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Transcript of the Testimony of Pacer Pettry

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STATEMENT UNDER OATH
OF
PACER PETTRY

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 Friday, August 20, 2010, beginning at 9:00 a.m.

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A P P E A R A N C E S

1
2
3
4
5
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I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Baxter	5 - 6
5	DISCUSSION AMONG PARTIES	6 - 8
6	STATEMENT	
7	By Mr. Farley	7 - 8
8	CONTINUED OPENING STATEMENT	
9	By Attorney Baxter	8 - 12
10	WITNESS: PACER PETTRY	
11	EXAMINATION	
12	By Mr. Sherer	12 - 38
13	EXAMINATION	
14	By Mr. Farley	38 - 40
15	EXAMINATION	
16	By Ms. Monforton	40
17	RE-EXAMINATION	
18	By Mr. Sherer	40 - 42
19	CLOSING STATEMENT	
20	By Attorney Baxter	42 - 43
21	CERTIFICATE	44
22		
23		
24		
25		

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

EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

7*

Two

Return Service on

Subpoena

7*

* Exhibit not attached

P R O C E E D I N G S

1
2
3
4
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ATTORNEY BAXTER:

My name is Derek Baxter. Today is August
20th, 2010. I'm with the Office of the Solicitor,
U.S. Department of Labor. With me is Erik Sherer, an
accident investigator with the Mine Safety and Health
Administration, MSHA, an agency of the United States
Department of Labor. Also present are several people
from the State of West Virginia. I ask that they
state their appearance for the record.

MR. FARLEY:

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

MS. MONFORTON:

Celeste Monforton with the Governor's
independent team.

ATTORNEY BAXTER:

And would you please swear in the
witness?

PACER PETTRY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

ATTORNEY BAXTER:

1 Okay. Go ahead, Terry.

2 MR. FARLEY:

3 Okay. Mr. Pettry, would you please state
4 your full name and spell your last name for the
5 record?

6 A. Pacer Dean Pettry, P-E-T-T-R-Y.

7 MR. FARLEY:

8 Okay. Would you also please provide us
9 with your address and telephone number, please?

10 A. (b) (7)(C)

11 (b) (7)(C)

12 MR. FARLEY:

13 (b) (7)(C)

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

15 MR. FARLEY:

16 (b) (7)(C) Okay. You are appearing
17 here today in response to a subpoena; is that correct?

18 A. Yes, sir.

19 MR. FARLEY:

20 Okay. Does this document look like a
21 copy of the subpoena you received?

22 A. Yes.

23 MR. FARLEY:

24 Okay. I'd like to enter that document as
25 Exhibit One.

1 (Exhibit P. Pettry One marked for
2 identification.)

3 MR. FARLEY:

4 Also, does this document look like the
5 return service on the subpoena ---

6 A. Yes.

7 MR. FARLEY:

8 --- that you got? Enter that document as
9 Exhibit Two.

10 (Exhibit P. Pettry Two marked for
11 identification.)

12 MR. FARLEY:

13 Also, Mr. Pettry, the State of West
14 Virginia is obligated to offer you a \$40 witness
15 appearance fee, along with a 15 cents per mile per
16 diem for your travel expenses. Do you wish to accept
17 this fee?

18 A. No.

19 MR. FARLEY:

20 Okay, all right. Very well. Thank you.

21 Also, on behalf of the Office of Miners' Health,
22 Safety and Training I want to inform you that you may
23 report any potential discriminatory actions taken
24 against you to the West Virginia Board of Appeals,
25 which hears such claims. I want to give you a

1 document with their address and also give you my
2 business card. And you'll see a phone number on here
3 for Mr. Bill Tucker, our lead underground
4 investigator. Should you experience any problems,
5 would need to file a claim within 30 days; all right?
6 Thank you.

7 ATTORNEY BAXTER:

8 All members of the Mine Safety and Health
9 Accident Investigation Team and all members of the
10 State of West Virginia Accident Investigation Team
11 participating in the investigation of the Upper Big
12 Branch Mine explosion shall keep confidential all
13 information that's gathered from each witness who
14 voluntarily provides a statement until the witness
15 statements are officially released.

16 MSHA and the State of West Virginia shall
17 keep this information confidential so that other
18 ongoing enforcement activities are not prejudiced or
19 jeopardized by a premature release of information.
20 This confidentiality requirement shall not preclude
21 investigation team members from sharing information
22 with each other or with other law enforcement
23 officials. The team members' participation in this
24 interview constitutes their agreement to keep this
25 information confidential.

1 Government investigators and specialists
2 have been assigned to investigate the conditions,
3 events and circumstances surrounding the fatalities
4 that occurred at the Upper Big Branch Mine-South on
5 April 5th, 2010. The investigation is being conducted
6 by MSHA under Section 103(a) of the Federal Mine
7 Safety and Health Act and the West Virginia Office of
8 Miners' Health, Safety and Training. We appreciate
9 your assistance in this investigation.

