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Transcript of the Testimony of Luke Ford

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CONFIDENTIAL STATEMENT UNDER OATH

OF

LUKE FORD

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 Saturday, August 28, 2010, beginning at 12:12 p.m.

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

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I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Hampton	6 - 7
5	DISCUSSION AMONG PARTIES	7 - 10
6	CONTINUED OPENING STATEMENT	
7	By Attorney Hampton	10 - 15
8	STATEMENT	
9	By Mr. Farley	15
10	WITNESS: LUKE FORD	
11	EXAMINATION	
12	By Mr. Sherer	16 - 27
13	EXAMINATION	
14	By Mr. Farley	27 - 33
15	RE-EXAMINATION	
16	By Mr. Sherer	33 - 36
17	CLOSING STATEMENT	
18	By Attorney Hampton	36 - 37
19	DISCUSSION AMONG PARTIES	37 - 38
20	CERTIFICATE	40
21		
22		
23		
24		
25		

1	EXHIBIT PAGE		
2			PAGE
3	NUMBER	DESCRIPTION	IDENTIFIED
4	One	Subpoena	8*
5			
6	Two	Second Subpoena	9*
7	Three	Return receipt	9*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* Exhibit not attached

P R O C E E D I N G S

ATTORNEY HAMPTON:

My name is Pollyanna Hampton. Today is August 28th, 2010. I am with the Office of the Solicitor, U.S. Department of Labor. With me here is Erik Sherer. He is an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the Department of Labor. And also present with us are several members of the various teams from the State of West Virginia, and I ask that they now state their appearance for the record.

MR. FARLEY:

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

MR. O'BRIEN:

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

ATTORNEY KOERBER:

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

MS. SPENCE:

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

1 ATTORNEY HAMPTON:

2 And we also have other members of the
3 team in the audience today.

4 ATTORNEY KOERBER:

5 Could you swear in the witness, please?

6 -----

7 LUKE FORD, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 -----

10 ATTORNEY KOERBER:

11 Sir, would you please state your full
12 name for the record and spell your last?

13 A. Luke Aaron Ford, F-O-R-D.

14 ATTORNEY KOERBER:

15 And would you please state your address
16 and your telephone number?

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

20 ATTORNEY KOERBER:

21 And do you have an attorney or personal
22 representative appearing with you here today?

23 A. I do have a representative, Mr. Sears.

24 ATTORNEY KOERBER:

25 Okay. Mr. Sears, would you state your

1 name for the record and who your firm is?

2 ATTORNEY SEARS:

3 Yes. My name is Christopher Sears, and

4 I'm with the law firm of Shuman, McCuskey & Slicer.

5 ATTORNEY KOERBER:

6 And Mr. Sears, is Mr. Ford your client?

7 ATTORNEY SEARS:

8 Yes.

9 ATTORNEY KOERBER:

10 Mr. Ford, are you appearing here today

11 because you were served with a subpoena?

12 A. Yes, sir.

13 ATTORNEY KOERBER:

14 Mr. Ford, this is a copy of that

15 subpoena. Would you please look at that? I'd like to

16 have that marked as Exhibit One.

17 (L. Ford Exhibit One marked for

18 identification.)

19 A. Yes.

20 ATTORNEY KOERBER:

21 And this is a document you probably have

22 not seen. This is the return of service filed out by

23 Buddy Miller of the Boone County Sheriff's Office,

24 showing that on the 11th day of August 2010, at 11:30

25 a.m., he served you?

1 A. Yes.

2 ATTORNEY KOERBER:

3 And then on that document, it's just a
4 copy of the same subpoena as was ---.

5 A. Yes. It was just issued on a different day. My
6 two subpoenas, one was given on the 4th day and I
7 think the other one was given on the 11th.

8 ATTORNEY KOERBER:

9 Yes.

10 (L. Ford Exhibit Two marked for
11 identification.)

12 ATTORNEY KOERBER:

13 And then this is the copy of the green
14 card, where your wife signed for it on the 16th.

15 A. Yes.

16 ATTORNEY KOERBER:

17 That would be Exhibit Three.

18 (L. Ford Exhibit Three marked for
19 identification.)

