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Statement Under Oath of Clifton Earls

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STATEMENT UNDER OATH

OF

CLIFTON EARLS

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at The National Mine Health & Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, August 12, 2010, beginning at 3:56 p.m.

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ATTORNEY WILSON:

Good afternoon. My name is Bob Wilson.

I am with the Office of the Solicitor, United States
Department of Labor. Today is August 12th, 2010.

With me is Erik Sherer, an accident investigator with
the Mine Safety and Health Administration. We're here
this afternoon to conduct an interview of Clifton
Earls. Also present are individuals with the State of
West Virginia. Terry?

MR. FARLEY:

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

MS. SPENCE:

Beth Spence, with the Governor's
independent investigation.

ATTORNEY WILSON:

At this time I'm going to ask you to face
the court reporter, and she will swear you in.

CLIFTON EARLS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
AS FOLLOWS:

ATTORNEY WILSON:

1 For the record, can you state your name,
2 your address and your telephone number?

3 A. Clifton Earls, (b)(7)(C)

4 (b)(7)(C) .

5 ATTORNEY WILSON:

6 And Terry is going to go over some
7 preliminary matters relating to the subpoena.

8 MR. FARLEY:

9 Mr. Earls, I need to ask you on the
10 record, but you are here in response to a subpoena; is
11 that correct?

12 A. Yes, sir.

13 MR. FARLEY:

14 Does that look like a copy of the
15 subpoena you received?

16 A. Yes, it is.

17 MR. FARLEY:

18 Okay. I'd like to enter that as Exhibit
19 One, please.

20 (Exhibit Earls One marked for
21 identification.)

22 MR. FARLEY:

23 Also I have a Return of Service verifying
24 that Mr. Earl's subpoena was, in fact, delivered and
25 issued --- issued and delivered. I'd like to enter

1 that as Exhibit Two.
2 (Exhibit Earls Two marked for
3 identification.)

4 MR. FARLEY:

5 And we spoke earlier about the per diem
6 that you were entitled to and mileage, and you have
7 declined; is that correct?

8 A. Yes, sir.

9 MR. FARLEY:

10 Thank you very much.

11 A. Uh-huh (yes).

12 ATTORNEY WILSON:

13 All right. Thank you. Mr. Earls, I have
14 a statement that I need to make concerning
15 confidentiality of information gathered during the
16 interview process. All members of the Mine Safety and
17 Health Administration Accident Investigation Team and
18 all members of the State of West Virginia Accident
19 Investigation Teams participating in the investigation
20 of the Upper Big Branch Mine explosion shall keep
21 confidential all information that is gathered from
22 each witness who provided a statement until witness
23 statements are officially released. MSHA and the
24 State of West Virginia shall keep this information
25 confidential so that other ongoing enforcement

1 activities are not prejudiced or jeopardized by a
2 premature release of information. This
3 confidentiality requirement shall not preclude
4 investigation team members from sharing information
5 with each other or with other law enforcement
6 officials. Everyone's participation in this interview
7 constitutes their agreement to maintain
8 confidentiality.

9 Mr. Earls, government investigators and
10 specialists have been assigned to investigate the
11 conditions, events and circumstances surrounding the
12 fatalities that occurred at the Upper Big Branch
13 Mine-South on April 5th, 2010. The investigation is
14 being conducted by MSHA pursuant to Section 103(a) of
15 the Federal Mine Safety and Health Act and by the
16 Office of West Virginia --- West Virginia Office of
17 Miners' Health, Safety and Training. We appreciate
18 your assistance in this investigation.

19 You may have an attorney or a
20 representative present with you today. Do you have a
21 representative?

22 A. I don't need one.

23 ATTORNEY WILSON:

24 All right. And I'll remind you that you
25 do need to speak your answers so that the court

1 reporter can take that down.

2 A. All right.

3 ATTORNEY WILSON:

4 This is not an adversarial proceeding,

5 but as I explained before we were on the record each
6 of the parties will have an opportunity to ask follow-
7 up questions. Your identity and the content of this
8 interview will be made public at the conclusion of the
9 interview process and may be included in a public
10 report of the accident, unless you request that your
11 identity remain confidential, or if your information
12 would otherwise jeopardize other potential
13 investigations. If you request us to maintain your
14 identity confidential, we will do so to the extent
15 permitted by law. In other words, if a judge or some
16 other law requires that we reveal your name, we may
17 have to do so. There may be a need also to use the
18 information that you provide to us in other
19 investigations or hearings concerning the explosion.
20 Do you have any questions concerning your right to
21 request confidentiality?

