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Transcript of the Testimony of Kenneth Thompson

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STATEMENT UNDER OATH
OF
KENNETH THOMPSON

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 Tuesday, July 27, 2010, beginning at 4:06 p.m.

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

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(b) (7)(C)

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Mine Map

18*

* Exhibit not attached

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I'm with the Office of the Solicitor, United States Department of Labor, and with me is Erik Sherer, an investigator with the Mine Safety and Health Administration. We're here today on July 27, 2010 to conduct an interview of Kenneth Thompson. Also present are individuals with the State of West Virginia. I'll ask that they state their appearance.

MR. FARLEY:

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

MR. O'BRIEN:

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

MS. SPENCE:

Beth Spence with the Governor's independent investigation.

ATTORNEY BABINGTON:

Mr. Thompson, Government investigators and specialists have been assigned to investigate the conditions, the events and the circumstances surrounding the fatalities that occurred at the Upper

1 Big Branch Mine-South on April 5th, 2010. The
2 investigation is being conducted by MSHA pursuant to
3 Section 103(a) of the Federal Mine Safety and Health
4 Act and by the West Virginia Office of Miners' Health,
5 Safety and Training. Now, we appreciate you coming in
6 here this afternoon and helping us out with our
7 investigations.

8 You may have an attorney present with you
9 or other personal representative. Do you have a
10 representative with you today?

11 MR. THOMPSON:

12 No, sir, I don't.

13 ATTORNEY WILSON:

14 Okay. You may refuse to answer any
15 question. You may terminate the interview at any
16 time. This is not an adversarial proceeding. We're
17 trying to gain factual information here just to know
18 what you know. Follow-up questions will be asked by
19 each of the parties.

20 As I explained to you before we went on
21 the record, your identity and the content of this
22 interview may be made public or will be made public at
23 the conclusion of the interview process and may be
24 included in a public report of the accident unless you
25 specifically request that your identity remain

1 confidential or if revealing your identity would
2 otherwise jeopardize other ongoing investigations. If
3 you request us to keep your identity confidential, we
4 will do so to the extent permitted by law. In other
5 words, if a judge orders us to reveal your name or
6 some law requires us that we reveal your identity, we
7 may need to do so.

8 There may also be a need to use the
9 information that you provide to us in other
10 investigations or hearings concerning the explosion.
11 Do you understand your right to request
12 confidentiality?

13 MR. THOMPSON:

14 Yes, sir, I do.

15 ATTORNEY WILSON:

16 All right. Do you have any questions?

17 MR. THOMPSON:

18 No, sir.

19 ATTORNEY WILSON:

20 All right. After the investigation is
21 complete, MSHA and the State will issue a public
22 report, detailing the nature and the causes of the
23 fatalities in hope that greater awareness about the
24 causes of accidents can reduce their occurrence in the
25 future. And information obtained through witness

1 interviews is frequently included in those reports.
2 We will be interviewing additional witnesses, so we
3 ask that you not discuss your testimony here today
4 with anyone outside of this room.

5 A court reporter will be recording the
6 interview, so please speak loudly and clearly in
7 answering the questions. If you do not understand a
8 question asked, please ask that the question be
9 rephrased. Please answer each question as fully as
10 you can, including information that you may have
11 learned from someone else.

12 After we have finished asking questions,
13 we will give you an opportunity to make a statement or
14 provide us with any other information that you believe
15 would be helpful to the investigation. And if at any
16 time after the interview you recall additional
17 information that you believe might be useful, we ask
18 that you either contact the State or contact MSHA to
19 provide us with that information.

20 I have here a copy of a letter that was
21 sent to you, requesting your appearance here today,
22 and it has the contact information for us here.
23 Norman Page is the chief lead investigator. You can
24 contact him with any additional information. The
25 letter also, on the second page, provides you

1 information concerning your rights as a miner under
2 the Mine Act. Terry?

3 MR. FARLEY:

4 Mr. Thompson, on behalf of the Office of
5 Miners' Health, Safety and Training I want to advise
6 you that the West Virginia Mine Health and Safety
7 Regulations also provide protection against potential
8 discrimination for participating in these type
9 interviews. I want to pass along to you some contact
10 information for the West Virginia Board of Appeals,
11 which hears complaints regarding discrimination.
12 Also, there's my business card and also a phone number
13 there for Mr. Bill Tucker, our lead underground
14 investigator.

15 If you have any problems, you can
16 certainly feel free to contact any of us. We'd
17 advised you that if there is a problem, you'd need to
18 file a complaint within 30 days of the date it
19 happens.

