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Transcript of the Testimony of Matthew Howerton

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STATEMENT UNDER OATH
OF
MATTHEW HOWERTON

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 Wednesday, July 8, 2010, beginning at 12:51 p.m.

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

DAVID STEFFEY

National Mine Safety and Health Academy

1301 Airport Road

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Beaver, WV 25813-9426

ALSO PRESENT:

DEBBIE ROBERTSON

Independent Investigation Team

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ATTORNEY BABINGTON:

My name is Matt Babington. Today is July 8th, 2010 around one o'clock. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is David Steffey, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record.

MS. ROBERTSON:

I'm Debbie Robertson with the independent team for the State of West Virginia.

MR. FARLEY:

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

MR. O'BRIEN:

I'm John O'Brien with the Office of Miners' Health, Safety and Training.

ATTORNEY BABINGTON:

There are several members of the investigation team also present in the room today. David Steffey will be conducting initial questioning. All members of the Mine Safety and Health

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

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

1 your assistance in this investigation.

2 You may have your personal attorney

3 present during the taking of this statement or another

4 personal representative if MSHA has permitted it, and

5 you may consult with your attorney or representative

6 at any time.

7 Your statement is completely voluntary.

8 You may refuse to answer any question and you may

9 terminate your interview at any time or request a

10 break at any time. For the record, do you have a

11 personal representative or Counsel with you today?

12 MR. HOWERTON:

13 No.

14 ATTORNEY BABINGTON:

15 Okay. We also have water available for

16 you if you'd like, a bottle of water. Your identity

17 and the content of this conversation will be made

18 public at the conclusion of the interview process and

19 may be included in the public report of the accident

20 unless you request your identity remain confidential

21 or your information would otherwise jeopardize a

22 potential criminal investigation. If you request us

23 to keep your identity confidential, we will do so to

24 the extent permitted by law.

25 That means that if a judge orders us to

1 reveal your name or if another law requires us to
2 reveal your name or if we need to reveal your name for
3 other law enforcement purposes, we may do so. Also,
4 there may be a need to use the information you provide
5 to us or other information we may ask you to provide
6 in the future in other investigations into and
7 hearings about the explosion. Do you understand?

8 MR. HOWERTON:

9 Yes.

10 ATTORNEY BABINGTON:

11 Do you have any questions?

12 MR. HOWERTON:

13 No.

14 ATTORNEY BABINGTON:

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

25 A court reporter will record your

1 interview. Please speak loudly and clearly. If you
2 do not understand a question asked, please ask the
3 interviewer to rephrase it. Please answer each
4 question as fully as you can, including any
5 information you've learned from someone else.

6 I'd like to thank you in advance for your
7 appearance here. We appreciate your assistance in
8 this investigation. Your cooperation is critical in
9 making the nation's mines safer.

10 After we've finished asking questions,
11 you'll have an opportunity to make a statement and
12 provide us with any other information that you believe
13 to be important. If at any time after the interview
14 you recall any additional information that you believe
15 might be useful, please contact any of us at the
16 contact information previously provided to you.

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

1 MR. FARLEY:

2 Matt, on behalf of the Office of Miners'

3 Health, Safety and Training, I'd like to advise you

4 that the West Virginia Coal Mine Health and Safety

5 Regulations, particularly Chapter 22(a), Article 1,

6 Section 22 of the West Virginia Code protect miners

7 against discrimination, also, and provide you with

8 some contact information and my business card and

9 business card for Bill Tucker, who's our lead

10 underground investigator. Should you experience any

11 possible discrimination or wrongful treatment as a

12 result of participating in this interview, please feel

13 free to contact us at those addresses.

14 MR. HOWERTON:

15 Okay.

16 MR. FARLEY:

17 Okay.

18 -----

19 MATTHEW HOWERTON, HAVING FIRST BEEN DULY SWORN,

20 TESTIFIED AS FOLLOWS:

21 -----

22 ATTORNEY BABINGTON:

23 David.

24 EXAMINATION

25 BY MR. STEFFEY:

1 Q. Could you please state your full name and spell
2 your last name?

3 A. Matthew Robert Howerton, H-O-W-E-R-T-O-N.

4 Q. Okay. Would you please state your address and
5 your telephone number?

6 A. (b) (7)(C)(b) (7)(C) in --- (b) (7)(C) ,
7 (b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C) ,
8 and the ZIP code is (b) (7)(C).

9 Q. Okay.

10 A. Phone number is (b) (7)(C) .

11 Q. Are you appearing here today voluntarily?

12 A. Yes.

13 Q. Has anyone made any promises concerning the
14 testimony you're about to give?

15 A. No.

16 Q. Has anybody given you anything in exchange for the
17 testimony you're about to give?

18 A. No.

19 Q. Has anyone made any threats concerning the
20 testimony you're about to give?

21 A. No.

22 Q. Has anyone else interviewed you concerning the
23 accident or your knowledge of the conditions in the
24 mine?

25 A. No.

1 Q. Matt, how many years of mining experience do you
2 have?

3 A. Five in August.

4 Q. Would you give me a brief description of your coal
5 mine employment history?

6 A. Just what I've done? I started off on move crew
7 for probably about two years. Then from there I went
8 to run the scoop on the section for probably about a
9 year and a half or so. Then from there, let's see, I
10 went to bolting top to running the miner to running
11 the scoop to putting in structure to running the
12 miner, and now I'm on the belts outside.