22 A. No, sir.

23 ATTORNEY WILSON:

24 All right. After the investigation is

25 complete, MSHA will issue a public report detailing

1 the nature and the causes of the fatalities in the
2 hope that greater awareness about the causes of
3 accidents can reduce their occurrence in the future.
4 Information obtained through witness interviews is
5 frequently included in those reports. We will be
6 interviewing other individuals, so we request that you
7 not discuss your testimony with anyone after your
8 interview is complete.

9 The court reporter will be recording the
10 interview, as I've indicated. Please speak loudly and
11 clearly so that the court reporter can take everything
12 down. If you do not understand the question asked,
13 please ask that the question be rephrased. Please
14 answer each question as fully as you can, including
15 any information that you may have heard from somebody
16 else. If you need to take a break at any time, please
17 just let me know.

18 After we have finished asking questions,
19 we will provide you with an opportunity if there's
20 anything else that you want to add to the record. The
21 reason we're here is to find out what you know. And
22 we may not ask the right questions, so if there's
23 something that you feel that you think may be
24 important to the investigation, please let us know
25 that. Okay?

1 A. Okay.

2 ATTORNEY WILSON:

3 If at any time after the interview you
4 recall any additional information that you believe may
5 be useful to the investigation, you can contact Norman
6 Page, who is MSHA's lead accident investigator here at
7 the Mine Academy. And here is a letter that includes
8 contact information for Mr. Page. And that letter
9 also includes some information relating to your rights
10 under the Mine Act as a miner. Terry, do you have
11 anything else that you want to add?

12 MR. FARLEY:

13 Mr. Earls, I think I spoke with you
14 earlier about the fact that the West Virginia Mine Law
15 protects miners against discrimination.

16 A. Uh-huh (yes).

17 MR. FARLEY:

18 And I've provided you with some contact
19 information should you experience any problems.

20 A. Yes, sir.

21 MR. FARLEY:

22 Thank you very much.

23 ATTORNEY WILSON:

24 Beth, is there anything?

25 MS. SPENCE:

1 No.

2 ATTORNEY WILSON:

3 All right. Then at this time we'll start

4 with the questioning, and Erik Sherer will start that
5 for MSHA.

6 EXAMINATION

7 BY MR. SHERER:

8 Q. The first thing I want to do is thank you for
9 coming down here, Mr. Earls.

10 A. You're welcome.

11 Q. We're looking into this accident. We're trying to
12 put it together, like Bob said, and we're doing it for
13 two reasons. The first one is the family and the
14 friends and the co-workers of these miners deserve to
15 know what happened. The second one is we need to know
16 what happened ourselves to try to prevent this in the
17 future. Roughly, how many years of mining experience
18 do you have?

19 A. I'm thinking 37, ---

20 Q. Okay.

21 A. --- right off the top of my head.

22 Q. That sounds good enough for me.

23 A. Thirty-seven (37) years.

24 Q. You're certainly an experienced miner. When did
25 you start with the Massey organization?

1 A. Well, I started in 1996 as a contractor. Then
2 they hired me in '99.

3 Q. Okay.

4 A. And I've been with them ever since.

5 Q. Okay. Now, when did you start working at UBB?

6 A. '96.

7 Q. '96. So you've been at UBB the entire ---

8 A. Uh-huh (yes).

9 Q. --- career with Massey?

10 A. Yes, sir.

11 Q. That's not too long after they started this mine
12 up.

13 A. I think they started in '95, ---

14 Q. Okay. Yeah.

15 A. --- as best of my recollection.

16 Q. You know it all then?

17 A. Well, I know a lot.

18 Q. Okay. Good. Do you have any Federal or State
19 mining certificates, like fire boss papers, electrical
20 papers?

21 A. Not here. I got Kentucky foreman papers.

22 Q. Okay. What was your job title prior to the
23 explosion?

24 A. I was a supply motorman.

25 Q. Okay. Was there any particular part of the mine

1 that you worked in, or did you work in the entire
2 mine?

3 A. Well, three weeks before the explosion they made a
4 change. I was on the evening shift. I worked the
5 North from Ellis Switch up to Old Two section,
6 tailgate of the wall to the new section I call One
7 section, then they made the change and I went to
8 dayshift. And then they put me from Ellis out toward
9 the south.