20 MR. THOMPSON:

21 I understand.

22 MR. FARLEY:

23 Okay. Thank you.

24 ATTORNEY WILSON:

25 Was there anything? No. All right. Mr.

1 Thompson, I'll ask that you face the court reporter
2 and she'll swear you in.

3 -----

4 KENNETH THOMPSON, HAVING FIRST BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 -----

7 ATTORNEY WILSON:

8 Would you please state your full name for
9 the record?

10 A. Kenneth L. Thompson. Lee.

11 ATTORNEY WILSON:

12 And would you give us your mailing
13 address and your telephone number?

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

15 (b) (7)(C)

16 (b) (7)
(C)

17 ATTORNEY WILSON:

18 Okay. Thank you. Erik Sherer will start
19 the questioning.

20 EXAMINATION

21 BY MR. SHERER:

22 Q. First of all, I want to thank you for coming down
23 this afternoon, Mr. Thompson. How many years of
24 mining experience do you have?

25 A. Six.

1 Q. Six. Has it all been at UBB?

2 A. No, sir.

3 Q. Where'd you start out at?

4 A. I started at Titan down Cabin Creek.

5 Q. Okay. When did you transfer to UBB?

6 A. August the 7th of 2005.

7 Q. Okay. Where were you working on the day of the
8 explosion?

9 A. I wasn't. I was in the locker room, getting
10 dressed.

11 Q. Okay. Well, where had you worked the previous,
12 the last shift you worked prior to the explosion?

13 A. I worked Good Friday and good --- or the following
14 Saturday cutting out a belt channel on UBB to start
15 the new panel that we were getting ready to start for
16 our section.

17 Q. Okay. Was that up near the Ellis Portal?

18 A. Yes, sir.

19 Q. Okay. Had you worked any days previously at that
20 location?

21 A. We'd worked all week in that area, putting in belt
22 structure ---

23 Q. Okay.

24 A. --- and a couple of double doors, and that was
25 basically it. You know, we were just had moved from

1 the south side to the Ellis punch-out and was getting
2 things set up.

3 Q. Okay. So as I understand it, they were going to
4 develop a short panel for their longwall?

5 A. Yes, sir.

6 Q. Okay. And you say you were cutting out for the
7 doors up there. Now, what was your job description?
8 What would you do?

9 A. Well, I was cutting out a belt channel Friday ---

10 Q. Okay.

11 A. --- and Saturday.

12 Q. Okay. Now, what did you do? Did you run the
13 miner?

14 A. Yeah. I also --- it was just me and one other
15 employee were under the certified assistant mine
16 foreman. There wasn't a need for a whole crew to be
17 there just to do two people's jobs.

18 Q. Okay. Who was the other employee that was working
19 with you?

20 A. Mitch Williams.

21 Q. Mitch Williams, okay. Did you do the pre-shifts
22 before you started cutting there?

23 A. Yes, sir.

24 Q. Okay.

25 A. I done one every --- done them every hour. And

1 then I dated up at the power center right there every
2 two hours.

3 Q. Okay. Did you do the pre-shift for anybody on an
4 oncoming shift?

5 A. Yes, I did.

6 Q. Okay.

7 A. But there was no one coming in that Sunday. It
8 would've been fire bossed.

9 Q. Okay.

10 A. You know, it was a off day for Sunday and it
11 would've been fire bossed by the dayshift fire boss,
12 then the evening shift fire boss, and then it would've
13 been followed up for dayshift coming in ---

14 Q. Sure.

15 A. --- Monday.

16 Q. Now, was there a new book started for those
17 examinations?

18 A. I'm pretty sure we used the old ---. We had one
19 that was called a UBB setup construction book.

20 Q. Oh, okay.

21 A. I'm pretty sure, and we had two of those.

22 Q. Okay. And that's where you reported those
23 examinations?

24 A. Yes, sir.

25 Q. Okay. Let me ask you about the conditions up

1 there. We understand that you were cutting out some
2 belt channels for overcasts and things like that. Was
3 the air direction consistent from day to day where you
4 were cutting those things out?

5 A. Those two days it was for Friday and Saturday. I
6 could cut and it would go so far. I had a green line
7 painted on the top that I had to go by for a center
8 line.

9 Q. Sure.

10 A. And it was blowing it away so good I could see the
11 green line the whole time I was cutting.

12 Q. Well, that's good.

13 A. So the air was pushing --- at one point I got
14 20,000, like, 800 coming through the open line right
15 there ---

16 Q. Okay.

17 A. --- the way, the way Gary May had it ventilated.

18 Q. Okay. So Gary May set up the ventilation?

19 A. Yes, sir.

20 Q. Okay. Was there any days you were cutting that
21 the air was coming back towards you?

22 A. Not on that particular cutting, no.

23 Q. Okay. How about in that general area?

24 A. No, not in that area --- well, I'd only cut there
25 for two days.

1 Q. Okay. Let me --- let's flip this map over if you
2 don't mind. Can I get you to take a marker and circle
3 where you were doing this work at?

