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Transcript of the Testimony of George Holtzapfel

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STATEMENT UNDER OATH
OF
GEORGE HOLTZAPFEL

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 Thursday, September 2, 2010, beginning at 9:55 a.m.

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STATEMENT

By Mr. Holtzapfel

44 - 45

CERTIFICATE

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

10*

Two

Green Card

11*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is
5 September 2nd, 2010. I'm with the Office of the
6 Solicitor, U.S. Department of Labor. With me is Erik
7 Sherer, an accident investigator with the Mine Safety
8 and Health Administration, MSHA, an agency of the U.S.
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

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

18 ATTORNEY KOERBER:

19 Barry Koerber, Assistant Attorney General
20 assigned to represent the West Virginia Office of
21 Miners' Health, Safety and Training.

22 MS. MONFORTON:

23 And I'm Celeste Monforton with the
24 Governor's independent team.

25 ATTORNEY KOERBER:

1 Could you swear in the witness?

2 -----

3 GEORGE HOLTZAPFEL, HAVING FIRST BEEN DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 -----

6 ATTORNEY KOERBER:

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

9 A. My name is George Henry Holtzapfel, spelled
10 H-O-L-T-Z-A-P-F-E-L.

11 ATTORNEY KOERBER:

12 And would you please state your address
13 and your telephone number?

14 A. Address is [REDACTED]

15 My phone number's [REDACTED]

16 ATTORNEY KOERBER:

17 And sir, do you have an attorney with you
18 here today?

19 A. Yes, I do.

20 ATTORNEY KOERBER:

21 And would you state who that attorney is?

22 A. Brian Abraham.

23 ATTORNEY KOERBER:

24 Okay. And Mr. Abraham, would you state

25 the firm you're with and identify yourself?

1 ATTORNEY ABRAHAM:

2 Abraham and Ilderton.

3 ATTORNEY KOERBER:

4 And is Mr. Holtzapfel your client?

5 ATTORNEY ABRAHAM:

6 Yes, he is.

7 ATTORNEY KOERBER:

8 Sir, are you appearing here today as a
9 result of receiving a subpoena?

10 A. Yes.

11 ATTORNEY KOERBER:

12 And would this be a copy of that
13 subpoena?

14 A. Yes, it will.

15 ATTORNEY KOERBER:

16 Okay. I'd like this to be marked as
17 Exhibit One.

18 (Exhibit Holtzapfel One marked for
19 identification.)

20 ATTORNEY KOERBER:

21 I notice on the subpoena that it is
22 subpoenaing you here for August 26th at 9:00 a.m., and
23 today is 9/2 or September 2. Were you here last week
24 on August 26th at 9:00 a.m.?

25 A. Yes, I was.

1 ATTORNEY KOERBER:

2 And after discussions with the parties

3 involved in the interview, was it your understanding

4 that we agreed to continue your subpoena to today at

5 ten o'clock?

6 A. Yes.

7 ATTORNEY KOERBER:

8 Okay. This is a copy of the green card

9 signed by you that I'm also going to have marked as

10 Exhibit Two.

11 (Exhibit Holtzapfel marked for

12 identification.)

13 ATTORNEY KOERBER:

14 Sir, the statute that authorizes the

15 Director to issue subpoenas compelling witnesses to

16 appear for interviews such as this requires the

17 Director to offer to each witness a \$40 a day witness

18 fee plus roundtrip mileage at the rate of 15 cents a

19 mile plus reimbursement for any tolls. It is my

20 understanding that your attorney and you have

21 considered that prior to entering this interview and

22 that you have a decision as to whether or not you want

23 that money.

24 A. I'll refuse it.

25 ATTORNEY KOERBER:

1 Okay. Thank you.

2 ATTORNEY BABINGTON:

3 All right. There are several members of

4 the investigation team also present in the room today.

5 Erik Sherer will be conducting initial questioning.

6 All members of the Mine Safety and Health

7 Accident Investigation Team and all members of the

8 State of West Virginia Accident Investigation Team

9 participating in the investigation of the Upper Big

10 Branch Mine explosion shall keep confidential all

11 information that is gathered from each witness who

12 provides a statement until the witness statements are

13 officially released. MSHA and the State of West

14 Virginia shall keep this information confidential so

15 that other ongoing enforcement activities are not

16 prejudiced or jeopardized by a premature release of

17 information. This confidentiality requirement shall

18 not preclude investigation team members from sharing

19 information with each other or with other law

20 enforcement officials. Team members' participation in

21 this interview constitutes their agreement to keep

22 this information 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, Safety and Training. We appreciate
6 your assistance in this investigation.

