Tucker, who's
9 our lead investigator. You can contact us if you need
10 anything.

11 Okay. Mr. Smith, where are you currently employed
12 right now?

13 A. Massey.

14 Q. Okay. Where specifically at Massey?

15 A. Elk Run.

16 Q. Working at Elk Run? Which Elk Run mine are you
17 working at?

18 A. Hunter Peerless.

19 Q. Hunter Peerless. How long have you been at Hunter
20 Peerless?

21 A. About a month.

22 Q. Okay. And prior to going to Hunter Peerless, had
23 you worked at the Upper Big Branch Mine?

24 A. Yes, sir.

25 Q. Okay. When did you start working at the Upper Big

1 Branch Mine?

2 A. It was October 26th.

3 Q. Okay. Is that 2009?

4 A. Yeah.

5 Q. Okay. Now, before we get into what you did at
6 UBB, what's your total mining experience? How long
7 have you been in the business?

8 A. Eight months, seven months.

9 Q. Were you a red hat when you started at UBB?

10 A. Yes, sir.

11 Q. Was that the first coal mine you worked in?

12 A. Yes, sir.

13 Q. Okay. When did you get your West Virginia
14 apprentice miner certification?

15 A. About a month ago. It hasn't been too long.

16 Q. You're talking about a coal miner certificate?

17 A. Are you talking about a red hat card?

18 Q. Yes, sir, the red hat card.

19 A. I had it for a while before I went in the coal
20 mines. I can't remember when I got it.

21 Q. Okay. But you had it before you started in the
22 coal mine?

23 A. Yeah.

24 Q. You recently got a coal miner certificate?

25 A. Yeah.

1 Q. Now, when you started to work at UBB, were you a
2 contractor or did you work directly for Peerless Coal?

3 A. Contractor.

4 Q. What contractor?

5 A. David Stanley.

6 Q. Okay. How long were you classified as a
7 contractor?

8 A. Six months.

9 Q. Okay. Now, when did you become a Massey employee?

10 A. Just a month ago.

11 Q. And would that have been when you went to Hunter
12 Peerless?

13 A. Yeah. I was getting hired in through Massey.
14 They was waiting until I got my black hat.

15 Q. So when the explosion happened on April 5th, you
16 were actually still employed by Stanley; ---

17 A. Yes.

18 Q. --- is that correct? When you first started at
19 UBB, your first day there, what happened that day?
20 What did you do?

21 A. I'll never forget it. We was laying track all
22 night long.

23 Q. Where?

24 A. Headgate 22. No, it was up at 78 Break. I can't
25 remember. You know where 78 was in the mine?

1 Q. Yes, I do.

2 A. Straight up that way. I don't know if they shut
3 that down or that's the ---.

4 Q. When you say straight up from 78, are you talking
5 the longwall face?

6 A. The one towards the longwall. I think 22 was
7 straight.

8 Q. Okay. All right. If you're at 78, there's two
9 ways you can go?

10 A. Yeah.

11 Q. Now, before you went in the mine that first day,
12 did anyone give you orientation training? Did they
13 show you a map? What exactly did they do for you?

14 A. Showed me all the maps and showed me all the
15 escapeways and everything, walked me through
16 everything.

17 Q. Okay. How much time did you spend?

18 A. At least almost an hour and a half, two hours.
19 They spent a good time with us, going over everything
20 with us.

21 Q. Okay. Did they do self-contained self-rescuer
22 training for you?

23 A. Yes, sir.

24 Q. Okay. About an hour and a half to two they spent
25 with you?

1 A. Yeah.

2 Q. Okay. Did you sign a document indicating that you
3 were trained that day?

4 A. Yeah. Still got it in my wallet, I think.

5 Q. Is that something you have a copy of that we can
6 see?

7 A. Make sure. I think that's it.

8 Q. You've just handed me three documents. Looks like
9 MSHA 5000-23. That's a 5000-23 miner training record
10 form. All three show a date of signature of 10/22/09,
11 signed by James Smith. Lists the mine name as the
12 Upper Big Branch Mine. One of the documents lists the
13 mine name, location and training institution as David
14 Stanley Consultants, Massey Marfork Training Facility.
15 All three documents indicate that you have experienced
16 miner training. So I'll leave these in the hands of
17 the MSHA guys. Maybe they'll ask some questions about
18 those later, because they're more familiar with those
19 than I am.

20 ATTORNEY KOERBER:

21 Quick question. Are you going to want to
22 make these part of the record? He should have the
23 originals back. I'll make copies if you do.

24 MR. FARLEY:

25 Probably.

1 ATTORNEY WILSON:

2 When we take a break, we can go down and
3 make copies, if that's okay with you.

4 A. That's fine.

5 BY MR. FARLEY:

6 Q. All right. So you said you laid track the first
7 night.

8 A. Yeah. Me and Farmer.

9 Q. I'm sorry?

10 A. Me and Farmer.

11 Q. Who's Farmer?

12 A. I cannot remember his first name. I don't know.
13 We just called him Farmer. He was hard on us red
14 hats.

15 Q. Why was he hard on you?

16 A. He's just Farmer. Until he liked you, you know.
17 Until he liked you, he was hard on you. He just
18 wanted to see if you could work or not. I loved old
19 Farmer. He was something else.

20 Q. Would that be Ralph Plumley?

21 A. No. Ralph only laid track through dayshift. We
22 laid track through the night up there.

23 Q. If you think of Farmer's name, let me know.

24 A. Everybody has so many nicknames in the coal mines.

25 Q. Okay.

1 A. That's what's so bad, because you don't know their
2 real names.

3 Q. Okay.

4 A. You know, we had Sand Jack and all these other
5 guys, you know. I had no clue who passed away until I
6 actually seen it on the thing.

7 MR. MCGINLEY:

8 What was your nickname?

9 A. Gumby.

10 MR. MCGINLEY:

11 Gumby?

12 A. Yeah. You know, so ---.

13 BY MR. FARLEY:

14 Q. Okay. Now, after your first night --- and you
15 indicated you laid track the first night --- did you
16 settle into working in a particular area of the mine
17 or particular section?

18 A. Well, the next night I went to the One section,
19 started moving belt.

20 Q. Now, when you say One section, do you mean what
21 some people call the 22 Headgate section?

22 A. Yeah. Yes, sir.

23 Q. Okay. All right. Now, from then on, did you
24 routinely work on 22 Headgate section or someplace
25 else?

1 A. That was where I stayed out.

2 Q. And what would have been every day?

3 A. Every day.

4 Q. Okay. Now, were you part of the move crew?

5 A. Yes, sir.

6 Q. Okay. Did you move belt power on regulators?

7 A. Yes, sir.

8 Q. Okay. Now, who was your immediate supervisor?

9 A. Kyle Anderson.

10 Q. Kyle Anderson?

11 A. Uh-huh (yes).

12 Q. Okay. Was that pretty much every day?

13 A. Every day.

14 Q. From October of last year until ---?

15 A. Until we had a month that we went and set pumps
16 because that water got real bad down there. I cannot
17 remember exactly how --- behind the longwall. I mean,
18 it got up pretty high. And me and Farmer and his
19 crew, and Derek was on my crew from move crew, we went
20 in there and set pumps.

21 Q. Okay. When? Can you tell me when?

22 A. I cannot remember.

23 Q. Let's see if we can narrow it down. You started
24 around October the 22nd, 2009. The explosion happened
25 April 5th. Would it have been ---?

1 A. Like three months ---.

2 Q. Would it have been in 2010?

3 A. Yeah.

4 Q. After the first of the year?

5 A. Yeah. I mean, I remember the water. That's the
6 only thing I remember. I can't remember the dates or
7 anything.

8 Q. Okay. And you were working with Farmer?

9 A. Yeah.

10 Q. Okay. Who else worked with you when you went ---?

11 A. Derek Petry and Tilley. I cannot remember his
12 last name.

13 Q. That's okay.

14 A. Joe Tilley I think is what his name was. And
15 Scotty --- everybody has nicknames. I cannot
16 remember.

17 Q. That's okay. Tell us what you remember.

18 A. That's about it. I mean, we went up there in that
19 water for one month and then we went back.

20 Q. Were you there every day for a month?

21 A. Yeah. About ---.

22 Q. Every working day for a month?

23 A. Yeah. About a month.

24 Q. Okay. Now, do you remember where the water was
25 located in the mine?

1 A. I know it was behind the longwall, because we went
2 in a different way. That always messed me up because
3 we always went a different way.

4 Q. All right. Maybe we can --- we can help you
5 figure it out.

6 A. See, remember how I told I went to 78?

7 Q. Right.

8 A. That's the way we went.

9 Q. Okay. Now, 78 is along about right here
10 (indicating) on this map. I'm pointing to the one
11 inch equals 200 feet scale map. So 78 is the area I'm
12 pointing to.

13 A. Yeah. Instead of going down that way
14 (indicating), we went straight. And if you keep going
15 straight, you went through two airlocked doors down
16 through ---.