4 A. You're going to have to bear with me. It's been
5 some time since I've looked at this map.

6 Q. Sure, uh-huh (yes). Yeah, this is the ---.

7 A. Now, that's the Ellis punch-out.

8 Q. Uh-huh (yes).

9 A. And all this had been mined, the old UBB.

10 Q. Yeah, I've heard that referred to as LBB.

11 A. Uh-huh (yes). I got crushed by the miner in 2008
12 right through here.

13 Q. Oh, jeez.

14 A. There was a set of double doors somewhere. That's
15 what I'm looking for, because the doors were ---.

16 Q. Here's two doors right here.

17 A. That it led down through the track and another
18 panel, which was down in here.

19 Q. There's a door here and a door here.

20 A. Okay.

21 Q. Then there's two doors here, also.

22 A. The belt channel was right in this general area
23 right here.

24 Q. Okay.

25 A. And I was cutting it down through here, I'm pretty

1 sure.

2 Q. Okay.

3 A. We were punching into that belt so we could load
4 this panel here onto that belt.

5 ATTORNEY WILSON:

6 Okay. Do you want to highlight which of
7 those entries where the belt was?

8 A. I'm thinking it's that one right there. We'd cut
9 into it like that.

10 BY MR. SHERER:

11 Q. Okay. You were cutting in this solid rib here?

12 A. Well, it was just the top part, but that was
13 projected that was the way we were going to go ---

14 Q. Okay.

15 A. --- with that belt.

16 Q. Okay. And you were going to mine down through the
17 solid block?

18 A. Yeah.

19 Q. Okay.

20 A. But I cut out 150 foot of top right here in two
21 days.

22 Q. Okay.

23 ATTORNEY WILSON:

24 All right. And I'll mark this map as

25 Exhibit Thompson One, and you've marked it in green.

1 (Thompson Exhibit One marked for
2 identification.)

3 BY MR. SHERER:

4 Q. But you hadn't actually ---

5 A. No.

6 Q. --- cut into the block?

7 A. No, we hadn't started the block yet.

8 Q. All right.

9 A. That was going to be Monday. I don't know what
10 the day --- what the dayshift did on the following
11 Monday.

12 Q. Uh-huh (yes), sure. Sure.

13 A. I was getting dressed.

14 Q. Okay. That's helpful. Now, you've mentioned that
15 Gary May set up the ventilation here. We know there
16 was a split in the mine. Mr. May had generally the
17 southern part of the mine, and Mr. Foster had the
18 northern part. Were you under the belief that Mr. May
19 would have --- would be over this development for this
20 new longwall panel that was coming in?

21 A. My understanding was that he was, yes.

22 Q. Okay. Did he discuss any ventilation plans or
23 anything with you before you started up there?

24 A. Not for Friday or Saturday. I just come in and I
25 read the report that the dayshift had left. And I'm

1 assuming the ventilation went down through here and
2 out right through here at the Ellis punch-out, because
3 it was so strong.

4 Q. Okay.

5 A. And then I got their air reading and I talk to
6 their boss, and you know, when he calls it out ---

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

8 A. --- it follows over onto you and you carry it on.

9 Q. Sure, uh-huh (yes). Okay. Did you have any
10 problems with doing that job up there?

11 A. No, sir.

12 Q. Okay.

13 A. Gary made it very simple and easy directions to
14 follow and always seemed to have everything right for
15 me every time that I know of.

16 Q. Okay. Now, I understand Gary was a miner operator
17 himself?

18 A. Yes.

19 Q. So he probably knew how to set things up?

20 A. Yes, sir. I'd say so.

21 Q. Okay. Thank you. Now, you say you worked Friday
22 and Saturday. Can you think back for us? Did
23 anything seem out of the ordinary on those two days?

24 A. Well, Saturday, yes, it kind of did.

25 Q. Well, what was going on, on Saturday?

1 A. I come across the track and I broke a track with
2 the miner. The following shift didn't cut as far as
3 they were supposed to cut so I had to back up and cut
4 their cuts and my cuts, too.

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

6 A. So we'd cut 20 foot at a time and me and Mitch
7 would bolt 20 foot at a time. I didn't use a shuttle
8 car. I just made a ramp to where we could bolt 12
9 foot high but not ---

10 Q. Sure.

11 A. --- you know, stand five foot high.

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

13 A. And that day I broke the track. And Timmy Davis
14 and Corey Davis come out about four o'clock and I had
15 the track broke, and the rule was you never hold the
16 longwall up no matter where they're going.

17 Q. Sure.

18 A. And I was getting nervous because I'd never met
19 none of them.

20 Q. Sure.

21 A. And they didn't speak to us and we didn't really
22 speak to them. And he asked me if I had another ride
23 on the other side of the track, and I explained to him
24 I did. And he said I need to go out and talk to the
25 other longwall crew. And he took my ride and went out

1 and came back in. That was the last I ever ---. I
2 don't know what he went out for, but I just thought it
3 was kind of odd ---

4 Q. Okay.

5 A. --- you know, to come out for ---

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

7 A. --- when there was a phone right there that you
8 can call out and tell anything on us, but that just
9 seemed odd.

10 Q. So Mr. Davis was working on the longwall on
11 Saturday?

12 A. Uh-huh (yes).

13 Q. And then he went out and spoke with, I guess, the
14 oncoming crew Saturday night?

15 A. Yes. I worked 14 hours Friday and I worked 12
16 hours Saturday, because I knew the sooner we got our
17 job done is the sooner we could start our new
18 panel, ---

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

20 A. --- you know, and get running and get off that
21 dead work.

22 Q. Sure. Now, was there other construction going on
23 up in that area? You mentioned some doors that were
24 being constructed. Had those been put in yet?