13 Q. Okay. And do you have any mining certifications?

14 A. Yeah.

15 Q. And what are they?

16 A. Assistant foreman.

17 Q. Are you presently employed?

18 A. Yeah.

19 Q. Where at?

20 A. Marfork Coal.

21 Q. Okay. When did you start at Marfork?

22 A. I'm thinking around August.

23 Q. Okay.

24 A. Yeah, I think.

25 Q. August of last year?

1 A. Yeah.

2 Q. Okay. So what's your present title again?

3 A. I'm a foreman over outside belts.

4 Q. Okay. Now, when did you work at Upper Big Branch?

5 A. Between around --- sometime between January and
6 February of '09 up until around August. I remember I
7 was still there in July, but I'm pretty sure it's
8 August.

9 Q. Okay. And where'd you work at prior to that?

10 A. Marfork.

11 Q. Marfork. How much of your mining history's with
12 Massey?

13 A. All of it.

14 Q. All of it. Now, when you worked at Marfork, what
15 section did you work off?

16 A. Two section.

17 Q. Or I'm sorry. When you worked at UBB, my
18 apologies.

19 A. I worked a little bit of everywhere, actually.
20 For maybe three weeks to a month I worked on One
21 Section.

22 Q. Uh-huh (yes).

23 A. Then I went to Three section on the other side of
24 the mountain. Then I went to Two section, and then
25 for the rest of the time I was basically outby,

1 putting in structure.

2 Q. Okay. And was the longwall running when you were
3 there or were they just getting ready to run it
4 or ---?

5 A. We was putting in the structure for the longwall.

6 Q. All right. So were you on the sections that drove
7 up the headgate or the tailgate of the drive panel?

8 A. One section.

9 Q. One section. Which section was that?

10 A. The headgate.

11 Q. The headgate. So you worked on the headgate of
12 the current longwall panel?

13 A. The first panel? I'm not sure exactly ---.

14 Q. This panel.

15 A. Where we at?

16 Q. This is the longwall, current longwall panel.

17 This is the panel where the accident occurred. This
18 is the Bandytown fan out here.

19 A. Okay. The very first panel we was putting in the
20 structure for.

21 Q. All right. I believe this would be it. All
22 right. Which portal did you enter traveling to this
23 section where you were putting in structure?

24 A. We started off at the Performance and then we
25 portaled at the Birchton Portal first, a few weeks.

1 Q. Now, where is the Birchton Portal?

2 A. That is right there at Birchton where the tunnel
3 goes across. I believe it's where they was portaling
4 for One and Two section at the time of the explosion.

5 Q. Is this also known as the Ellis Portal?

6 A. Yeah, Ellis.

7 Q. Okay. All right. And who did your pre-op check
8 on your mantrip prior to departure?

9 A. That would've been Marvin Perdue.

10 Q. Okay. And how long was your travel time to the
11 section?

12 A. Let's see. I'm thinking around 45 minutes.

13 Q. You ever find any problems with that mantrip
14 during the pre-op check?

15 A. Not that I can recall.

16 Q. Prior to going inside the mine, who pre-shifted
17 the area that you and the men you were working with
18 were going to work?

19 A. Pre-shifted it?

20 Q. Uh-huh (yes).

21 A. To be honest, I'm not too sure.

22 Q. Okay.

23 A. I'm trying to remember who was there.

24 Q. Do you know if the area was pre-shifted?

25 A. I'm not a hundred percent, but I'm pretty sure it

1 was.

2 Q. Anybody ever discuss with you any hazards found in
3 the pre-shift book?

4 A. No.

5 Q. Did you ever go up there to where you were going
6 to --- the area that you were going to be working in
7 and find a hazard that you had to take care of that no
8 one had told you about prior to entering the portal?

9 A. No. When we would get, if there was any hazards
10 Marvin would let us know what needed to be done.

11 Q. Okay. And how would he do this?

12 A. Just basically tell us if timbers needed set. I'm
13 not sure who it was that told him.

14 Q. Okay.

15 A. But they did instruct me.

16 Q. Okay. Did you travel through any equipment doors
17 on your way to this area?

18 A. Let's see.

19 Q. Track doors?

20 A. There's two sets of doors when you first start in
21 the portal. And there was two more sets right below
22 --- I'm thinking right below 78 Break, right in that
23 area. I don't remember what break, but it's around
24 that area.

25 Q. Okay. Were these doors automatic or did they have

1 to be opened by hand?

2 A. You had to push the button, the automatic doors.
3 Sometimes that would mess up. The jack would mess up
4 and you would actually have to stop the mantrip and
5 get out and open them.

6 Q. Okay. What condition were these doors in?

7 A. They was in good condition. At one point I think
8 a mantrip or something caught one of the doors and
9 dent it, but I don't remember --- I don't remember it
10 really being damaged.