7 You may have your personal attorney
8 present during the taking of this statement or another
9 personal representative if MSHA has permitted it, and
10 you may consult with your attorney or representative
11 at any time. Now, we went over Mr. Abraham before.
12 Another attorney just joined us in the room for the
13 interview.

14 ATTORNEY HARDY:

15 Yes. I'm sorry.

16 ATTORNEY BABINGTON:

17 Would you please identify yourself?

18 ATTORNEY HARDY:

19 I apologize. I was given various
20 information. I'm David J. Hardy with Allen, Guthrie &
21 Thomas, and I'm here on behalf of Performance Coal.

22 ATTORNEY BABINGTON:

23 Okay. Since this is not an adversarial
24 proceeding, formal Cross Examination will not be
25 permitted. However, your personal representative may

1 ask clarifying questions as appropriate. And just to
2 clarify again for the record, Mr. Abraham, you're here
3 on behalf of Mr. Holtzapfel?

4 MR. ABRAHAS:

5 That's correct.

6 ATTORNEY BABINGTON:

7 Your identity and the content of this
8 conversation will be made public at the conclusion of
9 the interview process and may be included in the
10 public report of the accident, unless you request that
11 your identity remain confidential or your information
12 would otherwise jeopardize a potential criminal
13 investigation. If you request us to keep your
14 identity confidential, we will do so to the extent
15 permitted by law. That means that if a judge orders
16 us to reveal your name or if another law requires us
17 to reveal your name or if we need to reveal your name
18 for other law enforcement purposes, we may do so.
19 Also, there may be a need to use the information you
20 provide to us or other information we may ask you to
21 provide in the future in other investigations into and
22 hearings about the explosion. Do you understand?

23 A. Yes.

24 ATTORNEY BABINGTON:

25 Do you have any questions?

1 A. No.

2 ATTORNEY BABINGTON:

3 After the investigation is complete, MSHA
4 will issue a public report detailing the nature and
5 cause of the fatalities in the hope that greater
6 awareness about the cause of accidents can reduce
7 their occurrence in the future. Information obtained
8 through witness interviews is frequently included in
9 these reports. Since we will be interviewing other
10 individuals, we request that you not discuss your
11 testimony with any person aside from a personal
12 representative or counsel.

13 A court reporter will record your
14 interview. Please speak loudly and clearly. If you
15 do not understand a question asked, please ask the
16 interviewer to rephrase it. Please answer each
17 question as fully as you can, including any
18 information you've learned from someone else.

19 I'd like to thank you in advance for your
20 appearance here. We appreciate your assistance in
21 this investigation. Your cooperation is critical in
22 making the nation's mines safer.

23 After we've finished asking questions,
24 you'll have an opportunity to make a statement and
25 provide us with any other information that you believe

1 to be important. If at any time after the interview
2 you recall any additional information that you believe
3 might be useful, please contact through your
4 representative any of us or Norman Page at the contact
5 information provided to you.

6 In that vein, this copy of the letter
7 that I'm handing you right now basically spells out a
8 lot of what I just went over in the script. And if
9 you want to read that at some point, maybe after the
10 interview, and you can ask me any questions about
11 that. And Norman Page's contact information is on
12 there.

13 Finally, any statements given by miner
14 witnesses to MSHA are considered to be an exercise of
15 statutory rights and protected activity under Section
16 105(c) of the Mine Act. If you believe any discharge,
17 discrimination or other adverse action is taken
18 against you as a result of your cooperation with this
19 investigation, you're encouraged to immediately
20 contact MSHA and file a complaint under Section 105(c)
21 of the Act. Terry?

22 MR. FARLEY:

23 Mr. Holtzapfel, on behalf of the Office
24 of Miners' Health, Safety and Training, I'd like to
25 inform you that the West Virginia State Mining

1 Regulations, specifically Chapter 22A, Article 1,
2 Section 22 of the West Virginia Code, also provides
3 protection against potential discrimination for
4 participating in these investigative interviews. I'd
5 like to pass along some contact information for the
6 West Virginia Board of Appeals.

7 The Board is charged with hearing
8 complaints from miners concerning discrimination, and
9 should you experience any such problems, you should
10 contact the board immediately. Now, I would caution
11 you that should you have a problem, you need to file a
12 claim within 30 days of whenever it occurs. All
13 right? Thank you.

14 EXAMINATION

15 BY MR. SHERER:

16 Q. Okay. The first thing I want to do is thank you
17 for coming down here this morning. Roughly how many
18 years of mining experience do you have?