20 ATTORNEY KOERBER:

21 Mr. Ford, the statute that authorizes the
22 Director to issue subpoenas compelling witnesses to
23 appear at interviews such as this also requires the
24 Director to offer to each witness subpoenaed a \$40-
25 per-day witness fee, and you'll appear here one day

1 and you'd be entitled to get the \$40, plus roundtrip
2 mileage to and from your home, here and back, so long
3 as you came in your personal vehicle, at the rate of
4 15 cents a mile, plus reimbursement for any tolls that
5 you pass on your way here and back. To receive that
6 money there are two forms that need to be filled out,
7 one of which is an IRS Form W-9, which is requesting
8 your Social Security number because the \$40 witness
9 fee is considered income and would be reported to the
10 IRS and you would at some later date get a 1099
11 miscellaneous. You can accept that money, I have
12 forms here that we can fill out at the close of this
13 interview, or if you do not want to provide your
14 Social Security number and fill out the forms, you can
15 decline that money. But you need to make your
16 decision on the record at this point in time.

17 A. I decline.

18 ATTORNEY KOERBER:

19 Thank you.

20 ATTORNEY HAMPTON:

21 All members of the Mine Safety and Health
22 Accident Investigation Team and all members of the
23 State of West Virginia Accident Investigation Team
24 participating in the investigation of the Upper Big
25 Branch Mine explosion shall keep confidential all

1 information that is gathered from each witness who
2 provides a statement until the witness statements are
3 officially released. MSHA and the State of West
4 Virginia shall keep this information confidential so
5 that other ongoing enforcement activities are not
6 prejudiced or jeopardized by a premature release of
7 information. This confidentiality requirement shall
8 not preclude investigation team members from sharing
9 information with each other or with other law
10 enforcement officials. And we ask that by you
11 participating in this interview that you also agree to
12 keep this information confidential.

13 Government investigators and specialists

14 have been assigned to investigate the conditions,
15 events and circumstances surrounding the fatalities
16 that occurred at the Upper Big Branch Mine-South on
17 April 5th, 2010. The investigation is being conducted
18 by MSHA under Section 103(a) of the Federal Mine
19 Safety and Health Act and the West Virginia Office of
20 Miners' Health, Safety and Training. We really
21 appreciate your assistance with this investigation.

22 You may have a personal attorney present

23 at the taking of this statement. And I see we've
24 already discussed that you have Mr. Sears here with
25 you today. And just a statement I'd like to make on

1 the record. Mr. Sears has appeared here at other
2 times for other witnesses, and based on prior
3 interviews, we have asked questions about whether or
4 not he was being paid as Counsel by a third party.
5 And we are going to assume today that Mr. Sears is not
6 going to answer those questions, as he has declined to
7 answer them in the past.

8 ATTORNEY SEARS:

9 That's a fair assumption.

10 ATTORNEY HAMPTON:

11 Okay. Your identity and the content of
12 this conversation will be made public at the
13 conclusion of the interview process and may be
14 included in the public report of the accident, unless
15 you request that your identity remain confidential or
16 your information would otherwise jeopardize a
17 potential criminal investigation. Now, however, if
18 you do request your identity to be confidential, we
19 can only give you that to the extent permitted by law.
20 That means that if a Judge asked us to reveal your
21 identity or if there is another law enforcement reason
22 for revealing it or any other law that would require
23 us to reveal your name, we would have to do so. As
24 well, the State has their own separate confidentiality
25 rules, so this is a statement only being made by the

1 Federal Team. Also, there may be a need to use the
2 information you provide to us or other information we
3 may ask you to provide in the future in other
4 investigations into or hearings about the explosion.
5 Do you have any questions about that?

6 A. No.

7 ATTORNEY HAMPTON:

8 After the investigation is complete, MSHA
9 will issue a public report detailing the nature and
10 causes of the fatalities in the hope that greater
11 awareness about the causes of accidents can reduce
12 their occurrence in the future. Information obtained
13 through witness interviews is frequently included in
14 these reports. Since we will be interviewing other
15 individuals, again, we do request that you not discuss
16 your testimony with other people other than with your
17 attorney, of course.