10 You may have your personal attorney
11 present during the taking of this statement or another
12 personal representative if MSHA has permitted it and
13 may consult with your attorney or the representative
14 at any time. And for the record, Mr. Pettry, do you
15 have a personal attorney or representative here today?

16 A. No.

17 ATTORNEY BAXTER:

18 Your statement is completely voluntary.

19 You may refuse to answer any question and you may
20 terminate your interview at any time or request a
21 break at any time.

22 Your identity and the content of this
23 conversation will be made public at the conclusion of
24 the interview process and may be included in the
25 public report of the accident, unless you request that

1 your identity remain confidential or your information
2 would otherwise jeopardize a potential criminal
3 investigation. If you request us to keep your
4 identity confidential, we will do so to the extent
5 permitted by law.

6 That means that if a judge orders us to
7 reveal your name or if another law requires us to
8 reveal your name or if we need to reveal your name for
9 other law enforcement purposes, we may do so. Also,
10 there may be a need to use the information you provide
11 to us or other information we may ask you to provide
12 in the future in other investigations into and
13 hearings about the explosion. Do you understand?

14 A. Yes.

15 ATTORNEY BAXTER:

16 Do you have any questions?

17 A. No.

18 ATTORNEY BAXTER:

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

1 other individuals we request that you not discuss your
2 testimony with any person aside from your personal
3 representative or Counsel.

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

10 I'd like to thank you in advance for your
11 appearance here. We appreciate your assistance in
12 this investigation. Your cooperation is critical in
13 making the nation's mines safer.

14 After we've finished asking questions,
15 you will have an opportunity to make a statement and
16 provide us with any other information that you believe
17 to be important. If at any time after the interview
18 you recall any additional information that you believe
19 might be useful, please contact Norman Page at the
20 telephone number or e-mail address provided to you.

21 Any statements given by miner witnesses
22 to MSHA are considered to be an exercise of statutory
23 rights and protected activity under Section 105(c) of
24 the Mine Act. If you believe any discharge,
25 discrimination or other adverse action is taken

1 against you as a result of your cooperation with this
2 investigation, you are encouraged to immediately
3 contact MSHA and file a complaint under Section 105(c)
4 of the Act.

5 EXAMINATION

6 BY MR. SHERER:

7 Q. First of all, I want to thank you for coming down
8 here this morning, Mr. Pettry. It's vital to get all
9 of the information we can about this accident. We're
10 trying to determine the causes of this explosion and
11 the conditions and practices that may have contributed
12 to this explosion, and we're doing that for two
13 reasons. The first one is the families and the
14 friends and the coworkers of those 29 miners deserve
15 some closure.

16 Second reason is we want to prevent this type of
17 accident from ever happening again, so any information
18 you can provide would be greatly appreciated.

19 Roughly, how many years of mining experience do you
20 have?

21 A. Two years.

22 Q. Two years. Okay. When did you start with the
23 Massey organization?

24 A. Last Thanksgiving of last year.

25 Q. Okay.

1 A. That was for the --- I was a contractor about
2 three months before that ---

3 Q. Okay.

4 A. --- working at the same ---

5 Q. Okay. Which ---

6 A. --- mine.

7 Q. --- contractor did you work for?

8 A. Mountain Labor Solutions. Brian Buzzard was the
9 owner.

10 Q. Oh, okay. Will you excuse me? We need to go off
11 the record.

12 OFF RECORD DISCUSSION

13 BY MR. SHERER:

14 Q. We just returned from a fire alarm, a fire drill.
15 We were talking about --- I think you mentioned you
16 were working for a contractor.

17 A. Yes.

18 Q. Approximately how long did you work for that
19 contractor?

20 A. Approximate a year.

21 Q. Okay. And then you hired on at UBB?

22 A. Yes.

23 Q. What was your job description at the time of the
24 explosion?

25 A. I was in training for headgate, but I was the

1 utility man.

2 Q. Okay.

3 A. I was just training for it.

4 Q. Okay. Were you actually working in the headgate?

5 A. Yeah.

6 Q. Okay.

7 A. Yeah.

8 Q. Which shift did you work?

9 A. We swung dayshift and evening shift, six on and
10 three off.

11 Q. Okay. What was the last shift you worked prior to
12 the explosion?

13 A. Saturday, two days before, but I don't know if it
14 was day or evening.

15 Q. Okay.

16 A. I can't recall.

17 Q. Okay. Do you recall anything unusual about that
18 day?

19 A. No. It seemed like a normal day.

20 Q. Okay. Where were you at the time of the
21 explosion?

22 A. I was in Beckley.

23 Q. Okay. Did you participate in the rescue or
24 recovery effort?

25 A. No.

1 Q. Okay. So you say you were training to be a
2 headgate operator?

3 A. Yes.

4 Q. Okay. Were you working with a headgate operator?

5 A. Yes. When I first started I was, and then after
6 that, the last week or so I was working by myself. If
7 I needed any help, you know what I'm saying, I would
8 holler at electricians, the boss whoever, but I pretty
9 much had it.

