



**SARGENT'S  
COURT  
REPORTING**

**Quality Work. Quality People.**

**Transcript of the Testimony of John Gillenwater**

**Date:** August 10, 2010

**Case:**

**Printed On:** August 23, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH

OF

JOHN GILLENWATER

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 & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Tuesday, August 10, 2010, beginning at 8:07 a.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

1                   A P P E A R A N C E S

2

3   BARRY KOERBER, ESQUIRE

4   West Virginia Office of Miners' Health,

5   Safety and Training

6   1615 Washington Street East

7   Charleston, WV 25311

8

9   POLLYANNA HAMPTON, ESQUIRE

10   U.S. Department of Labor

11   Office of the Regional Solicitor

12   1100 Wilson Boulevard

13   22nd Floor West

14   Arlington, VA 22209

15

16   JOHN O'BRIEN

17   Safety Inspector

18   West Virginia Office of Miners' Health,

19   Safety and Training

20   Welch Regional Office

21   891 Stewart Street

22   Welch, WV 24801-2311

23

24

25

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TERRY FARLEY

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

ERIK SHERER

Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

BETH SPENCE

West Virginia Independent Investigation

(b) (7)(C)

(b) (7)(C)

(b) (7)(C) (WIFE)

PERSONAL REPRESENTATIVE

I N D E X

1		
2		
3	DISCUSSION AMONG PARTIES	6 - 8
4	OPENING STATEMENT	
5	By Attorney Hampton	8 - 13
6	STATEMENT	
7	By Mr. Farley	13
8	WITNESS: JOHN GILLENWATER	
9	EXAMINATION	
10	By Mr. Farley	14 - 30
11	EXAMINATION	
12	By Mr. Sherer	30 - 38
13	EXAMINATION	
14	By Ms. Spence	38 - 40
15	RE-EXAMINATION	
16	By Mr. Sherer	40 - 41
17	CLOSING STATEMENT	
18	By Attorney Hampton	41 - 42
19	CERTIFICATE	43
20		
21		
22		
23		
24		
25		

	EXHIBIT PAGE		
			PAGE
3	NUMBER	DESCRIPTION	IDENTIFIED
4	One	Subpoena	7
5	Two	Return of Service	7
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 -----  
3 ATTORNEY KOERBER:

4 My name is Barry Koerber. I'm with the  
5 Attorney General's Office, and I'm a member of the  
6 State Investigative Team. Would you please, sir,  
7 state your full name for the record?

8 MR. GILLENWATER:

9 John Froud (phonetic) Gillenwater.

10 ATTORNEY KOERBER:

11 And would you please state your address  
12 for the record as well, sir?

13 MR. GILLENWATER:

14 (b) (7)(C)

15 ATTORNEY KOERBER:

16 And what's the ZIP Code?

17 MR. GILLENWATER:

18 (b) (7)

19 ATTORNEY KOERBER:

20 And what is your telephone number?

21 MR. GILLENWATER:

22 (b) (7)(C)

23 ATTORNEY KOERBER:

24 Sir, are you here today pursuant to a  
25 subpoena that was served upon you?

1 MR. GILLENWATER:

2 Yes, sir.

3 ATTORNEY KOERBER:

4 I'd like you to take a look at this, and

5 I'll ask you, is that a copy of the subpoena that you  
6 received?

7 MR. GILLENWATER:

8 It looks like it.

9 ATTORNEY KOERBER:

10 Okay. Could I have that marked as  
11 Exhibit One?

12 (Gillenwater Exhibit One marked for  
13 identification.)

14 ATTORNEY KOERBER:

15 And sir, this is a document that you only  
16 saw this morning, but this is the Return of Service  
17 that was completed by the Deputy Sheriff that served  
18 you just saying that he served it on that particular  
19 day, at that particular time. Take a look at it, but  
20 I'd like to have that marked as Exhibit Two and both  
21 put into the transcript that will be coming as a  
22 result of this interview.

23 (Gillenwater Exhibit Two marked for  
24 identification.)

25 ATTORNEY HAMPTON:



1 Okay. I have marked the subpoena as  
2 Exhibit Number One Gillenwater, 8/10/10, and the  
3 Return of Service as Exhibit Two Gillenwater, 8/10/10.

4 ATTORNEY KOERBER:

5 And I turn the proceedings back over to  
6 the Solicitor's Office.

7 ATTORNEY HAMPTON:

8 Okay. My name is Pollyanna Hampton.

9 Today is August 10th, 2010. I am with the Office of  
10 the Solicitor, U.S. Department of Labor. With me is  
11 Erik Sherer, an accident investigator with the Mine  
12 Safety and Health Administration, MSHA, an agency of  
13 the United States Department of Labor. Also present  
14 here are several people here from the State of West  
15 Virginia, and I ask that they now state their  
16 appearance for the record.