10 Q. Okay. Most of the questions we're going to ask
11 you today is primarily about the northern part of the
12 mine because that's where the explosion occurred.

13 A. Uh-huh (yes).

14 Q. And can you give us a rough idea of what you did
15 as a supply motorman?

16 A. I supplied the section with everything they would
17 need, supplies like bolts, rock dust, all that. I
18 would get the belt moves, go recover high voltage
19 cable, belt, water line, whatever.

20 Q. Okay. How would you determine what to take to the
21 sections? Would they call out and ask you to bring
22 things in?

23 A. Yes. They would give me a supply order.

24 Q. Okay. And then you would pick that up from
25 wherever you needed to pick it up?

1 A. I'd pick it up on the south side.

2 Q. Okay. What size motor did you run?

3 A. Fifteen (15) ton Brookville.

4 Q. Okay. Did you have one or two supply cars?

5 A. I'd have one and my helper would have one.

6 Q. Okay. So you'd normally have a trip with one
7 motor and two supply cars?

8 A. One motor, one supply car, one motor, one supply
9 car.

10 Q. Were you linked together or were you ---?

11 A. No. No, sir.

12 Q. Okay. Would you generally travel together?

13 A. Yeah, they --- we would be a short distance apart
14 going and coming.

15 Q. Oh, okay. Different places do it different ways.
16 That's why I was asking.

17 A. Well, we had to be together. We worked better
18 together, you know, me and my helper did.

19 Q. Sure. A lot of heavy stuff you guys had to move.

20 A. Uh-huh (yes).

21 Q. When you were going back and forth, I imagine you
22 passed through a lot of doors along the route.

23 A. A lot.

24 Q. I imagine. What sort of condition were those
25 doors in?

1 A. Well, when I left the south side, the doors coming
2 underground, they worked automatically. They were in
3 fine shape.

4 Q. Sure.

5 A. Then right before you get to Ellis Switch you had
6 a set of --- you had two sets of doors you had to open
7 by hand. They were okay. Then from there going
8 north, it was just a toss-up how you would find them
9 from one day to the next.

10 Q. Okay. Could you explain what you mean by a
11 toss-up?

12 A. Well, sometimes they wouldn't be closed or there'd
13 be a big gap in them, or the block would be out of the
14 top or sometimes they'd be wide open.

15 Q. Did you ever see both doors of a set of doors wide
16 open?

17 A. Yes, sir.

18 Q. How common was that? Would you see it once a
19 week, once a month?

20 A. I'd say once a week, ---

21 Q. Okay.

22 A. --- at least.

23 Q. Sure. Okay. Thank you. Was any of the doors
24 more likely to be open than any of the other sets?

25 Was there any one set of doors that gave you problems?

1 A. Yes, the doors between 78 Break and the mouth of
2 the wall.

3 Q. Okay. And in front of you is a map. Could you
4 point out exactly where those doors were that tended
5 to be open?

6 A. I'm thinking right here. I believe that's it. I
7 don't have my glasses.

8 Q. Okay. We actually have a magnifying glass.

9 A. Yeah. It should have been right here, between
10 the --- it should have been around 80 Break or 81
11 Break, somewhere in there.

12 Q. Can I ask you to take this marker and just draw a
13 circle around those doors?

14 A. Okay. That one and that one.

15 Q. Okay. Draw a line out here and write something
16 like doors open.

17 MR. FARLEY:

18 Now, that set of doors that you just
19 identified there is where the intake crosses; is that
20 right?

21 A. Yes, sir.

22 MR. FARLEY:

23 Okay.

24 MR. SHERER:

25 Thank you.

1 A. Yeah, that was here, 78, yeah.

2 BY MR. SHERER:

3 Q. Thank you, sir.

4 A. Uh-huh (yes). I left my glasses in my car.

5 Q. That's okay. A lot of folks do that. And that's
6 why we have that magnifying glass.

7 A. Okay. That's great. I couldn't have saw it.

8 Q. Okay. Now, let's talk a bit about ventilation.

9 You guys were back and forth quite a bit. Did you
10 ever notice any changes in the air? Did you notice
11 one day that you might have good air in one part of
12 the mine and the next day maybe not so good?

13 A. Well, I traveled the mainline mostly, so I really
14 couldn't tell much difference in the air. And then
15 when I would go to a section, I just went to the
16 supply doors.

