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Transcript of the Testimony of Clay Mullins

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STATEMENT UNDER OATH
OF
CLAY MULLINS

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 Monday, August 9, 2010, beginning at 9:08 a.m.

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY HAMPTON:

4 My name is Pollyanna Hampton. Today is
5 August 9th, 2010. I am 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
9 United States Department of Labor. Also present are
10 several people here from the State of West Virginia,
11 and I ask that they now state their appearance for the
12 record.

13 MR. FARLEY:

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

16 MR. O'BRIEN:

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

19 MS. SPENCE:

20 And I'm Beth Spence with the Governor's
21 independent investigation.

22 ATTORNEY HAMPTON:

23 There are also members of the teams that
24 are in the room right now. All members of the Mine
25 Safety and Health Accident Investigation Team and all

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

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

1 You may have a personal attorney present
2 during the taking of this statement and you may
3 consult with this attorney at any point. Your
4 statement is voluntary. You may refuse to answer any
5 question and you may terminate the interview at any
6 time or request a break at any time.

7 Since this is not an adversarial
8 proceeding, formal Cross Examination of you will not
9 be permitted. However, your attorney may ask any
10 clarifying questions if that is appropriate. For the
11 record, do you have an attorney with you here today?

12 MR. MULLINS:

13 Yes, I do.

14 ATTORNEY HAMPTON:

15 Okay. And let me just get a little
16 background on your attorney. Okay. And what is your
17 name, sir?

18 ATTORNEY WOOTON:

19 Jody Wooton with the Wooton Law Firm here
20 in Beckley.

21 ATTORNEY HAMPTON:

22 Okay. And are you legally representing
23 the witness in this matter?

24 ATTORNEY WOOTON:

25 I am.

1 ATTORNEY HAMPTON:

2 Okay. And do you understand that you may

3 not communicate with Massey Energy, its affiliates or

4 its officers or directors or attorneys concerning the

5 substance of this representation?

6 ATTORNEY WOOTON:

7 Yes.

8 ATTORNEY HAMPTON:

9 Okay. And are you being paid by a third

10 party to provide this representation?

11 ATTORNEY WOOTON:

12 No.

13 ATTORNEY HAMPTON:

14 Okay. Did you voluntarily choose to have

15 this individual as your attorney?

16 MR. MULLINS:

17 Yes, I did.

18 ATTORNEY HAMPTON:

19 Okay. And do you understand that Massey

20 Energy, its affiliates or its officers or directors or

21 attorneys may not represent or direct you in this

22 matter?

23 MR. MULLINS:

24 Yes.

25 ATTORNEY HAMPTON:

1 Okay. Your identity and the content of
2 this conversation will be made public at the
3 conclusion of the interview process and may be
4 included in the public report of the accident unless
5 you request that your identity remain confidential or
6 your information would otherwise jeopardize a
7 potential criminal investigation. If you request us
8 to keep your identity confidential, you will do so to
9 the --- we will do so to the extent permitted by law.

10 That means that if a judge orders us to
11 reveal your name or if another law requires us to
12 reveal your name or if we need to reveal your name for
13 other law enforcement purposes, we may do so. Also,
14 there may be a need to use the information you provide
15 to us in the future, and we may ask you to provide
16 additional information, particularly as we get into
17 further investigations into and hearings about the
18 explosion. Do you understand this?

19 MR. MULLINS:

20 Yes, I do.

21 ATTORNEY HAMPTON:

22 Do you have any other questions?

23 MR. MULLENS:

24 No.

25 ATTORNEY HAMPTON:

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

11 A court reporter will be recording your
12 interview, as you can see, so please speak loudly and
13 clearly so that she can get down everything that
14 you're saying on the record. If you don't understand
15 a question, please let that --- please ask that person
16 to rephrase it and they certainly will. Please answer
17 each question as fully as you can, including offering
18 any information you may have learned from someone
19 else.

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

24 After we have finished questions, you'll
25 have an opportunity to make any statement or provide

1 us with any other information that you think is
2 important. And if at any point after the interview
3 you recall additional information that you would like
4 to share with the teams, please have your attorney
5 contact Norman Page at the information that was given
6 to you in the letter that I handed you before the
7 interview, his e-mail address and phone number in
8 there, so you can reach us there at any point.

9 Any statements given by miner witnesses

10 to MSHA are considered to be an exercise of statutory
11 rights and protected activity under Section 105(c) of
12 the Mine Act. If you believe any discharge,
13 discrimination or any adverse action is taken against
14 you as a result of your cooperation with this
15 investigation, you are encouraged to immediately
16 contact MSHA and file a complaint under Section 105(c)
17 of the Act. Terry?

18 MR. FARLEY:

19 Mr. Mullins, on behalf of the Office of
20 Miners' Health, Safety and Training, I'd advise you
21 that the West Virginia Coal Mine Health and Safety
22 Regulations also provide protection against potential
23 discrimination for participating in these type
24 interviews. I want to pass along some contact
25 information to you for the West Virginia Board of

1 Appeals. The body hears complaints from miners
2 regarding discrimination.

3 Also, you'll see my phone number on
4 there, along with a phone number for Bill Tucker.
5 Bill's our lead underground investigator. And should
6 you have any problem, you can contact either of us or
7 the Board of Appeals; all right? Now, we'd caution
8 you, if you have a problem, you should file a
9 complaint within 30 days of when it happens; okay?