17 MR. FARLEY:

18 Terry Farley, West Virginia Office of  
19 Miners' Health, Safety and Training.

20 MR. O'BRIEN:

21 John O'Brien, with the West Virginia  
22 Office of Miners' Health, Safety and Training.

23 MS. SPENCE:

24 Beth Spence, with the Governor's  
25 independent investigation.

1 ATTORNEY HAMPTON:

2 There also might be other members of the  
3 team coming into the room to observe some of the  
4 testimony today.

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

23 Government investigators and specialists  
24 have been assigned to investigate the conditions,  
25 events and circumstances surrounding the fatalities

1 that occurred at the Upper Big Branch Mine-South on  
2 April 5th, 2010. The investigation is being conducted  
3 by MSHA under Section 103(a) of the Federal Mine  
4 Safety and Health Act and the West Virginia Office of  
5 Miners' Health and Safety Training. We appreciate  
6 your assistance in this investigation.

7 You may have a personal representative or  
8 an attorney present here with you during the taking of  
9 this statement and you may consult with this  
10 representative at any point. Since this is not an  
11 adversarial proceeding, formal Cross Examination will  
12 not be permitted. However, your personal  
13 representative may ask clarifying questions if  
14 appropriate. So the record is clear, do you have a  
15 personal representative here today?

16 MR. GILLENWATER:

17 My wife, (b) (7)(C) .

18 ATTORNEY HAMPTON:

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

1 to keep your identity confidential, we will do so only  
2 to the extent permitted by the law. That means that  
3 if a judge orders us to reveal your name or if another  
4 law requires us to reveal your name or if we need to  
5 reveal your name for other law enforcement purposes,  
6 we may do so. Also, there may be a need to use the  
7 information you provide to us or other information we  
8 may ask you to provide in the future in other  
9 investigations into or hearings about the explosion.

10 Do you understand?

11 MR. GILLENWATER:

12 (Indicates yes).

13 ATTORNEY HAMPTON:

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

24 As you can see, a court reporter is here

25 recording the interview, so please speak loudly and

1 clearly so that she can understand you. And also, if  
2 you don't understand a question, please ask the  
3 questioner to rephrase. Please answer each question  
4 as fully as you can, including giving us any  
5 information that you might have learned from someone  
6 else. We'd like to thank you in advance for your  
7 appearance here. We do appreciate your assistance in  
8 this investigation. Your cooperation is critical in  
9 making the nation's mines safer.

10 After we have finished asking questions,  
11 you will then have an opportunity to make a statement  
12 or give us any other information that you have that  
13 you would like to share with us, you think is  
14 important. And if after the time that we leave this  
15 room today you think of something else that you would  
16 like to share with us or you want to clarify any  
17 information that you gave to us, please contact us  
18 through the contact information given to you in the  
19 letter I handed to you before the interview. Norman  
20 Page is the leader of the MSHA Accident Investigation  
21 Team, and his e-mail address and phone number are in  
22 there. You can contact us that way.

23 Any statements given by miner witnesses  
24 to MSHA are considered to be an exercise of statutory  
25 rights and protected activity under Section 105(c) of

1 the Mine Act. If you believe any discharge,  
2 discrimination or other adverse action is taken  
3 against you as a result of your cooperation with this  
4 investigation, you are encouraged to immediately  
5 contact MSHA and file a complaint under Section 105(c)  
6 of the Act. Terry?

7 MR. FARLEY:

8 Mr. Gillenwater, on behalf of the Office  
9 of Miners' Health, Safety and Training, I'd like to  
10 advise you that the West Virginia Code also provides  
11 protection to miners against potential discrimination  
12 for participating in these type interviews. And I'd  
13 like to pass along some contact information from the  
14 West Virginia Board of Appeals. They hear complaints  
15 from miners regarding discrimination. The document  
16 also has my phone number and a phone number for Mr.  
17 Bill Tucker. He's our lead underground investigator.  
18 Should you experience any such problems, we'd be happy  
19 to try to help you out. I would caution you that if  
20 you should need to file a claim, you need to do so  
21 within 30 days of when the event occurs. Thank you.

22 MR. GILLENWATER:

23 Okay.

24 -----

25 JOHN GILLENWATER, HAVING FIRST BEEN DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 -----

3 EXAMINATION

4 BY MR. FARLEY:

5 Q. Mr. Gillenwater, where are you currently employed?

6 A. I'm still working for Performance, but right now  
7 I'm working at Randolph. My paychecks still come from  
8 Performance.