25 A. We'd put two doors in down here. We didn't have

1 to cut anything. It was just for the air. We had to
2 go to the doors and they would be open and closed, you
3 know, to keep the air, I guess, coming up to here.

4 Q. Okay. Had those doors been installed?

5 A. Yes, we installed them before we started any of
6 this ---

7 Q. Oh, okay.

8 A. --- previous that week.

9 Q. Was there any other construction going on up in
10 that area like setting the belt drives or anything
11 like that?

12 A. Not that I'm aware of.

13 ATTORNEY WILSON:

14 Taking a blue marker, can you just circle
15 or highlight the doors that you installed that
16 previous week?

17 WITNESS COMPLIES

18 A. I remember the regulators. I do know where those
19 are at. I'm pretty sure they were in that area right
20 there.

21 BY MR. SHERER:

22 Q. Okay. Can you just draw a line out from there and
23 say doors?

24 WITNESS COMPLIES

25 BY MR. SHERER:

1 Q. Okay. Thank you. Do you know if there was any
2 plan to remove these other doors that were just outby
3 these new doors that you'd installed?

4 A. Not that I'm aware of.

5 Q. Okay.

6 A. We kept all four closed ---

7 Q. Okay.

8 A. --- because them had had a padlock on it for years
9 right there so no one could come down through here.

10 Q. Oh, okay.

11 A. I do know that.

12 Q. Okay. Did you ever get down --- did you get ---
13 go down to where they were putting these doors in?

14 A. That one day that we put the doors in. That was
15 in the general area where I got hurt previously, and
16 it was ---. I really didn't want to go down in there
17 any further than ---

18 Q. Sure.

19 A. --- where I'd seen my date and my name my rib
20 check from 2008 and that was far enough for me.

21 Q. Sure. Okay. What were the conditions like up
22 here? Was the cutting going okay?

23 A. Yeah, it was solid sandstone top. There was no
24 --- not a lot of middle rock, because in this mines
25 there was a lot of middle rock.

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

2 A. But in that general area all down through here,
3 there was none.

4 Q. Okay. So a good --- a good, solid coal seam?

5 A. Yeah.

6 Q. Okay. Are you aware of anything that may have
7 been going on in this mine prior to the explosion that
8 may have contributed to the explosion?

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

10 Q. Okay. Does anything stick out as a little bit
11 odd, just anything?

12 A. A lot of air changes.

13 Q. A lot of air changes.

14 A. I mean, if it's right one time and then a month
15 later we'd do another air change. You know, if it was
16 right the first time, how come we were doing it four
17 times in five or six months?

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

19 A. And I know the longwall can affect a lot of
20 things, but I don't see how it could affect the air
21 that much in just seven or eight months that it was
22 there.

23 Q. Sure. Did you ever have to go home early or stay
24 out because of air changes?

25 A. I always had to stay and knock stoppings.

1 Q. Oh, okay, because you're certified. Did you knock
2 a lot of stoppings?

3 A. Yes, sir. Jamie Ferguson, he had a map that he
4 handed everyone, and we individually went and knocked
5 the stoppings ---

6 Q. Okay.

7 A. --- that was marked for us to mark. We'd have the
8 spad numbers, and we got a spad. And a couple of
9 times MSHA was there among us, trying to help us get
10 it right.

11 Q. Sure. Do you recall when the last time there was
12 air changes made prior to the explosion?

13 A. I'm thinking there was one in less than three
14 weeks ---

15 Q. Okay.

16 A. --- before the explosion.

17 Q. Was that around March the 9th?

18 A. Yes.

19 Q. Okay. I do know that we'd issued an order on the
20 tailgate of the longwall.

21 A. Yes, that would be the last one I participated in.

22 Q. Okay. Do you know if there was any air changes
23 --- maybe you didn't participate in it, but if there
24 was any air changes the weekend prior to the
25 explosion?

1 A. Not none that I know of.

2 Q. Okay. Who was in charge of ventilation at this
3 mine?

4 A. As far as I know, it would be Gary May, Terry
5 Moore, Rick Foster. When Jamie Ferguson was there,
6 it'd be Jamie Ferguson. And then on the sections it's
7 everyone's job to make sure their sections run right.

8 Q. Okay. But who would do the basic ventilation
9 plans, say, yeah, we need doors here or regulators
10 here or an overcast here?