17 Q. Okay.

18 A. And you know, I never did go up in the face, ---

19 Q. Oh, okay. Sure.

20 A. --- unless it was to deliver a message or just
21 hand off a part or something.

22 Q. Okay. Did you ever hear anybody complaining about
23 not having enough air?

24 A. Oh, yeah, the people on the section crew on this.

25 Q. The 22 Headgate --- or Number One?

1 A. No, all the way over here, over where --- no,
2 that's the tail there.

3 Q. This is the tail here. This is the headgate.

4 A. That's the headgate?

5 Q. Yeah.

6 A. Then you're not showing --- you're not showing the
7 cut-across then.

8 Q. That's right here, sir.

9 A. That don't look right.

10 Q. This is the wall.

11 A. This is the northernmost section up there; right?

12 Q. This is what they're calling Eight North.

13 A. Eight north.

14 Q. It was abandoned.

15 A. Well, call ---.

16 Q. This is the Number Seven belt, and then this is
17 the section belt going into the headgate section.

18 A. Okay. Right here is Six North.

19 Q. Uh-huh (yes). Yeah.

20 A. Okay. This is tail right here.

21 Q. Yeah, this is the tail right here.

22 A. This is the cut-across, there's the wall.

23 Q. Yeah, this is the headgate for the next one.

24 A. Okay. Now, where's the next headgate?

25 Q. The next headgate hadn't been started. It's

1 supposed to be right here. This is projection.

2 A. That's not right.

3 Q. Okay.

4 MR. FARLEY:

5 Now, wait a minute. This is the longwall

6 where they were mining at the time of the accident.

7 A. Over here?

8 MR. FARLEY:

9 Right here, where my fingers are.

10 A. Oh, okay.

11 MR. FARLEY:

12 That's where they were --- that's where

13 they were mining on April 5th.

14 A. Okay.

15 BY MR. SHERER:

16 Q. And this is called the tailgate section. They

17 were driving a parallel tailgate.

18 A. Okay. Okay. This was the other crew. Okay.

19 Q. Yeah. And this is --- we've been calling this the

20 connector, but you're calling it the cut-across.

21 About the same thing.

22 A. Well, that's what they called it.

23 Q. Okay. And then this is the headgate.

24 A. Okay. The headgate, the men, they complained ---

25 Q. Oh, okay.

1 A. --- about air all the time.

2 Q. Anybody in particular complain?

3 A. Well, at that time I was on the evening shift, so
4 it would be the evening shift crew.

5 Q. Okay. Did you ever hear anybody talking about
6 methane?

7 A. Let's see. I think I've heard a couple people
8 mention that before, that they would gas off --- their
9 miner would gas off or something like that.

10 Q. Do you recall which section would gas off?

11 A. It was the last section up, the new headgate.

12 Q. Twenty-two (22) Headgate. Do you recall about
13 when you last heard of them gassing off?

14 A. Let me see. I have to think back. About two
15 months before this happened, ---

16 Q. Okay.

17 A. --- just --- I'm just guessing now.

18 Q. Sure. I appreciate the information. Did you
19 work --- deliver supplies down anywhere around the
20 longwall?

21 A. Yeah. When they started the cut-across, I
22 delivered there.

23 Q. Okay. When's the last time you did anything on
24 the tailgate of the longwall?

25 A. It was probably three weeks, like I said, before

1 they changed me, because I would go to the tail of the
2 wall and recover all of my structure ---

3 Q. Okay.

4 A. --- and my waterline, high-voltage belt.

5 Q. Do you recall taking any Kennedy stopping panels
6 or equipment --- or materials to build Kennedy
7 stoppings into the tail of the longwall?

8 A. Oh, yeah, carloads of them.

9 Q. Oh, okay.

10 A. Yeah.

11 Q. Did they use a lot of Kennedies up in there?

12 A. (Indicates yes.)

13 Q. Was the floor heaving much up through there?

14 A. When you turned down on the tail of the wall,
15 from --- I'm thinking from about 36 Break to 52, the
16 bottom would heave right through there.

17 Q. Okay.

18 A. I mean, we had sand jacks sitting on the belt, ---

19 Q. Sure.

20 A. --- and it would bend them like a bolt.

21 Q. Oh, jeez.

22 A. But from there on up when I was up there, that was
23 before they started mining on the wall. You know, it
24 was fine.

25 Q. So once the wall started taking pressure, they

1 started heaving and ---?