10 Q. Okay. When would you shut off the water?

11 A. When they'd shut down the bit in service, you
12 know, what I'm saying, I'd tell Mike to shut it down,
13 because, you know what I'm saying, they couldn't have
14 the sprays on or whatever ---

15 Q. Sure.

16 A. --- and if they would holler and tell me to shut
17 it off.

18 Q. Would you shut it off for any other reason?

19 A. No.

20 Q. Okay. What if the fan quit running?

21 A. What if the fan quit running?

22 Q. Uh-huh (yes). Would you shut the water off then?

23 A. Uh-uh (no), no, unless they would tell me, because
24 I wouldn't know why it would quit running.

25 Q. Okay. What if something happened to the power and

1 the power was off? Would you shut down the water
2 then?

3 A. I never did experience that. I mean ---

4 Q. Okay.

5 A. --- when I was headgate.

6 Q. Okay. When would you disconnect the high voltage?

7 A. Whenever they would holler in and tell me, ---

8 Q. Okay.

9 A. --- which I couldn't do it, anyway. They'd always
10 send electricians up, ---

11 Q. Okay.

12 A. --- you know, what I'm saying, pull the blades?

13 Q. Uh-huh (yes), yeah. So do you think that was a
14 standard practice to send an electrician to pull the
15 disconnects?

16 A. Yes.

17 Q. Okay. Interesting. Did somebody tell you that?

18 A. No. Well, no, not really. I just figured, you
19 know what I'm saying? I wasn't no electrician. I
20 couldn't pull the blades and the power.

21 Q. Okay. Thank you. What had you done prior to
22 starting your training as a headgate operator? I
23 think you mentioned utility work.

24 A. Yeah, utility work.

25 Q On the longwall?

1 A. Yeah, on the longwall.

2 Q. Okay. And approximately when did you start that
3 training?

4 A. I started working for about three months before I
5 got hired in on Thanksgiving, three to four months.

6 Q. And that's when you started training for headgate
7 operator?

8 A. Oh, no, I started training for headgate around
9 four weeks prior to the explosion.

10 Q. Okay. So about the first of March?

11 A. Yeah, probably. Yeah.

12 Q. And you were working swing shift in there on the
13 longwall for about a month, or were you up there for
14 longer than that?

15 A. I was working the longwall ever since I got hired
16 in on Thanksgiving.

17 Q. Oh, okay. Let me ask you some general questions
18 about the wall. Had you noticed any change in the
19 ventilation roughly within a months or so prior to the
20 explosion?

21 A. I noticed a couple changes when I was there, but a
22 month or so, I couldn't really tell you.

23 Q. Okay. Anything ---? You say you noticed a couple
24 of changes. What do you remember?

25 A. Well, like the air picking up and going back down.

1 Q. Okay.

2 A. But I didn't know if it was the door shutting or
3 what it could've been, because I was new in the mines,
4 too.

5 Q. Okay.

6 A. So I didn't feel threatened by it or nothing.

7 Q. Okay, sure. Do you recall roughly when that
8 may've happened?

9 A. Not really.

10 Q. Okay. But how long did that happen from when you
11 first noticed it picking up and then going back down?

12 A. I'd say not very long. I'd say two, three
13 minutes.

14 Q. Okay. So it was just an intermittent thing?

15 A. Right, right. Yeah, yeah. One time two or three
16 minutes, and then one time, if I can recall, it seemed
17 like to me a little bit longer.

18 Q. Okay. Did it happen several times?

19 A. Just two or three times about all I'm aware of.

20 Q. Okay. And when you were going into the face of
21 the longwall there was some curtains in the entries
22 near the headgate.

23 A. Right, yeah.

24 Q. Do you remember those curtains?

25 A. Yeah.

1 Q. Did you ever see them loose?

2 A. Yeah, but you know what I'm saying, if they was
3 loose for some reason, most the time whoever went by
4 them would fix them.

5 Q. Okay. So they just come undone?

6 A. Right; like sometimes a rib would fall and ---

7 Q. Okay.

8 A. --- knock it loose on the bottom or something like
9 that.

10 Q. Okay. They wasn't just hanging there loose?

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

12 Q. Okay.

13 A. No.

14 Q. Did you ever see those things bowed back toward
15 the face of the longwall instead of bowed toward the
16 gob?

17 A. Right. No, I've never seen them bowed that way.

18 Q. Okay. Thank you. When you were working on the
19 face itself, did you go down the face often? Let me
20 ask you that.