11 A. Gary May. I'm pretty sure it would be Gary May.

12 Q. Okay. Would Mr. May work on the ventilation
13 around the longwall?

14 A. Like I say, I don't know a whole lot about the
15 longwall. I never seen it none, couldn't tell you
16 what the first part of it looked like.

17 Q. Sure; okay. Did you ever want to go look at the
18 longwall?

19 A. No, sir, ---

20 Q. Okay.

21 A. --- because they always told me the kind of miner
22 man I'd be is I'd be a good shearer operator, and I
23 figured I'd just stay far away from it.

24 Q. That's probably good advice. Okay. Did you ever
25 hear about anybody bridging out or messing with a

1 methane monitor at this mine?

2 A. No, not that I know of.

3 Q. Okay. Did you ever hear of anybody running the
4 miner without curtains?

5 A. I'm pretty sure it has happened. I don't know
6 anybody in particular, but when I worked on Three
7 section, the rock was 67 inches thick and it never
8 seemed like there was enough curtain to keep the dust
9 off of me.

10 Q. Oh, jeez. It's tough dust coming off that rock.
11 Was it sandstone?

12 A. Yeah, solid sandstone. I got up 11 inches of coal
13 on the bottom and 30 inches on top and 67 inches of
14 rock.

15 Q. Oh, jeez. That's a lot of rock, man. Bet you
16 that's hard cutting.

17 A. Sometimes three cuts a day on one side and back
18 and forth and --- I'm pretty sure it's affected me. I
19 can feel it from day to day sometimes.

20 Q. Now, when you're doing that, did anybody ever run
21 a dust pump on you?

22 A. We ran them. The last one I ran we failed at 8.4,
23 and I ran it the right way, you know. The curtain was
24 up. I tried to run it the best way that I knew how.
25 But that was the only pump that I'm aware of that I

1 failed previously, because one day we'd be up on the
2 rock and the next week we'd be off. You know, it'd
3 vary from week to week.

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

5 A. In 50 foot it would be as thick as this, and then
6 50 foot it would be thick as that wall right there.

7 Q. Okay. And you're holding up about a five, six-
8 inch marker and then you got --- you were referring to
9 a wall that's probably 10, 12 feet high?

10 A. Yeah.

11 Q. Okay.

12 A. Just in 50 foot it would vary from that.

13 Q. Sure.

14 A. And sometimes we'd have the pump when we were down
15 in no rock and, you know, your ventilation's great.
16 And we always had good air on Three section, but we
17 had so much you couldn't --- I know this sounds crazy
18 to say. You had so much you couldn't control it.

19 Q. Yeah.

20 A. It's blowing curtains up. It's blowing your pogo
21 sticks down. It was just too much.

22 Q. Have you had an x-ray?

23 A. No, sir, I haven't. I've thought about it, me and
24 my wife has mentioned going to get an x-ray.

25 Q. There is a van that comes around and does x-rays.

1 We could probably get you some information on that.

2 A. That would be great.

3 Q. They're free. They're done by NIOSH, the National
4 Institute of Safety --- Occupational Safety and
5 Health.

6 A. If you could help me on that, that would be great.

7 Q. Sure, we'd be glad to. And we'll talk about that
8 after this interview. What about the --- just
9 ventilation in general in this mine? Do you think it
10 was adequate?

11 A. As far as from where I worked, it seemed to be to
12 me, yes.

13 Q. Okay.

14 A. Because I would --- you know, I would fire boss
15 and I knew everybody and I would listen to their
16 reports and, you know, when they called out theirs
17 ---. The Massey law was 20,000 in the last open
18 break.

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

20 A. You didn't have it, you don't run. So you know,
21 evidently they had it to be running, or if not, they
22 were just flat out lying just to be running.

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

24 A. And me myself, I wouldn't run without it.

25 Q. Okay. What about methane monitors? I know I

1 asked you about bridging one out, but what if the
2 methane monitor went down on a miner? Can you
3 continue to cut using a handheld unit?

4 A. No. Mine has went bad before with water, and it
5 would flash a code and an electrician would back it
6 out and put a new one --- new sniffer in the miner.
7 But I never saw him have to bridge it out.

8 Q. Okay.

9 A. It was flashing, getting ready to go out, I'm
10 assuming.

11 Q. Okay, sure. Okay. Did you ever hear of anybody
12 that got in trouble for reporting a safety concern at
13 this mine?

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

15 Q. Okay. How about advance notice of inspectors on
16 the property? Did anybody ever call underground and
17 say, we've got company, ---

18 A. Yes.

19 Q. --- something like that?

20 A. Yes, they would call underground. It wouldn't be
21 a big warning. It would be a, you've got one on the
22 way, ---

23 Q. Sure.

24 A. --- you know, once they start underground. And in
25 my case we were 15 minutes underground on Three

1 section. If you're 15 minutes underground and you're
2 not doing it right, you're caught.