11 Q. Ever see anybody pull up to these doors in a
12 mantrip and bump them?

13 A. No.

14 Q. No?

15 A. We would get out and open them.

16 Q. What about supply motors with supply cars
17 attached? Did you ever see any of those go through
18 these doors?

19 A. I think once or twice.

20 Q. How many cars did they typically have ---

21 A. One.

22 Q. --- on a motor? One?

23 A. Yes.

24 Q. Could they fit between the two double doors and
25 shut the doors or did --- how'd they go through the

1 doors? Did they have to open both sets to go through
2 or could they open one door and pull in? Explain to
3 me how they did that.

4 A. They could open the one door, pull the motor in,
5 and then they'd have to shut that door, and then they
6 can open the other one.

7 Q. They always do that?

8 A. I couldn't tell you.

9 Q. Okay.

10 A. From what I've seen, yes.

11 Q. Did you ever find these equipment doors open?

12 A. I think maybe one set a few times.

13 Q. Do you remember which set that was?

14 A. I don't remember coming in or going out. I don't
15 remember, but if I could tell you one or the other, it
16 was probably actually one of each at different times.

17 Q. Okay. Did you ever pull up to the first set of
18 equipment doors and when you opened it, you found the
19 other set open?

20 A. I have, but I don't remember if it was there.

21 Q. Okay. When you would approach equipment doors,
22 did you notice anything about the air? Could you tell
23 anything?

24 A. I'm trying to think. When you went to shut the
25 doors, it actually sucked them shut.

1 Q. Okay. And where was this at?

2 A. Right around 78.

3 Q. Right around 78. Now, we've got a map here in
4 front of us. Do you remember about where these doors
5 were at on this map?

6 A. Let me see. You've got the Glory Hole.

7 Q. This is the Glory Hole right here.

8 A. Which I've never went down there, but I remember
9 there was a switch. Let's see.

10 Q. And you got break numbers off to the side here, if
11 that helps.

12 A. I'm trying to picture it. It's been a long time
13 since I've been in there.

14 Q. I understand.

15 A. Turned at 78 and you would have went about two
16 break to the doors, I'm thinking. No. I can't really
17 remember.

18 Q. When you first started in Upper Big Branch, did
19 anybody ever go over the mine map with you and the
20 escapeways? What did you do on your first day?

21 A. When I first went in, I had to walk out. They
22 just explain everything to you, which it's a big mine.
23 You don't really comprehend everything when they show
24 it to you.

25 Q. Uh-huh (yes).

1 A. And task trained me on the equipment and ---.

2 Q. Where'd you go in the mine on your first day?

3 A. On my first day I went to One section on evening
4 shift.

5 Q. Did you go anywhere else?

6 A. I don't think. I'm trying to think. No, no, no.

7 I take that back. My first day I went to Three
8 section, and then I worked that for one shift. I can
9 remember, because I stayed hung up all night. The
10 bottom busted up. The next day I went to Three
11 section --- or One section.

12 Q. What did they tell you about escapeways?

13 A. What do you mean?

14 A. Did they go over the escapeways? What did they
15 say about them?

16 A. They just explained it on the map. Other than
17 that ---.

18 Q. What did they explain to you?

19 A. Just the way the intake goes.

20 Q. Okay. Can you show me your primary and secondary
21 escapeways here?

22 A. The primary and secondary?

23 Q. Uh-huh (yes).

24 A. Primary would be the green, ---

25 Q. Okay.

1 A. --- which would be your intake. Secondary would
2 be your track. It should be right here, but it's ---.

3 Q. No, that's about Break 95 there.

4 A. Yeah. But I don't remember where I was when I
5 first started up there, though.

6 Q. Okay. Well, let's talk about those doors at Break
7 78.

8 A. Okay.

9 Q. Now, if you'll notice on the map here, there's an
10 area right there where the intake crosses over the
11 track, and it crosses between two sets of doors. Do
12 you remember that?

13 A. The intake crossing the track?

14 Q. Yeah, right in here.

15 A. That would be the doors right below 78.

16 Q. Is that the doors that you're talking about?

17 A. Yeah.

18 Q. Okay. All right. Let's go back to finding a set
19 open. Did you ever find these doors open?

20 A. I don't remember ever finding both sets open, but
21 I'm pretty sure we found one or the other open.

22 Q. Okay. Now, were these the doors that you said
23 would suck shut?

24 A. I don't remember if it's these or the ones when
25 you first start in. I'm thinking these.

1 Q. Okay. How could you tell that you were
2 approaching an outby door? Let's say you were
3 approaching from the outby side area and the first
4 door that you came to was closed. Was there any way
5 to tell if the inby door was open or closed?

6 A. I guess you would have to open up the little man
7 door on it to see.

8 Q. Okay. Do you know why they took the intake across
9 the track at that point?

10 A. No.

11 Q. Anybody ever explain that?

12 A. Not that I know of.

13 Q. Okay. Let's talk about --- you said you worked on
14 the headgate section, if I remember correctly, and
15 putting in structure for the longwall; is that
16 correct?