10 Thank you.

11 MR. MULLINS:

12 Okay.

13 MS. SPENCE:

14 Mr. Mullins, on behalf of the Independent
15 Team, I want you to know that we understand that
16 you've suffered a tremendous loss in this explosion,
17 and we want to assure you that everything we do here
18 is just aimed at trying to find out what happened so
19 that --- just to provide answers to your family and
20 other families like yours.

21 MR. MULLINS:

22 Thank you.

23 ATTORNEY HAMPTON:

24 Okay. Do you have any questions before
25 we begin?

1 MR. MULLINS:

2 No.

3 ATTORNEY HAMPTON:

4 Okay. Could you swear in the witness,
5 please?

6 -----

7 CLAY MULLINS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 -----

10 ATTORNEY HAMPTON:

11 Okay.

12 EXAMINATION

13 BY MR. SHERER:

14 Q. First, Mr. Mullins, I want to thank you for coming
15 down here this morning. It's very important to get
16 all the information we possibly can on the conditions
17 and things that led up to this explosion. Any
18 information you'd share with us will be very helpful.
19 We all express our condolences, and we want to
20 determine what contributed to this explosion so we can
21 prevent this type of disaster in the future.

22 A. Yes.

23 Q. I'm going to ask you --- I'm going to deviate a
24 bit from our normal procedures and I'm going to ask
25 you some background questions, and then I'm going to

1 ask you to just tell us what you wanted to say,
2 because it's a little different from our typical
3 witness. And then we'll probably have some clarifying
4 questions about that.

5 A. Okay.

6 Q. If that's okay with you.

7 A. No, that's fine.

8 Q. Okay. Thank you. Roughly how many --- first of
9 all, would you please state your full name and spell
10 your last name for the record?

11 A. Clay Sheridan Mullins, M-U-L-L-I-N-S.

12 Q. What's your address and telephone number, please?

13 A. [REDACTED] . And what
14 else was it?

15 Q. Telephone number.

16 A. [REDACTED]

17 Q. Thank you. Roughly, how many years of mining
18 experience do you have, Mr. Mullins?

19 A. Roughly around 33 years.

20 Q. Thirty-three (33) years. When did you start
21 working at UBB?

22 A. I don't know the exact date. I don't remember.

23 Q. No, just roughly.

24 A. Roughly, I was with them for about eight years,
25 I'd say, '86 or something maybe.

1 Q. Okay.

2 A. Something.

3 Q. Okay. And when was the last day you were employed
4 --- or the last ---?

5 A. Well, now, let me rephrase that.

6 Q. Okay.

7 A. That's when I hired in with Massey.

8 Q. 1986.

9 A. Yeah. When I first hired in with them, I wasn't
10 --- I was at Bethlehem Mine.

11 Q. Okay.

12 A. They called it Eagle Energy.

13 Q. Okay. And about when did you start working at the
14 UBB Mine?

15 A. At the UBB Mines? I was in Kentucky working for
16 my --- I [REDACTED] I
17 transferred to UBB to be home with my family. That
18 was in '91, I think.

19 Q. Okay. And as we understand, that's about ---

20 A. Or ---

21 Q. --- when they were starting this mine.

22 A. --- not '91. I'm sorry. 2001.

23 Q. Okay. So you started in 2001. We understand that
24 you left UBB at some point. About when was that?

25 A. I left UBB around --- now it's been about three

1 and a half years.

2 Q. Okay.

3 A. We had mined out all that part of the sealed area.

4 Q. Uh-huh (yes).

5 A. They had no panels for us to go to, and we moved
6 the mines down to what they called Logan's Fork on Elk
7 Run property. And I worked there close to a year or
8 something, and then I left and went to another mine.

9 Q. Okay. And where are you currently employed?

10 A. Speed Mining.

11 Q. Speed Mining. Same coal seam, isn't it?

12 A. Yes.

13 Q. Okay. What did you do when you were at UBB?

14 A. I was a maintenance foreman.

15 Q. Maintenance foreman. Working on the development
16 sections or the longwall?

17 A. I started out --- when I first --- well, when I
18 was at Performance it was the longwall. I was always
19 longwall.

20 Q. Okay. That's about all the background we need.

21 I'm going to ask you to just tell your story at this
22 point in time.

23 A. Well, when I worked there at UBB, there were a lot
24 of older guys that I've worked with over the years.

25 When I worked at Beckley Coal --- a lot of our top

1 supervisors were old Beckley Coal people and they ran
2 the mines right, because they knew --- at Beckley Coal
3 we had a lot of methane and they knew how to handle
4 methane and stuff.

5 And as the years went on, these guys started
6 dropping out, leaving. And they started getting new
7 guys in, and they --- I don't think they really knew
8 what methane could do. They knew, but they'd never
9 experienced it, so ---.

10 And they started --- production was more important
11 than the methane or --- it was more important than
12 anything. I mean, Massey had a --- what'd they call
13 it --- S1, P2 plan, you know, safety ---. It was
14 supposed to be safety first and stuff, but that was
15 just a big cover-up.

16 Guys would get hurt. They didn't want them to go
17 on comp, so they let them come in, work in the office,
18 just --- actually just sit around so they wouldn't be
19 --- it wouldn't be turned in on comp and make their
20 accident rate go higher and stuff. But it was a good
21 place to work. I mean, there was a lot of good men
22 there and they was a lot of good foremen.