17 Q. When you say straight, do you mean possibly the
18 tailgate side of the longwall?

19 A. Yeah. I know it was behind the longwall
20 somewhere.

21 Q. Okay. The water was behind the longwall?

22 A. Yeah.

23 Q. Okay. Now, do you know if you passed up the
24 headgate side of the longwall?

25 A. I'm not --- I didn't see it.

1 Q. Okay. All right. Now ---.

2 A. I can hear the longwall running.

3 Q. You could hear the longwall run?

4 A. Yeah. I mean, but I couldn't --- no, I never did
5 see it.

6 Q. All right. Let me show you a map here; okay?

7 This is the longwall face, where it approximately was
8 at the time of the explosion. Now, in January 2010,
9 the longwall face would have been about this area here
10 (indicating) indicated on the map; okay?

11 A. Yeah.

12 Q. So when you passed --- in order to get inby the
13 longwall face, you had to go pass by that either on
14 the headgate side or the tailgate side, in order to
15 get to an area inby the longwall face; okay?

16 A. Yeah.

17 Q. So do you recall which side you traveled on?

18 A. Only thing I can tell you is that we went ---
19 there at the 78 Switch, then we went straight and kept
20 on going up to the old Two section. That was what
21 they said. It was the old Two section.

22 Q. Okay. Now, would that be --- would that have been
23 before you got to the longwall?

24 A. They said it was behind the longwall, what they
25 kept on telling me. I mean, I was a red hat. I

1 didn't really, you know ---.

2 Q. Let me ask you ---.

3 A. I carried a lot of stuff. That's all I can
4 remember.

5 Q. That's all right. That's okay. The area where
6 the water was that you went to work on, how many
7 entries were there?

8 A. Three. Three, four. I guess four. Four.

9 Q. Okay. Could have been three, could have been
10 four?

11 A. Yeah. I think it's four.

12 Q. Okay.

13 A. Yeah, it's four. It was four.

14 Q. All right. How deep was the water? How big was
15 the area of water, the best you can ---?

16 A. Man, one part of the water was to the doggone top.

17 Q. Was it roofed?

18 A. Yeah. We can't get up there.

19 Q. Was that in one entry or more?

20 A. One. One entry was roofed out that we couldn't
21 get to it. I mean, you could walk up to it, but it'd
22 be up to your chest.

23 Q. Okay. Did you walk into the water?

24 A. I walked up to my --- about to my belt and I told
25 them I wasn't going no farther. We had waders, but I

1 told them I wasn't going no farther.

2 Q. Okay. Did anybody else go any farther?

3 A. No. They turned around.

4 Q. Okay. What was the need to walk that far into the
5 water?

6 A. Set those pumps.

7 Q. Okay.

8 A. We hung 'em up. Sit the pumps down in the water,
9 pump out the water. But we had waders. I mean, I
10 wish they had a pair that fit me, but --- I wore a
11 size 13. They always had a doggone size ten, you
12 know, but ---.

13 Q. That'd be hard ---.

14 A. Yeah. It was hard getting 'em on and off. It was
15 awful for a six foot, you know, four guy, those little
16 tiny waders. They got up the top of my those waders,
17 I left.

18 Q. Okay. I can understand it. Were there waders for
19 every person involved?

20 A. Everybody had waders.

21 Q. Okay. Now, at the time you were dealing with this
22 water, were you working, what, five days a week, six
23 days a week?

24 A. Six days a week, sometimes seven.

25 Q. Okay. And that was every day?

1 A. Yeah.

2 Q. For about a month?

3 A. Because they was stopping the air from going up
4 the longwall, ---

5 Q. Okay.

6 A. --- what they was telling me. I remember Farmer
7 saying something about it was hurting the air to the
8 longwall.

9 Q. Okay. It could do that.

10 A. Because where it was roofed out, it was stopping
11 the air and they couldn't run.

12 Q. Okay. Now, you said you thought there were three
13 or maybe four entries.

14 A. Yeah. I'm sure it's four.

15 Q. Okay. But the roof water, did it extend all the
16 way across all four entries or was it just one, two,
17 three or four?

18 A. There was water in every one of 'em, but only one
19 of 'em was roofed out where they couldn't get air
20 through it, that's why they couldn't run. We had to
21 shut down for ---.

22 Q. All right. And as you were approaching the water
23 of the entry that was roofed, would that have been on
24 your right or your left?

25 A. As I was going in, it'd be my right --- my left-

1 hand side. No. My right-hand side.

2 Q. Okay. Because if you were going towards the
3 water, you had to enter from 78; right?

4 A. Right. Must have been the right-hand side. I
5 mean, it was deep. I'll tell you that. I didn't like
6 going down there ---

7 Q. Okay.

8 A. --- because it was a long, long walk. I mean, it
9 was a haul, plus carrying those pumps.

10 Q. How many pumps did you take back there during that
11 one-month period? Do you recall?

12 A. I couldn't count 'em. I mean, it was a lot, a lot
13 of pumps.

14 Q. Okay. And how many people, again, was it that
15 worked with you and Farmer ---

16 A. It was me ---.

17 Q. --- on this water project?

18 A. It was me, Derek Petry, Scott, can't remember his
19 last name, Tilley, Farmer, and there was another guy.
20 He was a red hat, too. He was an older guy. I cannot
21 remember his name.

22 Q. Okay. Now, you were at this for about a month.
23 Did you eventually make any progress in reducing the
24 water?

25 A. Yeah. We got it down.

1 Q. How far down?

2 A. Real far down. I know they put dynamite in, blew
3 a big old thing and blew it out.

4 Q. Dynamite?

5 A. Yeah. I wasn't there when that happened though.
6 The only thing I got done was drilled.

7 Q. When do you think that happened? Wait. Are you
8 saying they shot a sump? Is that what ---?

9 A. Yeah. They shot a place where they could bring
10 that water out.

11 Q. Okay. All right. Now, can you give me any rough
12 idea of where you think they used the dynamite?

13 A. That one entry where it was real high. That's all
14 I can really tell you.

15 Q. Okay.

16 A. I mean, it went down, but it still stayed up to
17 your --- you know, right in there (indicating), they
18 blasted out through the dayshift, I think, is when
19 they done it.

20 Q. When you say right in there, you're ---?

21 A. I'm talking about waist high.

22 Q. Waist high. That would be --- you're six four,
23 you say?

24 A. Yeah.

25 Q. About four foot?

1 A. Yeah. We went out and measured it every day to
2 see how high it was and everything.

3 Q. Do you remember what the measurement was?

4 A. No. I really don't. Every day we always got ---
5 kept on going down, kept on going down, and --- I
6 don't know. I know I remember drilling the holes for
7 it, but we wasn't allowed to, you know, advance.

8 Q. Okay. I'm going to try to help you out a little
9 bit here in determining the location. We've had
10 reports of water problems in the longwall headgate
11 entries inby the longwall face in the area of anywhere
12 to 65 to ---.

13 A. I'll tell you a guy who to ask. He'd know more
14 about it than I would.

15 Q. Who's that?

16 A. It'd be Jason Thomas.

17 Q. Jason Thomas?

18 A. He worked on it forever. I mean, that was his
19 job. There was another guy on dayshift that done it
20 after we left --- I mean, after we left and concluded
21 it. I cannot remember his name. He was a red-headed
22 guy. But he done it through the dayshift, because
23 they had a crew that actually went down there and
24 worked on those pumps every day.

25 Q. Okay. From the point where you first started when

1 you started pumping --- pumped the water, from that
2 initial location, how much farther inby, meaning
3 through the water, was the location where you used ---
4 the dynamite was used to shoot the ---?

5 A. It was the last --- it was the last entry on the
6 right, ---

7 Q. Okay.

8 A. --- because I remember drilling and everything
9 like that, but it was the last one that we had trouble
10 getting all the water out of.

11 Q. Okay. So you drilled?

12 A. Yeah.

13 Q. What kind of drill did you use?

14 A. One of those ones you stand up on and push down
15 on. I cannot ---.

16 Q. Okay. Is it electric or ---?

17 A. Yeah, it was electric, because we didn't have no
18 --- can't get a scoop down there.

19 Q. Okay. How deep were the holes that you drilled?

20 A. One of those big old rods. I mean, I couldn't ---
21 four foot.

22 Q. Okay.

23 A. I mean, we went back and had --- next day we had
24 to go back and clean it out.

25 Q. Okay. Do you remember how many holes you drilled?

1 A. Sixteen (16).

2 Q. Sixteen (16). Okay. Do you remember about how
3 close together they were?

4 A. I mean, we was doing --- maybe four foot apart. I
5 mean, it was, you know, a pretty good distance to make
6 a trench, you know, wash it down.

7 Q. Okay. Now, if I understood you correctly, they
8 didn't shoot the area on your shift.

9 A. No. No, sir.

10 Q. Did they do it on another shift?

11 A. I think they did it on dayshift or evening shift.
12 I'm not really sure when they did it. The only thing
13 I know, when we came back in, we had to clean it up.

14 Q. Okay. How much --- how much time elapsed from the
15 time you drilled the holes --- do you think you
16 drilled the holes and when they actually shot it?

17 A. The next night we come back in and it was ---.

18 Q. Next day?

19 A. Yeah. We had to come back and clean it up.

20 Q. Okay. Would that have been from --- was it on a
21 weekend or during the week? Can you remember?

22 A. I couldn't tell you because I mean, we was working
23 so much that I never got to see the kids or nothing.

24 Q. Okay.

25 A. I was so tired. I was so tired of messing with

1 water.