17 A. Yeah, I run the miner for maybe three weeks.

18 Q. Okay.

19 A. And then I was on Three section for a little
20 while. I don't remember how long. The majority of my
21 time I was putting in structure.

22 Q. Okay. Did you ever hear of the floor bursting and
23 methane coming out of the floor or out of the roof?

24 Did you ever hear of any methane problems?

25 A. Somebody --- I don't remember who it was that was

1 telling me a story where, I guess, a long time ago
2 something like that would happen. I don't remember if
3 it was the floor or what. And they ended up having to
4 shut the mine down or something for a while.

5 Q. And you said you ran the miner for about three
6 weeks?

7 A. Yeah.

8 Q. Is that what you said? Okay. And was that your
9 first time running the miner at this mine?

10 A. Yeah. Well, I run the one the one night on Three
11 section.

12 Q. Okay.

13 A. And then that following night I was up there.

14 Q. What type of training did you receive on that
15 miner prior to beginning your shift? How'd they train
16 you?

17 A. They just took me up there and showed me, you
18 know, what the controls and everything was.

19 Q. Okay. Did they go over the methane monitor or
20 anything?

21 A. The water sprays. Which monitor, the one on the
22 miner or the ---?

23 Q. The one on the miner.

24 A. Not that I remember.

25 Q. Do you remember any numbers? Did it display any

1 numbers while you were cutting?

2 A. Zero. There was one time, though, it did shoot
3 up, I think, to like, 1.1. But what we ended up
4 having to do was change out the sniffer. It had got
5 wet. It had leaked.

6 Q. Who decided that the sniffer had gotten wet?

7 A. Well, we discussed it with the electricians --- I
8 guess they might've had problems with it before, and
9 the boss.

10 Q. Okay. Did you ever take a cut by the curtain?

11 A. No. The curtain was there. You had to --- bad
12 part about it, you had to climb up on a ladder in a
13 lot of places to actually hang it up. I mean, I would
14 roll it up a little bit to be able to get the miner in
15 there.

16 Q. Did you use exhausting or blowing face
17 ventilation?

18 A. Exhausting, I think. I'm trying to remember.

19 Q. What'd they tell you about your approved
20 ventilation plan? Anybody ever go over that with you?

21 A. They went over a roof control plan at the mantrip.

22 Q. Uh-huh (yes).

23 A. I don't remember anything on it.

24 Q. What about your ventilation plan?

25 A. Not that I recall.

1 Q. Did you ever hear of anybody bridging out the
2 methane monitor?

3 A. No.

4 Q. Nowhere in this mine?

5 A. Not that I know of.

6 Q. Well, how would you describe the roof, the rib and
7 the floor where you worked at?

8 A. The roof, I didn't think it was all that good. I
9 mean it would crack up and fall out. You'd have to
10 take short cuts. The bottom I didn't think was bad.
11 The ribs were good in some spots. Some spots they
12 weren't. Basically I figured it was where it was just
13 so high, because there was some spots that was, like,
14 12 foot high, 10 foot high.

15 Q. Did you ever have any problems with water up
16 there?

17 A. Water? When I was there, we didn't, but I did
18 hear about, I guess, water coming in. I think it was
19 around the vacation in November.

20 Q. And did you all ever have any problems with gas
21 wells, known or unknown?

22 A. Not that I know of.

23 Q. Did anybody ever discuss the Lower Eagle Seam
24 below you?

25 A. No.

1 Q. Did you know there was a coal seam below you?

2 A. I heard that there was, I think, one above it, but
3 I don't think I've ever heard of one being below.

4 Q. No one ever discussed the seam that was about five
5 feet below you, five to eight? Anybody ever talk
6 about that?

7 A. No.

8 Q. Did they talk about the seam above you?

9 A. Marvin just mentioned, you know, a coal seam above
10 us, because that's where we was talking about the
11 Glory Hole.

12 Q. Well, did they tell you anything else about the
13 seam above you?

14 A. No.

15 Q. Now, you mentioned you thought the roof was kind
16 of bad up there.

17 A. Yeah.

18 Q. What type of problems did it give you? What type
19 of problems did you have?

20 A. Well, just a lot of the times it would just crack
21 up, and when you'd be cutting, you know, it started to
22 come out. And you just had to shorten the cut and
23 bolt it up.

24 Q. Anybody ever express any concerns to management
25 about that?

1 A. I don't think, because we just done what we though
2 was, you know, right, shorten the cuts up. And they
3 was cable bolting, but that was, like, right when I
4 first started. They told me they had to take 15-foot
5 cuts, so they did tell me, you know, that I would be
6 taking short cuts. I wouldn't be able to take the
7 deep cuts or nothing.

8 Q. Prior to taking your cut, who took your methane
9 check?

10 A. Me.

11 Q. So did you have a spotter?

12 A. Yeah.

13 Q. What kind of spotter was it?

14 A. I don't remember the name of it. It's the one
15 with the two-inch readout, the big readout. I can't
16 tell you what it's called.