19 A. Ten.

20 Q. Ten? Was that all with Massey?

21 A. No.

22 Q. When did you first start working with the Massey
23 organization?

24 A. Massey gave me my first start in the mines as a
25 red hat in '99.

1 Q. Okay.

2 A. And I went through the red hat program through a
3 contractor called Lightning Contracting, which later I
4 got in a --- while I was still a red hat, got in
5 electrician trainee program at Independence Coal. And
6 right before I got certified I went to Speed Mining.

7 Q. Okay. And you were up at Speed for a while. When
8 did you come back to Massey?

9 A. October '08.

10 Q. Okay. When did you first start working at Upper
11 Big Branch?

12 A. It was in February of this year, beginning of
13 February.

14 Q. Okay. What was your job description prior to the
15 explosion?

16 A. I was a troubleshooter production electrician.

17 Q. Okay. Which section did you work on?

18 A. The barrier section.

19 Q. The barrier section. Which shift did you work on?

20 A. I rotated, two weeks of days, two weeks of
21 evenings.

22 Q. Okay. Do you recall who your boss was, section
23 boss?

24 A. Brandon Davis.

25 Q. Okay. What was ventilation like on that barrier

1 section?

2 A. Well, it really wasn't bad at all. We had plenty
3 of air. Every now and then a piece of equipment might
4 pull down a piece of curtain but it was usually stuck
5 right back up.

6 Q. Okay. Good. Ever notice any significant methane
7 on that section?

8 A. One time I seen a miner go up to .3 and then back,
9 right back down to 0.

10 Q. Okay. What was the rock dust like on that
11 section?

12 A. It was hand dusted, but it was never machine
13 dusted until about a week and a half, two weeks before
14 the explosion. They finally got a machine duster up
15 there ---

16 Q. Okay.

17 A. --- where we were a new section just developing
18 and we just didn't have one.

19 Q. Okay. You guys were in what, about eight or ten
20 breaks?

21 A. Yeah, if that.

22 Q. Okay. Were you working on April the 5th?

23 A. I was standing in the parking lot. I was getting
24 ready to go underground.

25 Q. Okay. So you were coming on for the evening

1 shift.

2 A. For the evening shift.

3 Q. What do you recall about the explosion? Did you
4 see anything or hear anything?

5 A. When I was getting out of my pickup, I was parked
6 in front of the small substation in the parking lot.

7 Q. Uh-huh (yes).

8 A. And I leaned over in the back of my truck to get
9 my dinner bucket and I heard a loud noise. Well, the
10 guy that rides with me, I told him, I said, watch that
11 fan. The motor's getting ready to blow up, because it
12 sounded like an A.C. motor was spinning and you know
13 how they'll run away and then blow up.

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

15 A. While I was watching the fan, well, the fan
16 stopped and started spinning backwards.

17 Q. So you actually saw the blades stop and start ---

18 A. Stop.

19 Q. --- rotating backwards?

20 A. Yes. Done that for about 15 seconds and then
21 started spinning the right way. Threw debris probably
22 200 yards up the hillside.

23 Q. Oh, Jeez.

24 A. Paper, trash, just --- but as far as the drift,
25 which I could see it at the same time, just a little

1 bit of rock dust come out, not much at all. Most of
2 it come out at the end --- from that point.

3 Q. Okay. What happened after you saw the fan reverse
4 and heard it and the dust came out? What did you do
5 then?

6 A. Well, I seen one electrician running toward the
7 fan, and I followed him, and by the time I got over
8 there he had had everything done. I guess he had shut
9 the blast doors and all that again.

10 Q. Oh, okay.

11 A. So I went back into the bathhouse, got dressed,
12 went and got my --- was on my way to get my cap light
13 and seen the safety directors going in.

14 Q. Did anybody tell you what to do at that point in
15 time?

16 A. Nobody knew what to do. Nobody knew what was
17 going on.

18 Q. Okay.

19 A. They were just yelling on the phone, yelling on
20 the phone.

21 Q. Now, you say the blast doors had come open on the
22 fan. And then who was this other electrician?

23 A. Patrick Williams.

24 Q. Patrick Williams.

25 A. He's the one that was going toward the ---.

1 Q. Okay. But he physically closed the doors?

2 A. As far as I know, yes.

3 Q. Okay. Thank you. That's the first confirmation
4 we've had that the blast doors came open.

5 A. It did spin backwards. That's a scary deed.

6 Q. That's very interesting, too. We've heard that,
7 but you're, I think, the first person that actually
8 saw it do that. I'm amazed that the motor didn't cut
9 out on the breaker or something.