2 Q. I understand.

3 A. I was so happy to move belts. God, I'll never
4 forget.

5 Q. What was your daily shift time? What time did you
6 start?

7 A. Eleven (11) o'clock.

8 Q. 11:00 p.m.?

9 A. 11:30.

10 Q. 11:30 p.m.?

11 A. Yeah.

12 Q. Until what time in the morning?

13 A. Until we got done. I mean ---.

14 Q. 7:30, 8:30?

15 A. 9:30, 10:30, 11:30.

16 Q. Six days a week, sometimes more?

17 A. Yeah.

18 Q. Okay.

19 A. We worked a lot of hours. I'll tell you that.

20 Q. I think you said that somebody on another shift
21 shot the area. Any idea who did it?

22 A. I have no clue.

23 Q. Okay. Now, when you cleaned it up, how did you do
24 that? What kind of equipment or tools did you use?

25 A. Shovel. Just threw it over the sides, you know.

1 Q. Uh-huh (yes).

2 A. Clean up that ditch.

3 Q. Was it more --- was it a ditch? About how
4 wide ---?

5 A. I mean, it was a big old --- a big old trench, you
6 know. Water came all the way down and made it like a
7 big old trench like that (indicating). I mean, it was
8 a good size. I couldn't ---.

9 Q. Did you all have a nickname for this trench?

10 A. No.

11 Q. Ever hear anybody call it the Panama Canal or
12 something like that?

13 A. No. It wasn't that big. No, it wasn't that big,
14 but it was --- two guys could stand side by side ---.
15 I can tell you that.

16 Q. I actually heard someone refer to a place in the
17 mine known as the Panama Canal. That doesn't mean it
18 was actually ---

19 A. Yeah.

20 Q. --- as big as the Panama Canal, but somebody did
21 actually refer to a Panama Canal somewhere in the
22 mine. I didn't actually locate it, but ---.

23 A. It was a nice little trench. I mean, it was ---.

24 Q. Okay. So you think that was after the first of
25 the year?

1 A. Yeah. This year.

2 Q. Okay. Can you give me an idea of when you went
3 back to 22 Headgate?

4 A. Not really. We was there a month. I know at
5 least a good month. See, we moved --- then we moved
6 the longwall after that, because I think it moved up
7 or --- they moved the longwall and then we moved our
8 section and then we went back to --- they moved
9 everything around.

10 Q. Okay. Let me back up on a couple things before we
11 go away from it. The drill that you used to drill the
12 holes for the trench, was that a battery-operated
13 drill?

14 A. Yeah.

15 Q. Was it called a Hildi or something like that?

16 A. I can't remember what he called it. I mean, I was
17 just wanting to get out of there. I wasn't worried
18 about it, because that was the last thing to do was
19 drill those holes. And I just wanted to get out of
20 there because I hated being --- I was wet and I wanted
21 to get out of there.

22 Q. Okay. I understand. Not Hildi. Hilti. Excuse
23 me.

24 A. Farmer called it something.

25 Q. Okay. Do you know how they might have gotten the

1 powder and caps back to your drill site?

2 A. I think that --- they had a box down there, you
3 know what I mean, ---

4 Q. Uh-huh (yes).

5 A. --- somebody brought in that had a lock on it.

6 Q. Was it like a wooden box?

7 A. Yeah. It was a wooden box.

8 Q. One box or two boxes?

9 A. One.

10 Q. Okay. Do you know if they had the powder and caps
11 in the same box?

12 A. I'm not really sure. I could not tell you nothing
13 about that.

14 Q. Okay.

15 A. I was never around nothing like that.

16 Q. That's okay. That's fine. So after about a
17 month, you said you went back to Headgate 22?

18 A. Uh-huh (yes).

19 Q. Now, you said they moved the longwall.

20 A. Yeah.

21 Q. Where did you mean when you said they moved the
22 longwall?

23 A. They moved the longwall up. We was running like
24 this and we went this way (indicating). I don't know.

25 That's the way they done it.

1 Q. Okay.

2 A. Because you had Two section that --- it was Two
3 section. When we went in, the Two section was this
4 way (indicating) now. You know what I mean? Then you
5 had the longwall.

6 Q. You're kind of losing me.

7 A. I wish I knew more, ---

8 Q. That's okay.

9 A. --- you know, to tell you, but --- the only way I
10 can explain it, you know.

11 ATTORNEY WILSON:

12 Are you talking about the crossover area
13 here?

14 BY MR. FARLEY:

15 Q. This 22 Headgate is about how it looked ---.

16 A. Okay. The old 78 way you went.

17 Q. Right.

18 A. Seventy-eight (78) way, as I always told you, we
19 went to the pump, we went this way.

20 Q. You went to the right?

21 A. Yeah.

22 Q. We went through all those doors.

23 Q. Okay.

24 A. Kept on going straight down, then it split off
25 down there at ---.

1 Q. Did you pass an area at all ---?

2 A. That's called the Glory Hole.

3 Q. Okay. I know where you are now.

4 A. We went down through there.

5 Q. Okay. That's how you went to 22 Headgate?

6 A. Yeah.

7 Q. Okay. All right. I gotcha.

8 A. We was going the other way, then we ended up we
9 went to the Glory Hole side.

10 Q. Okay. All right. I gotcha. When you got back on
11 22 Headgate, do you know about when that was?

12 A. I have no clue.

13 Q. Okay. I'm not trying to put words in your mouth
14 or I'm not asking you to guess, but I think we said
15 earlier we think that you were working on the water
16 for about a month after the first of the year in 2010;
17 is that fair?

18 A. That's fair. I mean, I'm not really for sure. I
19 ain't going to lie to you.

20 Q. Okay. That's all right.

21 A. I don't know.

22 Q. That's okay. No problem.

23 A. Maybe somebody could tell you. Maybe Farmer would
24 know to a T, but I don't know.

25 Q. Okay. That's fine. No problem. When you got

1 back to Headgate 22, were you back on the move crew
2 again?

3 A. Yeah.

4 Q. All right. Now, during the time you were on
5 Headgate 22 this year, did you have any --- were there
6 any times when there was some type of unusual
7 ventilation occurrence?

8 A. I remember they said that we didn't have enough
9 air to, you know, run ---

10 Q. Okay.

11 A. --- and they went and switched all the air. I
12 remember that, because we had to leave when they was
13 switching the air.

14 Q. Okay.

15 A. I remember a guy made us leave one day because he
16 said there wasn't enough air.

17 Q. Okay. Do you remember who that guy was?

18 A. No, but I --- it was an inspector. A big ol' guy.
19 I know him. What's his --- our boss. What's his
20 name?

21 Q. Who was your boss on Headgate 22?

22 A. Not Kyle, but I'm talking about the outside main
23 guy. They got into it because he was trying to say
24 there was enough air and ---.

25 Q. Blanchard?

1 A. Not Blanchard.

2 Q. Everett Hager?

3 A. Yeah. They was arguing. He said there was enough
4 air and he said there's not. And some reason, the guy
5 went back in and said, okay, there's enough air. I
6 don't know.

7 Q. Okay. Who was the guy that was arguing with
8 Everett Hager?

9 A. It was one of those guys that comes in and writes
10 up everything.

11 Q. The inspector?

12 A. Yeah.

13 Q. Okay. All right.

14 A. I know they was arguing because he was trying to
15 say there wasn't enough air to run, and he was like,
16 yes, they are. And he said, no, there's not. And for
17 some reason or another, he let 'em run. That's the
18 only thing I know.

19 Q. Okay. Now, that happened on your shift?

20 A. Yeah. Because he came outside and said there
21 wasn't enough air for them to run. After he done all
22 his walk-arounds and everything. We went out with
23 him.

24 Q. You rode out with the inspector?

25 A. Well, he was in front of us in another mantrip.

1 Q. Okay. Do you remember if he worked for the State
2 of West Virginia or for ---

3 A. I'm not really sure.

4 Q. --- MSHA? Okay.

5 A. I was a red hat. I was told, you know, ---

6 Q. That's all right.

7 A. --- to stay away. You know what I mean? I was a
8 red hat. Don't mess up. You know, don't do nothing
9 wrong. Make sure you got your glasses on, you know,
10 and all that great stuff. I'm an honest man. I ain't
11 going to lie.

12 Q. That's all right. That's okay. Now, during the
13 time you worked at UBB, as you told us you worked for
14 a contractor, Stanley?

15 A. Yeah.

16 Q. Okay. Now, do you think the fact that --- why do
17 you think they hired you as a contractor before making
18 you a full-time employee?

19 A. To see if I'd work.

20 Q. See if you could work?

21 A. Yeah.

22 Q. Did you feel like this was kind of a trial?

23 A. Yeah. That's what it feeled like. Like I said, I
24 mean, I talked to the people that come in there one
25 day and leave. Why would they hire me if they were

1 going to do that? I mean, you got a lot of paperwork
2 you got to fill out.

3 Q. Okay.

4 A. You know? That's the way I see it. But I
5 don't ---.

6 Q. As you look back on it, do you feel like you were
7 treated ---

8 A. Oh, yeah. I love my ---.

9 Q. --- fairly when you were a contractor?

10 A. Yeah. Kyle, Sean Walker, Farmer, all those bosses
11 were great to me. I never had a problem with them.
12 They took care of me.