17 Q. Did you take it home?

18 A. No.

19 Q. Left it at the mines?

20 A. Yeah.

21 Q. Who calibrated it and maintained it?

22 A. I'm assuming the outside guys.

23 Q. Did you ever pick up any methane on it?

24 A. No.

25 Q. Did you take any other gas checks during the cut?

1 A. Yeah, every 20 minutes you have to take a gas
2 test.

3 Q. Okay. And you mentioned that the miner was
4 equipped with a methane sensor, but you only saw it
5 pick up methane one time?

6 A. Yeah.

7 Q. And you said that the electrician changed the
8 sensor out?

9 A. Yeah, the sniffer on it.

10 Q. Do you remember who this electrician was?

11 A. I'm trying to think of his name. I wasn't up
12 there very long. I think that was Larry something.

13 Q. Did you ever see any methane monitor in
14 malfunction mode?

15 A. I don't think I've ever seen it.

16 Q. Okay.

17 A. No.

18 Q. Let's go back to the approved methane and dust
19 control plan. When changes were made to this plan,
20 how was the crew informed?

21 A. Well, anytime --- I can't think of any changes
22 being made, but I know at other mines they always went
23 over everything with you. But I can't think of
24 anything being changed while I was there.

25 Q. Did you ever notice if the mine ventilation plan

1 was posted on the bulletin board outside?

2 A. I never noticed.

3 Q. Do you ever recall any ventilation problems, any
4 air reversals, anything like that?

5 A. No. I do remember I always thought up on One
6 section, the little time I was there, I thought it was
7 warm, but I mean ---.

8 Q. Did you ever have any problem with low air ---

9 A. No.

10 Q. --- the low air volume?

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

12 Q. Were you ever in this mine when a citation was
13 issued for low air or any other violations like that?

14 A. I don't think. I know on Three section they had
15 came in --- I can't think of the inspector. And he
16 had, I think, wrote citations on some curtain, but
17 other than that, I can't recall any.

18 Q. Now, you took your gas check prior to the cut?

19 A. Yeah.

20 Q. What else did you do prior to the cut?

21 A. What do you mean?

22 Q. Prior to putting the miner in the coal, what else
23 did you do?

24 A. Well, we checked the water sprays, but we never
25 had any problem with them. I guess it was just that

1 much pressure. I think I've cleaned one since I've
2 run the miner for that time.

3 Q. Uh-huh (yes).

4 A. Just gas test. Usually at the --- up towards the
5 face I'd draw the curtain up a little bit so I could
6 get the miner over in there. That's all I can think
7 of.

8 Q. Nobody took an air reading at the end of the
9 curtain?

10 A. Well, the boss does that.

11 Q. So he took the air reading at the end of the
12 curtain?

13 A. Yeah.

14 Q. Okay. Could you run your scrubber?

15 A. Could I?

16 Q. Yeah, did you run your scrubber?

17 A. Yeah.

18 Q. Did your plan allow you to run your scrubber?

19 A. Yeah.

20 Q. All right. Do you know when the section boss
21 would typically do his on-shift exam? Did you ever
22 see him do that?

23 A. I never really paid attention, to be honest with
24 you.

25 Q. Okay. How many production shifts ran up there?

1 A. Two.

2 Q. Two? How many maintenance shifts?

3 A. Just the one.

4 Q. Did they run coal on the maintenance shift?

5 A. No.

6 Q. All right. How would you characterize most of
7 your time in this mine? Was most of your time in this
8 mine installing belt structure on the section?

9 A. Belt structure.

10 Q. Belt structure. So you mostly put in the belt
11 structure for the longwall?

12 A. Yeah.

13 Q. Okay. That's a pretty heavy structure, ain't it?

14 A. Some of it.

15 Q. Some of it? Did you ever see Chris Blanchard in
16 the mine, or Jason Whitehead?

17 A. Actually, I've seen both of them once or twice ---

18 Q. Were they ever ---?

19 A. --- not a whole lot.

20 Q. Not a whole lot?

21 A. No.

22 Q. Were they ever around when you were working?

23 A. They actually walked the panel while we was
24 putting in structure, if I can remember, because
25 usually the times they did come through was the times

1 we was sitting down, eating lunch.

2 Q. What'd they say?

3 A. Nothing.

4 Q. Nothing? Did they ever have any conversations
5 with your boss about the belt structure, the rate you
6 guys were getting the structure installed?

7 A. No. We put in two to three breaks, I'm thinking,
8 a day. And that's not even bolting it up. That's
9 just putting, you know, the bolts in it but not
10 tightening it down. And they seemed fine with that.

11 Q. Did you ever hear of them going to the section?

12 A. I think that's where they was actually coming from
13 when they was walking back.

14 Q. And did you ever know of them to go into the mine
15 and make any ventilation changes or did you ever hear
16 about that?

17 A. I think one time they had everybody stay out. I
18 don't remember who the mine foreman was at the time,
19 but the mine foreman and I think that somebody else
20 had went in to change something. I don't remember.
21 That's all I can remember from that.