2 A. Well, that's before the wall ever fired up.

3 Q. Oh, okay. So that was just when the ---?

4 A. To me, it was just a common occurrence.

5 Q. Okay.

6 A. You know, you might go 20 breaks and the bottom
7 would hoove or ---

8 Q. Sure.

9 A. --- you know.

10 Q. Okay. Did you guys transport explosives into the
11 mine?

12 A. I didn't.

13 Q. Do you know who did?

14 A. It had to be somebody on the midnight shift ---

15 Q. Okay.

16 A. --- because there was just certain people that was
17 allowed to get explosives.

18 Q. Do you know who that may have been?

19 A. I'm thinking it was Glenn Ullman and Everett Hager
20 that had access, you know, because you had to have
21 security come up and all that.

22 Q. Sure. Okay.

23 A. But I have brought empty explosive magazines off.

24 Q. Okay. Big boxes?

25 A. Uh-huh (yes).

1 Q. About how big were those boxes, just roughly?

2 A. Four foot by two foot by two foot, something like
3 that.

4 Q. Do you recall what color they were painted or ---?

5 A. They weren't painted, just wood.

6 Q. Just bare wood?

7 A. Uh-huh (yes).

8 Q. Okay. Thank you. Did you ever hear anybody on
9 the mine phone calling in, saying we've got company or
10 inspectors on the property?

11 A. Oh, yeah.

12 Q. How common was that?

13 A. Whenever an inspector would show up.

14 Q. That's pretty common.

15 A. Yeah. Yeah.

16 Q. We've talked about ventilation. We've talked
17 about methane. Did you ever hear anything about
18 people bridging out methane monitors?

19 A. No. No, sir. I never heard that.

20 Q. Did you ever hear of anybody putting a bag over a
21 sniffer?

22 A. No.

23 Q. Now, you said you spent most of your time in the
24 main track entry?

25 A. Uh-huh (yes).

1 Q. What was the rock dust like along there prior to
2 the explosion?

3 A. It was good because when I worked up north we were
4 told to keep anywhere from two to three pallets at
5 every belt head. And they had a rock dust crew on the
6 hoot owl, and that's what we tried to do.

7 Q. About how often would you have to take another
8 pallet into each belt head?

9 A. Well, if we thought it got down to below two
10 pallets, we would take another one. Because after the
11 Aracoma thing, they told us to keep anywhere from two
12 to three pallets at all times at the belt heads.

13 Q. Would you take a pallet once a week or ---?

14 A. No. It was probably twice a week.

15 Q. Okay.

16 A. Yeah, because we had those dusters at the heads.

17 Q. Trickle dusters?

18 A. Uh-huh (yes).

19 Q. Do you recall how many bags were on the pallet,
20 roughly?

21 A. Say 50.

22 Q. Okay. That's a lot of rock dust.

23 A. Just --- yes. I've never counted it.

24 Q. That's --- 40-pound bags, ---

25 A. Uh-huh (yes).

1 Q. --- 50, that would be a ton of rock dust.

2 A. Yeah. Hand unloaded.

3 Q. Oh, jeez. You guys earned your pay.

4 A. Well, ---.

5 Q. Did you take a lot of blocks into the mine?

6 A. Yes, sir.

7 Q. Roughly how many cars of blocks would you take in
8 during the week?

9 A. During the week --- well, when I was up north to
10 the headgate, the last headgate, they probably didn't
11 move but once a week. I probably wouldn't take over
12 ten pallets.

13 Q. Did you ever take any of this tailgate section
14 they were driving?

15 A. Yeah. You're talking about where they cut across
16 and then they started the new tail?

17 Q. Uh-huh (yes). Yeah.

18 A. Yes, sir.

19 Q. Were they using about roughly ten pallets a week?

20 A. Yeah, because they just got started and they had
21 problems, you know, getting set up and all that.

22 Q. Sure.

23 A. They didn't use probably no more than that ---

24 Q. Okay.

25 A. --- or whatever, you know, 10 or 12, something

1 like that.

2 Q. Was there anyplace else in this northern part of
3 the mine that you regularly took block to build
4 stoppings?

5 A. No.

6 Q. Do you recall delivering any block down on the
7 tailgate of the longwall?

8 A. Yeah, before the longwall started.

9 Q. Okay. But not after the longwall started?

10 A. No. No.

11 Q. Okay. Were you involved in the construction of
12 the new Mother Drive up at the end of the Seven belt?

13 A. Construction. I probably hauled belt head parts
14 and stuff like that ---

15 Q. Okay.

16 A. --- and you know, dropped it off.

17 Q. Okay. Do you know if there had been some doors up
18 near this new Mother Drive that may have been taken
19 out or maybe even new doors constructed you had to go
20 through?