9 Q. Okay. So where are you right now?

10 A. Randolph Coal Mine.

11 Q. Where is that?

12 A. It is --- I don't know how to tell you. I can  
13 tell you how to get there, but I couldn't tell you  
14 exactly where it's at.

15 Q. What county is it in?

16 A. I'm not even sure of that, really.

17 MS. GILLENWATER:

18 It's right outside Toney, towards  
19 Madison.

20 BY MR. FARLEY:

21 Q. Boone County?

22 A. Boone County.

23 Q. Okay. Close enough. When did you go to Randolph?

24 A. About two weeks after the accident.

25 Q. Okay. Now, what's your total mining experience,

1 approximately?

2 A. To date?

3 Q. Yes.

4 A. I'll have two years ---.

5 Q. Give or take a few days.

6 A. Two years in October, so a year and what, eight  
7 months.

8 Q. Close enough. How much of your mining experience  
9 has been spent with Massey?

10 A. All of it.

11 Q. Okay. When did you start at UBB?

12 A. October 2nd. I was working through David Stanley  
13 Contractors.

14 Q. When you say October 2nd, you mean 2009?

15 A. Yeah.

16 Q. Last year?

17 A. In 2008; right? 2008.

18 Q. Okay. 2008. All right. Now, how long were you  
19 an employee of Stanley while you worked at UBB?

20 A. I got hired December 16th of that year, so I  
21 started working for Stanley for like two-and-a-half  
22 months, October, November and December, yeah. Got  
23 hired December through Massey.

24 Q. Okay. You became a so-called member?

25 A. Yeah. A member, yeah.



1 Q. And that would have been December 2008?

2 A. Uh-huh (yes).

3 Q. Okay. And what was your job initially with  
4 Massey? What did you do?

5 A. I started out with belt moves and stuff like that,  
6 just ---.

7 Q. Okay. Now, prior to the accident at UBB on April  
8 5th, what was your work location underground?

9 A. I was working the new One section.

10 Q. And when you say the new One section, do you mean  
11 what is known as Tailgate 22?

12 A. New what?

13 Q. Do you mean the section known as Tailgate 22 or  
14 Headgate 22?

15 A. The headgate. It was up here.

16 Q. Okay. All right. Okay. How long had you been  
17 working on the one section or the Headgate 22 section  
18 prior to the explosion?

19 A. About two weeks.

20 Q. Okay. What area of the mine had you worked in  
21 prior to that time?

22 A. I helped put in the Mother Drive for the longwall.  
23 I'd cut and weld and things like that.

24 Q. Okay. Now, the Mother Drive --- do you mean the  
25 Mother Drive where the 22 Headgate belt ---

1 A. Well, I helped on that.

2 Q. --- dumped in the area on Seven North?

3 A. I'm not real good with these maps, ---

4 Q. That's okay.

5 A. --- so ---.

6 Q. That's okay.

7 MR. SHERER:

8 If I can help, you've got the current

9 Mother Drive down here.

10 A. Right. This is where the longwall is right there,

11 where the accident was. I helped this Mother Drive

12 in, and I worked on this one over here some.

13 ATTORNEY HAMPTON:

14 Just so that we're clear, you were

15 pointing to where the current Mother Drive is now, ---

16 A. Right.

17 ATTORNEY HAMPTON:

18 --- which is on the North --- Seven North

19 belt. And then the other --- the Mother Drive you did

20 work on is over by the Glory Hole.

21 A. And then I helped put in the tripper drive.

22 ATTORNEY HAMPTON:

23 Which is where exactly?

24 A. Which is ---.

25 MR. SHERER:

1 About mid-panel.

2 A. Yeah, right here.

3 BY MR. FARLEY:

4 Q. Okay. Now, the Mother Drive for the existing  
5 longwall panel would have been put in sometime in like  
6 2009; is that correct?

7 A. Yeah.

8 Q. All right. When you were working on the Mother  
9 Drive most recently here where the 22 Headgate belt  
10 dumps onto Seven North belt, how long were you in that  
11 area?

12 A. Well, actually a good while. I helped them  
13 when it started out. I mean, I wasn't there when it  
14 finished because I told them I wanted to learn how to  
15 run some equipment. So then that's when I got put on  
16 third shift to learn how to run a bolter.

17 Q. Now, can you be more specific as to how long you  
18 were at that Mother Drive area, how many days or  
19 weeks, in your best estimate?

20 A. Well, we had to split some blocks and --- to put  
21 the belts in, and I was there to help them do that. I  
22 didn't run any equipment or anything like that. I  
23 just did the leg work, you know. So I would say, a  
24 guess, maybe a month, right around that area.

25 Q. Okay. Now, would that month have been all in the

1 current year, 2010?