10 A. The way it sounded, it sounded like it was getting
11 ready to just disintegrate.

12 Q. Yeah. Now, you know much more about this than I
13 do, being an electrician, but doesn't the amperage go
14 way up when the motor ---

15 A. Oh, yeah.

16 Q. --- stalls out like that?

17 A. Oh, yeah.

18 Q. When you were working underground on that section,
19 did you ever --- did anybody ever come up and tell you
20 there were inspectors on the property or that you
21 heard it on the mine phone that inspectors were coming
22 in?

23 A. You was usually told before you come underground
24 if they expected the inspector to come in.

25 Q. Okay.

1 A. Like, we had the inspector yesterday. He's going
2 to come back today and abate some violations and look
3 at this or look at that and ---.

4 Q. Okay.

5 A. About all I was ever told.

6 Q. Okay, sure. What did you think about the overall
7 ventilation of this mine?

8 A. Well, what I seen, which I'd never been very far
9 through the mines --- I'd only been probably six,
10 seven breaks or so past the mouth of barrier section,
11 the furthest I'd been in the mines. And ventilation
12 seemed pretty good by what I could tell, but like I
13 said, I hadn't been very far.

14 Q. Okay.

15 A. I knew where we were developing, which was on the
16 return side, there was a lot of trash, lot of garbage,
17 debris, gob in the entries.

18 Q. Sure.

19 A. Lots of old dried up timbers been sitting there
20 for years.

21 Q. That's a pretty old part of the mine.

22 A. Uh-huh (yes).

23 Q. Thank you. I want to talk to you about Massey
24 Day, Massey Appreciation Day, February 13th. Do you
25 recall working, I think it was a Saturday?

1 A. It was a Saturday.

2 Q. What were you guys doing that Saturday?

3 A. Cutting a belt channel.

4 Q. Cutting a belt channel.

5 A. Developing Four section.

6 Q. Okay. Just turning the section off?

7 A. (Indicates yes.)

8 Q. Okay. Do you recall who was working on the crew
9 that day?

10 A. Probably name a few of them. Doubt I can remember
11 all of them.

12 Q. Sure. Who do you remember?

13 A. Had a miner man by the name of Jim Lucas.

14 Q. Uh-huh (yes).

15 A. He's an electrician. The other miner man was
16 there, Paul --- Mike Richards.

17 Q. Okay.

18 A. Section boss was Brandon Davis. Ricky Brown was
19 pinner operator. Charles Gray run the pinner with
20 him. Ricky Campbell, Kevin Lambert; they were shuttle
21 car operators. I got Travis Holdren, was the scoop
22 man.

23 Q. Okay.

24 A. Pretty much that was about the whole crew. There
25 might be one or two strays in there, but ---.

1 Q. I think you got most of it, about all of them.

2 Was there anybody else there that morning?

3 A. Yeah, the superintendent ---

4 Q. Who was that?

5 A. --- on that side of the mines, Gary May.

6 Q. Okay. And we understand that the miner was having
7 problems with the methane monitor.

8 A. Right.

9 Q. Do you recall that?

10 A. Yes.

11 Q. Could you tell us what happened?

12 A. He was about --- I don't know, this is just
13 estimation --- 10, 15 feet out from under the bolts
14 where he was cutting the higher top in that channel
15 for a belt head.

16 Q. Sure.

17 A. The power center was one break inby, same break
18 through, just one break inby. It just quit, lost all
19 the power. The lights went off, everything. Still
20 had a readout. The readout, I can't remember exactly
21 what number it said. It was either F5, F9 or
22 something like that, which means the sniffer had
23 malfunctioned.

24 Q. Okay.

25 A. And these national mine sniffers, we've had a lot

1 of problems with them. You get a little water in
2 them, they're done ---

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

4 A. --- 'til they're dried out. It was just down
5 right there, out from under the bolts.

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

7 A. I was asked to check it out, which they had to
8 come and find me to come and look at it. I went over
9 and looked at it and gave them my opinion that it was
10 probably water in the sniffer, and only way to find
11 out is to get it back. I told whatever it takes to
12 get it back.

13 Q. Okay. What'd you do then?

14 A. I argued around a little bit and wasn't too happy
15 doing with what --- you know, doing it the way I was
16 doing it. So probably took me about an hour, hour and
17 a half to do what I needed to do. Wasn't sure what I
18 was doing, had never done it before. Just heard about
19 it. Got into it, got it backed up, left it, left it
20 like that in the back. Took the cover off the
21 sniffer. Mostly it was full of moisture.

22 Q. Uh-huh (yes).

23 A. He was asking what it was going to take to fix it.
24 I said another sniffer, which I done told him that
25 several times. He had disappeared before that. Well,

1 he come back. He was carrying a sniffer, but no
2 calibration kit.