21 A. I'm thinking there was a set of doors at 100
22 Break, ---

23 Q. Okay, 100 Break.

24 A. --- going over in the intake.

25 Q. Way down here?

1 A. Yeah.

2 Q. Okay. Do you recall about when they built those
3 doors?

4 A. I can't recall. Now, wait a minute. There's
5 another set. If you go up the intake, there's another
6 set that went over and come --- and they would travel
7 underneath the belt when they moved off the tail here.

8 Q. Okay.

9 A. Somewhere in this area ---

10 Q. Okay.

11 A. --- right here.

12 Q. It doesn't look like --- well, here's a set right
13 here.

14 A. Yeah, that's probably them then.

15 Q. Okay. Good thinking.

16 ATTORNEY WILSON:

17 Just for the record, you were showing the
18 headgate of the longwall at about Break Five?

19 A. Uh-huh (yes).

20 MR. SHERER:

21 Thank you.

22 BY MR. SHERER:

23 Q. When was the last time you were up in the northern
24 part of the mine prior to the explosion?

25 A. Three weeks before that.

1 Q. Okay.

2 A. Well, no. Wait a minute now. See, you're calling
3 the north up here, and we call the north from Ellis
4 Switch down here.

5 Q. Yeah. And let's use the same definition.

6 Anyplace north of the Ellis Switch, when was the last
7 time you were up there?

8 A. Three weeks.

9 Q. Okay.

10 A. But I was out Ellis Switch the day it
11 happened, ---

12 Q. Okay.

13 A. --- delivering high-voltage cable.

14 Q. Okay. Was that where they were starting a new
15 section there ---

16 A. Uh-huh (yes).

17 Q. --- right near the portals?

18 A. Yes, sir.

19 Q. Okay. About what time of day were you up there?

20 A. I got in there around ten o'clock and probably
21 left there at 20 after 1:00.

22 Q. Okay. Did you notice anything unusual while you
23 were up there?

24 A. Uh-huh (yes).

25 Q. What was that, please?

1 A. Because when I delivered the car and went out
2 through there I couldn't see for dust.

3 Q. Okay.

4 A. So I got off the motor when I couldn't see and
5 walked. I walked about 500 feet. And to the right of
6 Five Ellis head there was a miner cutting on the
7 track, and both doors was open.

8 Q. Okay. That was dusting you out?

9 A. Uh-huh (yes). Yes, sir.

10 Q. And that dust was moving inby?

11 A. It was coming back toward me, ---

12 Q. Okay.

13 A. --- coming --- it would be coming from Ellis,
14 going north, to north mains.

15 Q. Did you get them to hold off so you could get
16 through there?

17 A. Uh-huh (yes). Yes.

18 Q. Have any other trouble while you were up there?

19 A. No. We went and unloaded the high-voltage cable,
20 and we left there. And we were going to go to the
21 tail of the wall and recover structure, and I told my
22 helper, I said, it's too late. We couldn't get it all
23 done. Because you know, it would take two or three
24 hours to get structure, belt, and we left there and we
25 went to the south side and recovered rail, track rail.

1 Q. That was a fortuitous decision.

2 Q. And the boy that helps me, it was his dad that ---

3 A. Oh, jeez.

4 Q. --- survived. Well, --- Woodsy.

5 Q. Do you know what sort of shape Mr. Woods is in?

6 A. Just --- from what I hear, it just comes and goes,
7 you know.

8 Q. Where were you when the explosion happened?

9 A. I was on the south side, at east mains.

10 Q. Did you hear it or feel it or anything like that?

11 A. We were tearing rail apart, and I told Jeremy, I
12 said, I hear something coming for just a second. And
13 we stopped what we was doing, then I said, maybe I'm
14 hearing things. So we finished what we was going to
15 do, and ten after 4:00 we left there. Well, I
16 couldn't get out the airlock doors. They had pulled
17 the power. So we had to pull the pins on the doors,
18 open them, put them back, and then come out. And I
19 didn't know anything about it until we got outside.
20 Then I had to deal with him, because his dad was on
21 the other side, you know, and it was real hard.