21 A. I did sometimes, like if they had a shutdown for a
22 problem mechanical problem, you know what I'm saying,
23 I'd go down and help the electricians. I mean,
24 carry ---

25 Q. Sure.

1 A. --- stuff for them or whatever.

2 Q. Sure, uh-huh (yes).

3 A. We'd all help.

4 Q. Okay. Did you ever smell anything like kerosene
5 or something?

6 A. No, never did.

7 Q. Okay. Now, we understand there was some doors
8 installed maybe a couple weeks, maybe three or four
9 weeks prior to the explosion, a new set of doors out
10 in the track entry. Do you recall those doors?

11 A. They've already set doors, you know what I'm
12 saying, because here's the track, you know what I'm
13 saying. Motors would come in down the track, would
14 unload supplies. And then we'd come over in Number
15 Three and get them and then just bring down, then
16 bring it to the face, but two or three weeks prior, I
17 couldn't tell you if they shut them or not.

18 Q. No, not shut them. We think there was another set
19 of doors installed.

20 A. Oh.

21 Q. We think there was two doors originally.

22 A Right.

23 Q. And then they set --- put --- installed another
24 two doors, another set of doors.

25 A Right.

1 Q. Do you recall that second set of doors?

2 A. No.

3 Q. Okay. Well, what sort of stuff would you do when
4 you were working that utility job?

5 A. How much more stuff?

6 Q. No, what sort of stuff?

7 A. Oh. Well, I'd set timbers on the longwall face as
8 they're advancing forward.

9 Q. Uh-huh (yes).

10 A. You got to keep so may feet outby. Set timbers
11 and then hang the curtains when they did get into a
12 break and needed to do a air change. Just was part of
13 anything done, really, but that was the main things.

14 Q. Okay. Did you go out on the tailgate any?

15 A. No, uh-uh (no), I think I was up there maybe once,
16 and I never did go off of it. I just went to the
17 tailgate.

18 Q. Oh, okay. Do you know who ---? We understand
19 that somebody had to knock a hole in the stopping a
20 break or so ahead of the face on the tail side. Do
21 you know who did that?

22 A. Yeah, I know --- I know ---. Well, I know Timmy
23 Davis did, because he was my boss ---

24 Q. Uh-huh (yes).

25 A. --- and about a month before that, Mikey was my

1 boss.

2 Q. Okay.

3 A. So you know what I'm saying? Timmy went out there
4 and knocked them whenever he was my boss.

5 Q. Okay. So Mr. Davis?

6 A. Yeah.

7 Q. And he was the longwall foreman, wasn't he?

8 A. Yeah, yeah.

9 Q. Okay. So that's who did that. Appreciate that.

10 Did you ever do any welding or burning on that wall?

11 A. They have, but I haven't.

12 Q. Okay.

13 A. You know what I'm saying, electricians have.

14 Q. Okay. Would they try to get a shearer back up
15 toward the head when they did that or would they just
16 do it wherever the shearer was at?

17 A. It was just according to the situation, whether if
18 they could run the shearer back to the head, you know
19 what I'm saying, if they needed to fix something ---

20 Q. Sure.

21 A. --- you know what I'm saying, they'd do it, but if
22 it was broke down they had to ---

23 Q. Oh, okay.

24 A. --- fix it where it was broke down at.

25 Q. Okay. Did you help them pull up the mule train?

1 A. No, uh-uh (no). Hoot owl done that.

2 Q. Hoot owl did it; okay.

3 A. Yeah.

4 Q. Do you have any, like, battery charges or anything
5 like that you had to keep up with?

6 A. I didn't keep up with them. I just charged the,
7 you know what I mean, equipment on it ---

8 Q. Okay.

9 A. --- the escape or whatever.

10 Q. Okay. Do you recall how many chargers were in the
11 headgate, roughly?

12 A. I know at least two. There was a scoop charger
13 and a hauler charger.

14 Q. Okay. Did you guys have a ---?

15 OFF RECORD DISCUSSION

16 BY MR. SHERER:

17 Q. Okay. Did you guys have a forklift down on the
18 wall?

19 A. No.

20 Q. Okay. It was just a hauler?

21 A. Yeah, just a hauler and a scoop.

22 Q. Okay. Was there a motor that'd typically come in
23 with you guys?

24 A. No, he didn't come in with us.

25 Q. Okay. Just a mantrip?

1 A. Right, just a mantrip.

2 Q. Was there a motor that was assigned to the
3 longwall?

4 A. No, they just --- just whenever they needed
5 supplies or needed something hauled. I mean I reckon
6 just different motors hauled it ---

7 Q. Oh, okay.

8 A. --- or just whoever was working that shift.

9 Q. Okay. There wasn't one specifically down there?

10 A. Right, right.

11 Q. Did you guys have someplace where you mainly
12 stored supplies?

13 A. Yes.

14 Q. Where was that at?

15 A. That was over in Number Three, the entry beside
16 the track on the other side.

17 Q. Would that just move with the face as the wall
18 moved up?

19 A. Yes.

20 Q. Okay. So it wasn't like a central area where you
21 kept stuff?

22 A. No, uh-uh (no).

23 Q. Okay. Where'd they store the tanks and --- for
24 the welding gases, the oxygen acetylene?

25 A. Most of the time it was by the walkthrough.

1 Q. Okay. Now, where was the walkthrough at?

2 A. Walkthrough would've been on the track ---

3 Q. Uh-huh (yes).

4 A. --- and then, you know what I'm saying, like, it's

5 --- like, it's three breaks inby or wherever we kept

6 it, and then they just stored it there ---

7 Q. Okay.

8 A. --- because that's where all their tools was and

9 their hoses and everything they needed.