2 A. Yeah. I mean --- yeah.

3 Q. While you were working around that Mother Drive,  
4 did you notice any stoppings that had been removed?

5 A. I can't say for sure. There was one stopping that  
6 we rebuilt, but that's --- was I there when it was  
7 removed? No.

8 Q. Okay. Now, if you rebuilt it, then that means  
9 someone removed it; ---

10 A. Right.

11 Q. --- is that correct? Do you know how long it had  
12 been gone before someone --- before you rebuilt it?

13 A. I have no idea.

14 Q. Okay. Did you notice any holes in any of the  
15 other stoppings in that Mother Drive area?

16 A. Not that I can remember.

17 Q. Okay. Now, if I got you correctly, you didn't  
18 move to the 22 Headgate section, where you worked  
19 approximately two weeks prior to the explosion; is  
20 that about right?

21 A. Yeah.

22 Q. Okay. Prior to the explosion on April 5th, what  
23 was your last shift on the 22 Headgate section?

24 A. Prior to the explosion?

25 Q. Yes, sir.

1 A. That was, I believe, Saturday night, right before  
2 vacation, the Easter vacation.

3 Q. Uh-huh (yes). Now, you were on the midnight  
4 shift; is that right?

5 A. Uh-huh (yes), hoot owl.

6 Q. Now, when you say Saturday night, does that mean  
7 you came out Saturday night and worked into Sunday  
8 morning, or would that have been the Friday night into  
9 Saturday morning?

10 A. We worked an extra day so we wouldn't have to come  
11 in until Tuesday. So I think it was the Saturday  
12 night maybe. I can't be for sure.

13 Q. Okay. All right.

14 A. Do you remember?

15 MS. GILLENWATER:

16 (Indicates no).

17 BY MR. FARLEY:

18 Q. Whether it was Saturday or Sunday --- actually, if  
19 it was Saturday night, you know, your shift actually  
20 would have been more into Sunday morning. So in  
21 either case, what did you do that night?

22 A. We were bolting top. We were putting in monkey  
23 faces and the monorails and putting up wire and stuff  
24 like that and running bolter.

25 Q. Was that pretty much all you did that night?

1 A. Uh-huh (yes).

2 Q. Now, during that last shift on the 22 Headgate,  
3 did you notice anything unusual?

4 A. One thing did unusual happen.

5 Q. What's that?

6 A. We walked in and we went to go get the bolter, and  
7 there was something wrong with the miner. So we kind  
8 of --- the guy I was with, Rodney, and I can't  
9 remember his last name, we kind of looked at the  
10 miner, and there was a lot of water in front of the  
11 miner. And we went and got the bolter and started  
12 working. Well, electricians came in, Andrew, Jeff, I  
13 think another guy. I can't remember his name either.  
14 They went down to work on the miner. And we were  
15 doing our job, putting the monkey faces and whatnot  
16 up. And all of a sudden, we heard a big crack and a  
17 pop, and the electricians came running up from the  
18 miner. And we waited there for a few minutes, if we  
19 have to make a run for it or whatever, because we  
20 didn't know what was going on. And we waited.  
21 Nothing happened. We walked down there, and all the  
22 water that was in front of that miner was gone. That  
23 was the most unusual thing.

24 Q. Okay. All right. Do you think that they  
25 experienced an episode of floor hooving?

1 A. Yeah, I would say. If I was going to guess at it,  
2 I would say that's what it was.

3 Q. Now, do you recall which entry this was?

4 A. This was at the face, where the belts were.

5 Q. Okay. That would be Number One; right?

6 A. Uh-huh (yes).

7 Q. Now, when you say in the face, inby the last open  
8 crosscut?

9 A. That's where they were. Now, we were back from  
10 that.

11 Q. Okay. All right. Let me make sure I got that  
12 right. You've got a continuous miner in the general  
13 face area, the Number One entry. The electricians who  
14 were working in the vicinity just ran away from it.  
15 And there had been some water inby the mining machine,  
16 which apparently disappeared after an episode of floor  
17 hooving?

18 A. Correct.

19 Q. Was there a crack in the floor?

20 A. I didn't see it. We went down there and looked,  
21 but I didn't see it. We went back to work.

22 A. Okay. Can you estimate --- was this early in your  
23 shift?

24 A. Yeah. I would say the first two hours maybe.

25 Q. Okay. Now, I know we're not exactly sure as to

1       whether this was Saturday morning or Sunday morning,  
2       but do you have any paycheck stubs, payroll records  
3       where you can verify that for me?