3 Q. Okay.

4 A. I said, well, it can't be ran. You got to --- to
5 change the sniffer, you still have to calibrate it.
6 Well, I walked away from it and they fired it back up
7 and chewed them belt channels.

8 Q. Now, who told you to do what you needed to do?

9 A. It was Gary May and me had discussed it quite a
10 bit there.

11 Q. Okay. And by doing what you needed to do, was
12 that bridging out the methane monitor?

13 A. Yes.

14 Q. Okay.

15 A. Through the readout, because it was still under
16 supported top, where the other end of the miner was
17 out from under supported top.

18 Q. Okay. Do you recall if that miner had the methane
19 monitor override?

20 A. I don't know what miners do have it and don't have
21 it, but some do, some don't.

22 Q. Sure.

23 A. But I know it's on all the remote boxes.

24 Q. Oh, okay.

25 A. But I don't know how to do it. I've never dealt

1 with doing it. The only thing I do know is how to
2 reset the tram breaker and every other function
3 is ---.

4 Q. Sure.

5 A. If you don't do it, you don't know, so ---.

6 Q. Sure. Yeah, you just fix them, you don't run
7 them.

8 A. I can tram it back and forth a little bit. That's
9 about it.

10 Q. Okay.

11 A. I've never loaded the buggy with the miner, never
12 done anything like that.

13 Q. Well, you got to do that. The first time I ever
14 loaded the buggy, right when I was fixing to load it,
15 the buggy operator got out and run like hell. That
16 does a lot for your confidence.

17 A. I loaded a buggy one time I run it, and the miner
18 man was loaded it and he was sitting there chaining
19 and chaining and the buggy wasn't getting full.

20 Q. Uh-huh (yes).

21 A. I never turned the chain off. I wasn't looking.
22 It was all dumping behind me, so I wasn't allowed on
23 the buggy no more. If it's broke, I can fix it.
24 Other than that, leave me alone.

25 Q. There you go. That's the way to work. So you

1 said you had a hard time bridging out that monitor.

2 Did you just eventually figure it out on your own?

3 A. Well, at first I was told to do what I had to do
4 to make it run. I said, well, there's only one way to
5 do that.

6 Q. Sure.

7 A. He said, well, you know, do what you have to do to
8 make this miner run.

9 Q. Uh-huh (yes).

10 A. I said, well, I don't know how. The
11 superintendent went to the mine phone. He was there
12 approximately five minutes, maybe ten minutes, come
13 back and told me, try this wire --- this color wire
14 and this color wire inside of the readout. I took the
15 readout apart, I tried those two wires, I put it back
16 together. Didn't work.

17 Q. Uh-huh (yes).

18 A. He said, well, you need to go to the phone. I
19 said, why's that? He said, go holler for Rick. Tell
20 him it didn't work. I go to the phone. I yell for
21 Rick, tell him it didn't work. He tells me two other
22 color wires. I go back to the miner. I take it all
23 back apart again, try these two wires, put it back in.
24 No, it didn't work.

25 At that time me and the superintendent, that's

1 when we discussed that I have to have a sniffer to
2 make it run. There was some words exchanged there.
3 He disappeared. Don't know where he went. Never told
4 me. And I didn't want to look like an idiot, but I
5 wanted to try to at least get it backed out from
6 that ---

7 Q. Sure.

8 A. --- bad top. Well, I played with wires and played
9 with wires and finally found the two it took.

10 Q. Okay. Now, when you went to the phone and
11 hollered out for Rick, who were you talking to then?

12 A. As far as I know, that day all I knew was Rick.

13 Q. Okay.

14 A. But there is an electrician on that side of the
15 mountain named Rick Nicolau.

16 Q. Uh-huh (yes).

17 A. Now, whether it was him or not, I don't know.
18 Because at that time I had no idea who Rick was.

19 Q. Okay.

20 A. I hadn't been there two weeks at that time.

21 Q. Sure. But it sounded like an electrician you were
22 talking to?

23 A. Oh, yeah, yeah.

24 Q. Do you recall what condition the miner was in at
25 the end of that shift? Was the methane monitor still

1 bridged out?

2 A. Yes.

3 Q. Do you know when that methane monitor was
4 eventually fixed and calibrated?

5 A. The following Monday night, which would've been
6 where it was a three-day weekend, ---

7 Q. Uh-huh (yes).

8 A. --- it was changed out then.

9 Q. Okay. Do you know if a crew worked during the day
10 on Monday?

11 A. On the day on Monday? It was probably us.

12 Q. Okay. So somebody ---?

13 A. But somebody ---. There was a crew that come in
14 behind us on that Saturday and ran.

15 Q. Oh, okay. So you think it was bridged out part of
16 the shift that you guys worked and then the shift of
17 the following crew on Saturday?