10 Q. Okay. Did you guys have any explosives you stored

11 anywhere around the headgate of the wall?

12 A. Not around the headgate. There was a box. I

13 don't know exactly. It seemed like to me about eight

14 breaks out, well, outby if you know what I'm saying?

15 Q. Yeah, uh-huh (yes).

16 A. And they kept it.

17 Q. What did you mainly use those explosives for,

18 shooting rocks?

19 A. Most the time shooting rock. If it gets stuck in

20 the line or in the crust or whatever.

21 Q. So you'd just go out and get a stick of powder?

22 A. Yeah, yeah, whoever could do it.

23 Q. Yeah.

24 A. There was just certain people who could carry

25 dynamite.

1 Q. Sure, uh-huh (yes). Did you use the explosives
2 for anything else?

3 A. Not that I'm aware of.

4 Q. Okay. Did you ever see anybody take explosives on
5 the tailgate?

6 A. No.

7 Q. Okay. Did you ever see anybody carry explosives
8 inby on the headgate?

9 A. No.

10 Q. Okay. What did you think about the rock dust in
11 this mine?

12 A. I thought it was pretty good.

13 Q. Did you ever have to spread any rock dust?

14 A. Yeah.

15 Q. How'd you do that?

16 A. By hand.

17 Q. Okay. Do you guys have a scoop duster?

18 A. I've never used one.

19 Q. Okay. Just spread it by hand?

20 A. Yeah, spread it by hand.

21 Q. Okay. Did you guys have any compressors down near
22 the headgate?

23 A. Well, they brought ---. Well, they brought one up
24 there one time when they was gluing the top. They
25 brought compressor down there.

1 Q. Okay. Do you know if that compressor was still
2 there at the time of the explosion?

3 A. I couldn't recall. The only thing, a week or so
4 before that it was, but you know what I'm saying? But
5 I was always by it, too, though.

6 Q. Sure, uh-huh (yes). Do you know if they were
7 still gluing the top about the time of the explosion?

8 A. I don't believe so, unless they was way outby us.

9 Q. Oh, okay. Who was the headgate operator that was
10 training you?

11 A. Josh Stout.

12 Q. So you were pretty much running it on your own
13 there?

14 A. Well, I was trying. I didn't know everything
15 about it. Quite a bit to it.

16 Q. There is. There's an awful lot to it.

17 A. Uh-huh (yes).

18 Q. Where was the stage loader? Was that in the
19 middle entry or up against the rib the last time you
20 were in there?

21 A. I was in the middle entry.

22 Q. Okay. Do you guys normally keep it out toward the
23 middle of the entry?

24 A. Yeah.

25 Q. Did you ever have to walk to the wall to try to

1 get it back off the rib?

2 A. Walk the wall with the stage loader itself?

3 Q. No, just ---?

4 A. Oh, okay. Walk yourself around the --- close to
5 the wall?

6 Q. Yeah.

7 A. Well, if there's a rib closed, you know what I'm
8 saying. You've already got clearance to walk it, but
9 sometimes it gets tight.

10 Q. No, no. What I'm talking about is sometimes you
11 have to change how you cut on the face to ---.

12 A. Oh, okay. Turn the --- turn the head?

13 Q. Yeah.

14 A. Yeah, yeah.

15 Q. Okay.

16 A. I've heard them talk about it, but I didn't now
17 how they done it or whatever.

18 Q. Okay. About how long was it taking the shearer to
19 make a pass the last few times you were in there?

20 A. It took a while, where they kept talking about a
21 lot of rock on the tail ---

22 Q. Uh-huh (yes).

23 A. --- and it took them a long time to cut it.

24 Q. Okay. Would they have to bit up during the pass?

25 A. Yeah, most of the time they would bit up on the

1 head and the tail.

2 Q. Okay. Did you have to call out any information
3 like when something broke down or ---?

4 A. Yeah, yes.

5 Q. How'd that work?

6 A. Well, if they broke down, I'd find out what they
7 broke down on and I'd call to the dispatch or whoever
8 was outside. I'd give them my information, too.