22 Q. When you were up on the section, how many miners
23 did you all --- continuous miners did have up there?

24 A. Two.

25 Q. Did you use sweeping air or split air?

1 A. I think it was split.

2 Q. So did you run both miners at the same time?

3 A. No, it was sweeping. Split was Parker.

4 Q. Okay. Did you run both miners here at the same
5 time?

6 A. No. That's one thing I did enjoy, was I could ---
7 usually I'd stay in, like, one. I could get a cut,
8 back up and just sit and wait, check my miner and get
9 everything ready.

10 Q. What about when you were loading the cleanup car?
11 What was the other car doing?

12 A. Waiting.

13 Q. Waiting? How was the rock dusting in this mine?

14 A. Some places it was good and some places it wasn't.
15 Usually --- well, go ahead, because ---.

16 Q. No, no. Go on.

17 A. Usually the scoop man would come by. He'd clean
18 up and dust. I'd help throw dust if I had time,
19 because I was always waiting.

20 Q. Uh-huh (yes).

21 A. But really ribs and stuff sloughed off a good bit
22 so when they would dust, it really didn't do that much
23 good later on.

24 Q. Now, the longwall belt that you installed, was the
25 track in the same entry?

1 A. Of the structure?

2 Q. Yeah.

3 Q. No.

4 Q. Okay.

5 A. That was a break over.

6 Q. Okay. How was the rock dusting in the break that
7 you were installing structure in?

8 A. Some of it was good and some of it wasn't. Just
9 usually --- it was good in spots, but where the ribs
10 flaked off it wasn't.

11 Q. How'd they rock dust that entry?

12 A. They had a duster for the scoop up there around
13 where the mother drive was, but they've used that
14 before.

15 Q. Could you run a scoop beside that belt, going ---?

16 A. No. It had to be dusted before the belt went in.

17 Q. Okay. So what about once --- what about after the
18 belt was in? How'd they dust it then?

19 A. The belt wasn't all the way in when I left,
20 so ---.

21 Q. What about in other areas where the belt was in?

22 A. You'd have to take a track duster with a hose,
23 which I've never done that, you know, up there. So
24 I'm not sure exactly if that's how they done it or
25 not.

1 Q. Did you ever see them rock dusting?

2 A. Yeah.

3 Q. How many rock dusters did they have?

4 A. It just the motor man.

5 Q. Just the motor man? How many bolter men did they
6 have?

7 A. I think two.

8 Q. Two per shift or two per ---?

9 A. That I'm not sure. I can remember two on dayshift
10 and two on evening shift.

11 Q. Okay. So their job was supply the sections and
12 rock dust the beltways?

13 A. Yeah, they could dust, too.

14 Q. And they could get all that done in one shift?

15 A. That, I don't know.

16 Q. Have you ever been underground, working when a
17 ventilation change was made?

18 A. Not that I know of.

19 Q. Okay. I may have already asked this. Forgive me
20 if I have, but do you ever remember any air reversals?

21 A. No.

22 Q. Were you ever told when you were on the section up
23 there to stop cutting coal because there was an
24 inspector coming?

25 A. No.

1 Q. Were you ever told that there was an inspector
2 coming?

3 A. No.

4 Q. What about anywhere else in the mine?

5 A. What do you mean?

6 Q. When you were working, installing structure, did
7 anybody ever call in on the mine phone and say there
8 was an inspector coming, anything like that?

9 A. Not that I can think of. You'd actually have to
10 go a few breaks to get to the phone, so that would
11 be ---.

12 Q. Where was the phone at on the working section?

13 A. On the working section it was right up near the
14 feeder.

15 Q. Right up near the feeder? So the inspector ever
16 come up on you up there and surprise you?

17 A. The only inspector I can think of seeing up there
18 was just one. I was on evening shift. That's the
19 only time I can remember seeing an inspector up on
20 that section.

21 Q. And what happened after that?

22 A. What do you mean?

23 Q. Did he cite the section for anything?

24 A. I don't remember. I don't think, but I don't
25 remember.

1 Q. So nobody ever called in and told you the
2 inspectors were coming? You don't ever remember that
3 call coming in?

4 A. No.

5 Q. I don't guess you'd have any idea when the
6 ventilation problems at this mine started, would you?

7 A. What do you mean?

8 Q. Well, do you ever recall the mine ever being shut
9 down due to ventilation issues?

10 A. No. I can remember there was once we was putting
11 in structure and they ended up pulling everybody outby
12 over gas. And I think that the owl took control of
13 the mines for a couple days.

14 Q. And when was this?

15 A. I don't remember. It would've been between,
16 around June or July, I'm assuming.

17 Q. Where were you at and were you installing belt
18 structure when this took place?

19 A. Yeah, I was outby.

20 Q. Okay. Where did they find gas at?

21 A. I'm thinking on One section. I don't really
22 remember.

23 Q. One section meaning the headgate section?

24 A. Yeah.

25 Q. Okay. So they were down, what, a couple of days

1 over this?