3 Q. Sure, uh-huh (yes). What about the rock dust in
4 the area that you fire bossed? Was it adequate?

5 A. Yes. Every once in a while I'd throw a couple
6 bags in the belt head or fill up the trickle duster or
7 something like that, but everything seemed to be
8 pretty decent when I fire bossed.

9 Q. Okay. Are you aware of any problems with the rock
10 dust crew a few weeks prior to the explosion?

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

12 Q. Okay. We understand most of the dusting was done
13 by a crew that worked on the hoot owl shift.

14 A. I think his name was Nate. I'm pretty sure he was
15 a full time employee. I didn't know him personally.

16 Q. Okay.

17 A. Just here and there.

18 Q. Did you hear that he had gotten fired?

19 A. I think he got fired for sleeping on the job.

20 Q. Do you know if somebody else stepped in to do that
21 rock dusting?

22 A. That I'm not sure of, no.

23 Q. Okay. Did you see evidence that a crew had been
24 down in the southern part of the mine?

25 A. Yes, on my --- on the side where Three section's

1 at. They'd go down there probably two or three times
2 a week ---

3 Q. Okay.

4 A. --- and lay the dust down. I'm aware of that.

5 MR. SHERER:

6 Okay. That's all the questions I've got.

7 EXAMINATION

8 BY MR. FARLEY:

9 Q. Mr. Thompson, just a couple --- three things just
10 to clarify some things. The Friday and Saturday
11 before April 5th when you were cutting the belt
12 channel, let me make sure I understood what shift you
13 were working those two days. Well, what time did you
14 start work each day?

15 A. Start at 6:30 a.m..

16 Q. A.M., okay. And you worked 14 hours and worked 12
17 the other?

18 A. Yeah, I think I worked until nine o'clock Friday
19 and we worked until seven o'clock Saturday.

20 Q. Okay.

21 A. We just knew we had to get it done and if evening
22 shift would've done their part the first day, we
23 probably wouldn't have worked ---. We were picking up
24 slack is what we were doing.

25 Q. Okay. Now, if I got you right, on Monday the 5th

1 when the explosion occurred, you were getting dressed?

2 A. Yes.

3 Q. And you were coming to work?

4 A. Yes.

5 Q. Okay. Now, where were you planning --- where did
6 you anticipate working that evening?

7 A. I'm pretty sure we were going to go back to where
8 we had cut the belt channel and start setting the more
9 structure in, monkey faces and things like that.

10 Q. Okay. Now ---.

11 A. Because we were real anxious to get out of the bad
12 rock over here once we was in the coal seam up there,
13 you know. Everybody was really excited, because you
14 go from 75, 100 foot a day to the chance to run 350,
15 400 foot a everybody gets kind of more morale and gets
16 excited.

17 Q. A little more fun?

18 A. Yeah.

19 Q. Prior to April 5th, when was the last time you
20 would've traveled past 78 Break up towards the north
21 part of the mine, or were you ever that far?

22 A. I'd been there in the past, but it would've been
23 when I worked up there, and I never went back.

24 Q. Okay.

25 A. Me and Gary May had made an agreement. If I gave

1 up my miner position on that side of the mine, I was
2 never allowed to go back, when I went to the Three
3 section panel for another member, because, you know,
4 they really needed the miner men to stay up there and
5 drive the panel.

6 Q. Uh-huh (yes).

7 A. And things just wasn't clicking for me up there,
8 and just wasn't really getting along with other
9 certain --- one other certain person on the section.
10 I'm not a conflict kind of a person. If I see it
11 coming about I'd just rather get away from it.

12 Q. Okay.

13 A. So I said, you know, if you need somebody to
14 volunteer, I'll go.

15 Q. Okay. All right. And that just had to do with
16 personal reasons ---

17 A. Yes.

18 Q. --- more so than conditions? Okay. You said you
19 were injured in 2008. How long were you off?

20 A. I missed one day.

21 Q. Okay. Now, you got --- you say you got crushed by
22 a miner?

23 A. I come back on light duty and I called and told
24 management I didn't want to run the miner no more.

25 They told me they didn't have anything else for me. So

1 I take my ribs up and my eyes were full of blood and I
2 went ahead and went on to work.

3 Q. Okay. How long did it take before you got back to
4 normal?

5 A. I'd say six months for me to actually get back to
6 a hundred percent normal.

7 Q. Okay. I'm assuming you got caught between a
8 miner, continuous miner and the rib?

9 A. Uh-huh (yes).

10 Q. Did you go to the hospital?

11 A. Yes. I had three ---

12 Q. (b)(7)(C) or anything?

13 A. --- (b)(7)(C) , and it hurt. It hurt (b)(7)(C)
14 real bad, just bruised it, smashed (b)(7)(C) . Blood
15 (b)(7)(C) --- I don't
16 know. It did blow blood (b)(7)(C) and my white in
17 my eyes were red. There was no white.