23 When I left, like I said, we had mined out the
24 first area of UBB, and we went to Logan's Fork and I
25 left there, got a better offer and I left and went to

1 Speed Mining. And my brother remained and all the
2 other guys that I knew, and I talked to him. Well, I
3 talked to my brother quite often. And he told me that
4 all they thought about now was production. They
5 didn't care about their safety.

6 They had a new president come in, Chris Blanchard,
7 and I know my brother told me he didn't like him, that
8 all he was about was production. He didn't care how
9 safe it was for the men. He just wanted to --- he's a
10 young man and stuff, and usually when you get those
11 young ones in there, they want to --- they want to
12 make a name for themselves, you know? They want to
13 --- so I actually think that's what happened.

14 I think they messed with the ventilation system a
15 lot. I've seen reports of their ventilation
16 violations, and they had a lot of ventilation
17 violations. And from my standpoint, you know, I can't
18 understand why the Federal or the State didn't step in
19 and say, you know, man, you all got a lot of
20 ventilation violations here. Something bad is going
21 to happen. We're going to have to get this
22 straightened up. But you know, I guess it is what it
23 is.

24 One other point that I'd like to make that when I
25 was there and we was in the sealed area, we got that

1 coal seam that runs under that one. It's full of
2 methane. It's highly volatile. Two times previous to
3 this we had had cracks in the mine floor, and it had
4 shut us down. It had gassed us off and shut us down,
5 and we were down --- I know one time we were down for
6 almost a week.

7 And I would like to know --- and I don't know if
8 you all could answer this and who could answer this,
9 but I would like someone to answer this sometime ---
10 why they weren't made or why they didn't do it or why
11 they weren't made to degasify that coal seam. They
12 knew that that coal seam was 10, 20 feet below them,
13 and you got all that pressure. When you're pulling
14 them panels, you got all that pressure, and that's the
15 first thing that's going to give is going to be
16 bottom, because you don't have that much coverage
17 there. You know, why didn't they degasify the ---
18 yeah, drill holes when it come to these panels to
19 degasify?

20 Q. Yeah, we'll talk about that in a bit. Let me ask
21 a couple questions, if you ---

22 A. Okay.

23 Q. --- don't mind. You said that you spoke with your
24 brother regularly.

25 A. Uh-huh (yes).

1 Q. Do you recall about the last time you spoke to him
2 prior to the explosion?

3 A. I spoke to him the day before the 5th, the
4 explosion.

5 Q. Did he talk about the conditions in the mine at
6 that point in time?

7 A. No, he did not. He didn't. He'd say --- he'd
8 tell me that at times it was so hot up there you
9 couldn't stand it, and then at times it would be so
10 cold, because they had so much air, that you couldn't
11 stand it. And he talked like it was constantly going
12 back and forth, so if it's constantly going --- if
13 it's getting from hot to cold like that ---

14 Q. Sure.

15 A. --- then their ventilation system --- something
16 was wrong there or somebody was messing with it or
17 something.

18 Q. Sure. That's an observation we've gotten from
19 several other people, so it's --- I agree with that.
20 It's an indication that something's changing. Now,
21 what was his general feeling of the conditions of the
22 mine? Was he concerned about those sorts of things?

23 A. He never --- he never mentioned it to me. I mean
24 and I think he would have if something ---. If they
25 were dealing with a lot of methane and stuff, I think

1 he would've told me.

2 Q. Sure.

3 A. Me and my brother and my son were the only three
4 in my family that was into mining, and me and him
5 talked about mining. Every time we'd get together,
6 we'd talk about it.

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

8 A. But he never indicated to me that they had a
9 serious problem like that. I mean the only thing he
10 would say is --- he didn't come right out and say it,
11 but when he told me that it would be cold one day and
12 hot the next day, that was telling me that, you know,
13 there's something wrong with the ventilation system.

14 Q. Okay. You talked about instead of turning in lost
15 time for people that were injured, they paid them just
16 to come to the mine and ---

17 A. Right.

18 Q. --- basically just set around, I think ---

19 A. Right.

20 Q. --- is what you said. How common was that?

21 A. Very common, very common.

22 Q. Do you know if they reported a --- instead of a
23 lost time accident, we have restricted-duty accidents.
24 Do you know if that was reported, instead?

25 A. No, I don't think it was. I mean, I think that

1 they didn't report anything. I mean they just tried
2 to keep it quiet to make their safety --- to make it
3 look like that their safety record was a good safety.
4 I mean, they said that S1, P2 and M3 or something like
5 that, and they wanted to portray that picture. But
6 they did it by covering, covering stuff up, by
7 sweeping accidents under the rug and not letting it be
8 known and stuff. It made it look like they had a
9 good ---.

10 Q. Sure. We call that cooking the books.

11 A. Yeah.

12 Q. Now, you were talking about the methane outburst.
13 Were you there in 2003 and 2004?

14 A. Yes.

15 Q. Were you actually up near where the ---

16 A. Yes.

17 Q. --- about where this occurred?

18 A. Uh-huh (yes).

19 Q. Could you describe those to us, please, what you
20 remember?

21 A. Well, I think the one in 2004 --- I think is when
22 it was, when we had that big one. And we were mining
23 and everything shut down. The methane monitor on the
24 tail done its job. It picked up the methane. The
25 shearer had already went by. This happened probably

1 right around mid-face, close to mid-face.