13 Q. Okay. Now, when you worked on 22 Headgate this
14 year, you just told me about this instance where you
15 didn't think there was enough air. Do you recall an
16 experience where the air was going the wrong direction
17 at any given time?

18 A. I remember the air change, but I don't remember
19 anything else because we had to leave because I was a
20 red hat, ---

21 Q. Okay.

22 A. --- and I know we had to leave.

23 Q. Okay. Was that just one time?

24 A. One time because somebody came in. I can't
25 remember who was doing the air change, but we wasn't

1 allowed to be there. They made us leave.

2 Q. Okay.

3 A. Because you're not allowed to be there when an air
4 change was going on or something like that. We worked
5 half the shift, then they was going to do the air
6 change, and we left.

7 Q. Okay. Do you know who made the air change, what
8 people were involved with that?

9 A. Farmer's crew.

10 Q. Farmer's crew?

11 A. Yeah, Sean Walker.

12 Q. And somebody else, another --- he was a big guy.

13 I don't know what his name was, but it might have been
14 Chris.

15 Q. Chris?

16 A. I don't remember his last name.

17 Q. When you say he's a big guy, do you mean he's big
18 in stature or a big wheel?

19 A. Bigwig, whatever you want to call him, you know,
20 came in there. Real skinny guy with glasses. I
21 cannot remember his name.

22 Q. Could it have been Wayne Persinger or ---?

23 A. It might have been. I got a problem with names.

24 Q. That's all right.

25 A. Yeah. I can remember nicknames, but I can't

1 remember names.

2 Q. No problem. That's not any problem. Now, when
3 you were on --- when was the last time you were on
4 Headgate 22 section before the explosion on April 5th?

5 A. I had three days off. I was supposed to go back
6 that Monday night.

7 Q. So you were off on April 5th when the explosion
8 occurred?

9 A. Yeah.

10 Q. Okay. When was the last shift you worked on
11 Headgate 22? Would that have been three days before?

12 A. Yes.

13 Q. That put you about what, Friday, April 2nd or ---

14 A. Yes.

15 Q. --- Thursday, April 1st, somewhere around there?

16 A. Yeah, Friday. Friday was my last day I came out.

17 Q. Okay. Now, I know you can remember a situation
18 where there were air problems on Headgate 22 where
19 there was not enough air. Now, during your last shift
20 there on Headgate 22 and the preceding several days,
21 let's just say the week preceding the explosion, what
22 was the air like on 22 Headgate section then?

23 A. It was fine.

24 Q. And when you say it's fine ---?

25 A. I mean, I never would go up there and watch 'em do

1 the readings or anything, but it seemed a lot
2 better ---

3 Q. Okay.

4 A. --- because they moved the air.

5 Q. Was it better than it had been before, before they
6 made the air change?

7 A. Oh, yeah, a lot better. I thought it was a lot
8 better. I mean, it was so hot up there. After they
9 switched that air, it cooled it down a lot. I felt
10 like I was in a sauna there for a while, it was so hot
11 up there, you know, when you got a lot of air to stay
12 hot. But when they changed the air, it was nice.

13 Q. I'm understanding you to say that the velocity
14 improved somewhat; ---

15 A. Yeah.

16 Q. --- is that accurate?

17 A. Yeah. I never heard 'em say anything else about
18 the air after that.

19 ATTORNEY WILSON:

20 I'm sorry?

21 A. I didn't hear 'em ever say anything else about the
22 air after they done that switch.

23 BY MR. FARLEY:

24 Q. Okay. On your last shift before the explosion,
25 did you notice anything unusual?

1 A Belt move.

2 Q. Belt move, that's what you did?

3 A. Yeah.

4 Q. Did you ever have opportunity to walk the 22
5 Headgate belt from one end to the other?

6 A. Oh, yeah.

7 Q. When was the last --- when was the last time you
8 traveled on that belt?

9 A. The night before.

10 Q. Okay. Can you remember what the belt entry looked
11 like?

12 A. Like it always did.

13 Q. Did it look like it needed to be rock dusted?

14 A. No. We kept that up. We kept that up. I tell
15 you that truthful because Kyle wouldn't let us, you
16 know. We'd always keep that up. We just got done ---
17 actually that week took a --- one of those ones ---
18 the hose you hook up to your scoop, have the --- we
19 sprayed the whole thing down. The big ol' hose going
20 to your scooper blows all that rock dust out. I'm the
21 one that done it.

22 Q. When did you do that?

23 A. It was that same week before I left.

24 Q. Before the explosion?

25 A. We went down through there because we went through

1 every man door, took that house and sprayed it all
2 down.

3 Q. That's 22 Headgate belt?

4 A. Yes.

5 Q. Okay. Who helped you rock dust?

6 A. John Plumley. John Plumley and Josh Plumley,
7 Derek Anderson, and Chicken Fry is what I've always
8 called him. I don't know his real name. I call him
9 Chicken Fry because like the guy from --- the guy that
10 sings that song, so ---.

11 Q. All right. That's funny. We'll find out who he
12 is.

13 A. Yeah. He was a contractor, too.

14 Q. Okay. Did you rock dust any entry other than the
15 belt entry that day?

16 A. No. We just did the belt entry. Make sure it's
17 pearly white. Make sure it's pearly white.

18 Q. Who said that?

19 A. Kyle Anderson.

20 Q. Kyle Anderson.

21 A. And then he came back and checked to make sure it
22 was pearly white.

23 Q. Okay. Was he satisfied with it?

24 A. Yeah.

25 Q. Okay.

1 A. Because I didn't want to do it again. I always
2 try to do things right the first time.

3 Q. I understand. Did you ever rock dust in another
4 area of the mine?

5 A. They used that scoop with a big ol' thing on it.

6 Q. Uh-huh (yes).

7 A. Kyle done that a lot.

8 Q. Where did he do that?

9 A. Here, at the power center. He always made us get
10 out of the way so we wouldn't be smoked out. Go from
11 the power center all the way around.

12 Q. Around the section?

13 A. Yeah. He did that right before --- right before
14 we were getting ready to leave.

15 Q. Okay.

16 A. Wanted to make sure everything was done before,
17 you know, they got in there, and they wouldn't get all
18 rock dusted out either.

19 Q. Okay. Do you remember the last time he rock
20 dusted the 22 Headgate section face?

21 A. I can't remember.

22 Q. A week before, two weeks before?

23 A. I mean, they done it like every week. You know,
24 it was a common thing.

25 Q. All right. Now, when you were traveling on the 22

1 Headgate section, did you notice any problems with the
2 mine floor, now what some people call heaving, some
3 people call hooving, where the floor has a tendency to
4 just break up and rise a little?

5 A. No.

6 Q. Did you notice anything like that?

7 A. No.

8 Q. Okay.

9 A. I done all the drilling and just set all the
10 tailpieces and stuff, and I always paid attention to
11 stuff like that, but I never seen nothing like that.

12 Q. Okay. Now, during the time that you worked on the
13 22 Headgate, especially in the month preceding the
14 explosion, do you recall anybody detecting any methane
15 in any of the working places?

16 A. That's what I --- no.

17 Q. Okay.

18 MR. FARLEY:

19 John?

20 MR. GODSEY:

21 Yeah.

22 EXAMINATION

23 BY MR. GODSEY:

24 Q. We'll just go back --- I got some questions, but
25 first I'll go back to when you were behind the

1 longwall, pumping water. Was the foreman that was
2 back there on dayshift, was that Jeremy Burdoff?

3 A. That's him.

4 Q. How many --- did he have many employees?

5 A. He had four, I think.

6 Q. Were they stationed there full time?

7 A. Yeah. They was there about every day, because
8 Jason Thomas had it first and then he switched off to
9 be a belt man and that.

10 Q. And you said that you all carried multiple pumps?

11 A. Oh, yeah.

12 Q. What type of pumps were they?

13 A. Air hose pumps.

14 Q. Did you have to carry 'em all the way manually or
15 did you have any kind of transportation for a short
16 period?

17 A. A short period of time they got us little tiny
18 buggies to put 'em on. It didn't really help none.
19 Better off putting 'em through a slate bar and ---.

20 Q. When you're saying a buggy, was it electric or was
21 it manual?

22 A. You know, a little manual buggy you carry ---.

23 Q. Did you ever happen to ever see an outfit ride
24 behind the longwall there?

25 A. I never did see nothing, just us.

1 Q. Okay. How did you all lay the waterline? Which
2 way did you all bring the water up?

3 A. Always to the left side. Take them all out and
4 took them straight out. Went straight out. I never
5 went all the way to the end of it to see which way
6 they was going because he wouldn't let us. I was a
7 red hat, you know, and he didn't want us going down in
8 there.

9 Q. Did you ever have to work by yourself back there?

10 A. No, never.

11 Q. You said that you got wet up to your chest or so.
12 How many times did that happen to you?

13 A. I wouldn't want to go out there. I just told 'em
14 I wasn't going to do it. I mean, if it got past ---
15 you know, right in here, went over my waders or
16 anything like that, I wouldn't do it. Farmer wouldn't
17 make us do it, so I can't really ---. You know, he
18 said he wouldn't put us through anything he wouldn't
19 go through.