18 As you can see, we have a court reporter
19 here recording your interview, so please speak loudly
20 and clearly. If you don't understand a question,
21 please ask the person to rephrase it, and they
22 certainly can do that. We want to make sure that you
23 understand every question that's asked of you. Please
24 answer each question as fully as you can, including
25 giving us any information that you might have learned

1 from somebody else. If you're telling us information
2 that maybe you don't have first-hand knowledge of,
3 it's fine because it still might lead us in a
4 direction that can help us to better understand the
5 events and circumstances that happened on April 5th.
6 But do let us know if it is a rumor or if it's
7 second-hand knowledge.

8 We would like to thank you in advance for
9 your appearance here. We appreciate your assistance
10 in the investigation. Your cooperation is critical in
11 making the nation's mines safer. Just to let you
12 know, once we've finished asking questions, I will
13 give you an opportunity to go over any of the answers
14 that you've given. If you want to clarify anything
15 that you've said or if you want to provide any further
16 information or if you'd like to make a statement at
17 that time, you can do so. As well, after you leave
18 here today if you have further information you'd like
19 to share with any of the teams, you may contact us
20 through the --- I handed you a letter before we
21 started. Norm Page is the lead accident investigator
22 for the Federal Team. His contact information is
23 there, and he can be contacted if you have further
24 things that you'd like to share with the teams.

25 Any statements given by miner witnesses

1 to MSHA are considered to be an exercise of statutory
2 rights and protected activity under Section 105(c) of
3 the Mine Act. If you believe any discharge,
4 discrimination or other adverse action is taken
5 against you as a result of your cooperation, you may
6 contact MSHA and file a complaint under Section 105(c)
7 of the Act.

8 MR. FARLEY:

9 Mr. Ford, on behalf of the Office of
10 Miners' Health, Safety and Training, I want to inform
11 you that the West Virginia Code, specifically Chapter
12 22A, Article One, Section 22, also provides protection
13 against discrimination for miners who participate in
14 these type interviews. I'd like to pass along some
15 contact information for the West Virginia Board of
16 Appeals. And should you experience any such
17 discrimination as a result of this interview or
18 participating in this investigation, you should
19 contact the Board immediately and file a claim. I
20 would advise you that should you choose to do so, you
21 would need to do so within 30 days of the event.

22 ATTORNEY HAMPTON:

23 Okay. Do you have any questions?

24 A. No.

25 ATTORNEY HAMPTON:

1 All right. Then let's get started.

2 EXAMINATION

3 BY MR. SHERER:

4 Q. I want to thank you for coming down here this
5 afternoon, Mr. Ford. Your testimony is very important
6 because we're still trying to put together the
7 conditions and the practices and the --- everything
8 that contributed to this explosion. We're doing that
9 for two reasons. The first one is the families and
10 the friends and the coworkers of the miners deserve to
11 know what happened to their friends and loved ones.
12 The second reason is we want to try to prevent this
13 type explosion in the future. So any information you
14 can share with us is greatly appreciated. Roughly,
15 how many years of mining experience do you have?

16 A. Approximately ten.

17 Q. When did you start with the Massey organization?

18 A. November of '04.

19 Q. When did you first start working at Upper Big
20 Branch?

21 A. November of '04.

22 Q. Okay. Have you worked there continuously since
23 then?

24 A. No, sir.

25 Q. When did you come back to Upper Big Branch prior

1 to the explosion?