4       A. Yeah. I think I wrote it down on my calendar, but  
5       I'd have to look at it to see.

6       Q. If you could check that and give us a call, we  
7       would greatly appreciate that. We'd like to be as  
8       specific as we can about what you just said. Was  
9       there any methane detected at the time ---

10      A. Uh-uh (no).

11      Q. --- this event occurred?

12      A. We checked. There was none.

13      Q. Now, when you say you checked, did anyone actually  
14      use an actual detector?

15      A. Well, no, not actually. We had one with us, but  
16      we didn't ---.

17      Q. Was it turned on?

18      A. I didn't have it, so I don't know.

19      Q. Who would have had it?

20      A. I thought Rodney might have had it, but --- if the  
21      miner was --- no, the miner wouldn't have been on.  
22      They were working on it.

23      Q. Okay. Who was your foreman supervisor that night?

24      A. Kyle. I don't know his last name.

25      Q. Kyle. Okay.



1 ATTORNEY HAMPTON:

2 Terry, could we have him mark ---

3 MR. FARLEY:

4 Sure.

5 ATTORNEY HAMPTON:

6 --- where ---

7 MR. FARLEY:

8 Absolutely.

9 ATTORNEY HAMPTON:

10 --- the miner was, where you saw the  
11 water and also where you believe that the pop noise  
12 came from?

13 A. Well, like I said, we were back running the  
14 machine, and the machine was going on ---. We heard  
15 it, but not to the extent, I guess, those electricians  
16 did because they were all running back towards us.

17 ATTORNEY HAMPTON:

18 Okay. Maybe you could mark on the map  
19 where the electricians were.

20 A. Well, they were down by the face --- near the  
21 face, where the miner was.

22 BY MR. FARLEY:

23 Q. The face in Number One entry?

24 A. Yeah.

25 ATTORNEY HAMPTON:

1 Okay.

2 MR. SHERER:

3 Do you remember about how many breaks up  
4 that was?

5 A. I couldn't say to be sure.

6 MR. SHERER:

7 Okay. Do you remember what break you  
8 guys were bolting at?

9 A. No, I couldn't, not for any definite ---. It was  
10 --- we were --- five, maybe five breaks back from the  
11 face, maybe six. I'm not sure.

12 MR. SHERER:

13 Do you recall who the electricians were?

14 A. Yeah. One was Andrew, and I don't remember his  
15 last name. And the other guy was named Jeff, and I  
16 don't remember his last name.

17 MR. SHERER:

18 Okay. Thank you.

19 BY MR. FARLEY:

20 Q. I assume you were inby the coal feeder at the  
21 time?

22 A. Oh, yeah.

23 Q. Okay. How close were you to the coal feeder?

24 A. We were about two breaks from it, I would say.

25 Q. Any estimation of how far the coal feeder was from

1 the face at the time?

2 A. That would be totally guessing. I really just  
3 couldn't say.

4 Q. Well, we can figure it out. That's good to know.

5 A. Yeah, it's still there. It should ---.

6 Q. Okay. All right. This episode, was that the only  
7 event during the shift that seemed out of the  
8 ordinary?

9 A. Yeah. I mean, I just never saw that before, and I  
10 didn't know what to make of it either.

11 Q. Okay. All right. Now, was it --- was the crack  
12 in the floor on the inby side of the miner toward the  
13 face?

14 A. I didn't see the crack.

15 Q. Okay. All right. Was there a crack?

16 A. I suppose so. The water was gone.

17 Q. Okay. Was there visible evidence of the floor  
18 hooving that you saw?

19 A. I didn't see it. We just went down there for a  
20 second or two and looked.

21 Q. Can you describe the noise you heard?

22 A. It was just a thunderous kind of sound that was  
23 --- that's all I can say. Just a loud pop.

24 Q. Okay. All right. Did you notice any unusual odor  
25 when you were in that area, like a kerosene-type thing

1 or ---?

2 A. Uh-uh (no). (Indicates no).

3 Q. All right. When you were operating the roof bolt  
4 machine, did you have a methane detector in your  
5 possession?

6 A. I didn't, but I think Rodney did. I was running  
7 the off side.

8 Q. Okay. But one of you had one?

9 A. (Indicates yes).

10 Q. Do you recall did Rodney detect any methane during  
11 your last shift?

12 A. Not that I can recall.

13 Q. Okay. You spent two weeks on the Headgate 22  
14 section on the midnight shift. From your first day on  
15 Headgate 22 until your last shift on Headgate 22, did  
16 you notice any difference in the quality and quantity  
17 of the ventilation?

18 A. No.

19 Q. At any time did it appear that you had more or  
20 less air volume and velocity?

21 A. I don't think so. I didn't know the difference.

22 Q. Okay. Did you hear anyone else comment on air  
23 changes?

24 A. Not that I can recall.

25 Q. Do you recall any air changes being made by any

1 upper management people in the mine while you were  
2 working on the 22 Headgate section?