22 Q. I'm sure it was.

23 A. It's been real hard.

24 Q. I can imagine. You have our deepest sympathy and
25 condolences. Do you have --- what's your personal

1 opinion of what may have happened in here?

2 A. My personal opinion is I think a huge amount of
3 methane built up on the tail or something in behind
4 there. That's just my gut feeling. I don't know.

5 Q. Sure. Any reason why you think that there may
6 have been a lot of methane develop on the tail?

7 A. Well, one thing, when the men up there would talk
8 about there was no ventilation over here on the new
9 headgate, and we had a fan right back here. You know,
10 I ---.

11 Q. Did you ever hear of anybody going back and doing
12 anything around that fan roughly a week or so before
13 the explosion?

14 A. Not a week or so, but I'd say a month before that
15 happened, three weeks or something, there was some
16 ventilation change going on from the tail to the wall
17 or to the headgate.

18 Q. And that was when MSHA had issued an order to shut
19 them down for ---?

20 A. I think. Now, I don't know for sure.

21 Q. Okay.

22 MR. SHERER:

23 That's all the questions I've got.

24 Terry?

25 ATTORNEY WILSON:

1 Terry, before you --- let me go ahead and
2 mark the map as Exhibit Earls Three.

3 (Exhibit Earls Three marked for
4 identification.)

5 A. But personally, I think this right here should
6 have had overcasts there from day one.

7 BY MR. SHERER:

8 Q. And you're referring to the two sets of doors
9 at ---?

10 A. At 78.

11 EXAMINATION

12 BY MR. FARLEY:

13 Q. Now, the doors at 78, now, I think you --- I don't
14 remember your exact words, but you kind of indicated
15 they were problematic.

16 A. Uh-huh (yes).

17 Q. How often was it, again, that you would see those
18 doors were wide open?

19 A. At least once or twice a week, just guessing, you
20 know, the best I can remember.

21 Q. It was pretty often; right?

22 A. Yeah.

23 Q. Do you know why they would be open, why ---?

24 A. Well, I've always said that people who had
25 mantrips would come up and just hit them because they

1 were not electric, because they took the electric off
2 of them, you know, knock them open to keep from
3 getting off the ride to open them.

4 Q. Okay. You said that you had hauled many loads of
5 Kennedy stoppings up the longwall tailgate?

6 A. No, up the headgate side.

7 Q. I'm sorry, the headgate side.

8 Q. Headgate side.

9 Q. Would that have been primarily last year?

10 A. Uh-huh (yes).

11 Q. Okay.

12 A. Yeah, pretty close to it, in that time frame.

13 Q. Did you ever haul any up the tailgate side?

14 A. I don't think so.

15 Q. Do you know of anybody else that might have done
16 that?

17 A. The longwall could have because they worked on the
18 tail. They would be setting props, but I can't recall
19 hauling any.

20 Q. Did you ever hear of anybody --- of some Kennedy
21 stoppings ending up here close to the Bandytown fan
22 area?

23 A. Oh, yeah.

24 Q. Do you know when and how they got there?

25 A. That was before the wall even fired up, ---

1 Q. Okay.

2 A. --- because the men that was --- this crew that
3 was over here on the new headgate, they was installing
4 them and they was talking about when they fired the
5 fan up, it blew them out, and they had to go back and
6 redo them.

7 Q. Okay. All right. Let me ask you another question
8 about doors.

9 A. Okay.

10 Q. Did you ever notice any people stationed at any of
11 the doors ---

12 A. No, sir.

13 Q. --- for any reason at all?

14 A. No.

15 Q. Did you ever hear of it?

16 A. No, I haven't heard of that.

17 Q. Okay. I got a call today about people being
18 stationed at doors. I just wanted to explore that a
19 little.

20 A. No, I haven't seen that.

21 Q. Can we get that map --- grab that map that shows
22 Ellis, if you don't mind, please?

23 A. Better give me my glass.

24 MR. FARLEY:

25 Give me a different colored marker there,

1 too.

2 MR. SHERER:

3 Well, this is actually the evidence of
4 somebody else.

5 ATTORNEY WILSON:

6 Let's go off the record.

7 SHORT BREAK TAKEN

8 ATTORNEY WILSON:

9 We're back on and we brought out another
10 map and marked that as Exhibit Earls Four.
11 (Exhibit Earls Four marked for
12 identification.)