2 A. I come back probably in April, May of 2009.

3 Q. Okay. What was your duties at Upper Big Branch
4 prior to the explosion?

5 A. I was a maintenance foreman on production on the A
6 Crew.

7 Q. And the A Crew is which shift?

8 A. We swung.

9 Q. Okay.

10 A. It was day and evening shift.

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

13 A. It would be Saturday.

14 Q. Saturday day or evening?

15 A. The day before Easter. April the 3rd. I guess it
16 would be April the 3rd.

17 Q. April the 3rd. Did you work during the day or the
18 evening?

19 A. Dayshift.

20 Q. Dayshift?

21 A. Uh-huh (yes).

22 Q. Do you know if that was the last shift the
23 longwall was run prior to the explosion?

24 A. That's the last shift that I worked.

25 Q. Okay.

1 A. That's all I know.

2 Q. Okay. Sure. Who did you report to?

3 A. I reported to Danny Laverty and Bobby Goss. They
4 would be the section boss.

5 Q. Did you have people that reported to you?

6 A. No.

7 Q. Okay. Were you hourly or salary?

8 A. Salary plus overtime.

9 Q. Did you have the ability to direct the work of
10 others?

11 A. No. I'm told what to do.

12 Q. Okay. I understand that.

13 A. Right.

14 Q. Could you requisition supplies?

15 A. No. I would just tell my boss, which would be
16 Danny, what I needed, and he would requisition.

17 Q. Okay. Thank you. That last shift you worked on
18 Saturday, when you were going in the mine, up until
19 the point when you got on the face, do you recall
20 anything unusual?

21 A. No, sir.

22 Q. Okay. During the day, do you recall anything
23 unusual?

24 A. No, sir.

25 Q. How about coming out of the mine, was there

1 anything unusual?

2 A. No, sir.

3 Q. Okay. Do you recall if the track was broken at
4 the Ellis Portal?

5 A. No, sir.

6 Q. Okay. What was the production shift like on
7 Saturday? Was it a good shift?

8 A. Was it --- excuse me?

9 Q. Was it a good shift production-wise?

10 A. Yes. It was fairly smooth.

11 Q. About how many passes did the longwall make?

12 A. I don't know. I can't tell you. Just as a
13 guesstimate, we probably made four or five passes that
14 day.

15 Q. And that's about normal?

16 A. Yes. For them conditions it was anyway.

17 Q. What did you do on Saturday?

18 A. I don't remember ---

19 Q. Okay.

20 A. --- as far as that day.

21 Q. Okay. Do you recall if you worked near the head
22 or did you get further down the wall?

23 A. For the most part, my day-to-day operations was I
24 would wash the shields and stuff off from the head to
25 tail.

1 Q. Okay. Do you recall if you washed the shields
2 off?

3 A. If I was there, I done some washing.

4 Q. Okay. Do you recall if the shields were clean
5 when you guys --- at the end of the shift?

6 A. I don't recall.

7 Q. Okay. What about the ventilation on the longwall
8 Saturday, was it about normal?

9 A. Yes, it was.

10 ATTORNEY SEARS:

11 Can you define normal?

12 MR. SHERER:

13 Buddy, if I could define normal I
14 wouldn't be here.

15 ATTORNEY SEARS:

16 Okay. I'm just ---.

17 A. It was normal in that --- for that time frame,
18 yes.

19 MR. SHERER:

20 Typical.

21 ATTORNEY SEARS:

22 Okay.

23 MR. SHERER:

24 But I'm still trying to define normal. I
25 appreciate any help you can give me.

1 ATTORNEY SEARS:

2 Do you understand what he means by

3 normal? Let me ask you that. Okay. That's fine.

4 A. Normal is --- I mean, it was the same since ---

5 the last couple weeks it was the same.

6 BY MR. SHERER:

7 Q. Okay. I appreciate that. Let me ask you a

8 slightly different question related to that. Did you

9 normally wear a jacket on the longwall, hoodie?

10 A. For the most part, yes, it was cold.

11 Q. Do you recall if you wore that jacket or whatever

12 on Saturday?

13 A. I don't recall that.

14 Q. Okay. Had you noticed the longwall getting a

15 little warmer prior to the explosion?

16 A. No, sir.

17 Q. Okay. Thank you. Do you wear a --- or carry a

18 methane detector?

19 A. I didn't have one at that time, no, sir.

20 Q. Have you ever carried a methane detector on the

21 wall?