3 A. No, not that I can recall.

4 Q. Nobody called in or nobody said at any time, hey,  
5 we've got to go here and do this or stay outside while  
6 there's an air change made, anything like that?

7 A. No.

8 Q. Other than the event you experienced on your last  
9 shift in the Number One entry, did you notice any  
10 evidence of floor hooving elsewhere on the 22 Headgate  
11 section during your last --- your two weeks there?

12 A. No, I don't --- not really.

13 Q. Now, during your two weeks on he 22 Headgate  
14 section, when you arrived on the section at the  
15 beginning of the shift, was the face ventilation  
16 routinely in place as it should have been? Were there  
17 curtains in the faces?

18 A. To be honest with you, I don't know because we  
19 just came to run the roof bolter and we helped out  
20 sometimes with the belt moves.

21 Q. Okay.

22 A. But other than that, I really didn't wander off  
23 anywhere else.

24 Q. Were you usually bolting in the faces or outby?

25 A. Outby.

1 Q. Okay. So you were installing what would be  
2 considered additional support?

3 A. Right. We were like catching up what first shift  
4 and second shift didn't get done as far as --- you  
5 know, as the belts go down through there, a lot of  
6 times they'll put up --- they call it chicken wire,  
7 the wire they put on the top, ---

8 Q. Right.

9 A. --- the cable bolts and ---.

10 Q. Okay. Would you say that you spent more than half  
11 your time bolting outby the faces?

12 A. Yeah.

13 Q. Would you say you spent more than 75 percent of  
14 your time bolting outby the faces?

15 A. Yeah.

16 Q. Okay. When you traveled into the mine to the 22  
17 Headgate section, to the surface, I'm assuming you  
18 encountered one of the many doors ---

19 A. Uh-huh (yes).

20 Q. --- that were placed along the track? At any time  
21 did you encounter situations where these doors were  
22 open, left open?

23 A. No.

24 Q. Did any of them appear to be damaged?

25 A. It looked like somebody had run into them at one

1 time or another, but nothing to where it was damaged  
2 where they weren't shutting tight, just like hit on  
3 the bottom or something.

4 Q. Okay.

5 MR. FARLEY:

6 Erik, do you have anything?

7 MR. SHERER:

8 Sure.

9 EXAMINATION

10 BY MR. SHERER:

11 Q. Okay. Mr. Gillenwater, what was the roof like on  
12 the 22 Headgate?

13 A. It was not bad. Like I said, I was just learning  
14 how to bolt, ---

15 Q. Okay. Sure.

16 A. --- so I really didn't know to ---.

17 Q. Okay.

18 A. But they always say, you know, you've got to  
19 consider it all bad.

20 Q. Sure. Do you recall what type of rock you had?  
21 Did you have a slate or shale or did you have a  
22 sandstone or ---?

23 A. I couldn't tell you for sure. Like I said, at  
24 that point I was just learning how to bolt.

25 Q. Okay. Did you bolt up any kettle bottoms?

1 A. No, we didn't --- not that I could ever recall.

2 Q. Okay. Now, you say that your other bolter's name  
3 was Rodney and he had a methane detector. Did you  
4 ever see that thing flashing or beeping?

5 A. No. Sorry. No, I didn't see it flashing.

6 Q. Where did you guys keep the curtain on the --- in  
7 relationship to the bolter?

8 A. We didn't pull with any curtain.

9 Q. Okay. So you were outby all the time. What was  
10 the temperature like up on the section? Did you have  
11 to wear a jacket?

12 A. Uh-uh (no).

13 Q. Did you wear short sleeves or long sleeves?

14 A. Short sleeves.

15 Q. When you were going into the section first thing,  
16 did you ever go by the power center?

17 A. I'm thinking we did, but I couldn't tell you for  
18 sure.

19 Q. Okay. Did that power center have a sign overtop  
20 of it that said high voltage?

21 A. I couldn't tell you for sure.

22 Q. What about when you were on the section, did you  
23 ever hear anybody calling in saying that there were  
24 inspectors on the property?

25 A. Uh-uh (no).



1 Q. How about when you were working out on the belt  
2 drive, did you ever hear anybody call in and say  
3 something like that?

4 A. Uh-uh (no). No. Sorry.

5 Q. Did you ever see an inspector underground, either  
6 Federal or State?

7 A. Yeah, I've seen some inspectors. I didn't know if  
8 they were Federal or State.

9 Q. Nobody knew they were coming, though, they'd just  
10 pop up?

11 A. Sometimes you might hear somebody say something  
12 that there might be an inspector today, but that's ---  
13 they never said for sure. You don't know when or  
14 where they're going to show up, just ---.

15 Q. Now, you said you were bolting on the 22 Headgate  
16 for about two weeks and you worked on the drive out at  
17 the mouth of the 22 Headgate section for I think about  
18 --- what did you say, for about a month?