18 A. Right.

19 Q. Okay.

20 A. The following crew following us did not have an
21 electrician. Whenever we were sent to Upper Big
22 Branch, he quit, and he wouldn't go. And he just
23 straight up quit Massey Energy.

24 Q. Uh-huh (yes).

25 A. The section boss was told. I told him, and as I

1 was finishing telling him, my section boss come up and
2 told him. I left him and told the miner operator what
3 was going on.

4 Q. Okay.

5 A. It was their choice. You know, I told him. I
6 said, if you don't --- told the miner man, if you
7 don't want to run it, don't run it.

8 Q. Okay.

9 A. That's your choice, I said. I just did what I had
10 to do and I walked away.

11 Q. Okay.

12 A. Now, what their discussions were with my section
13 boss, I have no idea.

14 MR. SHERER:

15 Sure. Okay. I appreciate that
16 information. That's all the questions I've got for
17 right now.

18 ATTORNEY HARDY:

19 Erik, can I ask a question real quick?

20 MR. SHERER:

21 Sure.

22 ATTORNEY HARDY:

23 It segues.

24 EXAMINATION

25 BY ATTORNEY HARDY:

1 Q. What was the section boss's name that you talked
2 to?

3 A. The one following him?

4 Q. Yes, sir.

5 A. Jack Martin.

6 Q. Jack Martin?

7 A. Uh-huh (yes).

8 ATTORNEY HARDY:

9 I'm sorry. Thank you.

10 MR. SHERER:

11 No problem.

12 EXAMINATION

13 BY MR. FARLEY:

14 Q. Okay. Who was the oncoming shift electrician?

15 A. There wasn't one.

16 Q. Okay.

17 A. That's why I'd said he had quit.

18 Q. Okay. Who was the oncoming shift continuous miner
19 operator?

20 A. Eddie Foster.

21 Q. Eddie Foster?

22 A. Well, they had two miner men, but I think he was
23 the one that was going to run. Usually he was the
24 ---. If they was just going to run one miner, he was
25 the one to run.

1 Q. Okay. All right. Now, what time during the shift
2 did the original problem occur?

3 A. I want to say 10:30, 11:00.

4 Q. A.M.?

5 A. Yeah. I don't really know. I don't wear a watch
6 underground. I just know when I see people going
7 toward the mantrip, it's time to go.

8 Q. Okay. But what time did you start that day?

9 A. Oh, we started at least by 7:00.

10 Q. Okay.

11 A. See, where we was under construction it was a
12 little different. We weren't rotating through them
13 weeks. It was just straight day shift, straight
14 evening shift.

15 Q. Okay. Is it fair to say that it was in the first
16 half of your shift that this event occurred?

17 A. It was probably mid shift.

18 Q. Okay. All right. Now, let me make sure I'm clear
19 on what I heard. Cutting the belt channel, the
20 machine shuts off. Now, is it correct that the ripper
21 head portion of the machine is under unsupported top?

22 A. It's under unsupported top, yes.

23 Q. Okay. Now, what distance had the channel been
24 cut, do you estimate?

25 A. Ten to 15 feet, maybe.

1 Q. Okay. Now, in order to change the sniffer, would
2 it have been --- without moving the machine, would it
3 have been necessary to expose yourself to unsupported
4 top?

5 A. Unless you set timbers and cribs, yes.

6 Q. Okay. Now, when Mr. May came to the scene, if I
7 understood you correctly, he instructed you to do
8 whatever you had to do to make the machine run; is
9 that correct?

10 A. Yes.

11 Q. Was there any doubt in your mind as to what he
12 meant for you to do?

13 A. I said, well --- I told him, I said, there's
14 several different ways we can go about it. One, we
15 got to get a new sniffer, got to set some timbers, fix
16 a tear. Or you know the other way. And he said,
17 yeah, I know the other way. We got to make it run.

18 Q. Okay. Now, did he instruct you to make it run
19 just for purposes of moving it or did he instruct you
20 to make it run for purposes of eventually also
21 continuing to mine?

22 A. Never was instruction like that. I've just got
23 --- I've got to get this miner running.

24 Q. Okay. All right. Now ---?

25 A. Because that ripper head was actually real close

1 to the track and debris on the track, the gob. It was
2 cutting it down and it was unsupported top beside the
3 track, you know. I know his main --- first main goal
4 was to get it backed up and get some bolts in there so
5 he could clean.