18 Q. Okay. And when did you return to work?

19 A. I missed one day and then the following day I came
20 back to work.

21 Q. Okay. You ran the miner again?

22 A. Yes.

23 Q. You're a pretty hard man.

24 A. I got a --- I had a child. I had high child
25 support then. And when you love your kids, you

1 just ---

2 Q. I understand.

3 A. --- do what you do.

4 Q. I understand. When you participated in the
5 ventilation change --- I think the last time you said
6 was about March 9th --- I think you indicated you had
7 ---. You said you had a map that Gary May would give
8 you, showing stoppings to knock and so forth?

9 A. Yes.

10 Q. Okay. Now, in addition to the map, was there
11 anybody on the phone someplace that sort of
12 coordinated all this and stayed in touch with
13 everybody, let them know what to do?

14 A. I'm pretty sure that I heard MSHA and Jamie
15 Ferguson. They had them pointed out in certain
16 places, and every time we'd knock one or build one,
17 they'd take a new air reading, trying to get the air
18 the way they wanted it to be. I do remember that that
19 day.

20 Q. Okay. So apparently you just kept tinkering with
21 it until you got there?

22 A. Yes, which we didn't get it that day when we were
23 there. I'm pretty --- I think they got it that night
24 after we'd left.

25 Q. Okay.

1 A. Because we swing --- we swung shift a lot, and I
2 was on-call 24 hours a day. Gary needed me. I live
3 so close to work, it was a ten-minute drive. I could
4 get --- I could go on out to work.

5 Q. Okay. April 5th when you were getting dressed ---
6 now, were you portaling at UBB at the time?

7 A. Yes.

8 Q. Okay. Did you participate in the rescue and
9 recovery work any?

10 A. I did take some EMT supplies to the Ellis
11 punch-out that evening after the explosion. Elizabeth
12 Chambers came downstairs and asked me did I care to
13 run some EMT supplies to the Ellis punch-out?

14 Q. Okay. One final thing. Since April 5th have you
15 learned anything that you think would be valuable to
16 us about what might've happened, what might've caused
17 this or anything?

18 A. In my mind I really don't know what happened. I
19 really don't.

20 Q. Okay, all right. Thank you.

21 EXAMINATION

22 BY MS. SPENCE:

23 Q. Mr. Thompson, how long did you say it was before
24 you felt back to normal after your injury in 2008?

25 A. Probably six months.

1 Q. Six months; sure. Okay.

2 A. I was just real shaky, real nervous. The way it
3 happened was an experience I'll never forget probably.
4 I thought I'd turned it off and the bolter was running
5 in one crosscut and a shuttle car running in another.
6 And I walked up and reached down to get my cable.
7 When I looked up it was already on top of me before I
8 could think.

9 Q. Can you tell us about your experience on the day
10 of April 5th, what happened? You were getting dressed
11 and then --- can you walk us through what happened up
12 to the time you started hauling supplies?

13 A. I knew something had happened. I went out to the
14 fan. We sort of --- we stand out there and smoke
15 beside the shower house, a couple of us. You know,
16 everybody go out and smoke. And there was enough dust
17 coming out to where you couldn't see the whole holler.

18 Q. Uh-huh (yes).

19 A. And that was, in my mind, an indication that
20 something was wrong. Somebody said, well, there's
21 probably been a fall. And when you see crib blocks
22 coming out of the fan, there was no fall that could
23 throw crib blocks out of the fan.

24 And I'd listened on the phone and I'd heard Rick
25 Foster had found Timmy Blake. I was eavesdropping on

1 the phone and we was all --- everybody was doing it,
2 because, you know, you're curious to what's going on.
3 That's your friends in there and things.

4 MR. SHERER:

5 Take a minute?

6 SHORT BREAK TAKEN

7 A. I'd heard Rick Foster found Timmy Blake and he
8 needed plenty of ambulances. And Elizabeth Chambers,
9 she was coming out acting like nothing was wrong,
10 telling guys, you know, just calm down. We really
11 don't know what's going on. But I already knew, you
12 know, because I was eavesdropping. And I heard him
13 say he needed a lot of ambulances and they were at 78
14 Break with Head's crew, which was Steve Harrah. And
15 that's when she asked me to come down and she said, do
16 you care to take the supplies to the Ellis punch-out?
17 And when I got --- by the time I got over there,
18 they'd already had the crew out on the ground and
19 things. And I seen them. I seen (b) (7)(C)
20 (b) (7) and all of them, and I got in my truck and I went
21 home.

22 MR. SHERER:

23 Sure.

24 A. That' what I did. To see seven people dead at one
25 time was an amount that --- it was too much for me to

1 deal with, and I was an EMT certified, so I didn't see
2 for me to be in the place where I was at. And that's,
3 you know, when ---.

4 I'd already called my wife previously. I told
5 her, I said, something bad has happened at work. And
6 when I went home, she knew when I pulled in the
7 driveway, you know. It was just a lot of hugs and
8 glad you're okay and my daughter pulled in behind me.
9 She had been to Charleston to see her mom.