2 Q. Sure.

3 A. And everything shut down. And we'd been having
4 trouble out of a tail drive cable, and we thought that
5 --- we thought that's what had happened, but when we
6 went down the face to go to the tail ---. I got up
7 there, I don't know, 40s or 50s and I could hear,
8 like, a roar, and I thought that someone had left a
9 wash down hose on or when they pulled the shields in
10 it hit the valve and kicked one open. I thought I'd
11 go up there and find a hose just flopping and spraying
12 water. And when I got there, I couldn't see anything
13 flopping and stuff, but I could still hear that roar.

14 Q. Uh-huh (yes).

15 A. And we started looking and we found it. It was a
16 crack that went right in between the shield, right
17 under the shield, right in between them, and it was
18 about that wide and --- just like the earth just
19 opened up.

20 Q. Okay. Now, for the record, about that wide is
21 about how many inches?

22 A. I would say it was anywhere from five to eight
23 inches wide.

24 Q. Okay. Do you recall roughly how long that crack
25 was?

1 A. Well, it started at the --- like, the tip of the
2 pontoon of the shield, and it went under the tip and
3 then it come and went between them, back into the gob,
4 and that's as ---. I could only see back in that
5 three, four feet, five feet, something like that.

6 Q. Okay. So it was at least a couple of shields plus
7 another ---

8 A. Yeah.

9 Q. --- five feet minimum?

10 A. Uh-huh (yes).

11 Q. Okay. Now, what were you doing on the longwall at
12 that point in time?

13 A. I was a maintenance foreman.

14 Q. Did you carry a methane detector?

15 A. Yes, I had a methane detector and we took --- I
16 took a gas test with it and it burned it up.

17 Q. Oh, okay.

18 A. And then the boss come up and we used his and
19 burned his up. And then we realized that we had a
20 problem and I went to the mule train and disconnected
21 all the power and knocked all the power. And while I
22 was doing that, they were calling outside and stuff,
23 and we withdrew. And then they went back in and I
24 don't know how many spotters that they burned the
25 sensors up in, a bunch of them.

1 Q. Uh-huh (yes), sure.

2 A. And the Federal come down, the State come down.

3 And I think they burned up a bunch of them, too.

4 Q. Sure.

5 A. And they had to get --- they got some kind of
6 special one that read high quantities of methane. I
7 think --- and what they told me was they was, like,
8 what, a hundred percent or over a hundred percent of
9 methane coming out of that crack.

10 Q. That's a lot of methane.

11 A. Yeah.

12 Q. Yeah, we've got some infrared detectors that use a
13 different technology. You can actually read up to a
14 hundred percent methane on them.

15 Q. And they took a bottle sample. They took a bunch
16 of bottle samples and they send them off and ---. But
17 we was down the --- I know the second time we was down
18 for, I want to say four to six days or something like
19 that. I'm not positive on that, but ---.

20 Q. Sure. Now, did you notice how it smelled?

21 A. Yeah, it had an odor to it. I mean they say that
22 you can't smell methane and you can't taste it, but I
23 would say, in my opinion, it probably had some sulfur
24 with it, and you got that sulfur smell and stuff,
25 yeah.

1 Q. Okay. Did it smell anything like kerosene?

2 A. No.

3 Q. Okay.

4 A. It smelled like rotten eggs.

5 Q. Rotten eggs. That's different. Okay. Now, to
6 get back to your question about what was going on, we
7 did bring down tech support, and they sent a geologist
8 and a person from the ventilation department, and both
9 did an investigation and they wrote some memos.

10 What we don't think is, we don't think anything
11 happened at the mine. One of the recommendations was
12 to drill degas holes and we know that that didn't
13 happen. There were some other recommendations that we
14 don't think anything changed, based on all that we can
15 determine at this point in time.

16 And in retrospect, that --- something should have
17 happened, and it didn't. We've still got a lot of
18 questions about that. We're trying to determine
19 exactly what happened as part of the investigation and
20 part of the internal review. And we will have a full
21 reporting of those events.

22 And also, we're going to have to take a different
23 approach to these things in the future. The fact of
24 the matter is a lot of the better coal has been mined,
25 and what's left is more problematic. It's deeper and

1 it's under worse conditions. I mean, the folks that
2 your grandfather's --- or the coal that your
3 grandfather's mined was easy stuff, and this is
4 getting hard. So as an agency, we need to take a
5 close look at that, and I assure you that we'll do
6 everything we can to prevent this sort of incident in
7 the future.

8 A. I'd like to see that, because you got 29 families
9 out there ---

10 Q. Sure.

11 A. --- that's devastated, and ---- but it's not just
12 29 families.

13 Q. Yeah.

14 A. It goes a lot deeper than just 29 families. They
15 was coworkers, friends that this has really --- I
16 mean, it just tore people up.

17 Q. Sure. Yeah. I can't tell you how many people
18 we've talked to that has been affected, and I
19 understand that we've only talked to a small number of
20 the total people that have been affected.

21 A. I've been in the mines for 33 years and I've been
22 covered up, broke up, but this right here has --- it
23 destroyed my mining career. There's no way --- I
24 won't go back underground now. This just did it. I
25 mean I can't do it again.