20 Q. Okay. I'm going to read you a few statements here
21 and you just ---. Has anyone made any promises to you
22 for giving a statement or offered you any rewards in
23 exchange for making your statement?

24 A. No, sir.

25 Q. Has anyone threatened you or warned you not ---?

1 A. No, sir.

2 Q. Has anyone from the company or person representing
3 the company talked to you concerning the explosion?

4 A. Yeah.

5 Q. Who was that?

6 A. Massey talked to me.

7 Q. When did they do that?

8 A. About two weeks ago.

9 Q. And did they give you any direction or anything
10 how to ---?

11 A. No. The same way you guys are doing, just talking
12 to me.

13 Q. Did they tell you --- did they ask you to report
14 back to them after you ---?

15 A. No. I didn't even tell 'em I was coming here.

16 Q. Okay. While you were working with David Stanley
17 Contractors but you were working at UBB, did you still
18 have any contact with David Stanley? Did you ever
19 talk to anybody?

20 A. I talked to 'em, too, before I went back to work.
21 That's the only time I ever talked to 'em. I called
22 'em about every week to see if they got me a place to
23 go.

24 Q. Did they tell you how you're doing or how the
25 rating --- like UBB is giving you some type of rating,

1 what type of job you're doing?

2 A. No.

3 Q. Earlier you said the first day that you went to
4 UBB that they showed you the escapeway maps and stuff
5 like that. Did they take you underground and walk the
6 escapeways or anything with you?

7 A. Farmer walked 'em. He showed us every way out.

8 Q. He walked all the way out?

9 A. We didn't walk all the way out that night, but the
10 next day we ---.

11 Q. Do you remember which portal you went in?

12 A. No. I mean, that was my first couple days in. I
13 couldn't tell you. I remember walking all the way
14 out. I mean, that was awful.

15 Q. What do you mean awful?

16 A. Oh, that was awful. We had to leave early. That
17 was just a long, long walk.

18 Q. How did the escapeways look to you?

19 A. It was fine. Good walkway and everything, just a
20 long, long walk. I would estimate about three hours.
21 It might have been longer than that. I mean, it was a
22 long walk. I was like, man.

23 Q. When is the last time you walked it?

24 A. I walked it twice, and I --- I walked it twice,
25 and I didn't like it. I said, man, oh, man.

1 Q. So you started at 11:00 at night?

2 A. 11:30, that's when we went under.

3 Q. How many people were in your crew?

4 A. Three --- there was five plus a boss.

5 Q. Do you remember what portal you all entered?

6 A. We went in not from --- we went from the other
7 way. We didn't go through --- what do they call that?

8 Q. Is it a new portal?

9 A. Yeah. That new one where Everett always stayed
10 at. That's where we came in at.

11 Q. Would that have been the Ellis Portal?

12 A. Yeah, that's it. I'm so bad with names.

13 Q. Did you have a certain man bus that you all rode
14 in every night?

15 A. No, different ones.

16 Q. Did you all leave after the other crews did or
17 when did you all ---?

18 A. We went in and they came out.

19 Q. Okay.

20 A. We'd go in, they'd come out.

21 Q. Okay. Did you ever happen to notice about the
22 direction of air on the track portal or Ellis?

23 A. No. I was always sleeping.

24 Q. Sleeping?

25 A. Yeah. I ain't going to lie to you. I slept ---

1 that was a long trip in there.

2 Q. Did you ever awake any time to notice the
3 condition of the track or anything?

4 A. The track was always pretty good, actually. I
5 mean, I was sleeping, so that tells you something. It
6 didn't whip me around or anything like that.

7 Q. Okay. Do you remember going through any man doors
8 --- I mean, equipment door? Excuse me.

9 A. Yeah, because they always woke me up to go get
10 'em. I was a red hat, so ---.

11 Q. Did you know where you were when ---?

12 A. Yeah, I knew where I was at. They always woke me
13 up. Gumby, go get the door.

14 Q. What was the condition of those doors?

15 A. They was good. I mean, that one was pretty bad.
16 I mean, you had to push it pretty hard to keep it
17 shut.

18 Q. What kind of leakage did you have?

19 A. None, I'm guessing. I never did pay attention to
20 'em. I just opened 'em and shut 'em. I was a red
21 hat, you know. You do as you're told.

22 Q. Did you ever find any of them have been opened?

23 A. No.

24 Q. At the end of the track --- how far was it from
25 the end of the track to the loading point of the

1 section?

2 A. That was a problem.

3 Q. What kind of problem was that?

4 A. We had a long walk in. At the end of the
5 track --- I mean, they didn't have all the tracks
6 labeled. They had emergency rides is what they called
7 'em. We had to ---.

8 Q. Tell me about that.

9 A. Well, they was just little --- eight men with a
10 little ride. You rode up and rode back in to the
11 track, to there.

12 Q. Did they ever --- did you know why the track was
13 so far behind?

14 A. I have no clue. We started laying a lot of track.
15 I couldn't tell you. I couldn't really tell you. I
16 mean, it was a long walk there for a long time, and
17 then they got us that little emergency ride or
18 whatever you want to call it and we rode it in.

19 Q. So what entry did you walk to the face or towards
20 Headgate 22?

21 A. Back there at the Glory Hole. As soon as you had
22 the doors and --- I mean, at the end, I mean, we were
23 split off where we went to Two section, and then we
24 had to lay track from there on out.

25 Q. Are you calling the Two section Headgate ---

1 Tailgate 22?

2 A. Yeah. I mean, it was the Two section in there,
3 too. We went that way.

4 Q. Is that back towards the longwall?

5 A. Yeah.

6 Q. What was the condition of the track entry that you
7 walked?

8 A. It was all right. I mean, a little water.

9 Q. How much water?

10 A. Not much. Just, you know, a little bit of water
11 here and there. It wasn't nothing major.

12 Q. Did you see any pumps or anything?

13 A. We had one pump.

14 Q. Where was that located?

15 A. One of the entries right there where the man door
16 was. There was one --- it was on the right-hand side.

17 Q. What did the rock dust look like?

18 A. He always made it --- make sure it was pearly
19 white. It always made it look pretty.

20 Q. How would you compare the belt track to the
21 section of rock dust?

22 A. They was good. He always ---.

23 Q. Which one would be better, the track or the ---?

24 A. They kept them about the same. I mean, they
25 always rock dusted all the time, so I can't say

1 nothing about that.

2 Q. So you moved the power, belt and battery chargers
3 or whatever?

4 A. We didn't move the battery chargers.

5 Q. Who moved that?

6 A. Dayshift.

7 Q. How close would you keep the tailpiece to the
8 face?

9 A. I don't know. I was a red hat. I ain't going to
10 lie to you. The only thing I know was lay the
11 structure, get the belt in.

12 Q. Did you all anchor the tailpiece ---

13 A. Yes, sir.

14 Q. --- and set the feeder?

15 A. Yes, sir.

16 Q. Was there ever a check curtain placed just outby
17 the feeder?

18 A. The check curtain ran down. You could always see
19 it up above, you know, when it ran --- ran around.

20 Q. Well, that's what I was trying to get at. Did it
21 have belt air, you know, belt --- track air you used
22 to ventilate the section with?

23 A. I'm not really sure of that.

24 Q. I mean, could you look --- from a feeder look
25 outby and nothing in between you and the entry?

1 A. When I looked straight up that beltline ---.

2 Q. Down the beltline ---

3 A. I could look straight down the beltline.

4 Q. --- did you ---?

5 A. No. We was supposed to build one of those things
6 Goober talked about, breaks that kept on falling down,
7 falling down, falling down, falling down. We never
8 did build it.

9 Q. Did you all build the stoppings up there?

10 A. Yes.

11 Q. How did you all ---? What was the construction
12 method you all used there?

13 A. B-Bond. I mean, it was high. I mean, they was
14 some high, high stoppings.

15 Q. Did you ever have any trouble building?

16 A. Well, if we couldn't reach --- I mean, if we
17 couldn't reach some of 'em, we'd just spray the top,
18 you know, whatever we couldn't reach. I mean, some of
19 'em --- it was high.

20 Q. How high?

21 A. I mean, I'm six foot, four, and I couldn't --- we
22 got on top of scoops, ladders and everything and
23 couldn't reach.

24 Q. Did you ever use scaffolding or anything?

25 A. No.

1 Q. Did you build a larger base or did you dry stack
2 'em or wet lay 'em or mortar between the ---?

3 A. No. Lay one row flat and the rest of 'em straight
4 up, wedge and keep on going.

5 Q. How close did you keep 'em? How many open
6 crosscuts did you --- did they keep between the face
7 and the stopping?

8 A. It was one. One, I think.

9 Q. And did you ever feel --- did you feel that they
10 had an adequate amount of air up there?

11 A. After they done that air change.

12 Q. When did they do the air change?

13 A. It was about a month, you know, before all this
14 happened. It was about a month.

15 MR. MCGINLEY:

16 A month before the explosion?

17 A. Yeah.

18 BY MR. GODSEY:

19 Q. Would it --- about the middle of March or
20 something like that?

21 A. Yeah.

22 Q. Did you talk to other people on other sections and
23 discuss about the shortage of air in any other
24 sections?

25 A. No. Every time I seen somebody else, they was

1 always joking and carrying on, so --- but we don't
2 hardly ever see anybody else, you know. It's like,
3 what are you doing down here, you know, stuff like
4 that.