9 Q. Uh-huh (yes).

10 A. And I'd tall them that they're broke down, what
11 time ---

12 Q. Okay.

13 A. --- and just give them all I could give them.
14 Then when they started back up I'd have to call them
15 back.

16 Q. Did you have to regularly call out, like, how many
17 feet they had advanced or anything like that?

18 A. Yes.

19 Q. How often?

20 A. Every 30 minutes.

21 Q. Every 30 minutes. That's pretty often.

22 A. Yeah, yeah, that's a lot.

23 Q. Did you ever miss one of those callouts?

24 A. I've been late, but I never missed one.

25 Q. What happened when you were late?

1 A. Oh, nothing, really. I mean you know what I'm
2 saying?

3 Q. Okay.

4 A. They might say, well, you got to start calling out
5 on time, or whatever.

6 Q. Okay.

7 A. I said, well, I'll try.

8 Q. Would somebody call in to ask you about that?

9 A. Yeah, sometimes. Yeah, yeah, like if I'm late or
10 whatever, they'll call and ask for it, the report.

11 Q. Sure. What have you heard about that last day?

12 A. Not too much, really. I don't really listen to
13 what people say a whole lot about it.

14 Q. Okay. Let me tell you what we know, and I'll tell
15 you what we --- how we think some of that information
16 is. And I'm going to ask your opinion as a headgate
17 operator what you think might've been going on.

18 The wall had --- supposedly was in pretty good
19 shape at the end of the hoot owl on Sunday night. We
20 think the shearer was parked in the head, ready to go.
21 They started up and during the entire day they made
22 just a little over one pass. They'd been down most of
23 the day because of a hinge pin problem on the ranging
24 arm. They called out at somewhere around 2:42, said
25 they were back in production, and that's the last

1 thing anybody ever heard from them.

2 The shearer was pretty much cut out on the tail.

3 You've probably seen a photograph of that.

4 A. Uh-huh (yes).

5 Q. Okay. The arms are extended. The pan was pretty
6 much clear of coal. It was totally clear of coal near
7 the head and was totally clear of coal near the tail.
8 Around the middle of the pan there was a little bit of
9 coal and some rocks.

10 The high voltage had been pulled on the head. The
11 visual disconnects had been pulled. The water had
12 been cut off. The closest victims to the shearer were
13 at midface, so they come halfway up the face.

14 A. Uh-huh (yes).

15 Q. Several of the victims were scattered out between
16 midface and the head, and the rest of the victims were
17 up around the head. That's about all we know right
18 now. What do you think was going on?

19 A. I hate to assume, because I wouldn't really know.

20 Q. Okay. Have you ever --- in the month or so you
21 were up there working on the headgate, had you ever
22 run into any similar conditions to that?

23 A. No, no. Most of the time if there's something
24 broke down, you know what I'm saying, most of the time
25 people would be going to where it's broke down there

1 instead of ---

2 Q. Okay.

3 A. --- you know what I'm saying, coming away from it.

4 Q. Okay. Now, it was about 30 minutes before the end
5 of the shift. Do you think they would've been just
6 giving up and started off the face?

7 A. No.

8 Q. Why? Why do you think that?

9 A. Because whenever --- you what I'm saying? Like,
10 if I work dayshift and, you know what I'm saying, we
11 come to the next crew, or we work evening shift and we
12 come to the next crew, they're always there working
13 when we get there. They're not out there, standing
14 and waiting on us or whatever.

15 Q. So you guys kind of change ---

16 A. Right.

17 Q. --- at the face or hot seat change?

18 A. Right. Yeah, yeah, kind of on the face. We'd
19 just switch out on the face.

20 Q. Okay. Have you ever seen any reason why people
21 would go toward the middle of the face? Was there
22 anything they had to do down there?

23 A. No, not the shearers, though. They wouldn't be,
24 unless there was a shield broke down or maybe, you
25 know what I'm saying, gobbed up, gobbed out like the

1 line, but still there the shield operators wouldn't
2 go.

3 Q. Yeah, yeah. We don't think it was gobbled out
4 because ---

5 A. Right.

6 Q. --- there just wasn't much on the line. And there
7 was a few rocks, but we don't think there were any
8 huge rocks or anything like that. Okay. Well, I
9 appreciate your opinion. When you were working in
10 this mine, when you were underground, did anybody ever
11 mention that there were inspectors on the property or
12 inspectors coming?

13 A. No.

14 Q. Okay. Never heard that?

15 A. Uh-uh (no). I mean, like, you know what I'm
16 saying, like, if they'd be --- see somebody outside or
17 something and they'd come in, I mean you'd just hear
18 them on the phone or something.

19 Q. Okay.

20 A. You know what I'm saying? Saying such and such is
21 going to One section or whatever like that, but ---.

22 Q. Okay. Nobody ever said you got company coming
23 or ---

24 A. No.

25 Q. --- anything like that?

1 A. Uh-huh (no).

2 Q. Okay. You had a methane readout on the headgate,
3 didn't you?

4 A. Yes.

5 Q. Where was the sniffer at for that?

6 A. Right over top of the control. Oh, well, it was
7 on the tail for the sniffer.

8 Q. Okay. So that was a remote readout?

9 A. Yeah, yeah, the way I took it.

10 Q. Okay.

11 A. You know what I'm saying? That's what they told
12 me.

13 Q. Okay. You ever see that readout when it wasn't
14 functioning?

15 A. No.

16 Q. It was always working when you were on the
17 headgate?

18 A. Yes.

19 Q. Did you ever see the cover off that readout?

20 A. No.

21 Q. Okay. Did you ever hear of anybody messing with
22 that methane monitor?

23 A. No.

24 Q. Okay. We talked about the ventilation earlier.

25 Do you think the ventilation at this mine was

1 adequate?