1 Q. Sure.

2 A. I lost my brother. Twenty-seven (27) of the 29
3 mine I knew personally.

4 Q. Sure.

5 A. And it's just like when we had that hearing, that
6 House hearing. I forget what it was.

7 ATTORNEY WOOTON:

8 Something about the House Committee?

9 A. Yeah, we had the House Committee hearing.

10 BY MR. SHERER:

11 Q. Sure.

12 A. I lost 29 brothers in that.

13 Q. Sure. We understand that, sir, and that's why
14 we're working.

15 A. And I'm not speaking just for me. I mean, I want
16 to ---. It's all of these family members ---

17 Q. Sure.

18 A. --- that I want to speak out for, because we go to
19 these meetings, the MSHA meetings and stuff, and you
20 see the widows and the mothers and the fathers and
21 most of them don't know nothing about mining.

22 Q. Sure.

23 A. They don't know --- they don't know anything about
24 it, because when you're a coal miner, when I come
25 home, that's the last thing I want to talk to my wife

1 and my family about, is coal mining. I didn't want
2 them to know the dangers that I went through. I
3 didn't want them to worry and stuff. I wanted to make
4 it --- I wanted to paint a pretty picture and make it
5 look like, you know, everything's good, you know.

6 Q. Sure. Well, as an agency, our prime focus is to
7 make sure that every coal miner goes home to their
8 family at the end of the shift, and that's what we're
9 working for, and we're not going to leave any stones
10 unturned here. We've got some very skilled technical
11 people looking into many of the problems that you've
12 talked about so far. And I guarantee you ---.

13 A. I understand where you're coming from, but it's
14 sad that it took 29 lives for us to come to this point
15 that we're sitting here having these hearings and
16 stuff and trying to figure out what we can do to make
17 it better and stuff. We should've been doing this
18 years ago. We should've been thinking, you know.

19 Q. I agree with you, sir. It shouldn't take a single
20 life.

21 A. Yes.

22 Q. And unfortunately, these events occurred and we've
23 all got to work to make sure it never happens again.
24 And I agree with you. It shouldn't have happened in
25 the first place.

1 MR. FARLEY:

2 If you look at all the history of mine
3 safety regulatory changes over the years, that in
4 almost all cases occurred after ---

5 A. After ---.

6 MR. FARLEY:

7 --- after the fact.

8 A. Yeah, because when you're mining good, when
9 everything's going good, you're not focused on that
10 stuff. You're not thinking about that, and you're
11 thinking about, man, I'm going to go and work today
12 and I'm going to get my payday tomorrow and stuff.

13 BY MR. SHERER:

14 Q. Sure.

15 A. Or your coal operators are, man, we're going to
16 run all this week. We're going to push out a bunch of
17 coal. We're going to make a big profit this week, or
18 something, you know?

19 Q. Sure. Well, we understand the needs for profit
20 and the needs to keep miners employed, but the basic
21 need for safety is something that none of us can
22 forget.

23 A. That's right, but I think Massey did forget that.

24 I mean I think they put --- they put their lump of
25 coal ---. It was more --- that lump, them lumps of

1 coal they were mining was more important than the 29
2 lives that was lost.

3 Q. Sure.

4 A. They're already talking about wanted to go back in
5 that mine and open it up. They're losing millions of
6 dollars and stuff, but you got 29 men that's not going
7 to be able to spend the last paycheck they got.
8 They're not going to go in there and make another
9 dollar. They're not going to get to see their
10 grandkids grow up. They're not going to get to rock
11 them on their knee and stuff.

12 MR. SHERER:

13 I don't have any more questions. Do you
14 have any, Terry?

15 EXAMINATION

16 BY MR. FARLEY:

17 Q. I know that you said you talked to your brother on
18 April 4th, but you didn't really get into talking
19 about UBB.

20 A. No.

21 Q. You said that he told you that it was --- the air
22 on the longwall was cold one day and hot the next.

23 A. Yeah.

24 Q. Can you give me the approximate date as the last
25 time, the last time you had that conversation with

1 your brother? Would that have been sometime in March,
2 sometime in February?

3 A. No, that was in ---. I'm going to say it was
4 probably two weeks before the 5th, probably a couple
5 weekends, one or two weekends. It might've been the
6 weekend before Easter weekend when he told me, because
7 that's usually when we seen each other, was on the
8 weekends. We'd usually all go to my mother's. If he
9 was off and I was off we'd all go to my mother's and
10 we'd eat Sunday dinner and stuff, and that's usually
11 when we'd talk about it. Or he lived right down the
12 road from me and I'd go down and see him. If he was
13 off work, I'd go down and see him and talk and stuff,
14 but it was, I'd say a couple weeks.

15 Q. Okay.

16 A. And I didn't hear ---. This is hearsay and stuff,
17 but I know at our meetings and stuff, and you've been
18 there, that all --- a lot of the families, the widows
19 and stuff, they're talking about when their guys come
20 home, how tired they were and hot and said that they
21 was no air on the miner sections. They said they
22 didn't have no air on the miner sections and such.
23 But I wasn't there. I can't verify that. I'm going
24 by what they say and stuff, which I believe they were
25 telling the truth and stuff.

1 MR. SHERER:

2 Sure. We're actually checking into some
3 things on that right now.

4 ATTORNEY HAMPTON:

5 Okay.

6 MS. SPENCE:

7 I don't have anything.

8 EXAMINATION

9 BY ATTORNEY HAMPTON:

10 Q. I just wanted to ask, why exactly did you decide
11 to leave UBB?

12 A. We had went to that other mines at Logan's Fork on
13 Elk Run property ---

14 Q. Uh-huh (yes).

15 A. --- and we couldn't park at the mine site. We had
16 to go to a neutralized parking area, and they got an
17 old junky bus and they would put us on that bus and
18 take us to the mine site. And then it would take us
19 about two and a half hours to go from outside to the
20 longwall where we was driving or pulling.