5 Q. Did you ever actually work in the face?

6 A. No, I never ---.

7 Q. Did you ever go up to the face?

8 A. Every now and then. I mean, ---.

9 Q. Did you ever watch 'em mine any or bolt any?

10 A. No. I watched 'em bolt. I mean, they had a night
11 bolting crew up there, you know, but --- I watched
12 them bolt when I had time, you know, because old
13 Boone, the one that died, he showed me a few things on
14 the bolter, because I really wanted to be a bolter. I
15 don't know.

16 Q. How did they use ---? How did they use their
17 ventilation curtain up there? Did they use
18 ventilation curtain when they was bolting?

19 A. I mean, it was --- I mean, I'll tell you the
20 truth. I never did pay attention to stuff like that
21 because I was always too busy getting structure and
22 everything ready for a belt move.

23 Q. Okay. Well, that height you said --- what about
24 coal ribs, did you ever have any problems, ever see
25 anything wrong with coal ribs?

1 A. No. No. Never had any problem with the ribs.

2 Q. What about the roof, did you ever hear the ---?

3 A. I remember we had a couple falls.

4 Q. Where were they at? On the section?

5 A. No, none on our section. I know there was a
6 couple good falls, but --- I know they was cleaning
7 one up, you know, and stuff like that.

8 Q. Did you help clean it up?

9 A. Right there where they put that new tube section
10 in at for the belt, they put that new track in there
11 and everything, I know there was a fall right there.

12 Q. Did you help clean that up?

13 A. No.

14 Q. Did you ever visit it or anything?

15 A. I went up there --- I didn't go close to it
16 because Kyle told me I wasn't allowed to go anywhere
17 near a fall where I was a red hat. But I got to peek
18 at it. I just wanted to see it, you know, see what it
19 looked like, but he wouldn't let us get nowhere close
20 to it.

21 Q. On your shift, did you ever see any upper
22 management people come in on that owl shift that
23 normally wasn't, you know, there?

24 A. No.

25 Q. Did you ever notice anybody building --- tearing

1 out stoppings or putting in stoppings?

2 A. Uh-uh (no).

3 ATTORNEY WILSON:

4 Is that a no?

5 A. Yes, it's a no.

6 BY MR. GODSEY:

7 Q. Did you ever talk to any of the people on the
8 section when I guess you were up there about you
9 running a miner with a methane monitor bridged out
10 or ---?

11 A. Never heard nothing like that.

12 Q. Okay. Was the curtain --- when they were bolted,
13 when you saw 'em, was it rolled up or how was it
14 placed?

15 A. It was usually --- well, I mean, what I seen, you
16 know, it was usually down because you had to go ---
17 you had to raise it up. For a scoop, if we had to go
18 around 'em or anything like that, you had to raise
19 that curtain all the way up.

20 Q. Oh, you raised --- they had the curtains, were
21 they raised up?

22 A. It was down. We had to pick it up and we had to
23 go through, I mean, like with the scoop or something.

24 Q. Did you ever happen to see 'em scoop --- clean a
25 place up there on a section?

1 A. No. The only thing I know was get structure, get
2 belt. I ain't going to lie, you know. But I can
3 really tell you, the only thing we was ever worried
4 about was getting everything ready for a move.

5 Q. Were you ever concerned, about going to work, for
6 your safety or anything up there?

7 A. No, sir.

8 Q. Did you ever talk to anyone that may have been?

9 A. No.

10 Q. And did you talk to any of the --- what about the
11 men behind the longwall that were pumping the water,
12 were they ever having any problems, talked to you they
13 had problems working back there, being in that water
14 all the time?

15 A. No, just that long walk. I mean, it was a long
16 walk. Everybody complained about was that long walk,
17 you know,

18 Q. Do you know of anybody or anyone making a
19 complaint to upper management about a safety concern
20 or ---?

21 A. No, sir.

22 Q. Did you ever ---? Did you ever know of anybody
23 ever calling a Massey 800 number ---

24 A. No, sir.

25 Q. --- or an MSHA Hotline?

1 A. No, sir.

2 Q. Would you have felt comfortable making a complaint
3 to upper management if you had a problem?

4 A. Oh, yeah. If I had a problem, I'd tell 'em.

5 Q. What do you think --- how would they have accepted
6 that?

7 A. Well, Sean --- I mean, you could talk to Sean.
8 Sean was a good guy.

9 Q. What about the people above him?

10 A. Who, Everett?

11 Q. Yeah.

12 A. Everett was all right. You got to know how he
13 was. He yells at you, yell at him back. That's the
14 way --- it was like the more you yelled at him, the
15 more he liked you. I don't know. He was weird. I
16 ain't going to lie to nobody. He's a strange man. He
17 started yelling at me one day, I started yelling at
18 him back. He's, I like you. I was like, that's good.

19 Q. Okay. You said that you was on the move crew.
20 Did you --- what kind of problems did you ever have
21 during your shift?

22 A. Maybe if the belt didn't go in right, but we was
23 always done early, so ---.

24 Q. When you all came out, did --- how many --- did
25 all the sections come out together?

1 A. No, just different times.

2 Q. But when you all came out, did you ever notice the
3 doors being open?

4 A. No.

5 Q. Did you ever hear anybody talking about that?

6 A. Uh-uh (no).

7 Q. Have you ever been to the Tailgate 22 section?

8 A. Uh-huh (yes).

9 MR. MCGINLEY:

10 Is that a yes?

11 A. Tailgate 22?

12 MR. MCGINLEY:

13 You have to say yes or no.

14 A. Yes.

15 BY MR. GODSEY:

16 Q. When were you over there?

17 A. We went up there one time looking for rollers, top
18 rollers and stuff, but that's the only time I've
19 really been up there.

20 Q. Do you remember what that looked like?

21 A. No. We never paid attention. We were just
22 looking for rollers, trying to get out of there. I
23 moved grates all the time.

24 Q. Have you ever worked on a longwall?

25 A. No.

1 Q. While you were up there before they made a
2 ventilation change, were you ever concerned about the
3 ventilation up there?

4 A. No, not really.

5 Q. And did your supervisor ever take gas checks while
6 you were there?

7 A. He did his readings.

8 Q. Did he ever tell you if he found any methane?

9 A. No.

10 Q. Did you ever ask him?

11 A. No.

12 Q. Have you ever been --- have they ever moved you
13 all at night from a mine because of something
14 happening?

15 A. The only time we ever left the coal mines that I
16 can recall is on that air change. We weren't supposed
17 to be there.

18 Q. Okay. Have you ever showed up --- have you all
19 ever showed up for work and work was cancelled due to
20 some kind of problem underground?

21 A. I'd have to say yes to that.

22 Q. What was ---?

23 A. It was over --- I think it was over doors, those
24 four doors.

25 Q. What ---?

1 A. They had switched them. Somebody said something
2 about those doors is wrong, so they switched them. So
3 they took everybody over to switch 'em.

4 Q. Did those doors ever concern you?

5 A. No.

6 Q. Did anybody ever talk about it?

7 A. No. They said those two doors was on backwards or
8 something. That's the only thing I ever heard about
9 those doors.

10 Q. How did you --- did those doors close easily? Did
11 they stay closed once ---?

12 A. Yeah. One was kind of rough. I mean, the second
13 one was you had to pull the flapper in first then pull
14 the door to make it stay shut.

15 Q. Did you have to use any kind of pass --- or rope
16 or something to keep it closed?

17 A. No.

18 Q. How about --- any ventilation changes made while
19 you all were underground?

20 A. The only one I remember was that one that I
21 mentioned.

22 Q. Is there anything that you can remember ---?

23 Think about it a minute. Anything in the back of your
24 mind that you may have went to work and you said,
25 well, this just isn't the way it was, or something ---

1 something is strange?

2 A. No.

3 Q. Has anybody ever ---?

4 A. No.

5 Q. Did you ever have any inspectors on your section
6 at night?

7 A. Yeah. I had one of 'em.

8 Q. Did you know he was coming?

9 A. I don't know. I had no clue. I'll tell you
10 truthfully, I remember he was there when I got there
11 at night, telling us he'll be up there where we're at
12 that night. I said, okay.

13 MR. GODSEY:

14 That's all I have.

15 ATTORNEY WILSON:

16 Let me return to you the three things
17 that you've provided to us. I'll go ahead and mark a
18 copy of those as Smith Exhibit Three. And this will
19 be a two-page exhibit, with all three Training
20 Certificates on it.

21 (Smith Exhibit Three marked for
22 identification.)

23 ATTORNEY WILSON:

24 Pat, do you have any follow-up?

25 MR. MCGINLEY:

1 I have some questions.

2 EXAMINATION

3 BY MR. MCGINLEY:

4 Q. Mr. Smith, I've been sitting here listening to you
5 answer questions, and a lot of the questions you've
6 answered by saying you're a red hat and you don't
7 remember nothing and you weren't aware. But, you
8 know, it's important find out information here because
9 we got widows and we got children of men who died. So
10 to the extent that you can just, you know, squeeze
11 your brain and remember as much as you can, it's
12 important because they want to find out the cause of
13 this explosion. And, you know, if somebody is
14 responsible, they ought to be held responsible or not,
15 and then we'll just go on. So, you know, when I'm
16 asking a few questions, I don't have too many for you,
17 but if you would keep that in mind, we'd all
18 appreciate it.