2 A. I didn't really know. I was, you know what I'm
3 saying, not been in the mines very long. I mean I
4 felt safe in it ---

5 Q. Okay.

6 A. --- with everything.

7 Q. Okay. When you first heard of the explosion, what
8 was the first thought or two that went through your
9 mind?

10 A. Well, I couldn't believe it, because I never would
11 think even something like that would ever happen.

12 Q. Okay. What's the first thing you thought might've
13 happened that might've caused that explosion?

14 A. Gas, methane.

15 Q. Had you run into any methane in this mine?

16 A. We did. We did one time when I first started
17 there as a contractor. I was with Timmy and we was on
18 the tail side setting up the props for the escapeway
19 and we, well, we got into methane one time. And then
20 after that he pulled everybody out, you know what I'm
21 saying, ---

22 Q. Uh-huh (yes).

23 A. --- out, outby. Then after that he went over
24 there and done his checks or whatever.

25 Q. Okay. Do you recall about where that was at?

1 A. Not really, because I just first started, but I
2 can't recall exactly where it was. Well, it was on
3 the tail side. We was setting the props.

4 Q. Okay. So you started in, I think you mentioned
5 last fall in what, September, October?

6 A. Yes.

7 Q. Okay. So the wall had been pretty close to where
8 it started out?

9 A. Uh-huh (yes).

10 Q. Do you recall if you were setting those props inby
11 the face or outby the face?

12 A. Yeah, out there whenever we was setting the jacks,
13 that was before it started up.

14 Q. Oh, okay.

15 A. Yeah, that's when I first started there as a
16 contractor.

17 Q. Okay. How far from the setup rooms were you up
18 the entries? Do you recall?

19 A. I don't recall.

20 Q. Okay. Do you have any idea what sort of methane
21 reading that Mr. Davis was getting?

22 A. I'd hate to say, but it seemed like it fluctuated
23 between six and eight percent.

24 Q. Six and eight percent. That's a lot of methane.

25 A. Yeah, yeah. Yeah, I've heard them ---. Yeah,

1 I've heard them talk about, you know what I'm saying,
2 that it can't blow up after, like, 15 percent. And
3 you know what I'm saying, he said, you what I'm
4 saying, that wasn't good, so you know what I'm saying,
5 he got us out of there and then, you know what I'm
6 saying, checked it again or whatever, then after that
7 called somebody and we just left the area.

8 Q. Sure. Now, who was telling you it couldn't blow
9 up after 15 percent?

10 A. Well, I mean, you know, what I'm saying, it seemed
11 like it was 15 percent. I just heard him talk like
12 there was a certain percent that it --- you know what
13 I'm saying? If it's under, like, three percent --- I
14 can't exactly remember the numbers. Or if it's over a
15 certain number that it can't blow up.

16 Q. Yeah, methane is explosive between five and
17 fifteen percent.

18 A. Maybe that's what it is, yeah.

19 Q. The problem is if you're standing in 20 percent
20 methane ---

21 A. Right.

22 Q. --- somewhere it goes back through that explosive
23 zone.

24 A. Right, right, yeah. Yeah, yeah, I've just heard
25 that, you know what I'm saying? Like I said, I'm a

1 new miner. I ain't been in the mines too long.

2 Q. Sure. Yeah. Any methane over a percent or so is
3 dangerous ---

4 A. Right.

5 Q. --- or has the potential to be dangerous.

6 MR. SHERER:

7 That's all the questions I've got for
8 right now. I appreciate your answers and I'm going to
9 turn it over to Mr. Farley.

10 EXAMINATION

11 BY MR. FARLEY:

12 Q. Okay. Mr. Pettry, on the last shift you worked on
13 the UBB longwall, in which direction was the belt air
14 moving that day?

15 A. Most the time the belt air wasn't --- I mean, you
16 know what I'm saying? It was pretty dead up there
17 around the headgate, because it stayed pretty hot, but
18 it seemed like to me it was moving toward the face, if
19 I can recall what air that they was.

20 Q. Okay.

21 A. There's not a whole lot of air that moves around
22 there.

23 Q. Okay. Was there any kind of box check curtain at
24 the end of the belt?

25 A. No. The only --- the only curtain that I know of

1 is up there at the shield where it goes to the rib,
2 from the shield to the rib. There wasn't nothing
3 going up the beltline.