21 And going in wasn't bad. It was coming out the
22 next morning. You'd be on the mantrip coming out, and
23 you'd have to spur up, because anybody coming in,
24 they'd stick you in the switch. We wouldn't get
25 outside until 10:00, ten o'clock or 10:30.

1 And then they had, like, three showers there, and
2 it was just --- it was a nasty place, and I just got
3 fed up with it. I said, man, you know, I can do
4 better than this.

5 RE-EXAMINATION

6 BY MR. FARLEY:

7 Q. Is that when you went to Speed Mining?

8 A. That's when I went to Speed Mining, yes.

9 Actually, my boss is the one that got that started.

10 He was going to quit and go to Speed, and he said he
11 was going to take all of us with him, and I told him,
12 I said, well, I'll tell you right now, I said, I like
13 you and stuff, you know, I said, but nobody talks for
14 me. I said I'll go talk to them myself. Well, he was
15 blowing smoke, and I wasn't blowing smoke. I went and
16 done it.

17 ATTORNEY HAMPTON:

18 Any other questions?

19 MR. FARLEY:

20 No.

21 MS. SPENCE:

22 No.

23 ATTORNEY HAMPTON:

24 All right.

25 MR. SHERER:

1 One thing.

2 RE-EXAMINATION

3 BY MR. SHERER:

4 Q. Anything else you'd like to tell us about, Mr.
5 Mullins?

6 A. Now, I can tell you this, that I spoke to Gary
7 Quarles probably two months before this and Gary told
8 me the same thing. He told me, he said, Clay, it's
9 not like it used to be when you was there. He said,
10 he told me that they had changed. He says, he said
11 all the people has changed and stuff. He says, it's
12 not like it was.

13 It used to be a good --- it was a good place to
14 work and stuff. And they did care about safety. When
15 I was there ---. It's hard to describe it. They
16 cared about safety, but they still --- they still
17 tried to sweep stuff under the rug and stuff. They
18 still ---.

19 Gary Quarles is a good example. He broke his leg.

20 A rock fell and broke his leg, and they had him come
21 and set in the office. There's been numerous guys
22 that I've seen come and just sit in the office or in
23 the bathhouse and just to say --- just so they could
24 say that their safety was up to par, you know, that
25 yeah, we run a safe mines and stuff, which, in fact,

1 you know, that they didn't, you know. And you can
2 look at --- you can go through their violations and
3 stuff and you can see.

4 MR. SHERER:

5 Okay. Thank you.

6 OFF RECORD DISCUSSION

7 ATTORNEY HAMPTON:

8 Okay. On behalf of MSHA and the Office
9 of the Miners' Health, Safety and Training, we'd like
10 to 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. As I mentioned earlier, we do request that
14 you not discuss your testimony with any other person
15 other than an attorney.

16 And after questioning other witnesses we
17 might call you if we have any follow-up questions.
18 And if at any point you have additional information
19 you'd like to share with us, again, as I mentioned,
20 have your attorney contact Norm Page through the
21 information in that letter I provided to you. So now,
22 as I told you before we started, you have an
23 opportunity to make any other statement or to ---.

24 A. Okay. Yeah, I do want to say something else.

25 ATTORNEY HAMPTON:

1 Okay.

2 A. Regarding the methane monitors. Now, I was a
3 maintenance foreman on the longwall. And one of my
4 responsibilities was to keep everything running and to
5 calibrate the methane monitors and stuff, and we did
6 that, but when --- on several occasions we had a
7 methane monitor on our shearer to go --- fault out.
8 And management told me that --- and the other
9 maintenance foremans and electricians that they had a
10 24-hour period --- if they didn't have the parts
11 onsite that they had a 24-hour period that they could
12 run. We could run it with the handhelds, monitor the
13 methane with the handhelds for 24 hours until the
14 parts arrived and we could fix it.

15 And then after this all happened and stuff, I
16 found out that that wasn't true and stuff. At the
17 time I thought --- I just took them at their work. I
18 thought they knew what they was talking about, you
19 know. I thought it was true, ---

20 MR. SHERER:

21 Sure.

22 A. --- but ---. I've made that statement and I've
23 told Norman and them about it and stuff. And then I
24 told some --- talked to some reporters and they've
25 contacted me about the methane monitors, and I talked

1 to them. And Massey's saying that they've never done
2 that and stuff, but I know for a fact they have. I've
3 bridged them out myself, and to make the machine run
4 with the understanding that that was an agreement they
5 had with MSHA.

6 RE-EXAMINATION

7 BY MR. SHERER:

8 Q. Do you recall who told you that, Mr. Mullins?

9 A. Darwin Spencer. I don't know if he's with Massey
10 now. He was with --- what did you call it ---
11 Massey's Coal Services.

12 Q. Uh-huh (yes).

13 A. He was the head electrician over all Massey. They
14 said we could do it. Jack Roles said we could do it,
15 Bobby Goss. I don't know who. It was several of them
16 that said that and stuff, but that was always our
17 understanding. I mean, that was like --- that was
18 like a law that was written, you know, and that's what
19 they'd tell us, you know?