22 A. Yes, sir.

23 Q. When did you last do that?

24 A. I don't recall the date of that.

25 Q. Roughly.

1 A. Probably a month or two prior.

2 Q. A month or two prior. When you were wearing that
3 or carrying that methane detector, did it ever alarm?

4 A. No, sir.

5 Q. Okay. Do you recall what the alarm level was set
6 at?

7 A. No, sir.

8 Q. When is the last time you guys did a fire drill on
9 that face?

10 A. I don't recall the exact date, but we did do one.

11 Q. Give me a rough date then. A week ago, two weeks
12 ago?

13 A. No, it had been more than two weeks since we done
14 a fire drill. I don't recall when the exact date was.

15 Q. Would it have been within 90 days?

16 A. It should have been within that quarter range, in
17 the quarter.

18 Q. When you did that fire drill, what did you guys
19 do?

20 A. We insinuated (sic) a piece of paper as being a
21 fire in our last open break. We squirted it with a
22 fire extinguisher ---

23 Q. Okay.

24 A. --- and put it out. We talked about the lifeline.
25 We then followed the lifeline outside, primary

1 escapeways, ---

2 Q. Okay.

3 A. --- taking note where the rescue chambers and
4 stuff like that was, where your rescuers were placed
5 at in the coal mines.

6 Q. Uh-huh (yes).

7 A. As a matter of fact, we got on the phone to the
8 dispatcher and spoke with him all the way outside, ---

9 Q. Okay.

10 A. --- then we walked out to the portal.

11 Q. Okay. Had you ever simulated a fire actually on
12 the face?

13 A. No, sir.

14 Q. If you had a fire, where do you think it would
15 probably be?

16 A. What do you want to know? I mean, on --- if
17 there's a fire where?

18 A. Well, let me put it this way. I've investigated a
19 lot of accidents. Generally it's on the face, not in
20 the headgate.

21 ATTORNEY SEARS:

22 What is, the fire?

23 MR. SHERER:

24 Fire, yeah, because that's where your
25 fuel and ignition sources tend to be.

1 BY MR. SHERER:

2 Q. You can have a belt fire on the stage loader, but
3 you've got a lot of water there. It tends to suppress
4 it. If you had a fire on the face, what would you do?

5 A. I would --- we had a cutoff valve on the shields.
6 We would hook a fire hose up to it.

7 Q. Okay. Do you recall about where that was?

8 A. Not exact number, no, sir.

9 Q. No, just roughly. Was it mid-face?

10 A. Probably around mid-face, yes, sir.

11 Q. Was there another valve like that near the
12 headgate?

13 A. I believe so, yes, sir.

14 Q. Do you know if there's one near the tailgate?

15 A. Don't know.

16 Q. Okay. Where was the fire hose stored at?

17 A. On the stage loader.

18 Q. Did you have any down the face?

19 A. Not that I'm aware of.

20 Q. Okay. Do you recall where the fire extinguishers
21 were along the face?

22 A. I don't recall the exact location, no, sir.

23 Q. Rough location?

24 A. Just down the face. I don't know. I mean, I
25 can't answer that.

1 Q. Do you think there were several down the face?

2 A. Probably three or four.

3 Q. Okay. Do you think there was any at or around the
4 tail drive?

5 A. I can't answer that. I don't know.

6 Q. Okay. Where were the nozzles for the fire hose
7 stored at?

8 A. They was on the hose at the stage loader.

9 Q. Okay. If you were somewhere around the tail end
10 of the longwall and a fire broke out around the pan or
11 someplace like that, what would you do?

12 A. If it wasn't something that I could put out with a
13 fire extinguisher, I would evacuate.

14 Q. Okay. That's a reasonable answer. Which way
15 would you go? Would you go back across the wall or
16 would you try to get out the tail?

17 A. Go out the tail entry.

18 Q. Okay. Thank you. Let me tell you what we know
19 about the wall at the time of the explosion. And I'm
20 just going to ask you for your opinion, if you don't
21 mind.

22 A. I don't have an opinion, sir.

23 Q. You're not going to have an opinion?

24 A. I am in awe myself.

25 Q. Okay.

1 A. If I felt that that place would have blowed up, I
2 would not have been employed there.

3 Q. Okay. Where are you working right now?

4 A. Elk Run, Hunter Peerless.

5 Q. Do you think that one will ever blow up?

6 A. Excuse me?

7 Q. Do you think that mine will ever blow up?

8 A. I would hope not.

9 Q. What's different between Elk Run, Hunter Peerless
10 and UBB?

11 A. Just two different seams.

12 ATTORNEY SEARS:

13 Go ahead.

14 BY MR. SHERER:

15 Q. Do you think that it's less gassy?

16 A. I guess they would be the same. I don't know.

17 Q. So it would have an equal probability of an
18 explosion, wouldn't it?

19 ATTORNEY SEARS:

20 I'm going to object, being argumentative.

21 I'm just going to object to that.

22 A. I'm not going to speculate.

23 ATTORNEY SEARS:

24 Yeah. I mean, should I explain my

25 objection?