2 A. I don't remember if they was down a couple days.

3 I don't think they was, but I just remember every day
4 MSHA was there after that.

5 Q. Did you ever hear any talk in the bathhouse about
6 it, about what was going on?

7 A. No. When I went in the bathhouse, I got dressed,
8 went out to the motor barn, got ready, and then when I
9 left, I got dressed and left. I didn't stick around.

10 Q. Did you ever have your upcoming work shift delayed
11 or cancelled due to any problems in the mine?

12 A. I don't remember if it was one or two days, but I
13 think they had problems with the fan and nobody could
14 work.

15 Q. What kind of problems did they have?

16 A. I don't know.

17 Q. Do you remember when this was?

18 A. No. I could just remember. I think I was on the
19 --- I'm thinking I was on Three section and the fan on
20 the other side of the mountain was messed up, but we
21 still couldn't work.

22 Q. Okay. Did you feel like --- what's your feelings
23 about this mine as far as pressure to run coal goes?

24 Did you feel like there was pressure?

25 A. I didn't, no. See, when I was putting in the

1 structure, they wanted me to go somewhere else and run
2 a miner for them for a little while, and I was
3 supposed to go back. And I was actually mad when they
4 didn't send me back, because I liked working there. I
5 thought it was nice.

6 Q. Who asked you to --- who asked you to go somewhere
7 else?

8 A. Jamie Ferguson.

9 Q. And who is he?

10 A. He was the vice-president.

11 Q. Okay. What's he doing now?

12 A. I think he's the president.

13 Q. All right. I may have already asked this. To
14 your knowledge, was mine ventilation adequate at all
15 times?

16 A. Probably not. What do you mean, like, curtain or
17 stoppings?

18 Q. Curtain, volume, stoppings. It's all one
19 ventilation system, so was it adequate at all times
20 or ---?

21 A. I'd say there have been times where the curtain
22 wasn't, you know, completely right.

23 Q. Okay. What about in the outby areas on the
24 stopping lines? How was the stoppings plastered?

25 A. Some of them was with foam. A lot of them was

1 with plaster.

2 Q. So you all used those ---?

3 A. I don't remember if they used B-Bond or not.

4 Q. So you all had those little canisters of spray
5 foam that you used?

6 A. They rained a couple of them, that I can remember.

7 Q. Rained a couple of them?

8 A. Yeah.

9 Q. Did they spray anywhere else on it?

10 A. A few of them, yeah.

11 Q. Okay. Do you think miners were ever subjected to
12 retaliation and threats for reporting safety issues or
13 other concerns?

14 A. Not that I'm aware of.

15 Q. Do you know of any safety issues that were ever
16 reported?

17 A. Not that I can think. If I would sit and think
18 about it, I could probably come up with something, but
19 ---. Oh, the only safety issues I could think of
20 would've been, like, the ribs or something, but those
21 were rib bolted.

22 Q. Did you ever have any concerns?

23 A. No. Just occasionally with the top, but, you
24 know, we shortened the cut.

25 Q. Did you ever --- did you ever discuss the ribs

1 with your management outside?

2 A. No.

3 Q. Did you ever hear of any concerns being discussed
4 with management outside?

5 A. There was talk about the rib bolting. I think
6 they wanted it done more than it was. I don't
7 remember the spacings.

8 Q. Okay.

9 MR. STEFFEY:

10 All right. No further questions right
11 now.

12 ATTORNEY BABINGTON:

13 Okay. Terry?

14 EXAMINATION

15 BY MR. FARLEY:

16 Q. Matt, I'm going to try to clarify a few things, so
17 I may work backwards here, so bear with me. You left
18 UBB in August of 2009; is that about right?

19 A. I think, right around there.

20 Q. Okay. Now ---?

21 A. I can't remember exactly.

22 Q. All right. You were talking about being withdrawn
23 because of some gas problems in the One section, the
24 headgate development section; is that right?

25 A. Yeah.

1 Q. Okay. Now, do you know about where the headgate
2 section was operating at that time?

3 A. No.

4 Q. Was the --- I'm sorry, go ahead.

5 A. If I'm thinking right, I'm thinking it was up
6 through here somewhere, but I don't know, to be honest
7 with you.

8 Q. Okay. Was it for the Bandytown fan you came
9 online?

10 A. That I don't know.

11 Q. Okay. Would it have been past the diagonal here
12 which connects the tailgate entries over to the
13 headgate entries? And when I say past, I mean inby
14 there?

15 A. I think. Once I started doing this, I never
16 really went up there, so I don't know exactly where
17 they was.

18 Q. Okay. But did this methane problem occur while
19 you were installing structure?

20 A. Yeah.

21 Q. Okay. Do you recall what the quantity of methane
22 was, how much was detected?

23 A. I'm thinking I heard three percent.

24 Q. Okay. Do you recall when you heard that?

25 A. No. I just remember hearing it.

1 Q. Okay. All right. Now, earlier Mr. Steffey asked
2 you about some doors. Now, the airlock doors
3 installed along the UBB track ---

4 A. Yeah.

5 Q. --- you indicated that you would look through a
6 man door in the supply, in the door to see if the next
7 door was open or closed; is that right?