6 Q. Okay. Were there people working elsewhere in the
7 mine?

8 A. Yeah, next break down. They were cleaning. We'd
9 done cut a couple overcasts where we was just
10 developing. They were building overcasts.

11 Q. Okay. Was your work --- these other people, were
12 they inby where you were or outby?

13 A. All around, just a big circle around it.

14 Q. Would the circumstances at the track have impeded
15 their ability to travel out of the mine?

16 A. From where our mantrip was parked?

17 Q. Yes, sir.

18 A. Yes. Yes, it would've, definitely.

19 Q. Now, you indicated that after Mr. May told you to
20 make it run, he left, left the site. How long was he
21 gone?

22 A. Hour, maybe.

23 Q. About an hour?

24 A. Yeah.

25 Q. Okay. Now, had you been able to get the machine

1 reenergized before he was ---?

2 A. Yes.

3 Q. Okay.

4 A. I mean it was backed up and the pinner was put in
5 to start cleaning, or start bolting.

6 Q. Okay. Now, after he reenergized the machine, did
7 anyone begin operation of the machine before Mr. May
8 returned?

9 A. Yes.

10 Q. Who?

11 A. It was the miner operator, James Woods. It was
12 backed up on the main break there where the master
13 panel was thrown.

14 Q. Okay.

15 A. And the pinner come around and come in and started
16 bolting.

17 Q. Okay. At what point did the machine begin cutting
18 the belt channel?

19 A. I don't know all what's going on, but when he come
20 back with the sniffer, and then he had it, I said,
21 well, I wish I knew you were going that far to get a
22 sniffer. I need a calibration kit to make it right.
23 Well, he kicked around a few rocks and him-hawed and
24 huffed and puffed and walked away. Well, instead of
25 having a confrontation, I got my sack and I walked

1 away, as well.

2 Q. Okay. So at that point Mr. May did not instruct
3 you to install a new sniffer; is that correct?

4 A. Uh-uh (no).

5 Q. Okay. Do you recall Mr. May instructing the miner
6 operator or anyone else to commence ---

7 A. No, I wasn't ---.

8 Q. --- cutting the top again?

9 A. I wasn't in the area at that time. Like I said,
10 I'd walked over to the power box. I probably ate my
11 lunch, and then I went up toward the overcasts and
12 ---. We had a lot of --- like I said, we had a lot of
13 stuff going on. I would ---

14 Q. Okay.

15 A. --- help everybody do anything they needed help
16 with.

17 Q. Okay. Now, after you left the scene, did it
18 become clear --- at what point did it become clear to
19 you, again, that the machine began its cutting?

20 A. I'd say about an hour, hour and a half later I
21 could hear it.

22 Q. Okay.

23 A. I could hear it down there, chewing on the rock.

24 Q. Okay. Now, but ultimately by the end of the
25 shift, the sniffer had still not been replaced?

1 A. No.

2 MR. FARLEY:

3 Okay.

4 MS. MONFORTON:

5 I don't have any questions.

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. I've got one more question, Mr. Holtzapfel. Now,
9 you said that the mantrip was inby where that miner
10 was.

11 A. Uh-huh (yes).

12 Q. How long would it have taken to walk out of that
13 section?

14 A. Thirty (30) minutes.

15 MR. SHERER:

16 Okay. Thank you.

17 ATTORNEY BABINGTON:

18 Okay.

19 ATTORNEY HARDY:

20 May I ask another clarifying question?

21 ATTORNEY BABINGTON:

22 Sure, uh-huh (yes).

23 RE-EXAMINATION

24 BY ATTORNEY HARDY:

25 Q. George, it's important, because it's kind of hard

1 to follow the timeline here. I think Terry Farley
2 cleared most of it up, but I just wanted to make sure
3 I understood. The problem happened around 10:30 a.m.,
4 11:00, I think you said.

5 A. About around 11:00, yeah.

6 Q. Okay. And May said, make the machine run. And
7 you were able to get it to run by doing --- what did
8 you do to make it run?

9 A. Bridge two wires in the readout, put them
10 together.

11 Q. Okay. And then where I kind of lose the event,
12 George, is did you leave at that point? Did you watch
13 the miner man back it out or ---?

14 A. Yes, I was there when it was backed up ---

15 Q. Okay.

16 A. --- because I knocked the main breaker on the
17 master switch.

18 Q. And that was done by James Lucas?

19 A. Uh-huh (yes).

20 Q. Okay. After he backed it up, what happened?

21 A. I stood there while they pulled the roof bolt
22 machine into the place ---

23 Q. Okay.

24 A. --- to set up the ---. They probably put up maybe
25 one row of bolts, maybe two when he showed back up

1 with a sniffer.