19 This training that you had represented by the
20 certificates --- and then they're here as Smith
21 Exhibit Three, was the training all done at the same
22 place?

23 A. We had one at the mines. We had one at the
24 Marfork ---.

25 Q. Which one did you go to first?

1 A. The Marfork.

2 Q. Then you went up to UBB?

3 A. Yeah. They showed up all the maps and everything.

4 Q. I was just wondering, looking at your signature
5 here, at least one of them looks quite different. Did
6 you sign all three of them?

7 A. Yeah. I was nervous.

8 Q. Why were you nervous?

9 A. It was my first day underground. You know, you
10 get nervous the first day.

11 Q. Sure. I understand. The air switch that you
12 remember and you had to come out of the mine, and what
13 you said is you thought it was in 2010. It would be
14 very helpful if you knew a little more --- with a
15 little more accuracy. You know, you've got a time.
16 You've got the --- you certainly --- you remember ---.

17 A. That's ---.

18 Q. Now, hold on.

19 A. Yeah.

20 Q. New Year's is a good point we all generally
21 remember. Some of 'em don't.

22 A. Yeah. I don't --- it was a good time.

23 Q. The next morning, right.

24 A. Yeah.

25 Q. And then we got Easter, in that period of time.

1 And this --- when you had to come out of the mine, it
2 only happened once time since you've been working
3 there; right?

4 A. Yeah.

5 Q. So that's something you remember pretty well?

6 A. Yeah.

7 Q. We was all happy.

8 A. Right.

9 Q. So you know, in that period from New Year's to
10 Easter, think back and think hard about that. You
11 know, are we talking about not long after New Year's,
12 close to the time of the explosion? Because this is
13 helpful to us, if you can remember.

14 A. That's exactly what I told Massey, too. I cannot
15 remember.

16 Q. So who did you talk to with Massey?

17 A. I don't --- I can't remember their names.

18 Q. Were they lawyers?

19 A. Yeah, they were lawyers.

20 Q. And where did you talk to them?

21 A. Up there at Massey's --- up there at Marfork.

22 Q. So you basically said, I'm a red hat, and I don't
23 remember anything?

24 A. Yeah. I told 'em the same thing. I told 'em I
25 ain't got a great memory. If I could tell you more, I

1 would. I mean, Jason Atkins was one of my best
2 friends in the world. If I could help you, I'd tell
3 you.

4 Q. We appreciate it. So what did the --- you talked
5 to the lawyers about two weeks ago?

6 A. About two weeks ago.

7 Q. Did you go to Marfork to talk to 'em?

8 A. Yeah, after work.

9 Q. How long did they talk to you?

10 A. About an hour.

11 Q. And what did they ask you?

12 A. About the same questions you guys are asking me.
13 I told 'em about the water and told 'em everything
14 else. Told 'em about the air switch.

15 Q. What else did they ask about, water, air switch?

16 A. Yeah.

17 Q. It took you an hour to ask you just ---?

18 A. Yeah, just real simple questions, what I knew.
19 And I was like --- I told them about the water and
20 told them about the air switch.

21 Q. So you had training, some training before you went
22 in the mine?

23 A. Yeah. And we just had retraining, too.

24 Q. Right. So what's it mean when there's not enough
25 air in the mine, not enough airflow?

1 A. Ain't enough airflow in the mines, then we really
2 shouldn't be there.

3 Q. Why?

4 A. Because there would be a good chance methane will
5 show up or anything, you know.

6 Q. So, you know, when the inspector came in and said
7 there's not enough air and you all ought to come out,
8 you went out on the mantrip after him; right?

9 A. Yeah.

10 Q. That was sort of the second time you had to come
11 out of the mine?

12 A. Yeah. But see, he waited all shift to do it.
13 That's why I didn't understand. He walked around,
14 walked around, walked around, then he finally went up
15 to the face, you know what I mean, and said there
16 wasn't enough air. And it was almost the end of the
17 shift. And I was like ---.

18 Q. When you say the face, which --- the longwall
19 face, ---?

20 A. Up there where we was at.

21 Q. Uh-huh (yes).

22 A. They said there wasn't enough air, so ---.

23 Q. And what were the people --- what was the foreman
24 there saying to him?

25 A. Kyle didn't walk with him. It was really the

1 electricians that walked with him.

2 Q. Do you know who they are?

3 A. The electricians? Andrew Lucas and Mike Dickens.

4 Q. Okay. And so at the end of all that time the
5 inspector spent there he said, I don't think you have
6 enough air, you all have to come out?

7 A. Yeah. He said, there ain't enough air. He said,
8 there ain't no way you can run today. We had to get
9 the

10 Q. So when there's not enough air, there's a --- as
11 you just said, there's a concern?

12 A. Yeah.

13 Q. Could be an explosion; is that right?

14 A. Well, I don't --- you know, I don't know about an
15 explosion or not, but I know there wasn't enough air,
16 you know.

17 Q. Well, that's why they bring you out of the mine,
18 for your safety; right?

19 A. Yeah.

20 Q. So were you concerned about that?

21 A. Well, I thought they was doing the right thing,
22 you know.

23 Q. Sure. If there's not enough air, you shouldn't be
24 there; right?

25 A. Yeah. I went home.

1 Q. And did you go home --- did you stay there long
2 enough to listen to the conversation with Mr. Hager
3 and the inspector?

4 A. You know, you can hear a little bit when you're
5 downstairs, upstairs. You can hear him screaming. I
6 mean ---.

7 Q. Hager was screaming at the inspector?

8 A. Yeah. He was always screaming about something,
9 so ---. You know, it's hard enough --- you're hear
10 somebody screaming --- you know, he sent him up there
11 to run. He was saying why they wasn't. For some
12 reason they ran, so ---.

13 Q. Do you think the inspector is there to hassle the
14 company or to ensure safety?

15 A. He's there to do his job.

16 Q. So do you think that's unusual that Mr. Hager
17 would be screaming at him?

18 A. That's Hager. I mean, I can say that about him,
19 he was always screaming at somebody.

20 Q. So how did you know that miners were allowed to go
21 back into the mine?

22 A. Because he said he was going back in.

23 Q. Who said that?

24 A. The inspector, because I was in the bath house
25 changing. He said, I'm going back in the mines and

1 putting on the power. And they said okay.

2 Q. Now, after the --- you said you worked about a
3 half shift and then they made the air change, and you
4 had to leave, and then the air was better afterwards?

5 A. Yes.

6 Q. Now, where were you working at that time? Do you
7 understand this map?

8 A. Yeah, a little bit.

9 Q. Just as a general --- if you can give us a general
10 idea where you might have been.

11 A. I was at the longwall, Glory Hole, right here.

12 Q. Okay. So your experience was that there was ---
13 there was a major change in the velocity of the air
14 after they made that air change because it had been
15 really hot in the area where you had been working
16 around the Glory Hole there before that. And
17 afterwards you felt it was much better?

18 A. Yeah. You could feel a breeze and everything.

19 Q. And before they made the air change, did you feel
20 any breeze at all?

21 A. Just the one spot and that was it. And then after
22 they done that air change, you could feel it pretty
23 much everywhere.

24 Q. Where was the one spot where you could feel it
25 everywhere?

1 A. Right down the --- right down the middle. Right
2 down to where the power and everything was.

3 Q. Could you show us that on the map, if you can?

4 A. Can you show me where the power was at?

5 Q. Maybe somebody here can help you.

6 OFF RECORD DISCUSSION

7 A. It would be in Entry Two, I mean. That's where
8 the power was at. You only had three entries, One,
9 Two and Three, so ---.

10 BY MR. MCGINLEY:

11 Q. So can ---?

12 MR. MCGINLEY:

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

14 OFF RECORD DISCUSSION

15 BY MR. MCGINLEY:

16 Q. You said you worked in the water behind the
17 longwall for a good month; is that right?

18 A. Yes, sir.

19 Q. And Massey provided you with waders?

20 A. Yes, sir.

21 Q. But was the largest they had a size ten or were
22 they all size ten?

23 A. One guy had a size 12, but it was hard talking him
24 out of it. He was a black hat. I tried every which
25 way to talk him out of it, but he wouldn't give 'em to

1 me.

2 Q. Did anybody choose not to put 'em on and just get
3 wet?

4 A. No. A couple guys, you know, didn't even have
5 waders, and they wouldn't even get close to the water.

6 Q. So how far on you did the waders come up?

7 A. About right here on my chest.

8 Q. About chest high?

9 A. Yeah. And they was tight, skin tight.

10 Q. Right, because they weren't the right size?

11 A. Yeah.

12 Q. How about your feet? How did they fit your feet?
13 Size 13 feet in size 10 ---?

14 A. Yeah. It was awful. I'd have three guys jerking
15 'em off of me.

16 Q. Must have taken a while to get 'em on, too?

17 A. Oh, yeah. It wasn't really that bad getting 'em
18 on.

19 Q. It was getting them off.

20 A. I guess where, I don't know, all that moisture and
21 stuff in it, I slid right in 'em. But getting 'em
22 off, that was a --- after if you get in that water, it
23 sucks in.