19 A. Uh-huh (yes). Yes, yes. Sorry.

20 Q. So that puts us sometime around mid-February.  
21 What did you do prior to that?

22 A. Prior to that, well, I helped put in some  
23 overcasts. We did a lot of little things that needed  
24 to be fixed. It was just ---.

25 Q. Okay. So just doing general outby work?

1 A. Yeah.

2 Q. Okay.

3 A. Yes.

4 Q. When you were doing that, did you ever get down in  
5 either the headgate or the longwall or the tailgate of  
6 the longwall inby where they were cutting?

7 A. I went down there one time just to see what it was  
8 like because I never saw one before.

9 Q. Sure.

10 A. Me and a couple other guys, we went down that way.

11 Q. So you just went to the face of the longwall?

12 A. Yeah.

13 Q. Did you go further on in?

14 A. Yeah.

15 Q. Okay. What were the conditions like back there?

16 A. They had water in the back.

17 Q. Do you recall if you were on the headgate or the  
18 tailgate?

19 A. I was behind the longwall.

20 Q. but were you on the head side or the tail side?

21 Were you on the side with the mother belt or the other  
22 end?

23 A. Where the intake air comes through.

24 Q. Okay, you were on the head side then.

25 A. And we were putting in cribs and putting in --- we

1 put in Kennedy stoppings.

2 Q. Okay. Do you recall about how far back you got?

3 A. No. Well, ---.

4 Q. Did you go all the way past the end of the setup?

5 A. Yeah.

6 Q. Okay. So you were inby the entire longwall then.

7 a. We went all the way down to 81.

8 Q. Eighty-one (81). So you were right past the  
9 setup. And you said there was water. How much water?

10 A. They were working to get rid of the water, but I  
11 went back there with my boss, Marvin Perdue, and it  
12 was about up to the waist.

13 Q. Was it up to the waist in all the entries?

14 A. No, just back by 81.

15 Q. Okay. But I mean, there's three entries across.  
16 Did you get in all three of them?

17 A. No. We just stayed right on that intake main  
18 supply.

19 Q. Okay. So you were in the middle entry, Number Two  
20 entry?

21 A. We were the furthest one over.

22 Q. Okay. So you were in Number Three entry, right  
23 next to solid rib?

24 A. Right next to solid rib.

25 Q. Okay. And it was about waist deep then?

1 A. At one place it was.

2 Q. Okay. Do you recall about when that was? Was it  
3 before Christmas or after Christmas?

4 A. I think it was after Christmas.

5 Q. Okay. It was after Christmas. Do you think it  
6 was in January or February?

7 A. January.

8 Q. Okay. Thank you. Now, when you were working at  
9 different places in the mine, did you work like with a  
10 specific crew or did you just go to different places  
11 with different people?

12 A. I worked mostly with a specific crew. I worked  
13 with --- Marvin Perdue was my boss, ---

14 Q. Okay.

15 A. --- and we just did --- when they --- we were  
16 doing outby work when we weren't working over there on  
17 the Mother Drive.

18 Q. Okay. Now, who else worked with you on that crew  
19 with Marvin?

20 A. Well, there was me and Cliff Stouffer and Apey,  
21 but I can't remember his --- his last name was Apey.  
22 We just called him Apey.

23 Q. Okay.

24 A. And then there was Mike Williams. And then we had  
25 a couple red hats a time or two, but ---.

1 Q. Okay. Now, how knowledgeable are you concerning  
2 rock dust? Has anybody given you any training about  
3 rock dust?

4 A. Yeah. You just need to keep everything rock  
5 dusted, keep the float dust down.

6 Q. Okay. Have you ever seen any float dust?

7 A. I don't really know how to answer that. I mean,  
8 yes, I have, but to what do you mean?

9 Q. Okay. Have you ever been anywhere in the mine and  
10 see it to the point where it was more gray than that  
11 bottom part of this map here?

12 A. No, I don't think so.

13 Q. Okay. Have you ever seen it more gray than the  
14 current longwall panel is shaded on this map?

15 A. I don't know. I don't think so. Like I  
16 said, ---.

17 Q. Okay. Have you ever worked spreading out rock  
18 dust?

19 A. Uh-huh (yes).

20 Q. Okay. How did you do that?

21 A. Just opened up the bad and ---.

22 Q. So you just did it by hand?

23 A. Yeah, by hand.

24 Q. Did you ever scoop dust?

25 A. Not at UBB.

1 Q. Okay. Now, you say not at UBB. What other mines  
2 have you worked at?

3 A. Randolph.

4 Q. Okay. That's right. Did you ever get off in  
5 either the main returns or the main intakes anywhere  
6 doing some of that outby work?