8 A. No, I didn't say that that's how I did it.

9 Q. Okay.

10 A. I just said that that's how I would assume you
11 would do it.

12 Q. Okay. All right. Well, you did say that the
13 airlock door had a man door?

14 A. Yeah.

15 Q. Did all of the --- all of the airlock doors have a
16 man door?

17 A. I don't remember. I think, but I'm not a hundred
18 percent.

19 Q. Okay. Well, let's take the doors at 78, for
20 example. Do you recall if they were provided with man
21 doors?

22 A. That's the ones I was trying to picture, because I
23 remember that there was ones on the other one side
24 when you first start in. I don't want to say yes,
25 because I don't ---.

1 Q. That's okay.

2 A. --- I don't know.

3 Q. That's fine. Well, the airlock doors that had man
4 doors, do you recall if the man door was built into
5 the wing walls of the door or into the door itself?

6 A. It was in the middle of the door.

7 Q. Okay.

8 A. A question that simple, you'd think I'd remember.

9 Q. Okay. Well, I think maybe you just answered. Do
10 you ever recall seeing just the man door --- he asked
11 you if you've ever seen doors left, left open. Do you
12 recall instances where the man door, the smaller door
13 was left open?

14 A. To be honest with you, I never really paid
15 attention.

16 Q. Okay. All right. When you worked at UBB, did you
17 work as a supervisor at any time?

18 A. No.

19 Q. Were an hourly employee for your entire time
20 there?

21 A. Yeah.

22 Q. Okay. Now, am I to understand that you became the
23 supervisor when you went to Marfork?

24 A. Yeah, I've just been doing that recently.

25 Q. Okay. Are you now a salaried employee or still an

1 hourly employee?

2 A. Salaried.

3 Q. Okay. And you were at --- when you were at UBB
4 you mentioned working with Marvin Perdue while
5 installing the longwall structure. Was Marvin your
6 supervisor?

7 A. Well, Mark Ferrell was actually the supervisor.

8 Q. Okay.

9 A. Marvin was --- I don't know if he was considered a
10 supervisor or just like a crew leader.

11 Q. Okay.

12 A. But I looked at him as my boss.

13 MR. FARLEY:

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

16 ATTORNEY ROBERTSON:

17 No, you asked everything I was going to
18 ask.

19 RE-EXAMINATION

20 BY MR. STEFFEY:

21 Q. Just a few more questions. Do you ever recall
22 hearing about any methane blowers in the floor of the
23 mine? Did you ever hear of that?

24 A. What do you mean?

25 Q. Methane blowing out of the floor and making a real

1 loud sound as it was coming out, did you ever hear
2 about that?

3 A. That was at where I was telling you the story that
4 I heard.

5 Q. Uh-huh (yes).

6 A. That's what that was to do with.

7 Q. Okay. Do you remember about when that happened?

8 A. No. I'm assuming that was years ago.

9 Q. Okay. Where were you at the time of the accident?

10 A. At the time of the accident? Let's see. I was
11 working for Marfork. You want to know where I was at
12 the time or where I was working?

13 Q. Just where you was working.

14 A. Low Gap ---

15 Q. Okay.

16 A. --- for Marfork.

17 Q. And who told you about the accident?

18 A. I actually figured it out going up the road,
19 because on my way home there was beaucoup's of
20 ambulances, and I seen inspectors. So I just, you
21 know, heard on the news.

22 Q. And then you heard it on the news?

23 A. Yeah.

24 Q. Did you suspect before you heard it on the news
25 that there'd been an explosion?

1 A. I didn't really suspect an explosion. I just
2 figured something bad happened.

3 Q. Okay. Did you go to the mine property ---

4 A. No.

5 Q. --- after that at any point?

6 A. No.

7 Q. Okay. Is there anything you'd like to add that
8 could help us determine what happened?

9 A. I can't think of anything. The only thing, I was
10 thinking a gas well or something like that, but all
11 that you alls have covered. Nothing that I can think
12 of.

13 MR. STEFFEY:

14 Okay. I got no further questions.

15 ATTORNEY BABINGTON:

16 Okay. On behalf of MSHA and the Office
17 of Miners' Health, Safety and Training, I want to
18 thank you for appearing and answering questions today.
19 Your cooperation is very important in the
20 investigation as we work to determine the cause of the
21 accident. We request that you not discuss your
22 testimony with any person aside from a personal
23 representative or Counsel. After questioning other
24 witnesses, we may call you if we have any follow-up
25 questions. If at any time you have additional

1 information regarding the accident that you'd like to
2 provide to us, please contact us at the contact
3 information provided to you.

4 If you wish, you may now go back, go back
5 over any answer you've given during this interview,
6 and you may also make any statement that you'd like to
7 make at this time.

8 A. No.

9 ATTORNEY BABINGTON:

10 Okay. Again, I want to thank you for
11 your cooperation in this matter.

12 A. Thank you.

13 ATTORNEY BABINGTON:

14 Off the record.

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STATEMENT UNDER OATH CONCLUDED AT 1:45 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20

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23

Alison Salyards

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