24 Q. Did the water ever get over the top?

25 A. I wouldn't go that far.

1 Q. So how deep would you go?

2 A. I'd go --- I went to my chest one time. That's as
3 far as I'd go.

4 Q. Okay. But generally you'd try to keep it to what,
5 a few inches below ---?

6 A. About waist or right in here (indicating). I
7 wouldn't go no farther than I had to because ---.

8 Q. So when it was up to your waist, when you were
9 still hanging those pumps up, where were you hanging
10 'em from?

11 A. Off the monkey faces, off bolts. You know, you
12 take two rope hangers, wrap 'em around, hang 'em up,
13 run your air hoses and run your pump on your section.

14 Q. So would you say a majority of the time the water
15 was up to your waist?

16 A. Yeah, it was. And we finally got, you know, one
17 or two of 'em down. There wasn't no water at all.
18 The other two --- one where they blasted that, but
19 could not get it out of there.

20 Q. When you say one or two of 'em, are you talking
21 about entries?

22 A. Yeah. I mean, one or two of 'em. We just
23 couldn't get it out of there at all. We only blasted
24 in that one because kept on standing up so high where
25 the air couldn't go through.

1 Q. So after they did that blasting, they built that
2 little sump, that cleared out the water from one of
3 the entries?

4 A. No. It still didn't really clear it up.

5 Q. Okay. So how high was the water?

6 A. Still ---. I mean, it's still --- I mean, after
7 they blasted, that thing still came up to above the
8 knees.

9 Q. About your knees?

10 A. Yeah. I always went out and measured with a stick
11 to see how deep it was, and it was always still above
12 the knees.

13 Q. Were you measuring with a stick just to make sure
14 where you were walking?

15 A. That, too, just to balance myself, make sure I
16 didn't fall over or anything. But I always measured
17 --- we'd always spray painted it. Then after I got
18 back out, we measured with a ruler, because he always
19 had to mark down how much water was in each one.

20 Q. And were you trying to keep track of how high it
21 was ---?

22 A. Yeah, how much it went down every night.

23 Q. Did you write it down?

24 A. Farmer did. Kenny Farmer. He just told me his
25 name. I could not remember. Kenny Farmer.

1 Q. Kenny?

2 A. Kenny. Ole Pumpkin Head, that's what we always
3 called him.

4 Q. So were there a couple sections that were --- even
5 when you were pumping fast, there were a couple of
6 entries that were roofed out or nearly roofed out?

7 A. What is that? Can you repeat?

8 Q. A couple entries --- after you got that sump in
9 and you were pumping, you were doing the best you
10 could at pumping, there were still a couple entries
11 that were roofed out?

12 A. No. After we got --- but those two I was telling
13 you about, we just couldn't get them down far enough.
14 The one that was really roofed out, we never could get
15 it down.

16 Q. So it continued to be roofed out?

17 A. No. It got down like, you know, ---

18 Q. Knee high?

19 A. --- yeah, about knee high. But that's as far as
20 we could get it. That's why they always had cribs
21 going in there and making sure the pumps was pumping,
22 trying to get that water out.

23 Q. Farmer told you that the water was hurting the
24 longwall and they couldn't get adequate air up at the
25 longwall; is that right?

1 A. Yeah. They wasn't running no coal. They couldn't
2 run no coal because they didn't have the air because
3 they was stopping the air ---.

4 Q. Did you feel like you had enough air where you
5 were working?

6 A. There was plenty of air. Too much air. It was
7 strong.

8 Q. You think that was because some of the entries
9 were blocked with water?

10 a. It was blowing all that air towards us. I mean,
11 it was strong, strong.

12 Q. Do you know what S-1 and P-2 refer to?

13 A. No.

14 Q. You don't know the term S-1?

15 A. No. Talking about the rescuers? Are you
16 talking ---?

17 Q. I'm just wondering if you know that term.

18 A. I didn't hear it a lot or anything.

19 Q. You don't remember at all?

20 A. No.

21 Q. P-2, doesn't ring a bell?

22 A. No.

23 Q. Was there any --- from your experience, I know you
24 weren't working on the production section, but in
25 terms of talking to the other miners, any sense of how

1 important production was at UBB and was it really
2 stressed or was safety stressed more than production?
3 Do you have any sense of that?

4 A. No. I mean, we just talked to 'em when they came
5 in on a mantrip because we was always coming out.

6 Q. Talk about production, talk about safety?

7 A. No, just talking, how you doing, buddy? You know,
8 be safe, stuff like that. We always done our safety
9 meetings at the mantrip before they left.

10 Q. How long would those last?

11 A. Probably about 30 minutes, because Dino would
12 always go --- he was good. He read out of everything.
13 I liked old Dino.

14 MR. MCGINLEY:

15 No further questions.

16 ATTORNEY WILSON:

17 Terry?

18 RE-EXAMINATION

19 BY MR. FARLEY:

20 Q. I have one. When you were interviewed by the
21 Massey lawyers after the explosion, were you the only
22 person being interviewed at the time?

23 A. Yes, sir.

24 Q. Okay.

25 A. There was a woman and a man and just me.

1 Q. Okay.

2 MR. GODSEY:

3 I just got a couple myself.

4 RE-EXAMINATION

5 BY MR. GODSEY:

6 Q. When you go back ---? When you went back in
7 behind the longwall to pump the water, what was the
8 travelway like? What was the condition of it?

9 A. Fairly decent, but it was low in spots, but ---.

10 Q. Did it have any supplemental support or install
11 entries, cribs or ---?

12 A. They had cribs. I mean, in certain spots they had
13 cribs all the way up to the ceiling we had to walk
14 through. That's why we couldn't get a scoop down
15 there.

16 Q. What about the ribs down there?

17 A. They was fine.

18 Q. All the way down?

19 A. Yeah.

20 Q. Did you ever notice any other entries beside it,
21 what condition they were in?

22 A. No, I didn't really pay attention. The only thing
23 I was worried about was getting them pumps in there,
24 getting 'em off my shoulders.

25 Q. And you said you all drilled those holes. What

1 did you say you drilled those holes with?

2 A. It was like an electric drill.

3 Q. How was it operated? What powered it?

4 A. One guy on one side, one guy on the other, pull
5 the trigger ---.

6 Q. I know, but was it --- did you have a cable to it
7 or was it battery operated?

8 A. It had a big battery ---. No, no. I'm lying to
9 you. It was air because it came off the air hose
10 going to it. Now I remember.

11 Q. Pretty loud?

12 A. Oh, yeah, real loud. We had earplugs. We had to
13 put earplugs in, it got so bad.

14 Q. Did they task train you on all that stuff?

15 A. Yes.

16 Q. When you were up on Tailgate 22 and early in the
17 morning before you all came out, did your supervisor
18 ever have to do any pre-shifting for the next coming
19 shift?

20 A. He always done it, the fire boss.

21 Q. Did he leave you all any ---?

22 A. Yeah. He done fire bossing and we always had two
23 black hats with us.

24 Q. But did you all have a methane monitor, a spotter?

25 A. No.

1 Q. You all were left alone without a spotter?

2 A. Yes.

3 Q. I think I have one more. Now, on the first day
4 when you went to Upper Big Branch, did you go to any
5 section --- travel to any working section?

6 A. The only thing I done was laid track.

7 Q. Laid track, okay.

8 MR. GODSEY:

9 That's all I have.

10 ATTORNEY WILSON:

11 Anything further?

12 MR. FARLEY:

13 No.

14 ATTORNEY WILSON:

15 All right. Then Mr. Smith, on behalf of

16 MSHA and the Office of Miners' Health, Safety and
17 Training, I want to thank you for appearing and
18 answering questions today. Your cooperation is
19 important to the investigation as we work to determine
20 the cause of the accident. Again, because we will be
21 interviewing other witnesses, we request that you not
22 discuss your testimony with anyone.

23 I do want to advise you of your rights

24 under the Mine Act. Any statement given by miner
25 witnesses to MSHA are considered to be an exercise of

1 statutory rights and protected activity under Section
2 105(c) of the Mine Act. If you believe that a
3 discharge, discrimination or any other type of adverse
4 action is taken against you for your cooperation with
5 this investigation, you are urged to immediately
6 contact MSHA and file a complaint under Section 105(c)
7 of the Act. Remedies under the Mine Act include back
8 wages and immediate reinstatement to your most recent
9 position, pending a full investigation of your
10 complaint. In order to file such a complaint, you
11 should contact the MSHA District 4 office in Mount
12 Hope. And you can find other information concerning
13 your rights under the Mine Act at MSHA's website,
14 which is [www.msha, M-S-H-A, .gov](http://www.msha.gov).

15 Before we go off the record, I want to
16 give you an opportunity to add any additional
17 information that you think might be helpful or go back
18 and clarify any answer that you gave or if you would
19 like to just make a statement, you may do so at this
20 time.

21 A. I have nothing.

22 ATTORNEY WILSON:

23 Then if there's nothing else, again,
24 thank you, and we'll go off the record.

25 * * *STATEMENT UNDER OATH CONCLUDED AT 3:00 P.M.* * *

1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Danielle Ohm, 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.



Danielle Ohm