1 ATTORNEY HAMPTON:

2 No, we're not in a deposition. We're
3 here in an interview.

4 ATTORNEY SEARS:

5 I understand that. I'm just going to
6 enter ---.

7 MR. SHERER:

8 Okay. Okay. Okay, Buddy.

9 ATTORNEY SEARS:

10 I think you're being argumentative.

11 MR. SHERER:

12 Okay.

13 ATTORNEY HAMPTON:

14 That's fine, but ---.

15 MR. SHERER:

16 I don't have any problem with you being
17 objectionable. No problem. Thank you. Okay. I
18 don't have any more questions for you, Buddy.

19 EXAMINATION

20 BY MR. FARLEY:

21 Q. Mr. Ford, your last shift on the UBB longwall was,
22 of course, Saturday, April 3rd. Did you work there
23 routinely through the month of March?

24 A. Yes, when I was scheduled.

25 Q. Now, on any given day during the month of March on

1 that longwall section, if you had wanted to increase
2 the quantity of air coming to the longwall section,
3 what would you have done to that?

4 A. That wasn't my job title, sir.

5 Q. Okay. All right. But would you have any idea
6 what some other person might have done?

7 A. Other than adjust regulators, I mean, I don't
8 know.

9 Q. Okay.

10 A. That's not my job.

11 Q. Okay. During the month of March the
12 pre-shift/on-shift books for the UBB mine reflect that
13 the main intake air reading for the longwall on the
14 intake side was about 115,000 cubic feet per minute
15 around the 1st of March. Now, by the end of the month
16 it continues --- the air readings recorded in the book
17 continued to decrease until eventually the air
18 readings average about 55,000, 60,000 cubic feet per
19 minute at the most by the end of the month. Now,
20 that's a decrease by half. Did you feel that? Did
21 you experience that? Did you notice that during the
22 month of March?

23 A. You could tell that the ventilation had been
24 changed, yes.

25 Q. Do you know why it had been changed?

1 A. As what I was told is MSHA made them do a
2 ventilation change. That was during our days off.
3 When we come back, you could feel the difference, and
4 we was told that they was required to do a ventilation
5 change, and that's why it was done.

6 Q. Okay. As you traveled to and from the longwall on
7 the track entry, this map reflects about two sets of
8 --- a set of doors one ach side of the intake air on
9 this map where the intake air splits for the miner
10 sections and where the air splits to go to the
11 longwall section. That's the green line. Now, we've
12 been told that these doors on the inby side of that
13 split towards the longwall were constructed in such a
14 manner as to where you have a door across the track
15 and then you had a side panel where some number of
16 blocks had been left out to allow air to pass through.
17 Do you recall seeing those doors in the month of March
18 of this year?

19 A. Yes.

20 Q. Is my description accurate of what you saw?

21 A. As far to my knowledge, yes.

22 Q. Okay. Do you know when those doors might have
23 been installed?

24 A. Not a date, no, sir.

25 Q. Okay. As best we can determine, we believe they

1 would have been installed sometime around the 1st of
2 March or early in March. Is that a fair assessment on
3 our part?

4 A. Again, sir, I don't know the --- I don't want to
5 speculate on that. I don't know the fact.

6 Q. Okay. During your last shift on the UBB longwall
7 face on Saturday, April 3rd, did you happen to
8 examine, test or otherwise observe the methane
9 monitors for the longwall face equipment?

10 A. I'm sure I did, and there was no reading there, to
11 my knowledge. If there was, it would have stood out.

12 Q. Okay. To the best of your knowledge, would the
13 methane monitoring system on the longwall face on
14 Saturday, April 3rd, have been fully operational?