20 You know, we can run this if we've got a part ---.

21 If they didn't have the part in the warehouse and
22 didn't have it on the property, as long as they had
23 one coming and it could get here within 24 hours ---.

24 If it wasn't there within the 24-hour period, then we
25 had to shut the machine down and it stayed down until

1 we got the parts fixed.

2 Q. Sure, yeah. Now, we understand that may be a bit
3 of confusion between the State law and the Federal
4 law.

5 MR. SHERER:

6 Care to comment on that, Terry?

7 MR. FARLEY:

8 There's a provision in the State law, the
9 administrative regulations, which does allow for
10 something along the lines of what you described in
11 reference to longwall system methane monitors.

12 A. Yes.

13 MR. FARLEY:

14 But it does not extend to 24 hours.

15 However, you know, to my understanding is there's no
16 such provision in the Federal law.

17 A. Well ---.

18 MR. FARLEY:

19 So that could be what they were referring
20 to.

21 A. Yeah. But that's what we were told, and I guess I
22 was ignorant on it. I really ---- I probably
23 should've investigated it more or asked the Federal
24 inspectors or something about it.

25 BY MR. SHERER:

1 Q. Sure.

2 A. But I just thought it was an agreement. They told
3 me that they had an agreement and ---. But when I
4 told Norman and them, he said, no, we didn't --- there
5 ain't never been nothing out there like that.

6 Q. We look at the methane monitors the same way as we
7 look at breaks on a haul truck.

8 A. Uh-huh (yes).

9 Q. They're essential safety devices. If they don't
10 work, the piece of equipment shouldn't work.

11 A. Well, the reason I --- the reason I kind of agreed
12 with them ---. And I didn't agree with them, but I
13 thought that they would tell me right, because on the
14 shearer you got your sniffer right there where your
15 --- right on the machine and you're walking right with
16 it and such, you know. And you can put a handheld
17 right there where your sniffer's at. I mean it's
18 right there on the pan. And I guess that's why ---
19 that's why I thought that it would be okay to do that.
20 I mean, ---

21 Q. Sure.

22 A. --- I took them at their word and stuff, but ---.

23 Q. Sure. Now, let me ask you about the sniffer on
24 the tail of the longwall. Has that one ever been
25 bridged out that you're aware of?

1 A. Not that I'm aware of, no.

2 Q. Okay. Do you know if ---?

3 A. And we've had it faulted out, but when it's
4 faulted out, then we ---. We used to have a lot of
5 trouble with water on the tail.

6 Q. Uh-huh (yes).

7 A. And water would get in it and fault it out and
8 we'd have to pump water and then take a new sniffer
9 down, put a sniffer in it and recalibrate it to get it
10 running again.

11 Q. Okay. Now, we understand this particular wall had
12 a sniffer on the shearer, like you say, and one at the
13 tail drive.

14 A. Yes.

15 Q. When you were running the wall on the sealed area,
16 do you recall if there was also a sniffer at about
17 mid-face?

18 A. Yeah, we used to have one at mid-face.

19 Q. Okay. Do you know why they may have dropped that
20 sniffer?

21 A. I don't know.

22 Q. Okay.

23 A. I don't know. I don't know if it was required by
24 law. Probably if it wasn't required by law, they
25 probably dropped it, saying they was going above and

1 beyond what ---.

2 Q. Yeah. Yeah, it's not required by law, but
3 it's ---.

4 A. But yes, we did, we did. We had a sniffer at
5 mid-face and we had one on the tail and we had one on
6 the shearer.

7 Q. Uh-huh (yes), okay. Okay. Thank you.

8 ATTORNEY HAMPTON:

9 I'm actually going to request we take a
10 quick break; okay? A couple minutes.

11 SHORT BREAK TAKEN

12 BY MR. SHERER:

13 Q. Okay. Mr. Mullins, I've got a couple more
14 questions for you.

15 A. Okay.

16 Q. Were there any other ways that people would try to
17 defeat the methane monitors that you're aware of at
18 UBB?

19 A. Yeah, they'd put sandwich bags behind the cap of
20 the sniffer. They'd take that --- they'd take cap of
21 sniffer off and take that little screen --- you got a
22 little screen in there, a little mesh screen.

23 Q. Uh-huh (yes).

24 A. And they could take it and rub it on top the
25 shearer and get all of that coal dust and stuff in it

1 stop those screens up and then put it back together,
2 and that would do it. That's about it, besides going
3 in the machine and bridging it out and such.

4 Q. Sure. And you've actually found sniffers in that
5 condition?

6 A. Yes.

7 Q. How common was that?

8 A. It wasn't real common. I mean probably no more
9 than three or four times you would find it like that.

10 Q. Okay.

11 A. It wasn't really common and stuff, but I mean
12 that's something that I took serious when they ---
13 anybody done anything like that, because that was
14 defeating --- that was defeated the safety feature on
15 that machine and stuff. You know, that's taking a ---
16 whoever did it was taking a chance with everybody's
17 life up there when they done something like that.

18 Q. Sure. Thank you. Now, you were talking about
19 being told that you could bridge out a methane monitor
20 for some period of time and use a handheld detector.