7 A. I wish I could tell you yes or no. I went and  
8 picked up supplies with a scoop and stuff like that.

9 Q. Okay. Now, when you got off the beaten path, let  
10 me call it that. Most mines people stay around the  
11 track entry and the belt entry.

12 A. Right.

13 Q. When you get off that beaten path, what were the  
14 conditions like? Did you notice any draw rock coming  
15 down from the roof?

16 A. No, not really.

17 Q. Thank you. Now, you were talking about an  
18 incident where the water from the miner suddenly  
19 disappeared with a big crack and a pop. Did you  
20 notice or did anybody comment on how deep that water  
21 was?

22 A. No. It was --- I don't know how deep it was.

23 Q. Did you guys talk about that incident after it  
24 happened?

25 A. Yeah. We just didn't know what to think about it.

1 Q. Did anybody mention the miner shifting around when  
2 that happened?

3 A. Not that I recall.

4 Q. You say the foreman's name was Kyle. Did he come  
5 over when that incident occurred with the water?

6 A. No. He was I think getting a belt move ready or  
7 something else. I don't know exactly what he was  
8 doing.

9 Q. Okay. Did you see him any time later on that  
10 shift?

11 A. Yeah, when we were leaving.

12 q. Did anybody mention the water?

13 A. I don't know by that time. I don't recall.

14 MR. SHERER:

15 Thank you.

16 EXAMINATION

17 BY MS. SPENCE:

18 Q. Did the electricians say anything when they came  
19 running over? Specifically, do you remember what they  
20 said?

21 A. No, just --- we were just standing there, trying  
22 to figure out what happened.

23 Q. And they said?

24 A. We just kind of laughed about it, you know, what  
25 was that kind of thing. We just didn't know.

1 Q. Did anybody measure for methane when that  
2 happened?

3 A. I can't remember, to be honest with you.

4 Q. Okay. Let me ask you something else, and you  
5 don't have to answer specifically, but do you remember  
6 doing anything special on Easter Sunday, you and your  
7 family maybe?

8 A. No, not really.

9 Q. I was just trying to help you ---.

10 MS. GILLENWATER:

11 We went to early service. That's what I  
12 was thinking about that shift because we went to early  
13 service, remember Pastor asked, because it's always so  
14 crowded.

15 A. Right. Oh, yeah, on Easter Sunday.

16 MS. GILLENWATER:

17 So I'm thinking that he probably wouldn't  
18 have worked and then went to early service.

19 A. Right. Right.

20 MS. GILLENWATER:

21 We would have ---.

22 A. Right.

23 MS. GILLENWATER:

24 It would have been ---.

25 A. The hoot owl is different. Their Saturday is



1 Friday night. Let me think about that.

2 BY MS. SPENCE:

3 Q. So you probably worked Friday night into

4 Saturday, ---

5 A. Right.

6 Q. --- which was your last shift?

7 A. Right.

8 Q. And that's probably when this incident occurred?

9 A. Yeah. Yes.

10 MS. SPENCE:

11 All right. Thank you.

12 MR. SHERER:

13 I actually have another question.

14 RE-EXAMINATION

15 BY MR. SHERER:

16 Q. Have you spoken with anybody from the company or  
17 any representative or attorneys from the company?

18 A. Yes.

19 Q. When was that, please, roughly?

20 A. A month-and-a-half ago, something like that.

21 Q. Okay. Do you recall where that interview took  
22 place?

23 A. The main office in Independence in Madison or  
24 Danville 1. No, Madison.

25 Q. Okay. How many --- or who interviewed you; do you

1 recall?

2 A. I don't recall. Two lawyers, I suppose.

3 Q. Two lawyers, okay. What sort of questions did  
4 they ask you?

5 A. Asked me what I did in the mine and where I was at  
6 and had me show on the map where I was at.

7 Q. Okay. Did they ask you anything we didn't ask  
8 you?

9 A. Basically I guess about the same.

10 Q. Okay. And it was just that one interview?

11 A. Uh-huh (yes).

12 Q. Yes or no?

13 A. Yes. Sorry.

14 Q. Thank you.

15 ATTORNEY HAMPTON:

16 Okay. On behalf of MSHA and the office  
17 of Miners' Health, Safety and Training, we'd like to  
18 thank you for appearing and answering questions here  
19 today. Your cooperation is very important to the  
20 investigation as we work to determine the cause of the  
21 accident.

22 As we mentioned earlier, we do request  
23 that you not discuss your testimony with any person  
24 other than your personal representative. And if after  
25 questioning witness we have more questions for you, we



1 STATE OF WEST VIRGINIA )

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

I, Alison Salyards, 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.



*Alison Salyards*