15 A. Would it have been fully operational?

16 Q. Yes.

17 A. Yes, sir.

18 Q. Okay. Now, my understanding is that UBB longwall,
19 as of that time frame, was provided the two monitors
20 and two sniffers, one monitor being at the headgate
21 with the sniffer on the tailgate and the other being
22 provided on the shearer. Is that accurate?

23 A. Yes, sir.

24 Q. Do you recall the last time there might have been
25 a malfunction, breakdown, et cetera, with ---

1 A. No, sir.

2 Q. --- the methane monitoring system on the longwall?

3 A. No, sir.

4 Q. Any knowledge of the longwall face monitor ---
5 methane monitoring system ever being bridged out,
6 defeated or in any way manually overridden?

7 A. No, sir.

8 Q. Do you have mine foreman, fire boss certification?

9 A. Yes, sir.

10 Q. Did you ever perform any pre-shift/on-shift
11 examinations?

12 A. I'm sure I did, yes, sir.

13 ATTORNEY SEARS:

14 I'm sorry. I'm just --- since I
15 interrupted, I didn't mean to interrupt, but it just
16 occurred to me that I think there was someone planning
17 to be here at one o'clock that isn't here and probably
18 did not get notice that we were starting early, and
19 that's Mr. Hardy.

20 ATTORNEY KOERBER:

21 He's not coming.

22 ATTORNEY SEARS:

23 He's not coming? Okay. I'm sorry. I'm
24 sorry for interrupting.

25 ATTORNEY HAMPTON:

1 He was here this morning and he confirmed
2 to us that he was not going to be here.

3 ATTORNEY SEARS:

4 Okay. That's fine.

5 BY MR. FARLEY:

6 Q. Did you happen to make it over towards the
7 longwall tailgate side on Saturday, April 3rd?

8 A. Off the face?

9 Q. Yes.

10 A. No, sir.

11 Q. What about on the face?

12 A. I don't know exactly where all I was at that day.

13 I mean ---.

14 Q. All right. Who was your foreman that day?

15 A. Michael Webb.

16 Q. Did you have confidence in Mr. Webb?

17 A. Yes, sir.

18 Q. Do you feel Mr. Webb made an honest effort to
19 comply with health and safety requirements?

20 A. Yes, sir.

21 Q. Okay. You know, I was talking to you earlier
22 about the air reading entries in the longwall
23 pre-shift and on-shift book. Is it reasonable for us
24 to believe that those entries in the book are
25 accurate?

1 A. Yes, sir.

2 Q. Okay.

3 MS. SPENCE:

4 I don't have any questions.

5 MR. SHERER:

6 I've got some more questions.

7 RE-EXAMINATION

8 BY MR. SHERER:

9 Q. Do you ever weld on the longwall?

10 A. No, sir. I'm not a certified welder. The
11 electrician that was with me was a certified welder.

12 Q. Okay. Do you know if the on-board welder worked?

13 A. At that time I don't know, sir.

14 Q. Okay. Did you ever notice there was a portable
15 welder at the headgate?

16 A. What do you call a portable welder?

17 Q. One that's easily moved.

18 A. We had a welder hanging at the gate box.

19 Q. Okay. Was there any other welder ---

20 A. No.

21 Q. --- at or around the longwall?

22 A. Not that I'm aware of, sir.

23 Q. Did you ever observe anybody welding while the
24 shearer was cutting?

25 A. No, sir.

1 Q. In the month or so prior to the explosion, had
2 there been any problems with the methane monitoring
3 system?

4 A. Not that I'm aware of, sir.

5 Q. Did you ever calibrate the methane monitors?

6 A. No, sir.

7 Q. Who did that?

8 A. The owl shift.

9 Q. The owl shift. Okay. Did you ever have to work
10 on the methane monitors?

11 A. I have not worked on the methane monitors since
12 the longwall had been in operation in '09 or '10,
13 whenever they started.