21 A. Uh-huh (yes).

22 Q. And you mentioned several individuals. Do you
23 recall if Gary May ever said that to you?

24 A. No, I wasn't around Gary May.

25 Q. Okay.

1 A. I didn't know him.

2 Q. Okay. Thank you.

3 A. But I'd heard some stuff on him. Now, I heard
4 that he told guys to ---. I heard that they ---. I
5 think it was Gary May or either Chris Blanchard that
6 the boss --- they had got some high concentrations of
7 methane and the boss withdrew the men, and he made
8 them go back underground and told them that they
9 wasn't ---- he wasn't pulling nobody out of the mine
10 and stuff. If anybody was going to pull them out of
11 the mines, it would be them. Now, whether that's true
12 or not, I don't know. That's what I heard.

13 Q. Okay.

14 ATTORNEY HAMPTON:

15 Just to clarify, you just said, he. Were
16 you talking about Chris Blanchard or where you talking
17 about ---?

18 A. Chris, Chris Blanchard.

19 ATTORNEY HAMPTON:

20 Okay.

21 A. That Gary May, someone told me something, but I
22 can't remember what it was they said he did. I can't
23 remember what it was.

24 BY MR. SHERER:

25 Q. Okay. If you recall, you can give us a call or

1 drop us a note or something.

2 A. Okay.

3 Q. We'd appreciate that.

4 A. I'll tell you one thing I did hear. I heard that
5 Chris Blanchard ---

6 Q. Uh-huh (yes).

7 A. --- and Jason Whitehead went underground Easter
8 Sunday, the day before this and made some unauthorized
9 ventilation changes. Whether that's true or not, that
10 was one thing going around. And this is a pretty,
11 pretty good source that I got this from.

12 Q. Okay. Who was that source?

13 A. I forgot her name. It was a lady that works
14 there, a blonde-headed lady. You all probably
15 interviewed her, I'm sure.

16 Q. I think we know who that ---.

17 A. Okay, her. She said she seen them or --- no, no.
18 She seen them after, after the explosion. They was
19 not supposed to be in the mines and stuff, and she
20 seen --- she told me she seen Chris Blanchard and that
21 Jason Whitehead come outside in a mantrip out the
22 portal there at Ellis Portal, get out of the mantrip.
23 And Chris Blanchard left and then Chris Adkins and
24 that Jason Whitehead got back in the mantrip and went
25 back underground.

1 Q. Chris Adkins went underground?

2 A. That's what she said, now.

3 Q. Okay.

4 ATTORNEY WOOTON:

5 Is she Bobbie Pauley?

6 BY MR. SHERER:

7 Q. I think that's her name. Is she a miner?

8 A. Yeah, she's a miner. She works there and stuff.

9 MR. SHERER:

10 Okay.

11 ATTORNEY HAMPTON:

12 This was after the explosion?

13 A. This is after the explosion, yes.

14 ATTORNEY WOOTON:

15 Can we go off?

16 ATTORNEY HAMPTON:

17 Okay.

18 OFF RECORD DISCUSSION

19 RE-EXAMINATION

20 BY ATTORNEY HAMPTON:

21 Q. I just want to follow up on something real fast
22 before we move on.

23 A. Okay.

24 Q. You had made a statement that you had heard a
25 rumor about Blanchard and Whitehead going underground

1 and making ventilation changes ---

2 A. Yes.

3 Q. --- on Easter Sunday.

4 A. Yes.

5 Q. Do you recall who has been saying that?

6 A. Was Gary the one that told me that?

7 ATTORNEY WOOTON:

8 He's talking about Gary Quarles, but I'm

9 not ---

10 A. Yes.

11 ATTORNEY WOOTON:

12 --- certain that that's who it was.

13 ATTORNEY HAMPTON:

14 Okay.

15 ATTORNEY WOOTON:

16 Gary Quarles is --- there's two.

17 A. Gary Quarles, Sr. and Gary Quarles, Jr.

18 ATTORNEY HAMPTON:

19 Uh-huh (yes).

20 ATTORNEY WOOTON:

21 The Gary Wayne that died ---

22 A. Yeah.

23 ATTORNEY WOOTON:

24 --- and his father.

25 A. But I think Bobby told me, too, that she heard he

1 was in there. And then Scott Sickles, he worked
2 there. I think he's the one that told me that he
3 heard that they went in and done that to the
4 ventilation change.

5 MR. SHERER:

6 Okay. We appreciate that information.

7 That's all the questions I've got right now. Any,
8 anything else you'd like to tell us?

9 A. I just --- I wish we wasn't setting here doing
10 this. I wish them 29 guys was back in there running
11 coal today and it was a safe place for them to work,
12 you know. But wishing don't get you nowhere.

13 MR. SHERER:

14 Sure.

15 A. I want to see something come out of this that no
16 other families got to go through what we've been going
17 through and stuff.

18 MR. SHERER:

19 Sure. We understand you, sir. And
20 again, you have our deepest sympathies. Anything
21 else, Terry?

22 MR. FARLEY:

23 No, I don't think so.

24 MS. SPENCE:

25 No.

1 ATTORNEY HAMPTON:

2 Okay.

3 MS. SPENCE:

4 Thank you.

5 ATTORNEY HAMPTON:

6 Thank you again for your cooperation with
7 the investigation.

8 A. All right. Thank you.

9 ATTORNEY HAMPTON:

10 Okay. We'll go off the record.

11 * * * * *

12 STATEMENT UNDER OATH CONCLUDED AT 10:12 A.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20



21

22

Alison Salyards

23

24

25