4 Q. Okay. All right. Now, Erik asked a lot of
5 questions about ventilation. Now, according to the
6 pre-shift/on-shift report book for the longwall in the
7 month of March at UBB, the first few days of March the
8 intake air reading was about 115,000 cubic feet per
9 minute. Now, a few days later that's down around
10 79,000 cubic feet per minute. Now, on March 9th they
11 had an entry at 116,000 cubic feet per minute. Now, a
12 couple days later that's down to 76,000 cubic feet per
13 minute. Now, that's 35 percent.

14 A. Uh-huh (yes).

15 Q. Any of that ring a bell?

16 A. I don't know the numbers, but I know the, you know
17 what I'm saying, the air fluctuated like that, because
18 I heard them talk about it.

19 Q. Okay. What did they say about it? I mean, ---.

20 A. Well, and I mean I don't ---.

21 Q. And who was talking about it?

22 A. Well, most the time the bosses talked about it.

23 Q. Okay. What were their words? What were they
24 actually describing?

25 A. Well, I don't exactly know. Most the time I'd be

1 walking by, but I'd hear them, you know what I'm
2 saying, mention something about the air. We don't
3 have enough air. We need more air or something like
4 that.

5 Q. Okay.

6 A. But I'd hate to say something that I didn't
7 exactly know, you know what I mean?

8 Q. Okay. Now, by the end of the month that longwall
9 intake air reading was down in the mid 50's, 54,000,
10 55,000.

11 MR. FARLEY:

12 I don't think I have anything else.

13 EXAMINATION

14 BY MS. MONFORTON:

15 Q. I just have one question.

16 A. Uh-huh (yes).

17 Q. Where did you get your 80-hour training, your new
18 miner training?

19 A. My 80-hour training? From Banks, Danny Banks up
20 in Whitesville.

21 Q. Danny Banks.

22 A. Yeah.

23 MS. MONFORTON:

24 Great. Thank you very much.

25 RE-EXAMINATION

1 BY MR. SHERER:

2 Q. I got a couple follow-up questions, Mr. Pettry.

3 Did you normally wear a coat or a jacket or something
4 when you were on the headgate?

5 A. No, no, about the only time I wore one was riding
6 in.

7 Q. Okay. Did you notice that --- I recall you
8 mentioned on the belt it was kind of hot.

9 A. Right. Right there around the headgate where
10 you'd stay at where all the coal was.

11 Q. Did it seem like it had gotten hotter over a few
12 weeks prior to the explosion?

13 A. No, because I was really just there for about four
14 or five weeks where I was training, and then --- and
15 the time I was there seemed about the same.

16 Q. Okay, okay. Thank you. You were talking to Terry
17 about the air and you mentioned you'd overheard a few
18 things about not enough air or something like that,
19 and you said you didn't want to misrepresent something
20 or ---

21 A. Right.

22 Q. --- something to that effect. What we're doing
23 here is looking for information and ---

24 A. Right.

25 Q. --- we're not bound by the normal courtroom laws

1 and we can accept hearsay information ---

2 A. Right.

3 Q. --- things you overheard. Did anybody mention
4 anything specific?

5 A. Not that I recall, no.

6 Q. Okay. Just a general ---?

7 A. Just general, like, you know what I'm saying, we
8 had this air yesterday and, you know what I'm saying,
9 we have this air today, if it would be less or more.
10 You know what I mean, but I mean, I didn't really
11 stand around there and listen to them, because that
12 was their conversation ---

13 Q. Sure.

14 A. --- you know what I mean? So I'd just be walking
15 by or stop for a second and just hear them talking
16 about it and then I'd leave.

17 Q. But you got the impression there was some problem?

18 A. Yeah, yeah, yeah. Yeah, definite impression there
19 was a problem with the air.

20 Q. Okay. Thank you. Who were those bosses?

21 A. Timmy Davis most the time, and Rick Lane.

22 Q. Okay. Thank you.

23 A. Yeah.

24 ATTORNEY BAXTER:

25 On behalf of MSHA and the Office of

1 Miners' Health, Safety and Training, I want to thank
2 you for appearing and answering questions today. Your
3 cooperation is very important to the investigation as
4 we work to determine the cause of the accident. We
5 request that you not discuss your testimony with any
6 person aside from your personal representative. After
7 questioning other witnesses, we may call you if we
8 have any follow-up questions.

9 If at any time you have additional
10 information regarding the accident that you'd like to
11 provide to us, please contact us at the contact
12 information that was previously provided to you. If
13 you wish, you may now go back over any answer you've
14 given during this interview. You may also make any
15 statement you'd like to make at this time.

16 A. I'm fine.

17 ATTORNEY BAXTER:

18 Again, I want to thank you for your
19 cooperation.

20 * * * * *

21 STATEMENT UNDER OATH CONCLUDED AT 9:47 A.M.

22 * * * * *

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1 STATE OF WEST VIRGINIA)

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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