10 And I never seen this coming here at that mines.

11 I talked to them every day. I worked with the crew
12 that I saw dead. I worked with them a lot. He'd come
13 up and boss Three section. I'd run the miner. When
14 he missed a day to take vacation, I would boss his
15 crew.

16 BY MS. SPENCE:

17 Q. Who's that?

18 A. Steve Harrah.

19 Q. Okay.

20 A. And then, you know, I went home and just watched
21 the news the rest of the day. And that was basically
22 all we did. And I was hoping that maybe they would've
23 found more than what they did, which I worked the
24 following week of that, too.

25 Q. There?

1 A. Yes, I worked outside, which if I knew they were
2 going to pay me and everybody else was at home, I
3 wouldn't have worked the first day. But they ended up
4 --- I think it was kind of a bad deal. Some people
5 worked, some people sit at home and they got paid two
6 40-hour checks to sit at home. And I got paid for a
7 week and then the 40 I stayed home. And I think they
8 should've paid me another 40, just like they did
9 everybody else. I could've stayed home, too, but they
10 never told me.

11 And then Sunday they called me out to work to come
12 in and ventilate, and I went out and we never had to
13 ventilate anything for the mine rescue. That was my
14 last day there.

15 Q. And you're where now?

16 A. I'm at Roundbottom, Shunk Number Three.

17 Q. What do you think caused this?

18 A. I mean, I know it had to be methane. I mean,
19 that's obvious, but when I worked up on my tailgate
20 when I drove it, we never hit methane. But you know,
21 it could be there today or not there today and be
22 there tomorrow. That's why you got to do them gas
23 checks. That's why they're important. But in my
24 mind, I really don't know what happened.

25 MS. SPENCE:

1 Thank you.

2 A. Thank you.

3 RE-EXAMINATOIN

4 BY MR. SHERER:

5 Q. Somewhat unrelated question. You mentioned that
6 you went out to smoke near the shower house. Do you
7 know if there was a policy at this mine to not smoke
8 while you're on the property?

9 A. I'm pretty sure there was a policy that we didn't
10 smoke.

11 Q. Okay. But people did it anyway?

12 A. Yeah, we had a --- everybody had one little spot
13 to where it seemed like if you --- if management
14 walked by, they wouldn't say a whole lot to you. If
15 you threw your --- you know, put your cigarette out
16 and put it in the trash it was sort of okay.

17 Q. Okay. Have you ever heard of an incident where
18 somebody in management kicked a cigarette out of
19 somebody's hand?

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

21 MR. SHERER:

22 Okay. Thank you. That's all the
23 questions I've got.

24 MR. FARLEY:

25 I can't think of anything else.

1 ATTORNEY WILSON:

2 All right. Then Mr. Thompson, on behalf

3 of MSHA and the Office of Miner's Health, Safety and

4 Training, I want to thank you for appearing here today

5 and answering our questions. Your cooperation is very

6 important to the investigation as we work to determine

7 the cause of the accident. We request that you not

8 discuss your testimony with anyone outside of this

9 room. After questioning other witnesses, we may call

10 you if we have any follow-up questions. If at any

11 time you think of additional information regarding the

12 accident that you would like to provide, please

13 contact us at the information that was given to you.

14 I want to advise you of your rights as a

15 miner under the Mine Act. Any statements given by

16 miner witnesses to MSHA are considered to be an

17 exercise of statutory rights and protected activity

18 under Section 105(c) of the Mine Act. If you believe

19 any discharge, discrimination or other adverse action

20 is taken against you as a result of your cooperation

21 with this investigation, you are encouraged to

22 immediately contact MSHA and file a complaint under

23 Section 105(c) of the Act.

24 After filing a complaint, your remedies

25 would include immediate temporary reinstatement

1 pending a complete investigation of your complaint, as
2 well as back wages. In order to file a complaint, you
3 would contact the MSHA district office in Mount Hope,
4 West Virginia, and you can find their contact
5 information and other information concerning your
6 rights at MSHA's website, which is www.msha.gov.

7 Before we finish and go off the record, I

8 want to give you an opportunity if there's anything
9 else that you would like to add or if there's a
10 statement that you would like to make, anything else
11 that you can provide to us that you think might be
12 helpful. Now's the time to do that.

13 A. On the explosion itself, that's the only thing
14 that I would know about any ---. I just--- like I
15 said, I did not work up there a whole lot, just mostly
16 down in here on the old LBB and the Three section. I
17 wish I knew more to help understand it, but that's all
18 I have to say. That's all I know.

19 ATTORNEY WILSON:

20 All right. Then again, I want to thank
21 you for your cooperation in this matter, and we'll go
22 off the record.

23 * * * * *

24 STATEMENT UNDER OATH CONCLUDED AT 4:55 P.M.

25 * * * * *

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.

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Alison Salyards