14 Q. Okay. Had you ever noticed anybody else working
15 on those methane monitors?

16 A. No, sir.

17 Q. Did you ever see a cover off of those methane
18 monitors?

19 A. Excuse me?

20 Q. Ever seen the cover off of the methane monitor?

21 A. No, sir.

22 Q. The sensors on the methane monitors occasionally
23 get fouled up with water and dust. And we know there
24 are commercial products that can be placed over those
25 methane monitors. I think it's a Gortex sock. Do you

1 know if they used a product similar to that?

2 A. I've never had it off, sir.

3 Q. You've never seen the sensors themselves?

4 A. I've just seen them mounted. I've never took them
5 apart, sir.

6 Q. Did you see a sock over them?

7 A. No, sir.

8 Q. Okay. Do you recall if there was any sort of
9 protection, like a piece of belt or anything like
10 that, in front of those sensors, particularly the one
11 on the tail drive?

12 A. No, sir, not that I can recall.

13 Q. Okay. Have you ever heard of anybody covering
14 those sensors up with a plastic bag?

15 A. No, sir.

16 Q. Have you ever had any reason to bridge out a
17 methane monitor?

18 A. No, sir.

19 Q. Okay. Do you know of anybody else bridging out a
20 methane monitor?

21 A. No, sir.

22 Q. Did anybody ever call in the mine that you're
23 aware of that said there were inspectors on the
24 property or inspectors heading inby?

25 A. Yes, sir.

1 Q. Okay. Thank you. Do you think the ventilation in
2 this mine was adequate?

3 A. Yes, sir.

4 Q. Okay. Thank you.

5 MR. FARLEY:

6 I don't think I have anything else.

7 ATTORNEY HAMPTON:

8 Okay. On behalf of MSHA and the office
9 of Miners' Health, Safety and Training, we'd like to
10 thank you for appearing and answering our questions
11 today. Your cooperation is very important to the
12 investigation as we work to determine the cause of the
13 accident. After questioning other witnesses, we might
14 have some follow-up questions for you, so we might
15 call you if we do. And in addition, if you have any
16 other information you'd like to provide to the teams,
17 please don't hesitate to contact us and to give us
18 that information.

19 So now, as I had told you before we
20 started the questioning, if you would like you may go
21 back over any question that you've answered to further
22 clarify, to give any additional information or if
23 there's any statement that you would like to make, you
24 may do so at this point. Is there anything you'd like
25 to say? You have to say it out loud.

1 A. No.

2 ATTORNEY HAMPTON:

3 Okay. Thank you very much.

4 ATTORNEY SEARS:

5 Now, we would like the opportunity to

6 read and sign, if given that opportunity.

7 ATTORNEY HAMPTON:

8 I think --- yeah. I think that what has

9 --- the procedure that most likely will happen is we
10 have allowed people --- they can come in and read
11 their transcript, and if they have changes --- if by
12 read you mean to ensure that the copy accurately
13 reflects the things that he actually said here today,
14 I think that what probably will happen is that you'll
15 have an opportunity to attach a memo then to the
16 transcript.

17 ATTORNEY SEARS:

18 And we would also like to maintain

19 confidentiality, as permitted. Thank you.

20 ATTORNEY HAMPTON:

21 Okay.

22 ATTORNEY KOERBER:

23 You want to make it confidential, is that

24 what you said?

25 ATTORNEY SEARS:

1 Yes.

2 ATTORNEY KOERBER:

3 Let me explain on behalf of the State

4 because our FOIA statute is somewhat different than

5 the Fed's. Until such time as the investigation is

6 over, we will take the position that the ---

7 everything pertaining to the investigation is exempt

8 from FOIA, and we will refuse to give it to anybody

9 who issues us a FOIA request. Obviously, a court may

10 do something different in the interim, which I have no

11 way of knowing if it would happen or what would

12 happen. However, once the investigation is closed and

13 that report is issued, everything is subject to FOIA

14 and everything would be made public. So I just want

15 to make that crystal clear.

16 ATTORNEY SEARS:

17 We understand that.

18 ATTORNEY KOERBER:

19 Okay.

20 ATTORNEY SEARS:

21 Thank you.

22 MR. SHERER:

23 Thank you.

24 ATTORNEY HAMPTON:

25 Thank you. Off the record.

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CONFIDENTIAL STATEMENT UNDER OATH

CONCLUDED AT 12:47 P.M.

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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