2 Q. Okay.

3 A. That's when we had our discussion and I walked
4 away.

5 Q. Okay. And you told Gary May he needed a
6 calibrator ---.

7 A. Yeah, a calibration kit, gas kit.

8 Q. Okay. And then you walked away and Gary May
9 walked away?

10 A. Yeah. Well, he walked away first, and then I ---.
11 Instead of getting into a confrontation, I ---. I
12 didn't want to get in no argument.

13 Q. I understand. And at that point, what was the
14 miner machine doing at that point?

15 A. Nothing. They didn't have --- the power was off.
16 The only thing energized was the cable going to it.

17 Q. Okay. And then about one to one and a half hours
18 later, you heard the machine cutting rock?

19 A. Uh-huh (yes).

20 Q. Okay. Do you know what Gary May did in that one
21 to one and a half hours?

22 A. Well, like I said, I'd walked over to the power
23 box and ended up on the section. I never seen him one
24 time.

25 ATTORNEY HARDY:

1 Okay. Thank you.

2 ATTORNEY BABINGTON:

3 We should take a quick break and then
4 we'll come back on the record and close out. Off the
5 record.

6 SHORT BREAK TAKEN

7 ATTORNEY BABINGTON:

8 Let's go back on. Erik?

9 RE-EXAMINATION

10 BY MR. SHERER:

11 Q. One last question, Mr. Holtzapfel. Are you aware
12 of any other instance where a methane monitor has been
13 bridged out or otherwise defeated?

14 A. Not to my knowledge.

15 Q. Okay. Thank you.

16 A. I've been an electrician a little over nine years,
17 almost ten.

18 Q. Uh-huh (yes).

19 A. I've heard of it.

20 Q. Sure.

21 A. That's the first time I ever really dealt with it
22 as far as doing it. I have at another coal company
23 found one that way, being on third shift maintenance,
24 and corrected it. Other than that, no.

25 MR. SHERER:

1 Okay. Thank you.

2 ATTORNEY BABINGTON:

3 Terry, anything else?

4 MR. FARLEY:

5 No.

6 ATTORNEY BABINGTON:

7 Celeste?

8 MS. MONFORTON:

9 No.

10 ATTORNEY BABINGTON:

11 Okay. We've marked two documents at the

12 beginning. Holtzapfel One is a copy of the subpoena.

13 Holtzapfel two is a copy of the return receipt on the

14 subpoena.

15 On behalf of MSHA and the Office of

16 Miners' Health, Safety and Training I want to thank

17 you for appearing and answering questions today. Your

18 cooperation is very important in the investigation as

19 we work to determine the cause of the accident. We

20 request that you not discuss your testimony with any

21 person aside from a representative or counsel. After

22 questioning other witnesses, we may call you if we

23 have any follow-up questions.

24 If at any time you have additional

25 information regarding the accident that you'd like to

1 provide to us, please contact us through your
2 representative at the contact information previously
3 provided. If you wish, you may now go back over any
4 answer you've given during this interview, and you may
5 also make any statement that you'd like to make at
6 this time.

7 A. Yes, I do have a couple of statements about the
8 event on February 13th. At that time, I knew the
9 methane monitor had malfunctioned, but there was
10 several Solaris spotters in the area. There was
11 probably at least four or five. The roof bolter
12 operators had one in their crew. I would've had one.
13 The section foreman had one. Miner man had one.
14 Because I don't want to see anyone get hurt for any
15 reason, and you know, I made sure there were spotters
16 there. We all are required to carry them and we all
17 have them.

18 On the same note, where they were running shuttle
19 cars across the track when they were cutting the
20 overcast --- because we had the feeder just sitting on
21 the tail on the main line belt --- there was a lot of
22 air there. I'm not used to that much air coming down
23 that track. Usually I just wear a T-shirt, bibs and a
24 long blue jean button-up shirt. I had on long johns,
25 a zip-up hoodie and was freezing to death. I mean

1 there was a lot of air coming through that area.
2 I just didn't want to feel, you know ---. Don't
3 let anybody think I done it just hastily or anything.
4 I felt comfortable with it or I wouldn't have done it.
5 You know, I'm not going to say, comfortable. I was
6 still nervous as can be, but I mean I --- I don't
7 know. That's all I got to say about it.

8 ATTORNEY BABINGTON:

9 Okay. Thank you. And again, I want to
10 thank you for your cooperation in this matter.

11 A. Okay.

12 ATTORNEY BABINGTON:

13 Off the record.

14 * * * * *

15 STATEMENT UNDER OATH CONCLUDED AT 10:35 A.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