13 BY MR. FARLEY:

14 Q. Mr. Earls, can you show me about where the
15 continuous miner was cutting on the track on April 5th
16 there, about one o'clock, when you had to --- when you
17 couldn't see because of the dust?

18 A. Uh-huh (yes). It should be right there.

19 Q. Okay.

20 A. Right in this area right here.

21 Q. Would you mind marking it with maybe that blue
22 marker there?

23 A. The best I can see, it was over in this area right
24 there.

25 Q. Just putting continuous miner ---

1 A. Uh-huh (yes).

2 Q. --- cutting here. All right. Now, you said there
3 was two doors open. About where were the doors?

4 A. It was right when you turned down here toward
5 Laurel Branch.

6 Q. Would it have been over these --- would it be
7 these doors over here?

8 A. It would be --- if there's a set of doors there,
9 that's where they were at.

10 Q. The map shows them there now, but I've never been
11 there, so ---.

12 A. They were there.

13 Q. Okay. So ---.

14 A. And they were both open.

15 Q. Doors open.

16 A. Uh-huh (yes).

17 Q. And that was about 1:00 p.m.?

18 A. Uh-huh (yes).

19 Q. Okay. Now, after 1:00 p.m., you went back to the
20 south side?

21 A. Back to the south side.

22 Q. All right.

23 MR. FARLEY:

24 I think that's all I got.

25 MR. SHERER:

1 I don't have anything.

2 MS. SPENCE:

3 I just have one, if I can find it.

4 BY MR. FARLEY:

5 Q. And you never saw anybody stationed at any doors?

6 A. No, sir. If I did, I would tell you.

7 Q. Did you ever hear of it?

8 A. I never heard of it.

9 MR. FARLEY:

10 Okay. Good enough.

11 EXAMINATION

12 BY MS. SPENCE:

13 Q. Well, why do you think this should have been
14 overcasts at 78?

15 A. Well, because you've got doors there. when you
16 open them doors, you're going to have them interfere
17 with your airflow. I mean, that's your main intake,
18 you know. Why shouldn't they have been? You know
19 what I mean?

20 Q. Thank you.

21 MS. SPENCE:

22 That's all I have.

23 EXAMINATION

24 BY ATTORNEY WILSON:

25 Q. Do you know why they used doors instead of an

1 overcast?

2 A. From what everybody I talked to, they was in a
3 hurry, hurry up.

4 Q. So it's quicker to install doors ---?

5 A. We'll come back and get it later. But later is
6 too late.

7 ATTORNEY WILSON:

8 Erik, any follow-ups

9 MR. SHERER:

10 No.

11 ATTORNEY WILSON:

12 Terry?

13 MR. FARLEY:

14 I think I've got it.

15 ATTORNEY WILSON:

16 Mr. Earls, on behalf of MSHA and the
17 Office of Miners' Health, Safety and Training, I want
18 to thank you for coming in and answering questions
19 today. Your cooperation is very important to the
20 investigation as we work to determine the cause of the
21 accident. Again, as I indicated earlier, we will be
22 interviewing additional witnesses, so we request that
23 you not discuss your testimony with any other person.
24 After questioning other witnesses, we may call you if
25 we have any follow-up questions. And if at any time

1 you have additional information regarding the accident
2 that you would like to provide, please contact us at
3 the contact information that was provided from Norman
4 Page, or you can contact the Office of Miners' Health,
5 Safety and Training.

6 Before we finish up, I said that I would
7 give you an opportunity if there's anything else that
8 you wanted to add to the record, any information that
9 you think might be useful or just a statement that you
10 would like to make, you can do so at this time.

11 A. Well, I'd like to say that we --- you know, we'd
12 move equipment and they'd tell us, wait until the
13 inspector leaves or we got an inspector coming, and I
14 don't like doing that. You know, it's not right.

15 MR. FARLEY:

16 What kind of equipment were you moving?

17 A. We'd move miners, bolters, anything, with people
18 underground.

19 MR. FARLEY:

20 Okay. With people inby, in the same
21 area?

22 A. With people inby, yeah.

23 MR. FARLEY:

24 When is the last time you did that?

25 A. Well, I moved a miner head probably two months

1 before the explosion?

2 MR. FARLEY:

3 A ripper head?

4 A. A ripper head.

5 MR. FARLEY:

6 Okay. Where did you start with.

7 A. I packed it up from the dayshift. They started
8 off with either the headgate --- the new headgate or
9 the old headgate One, and they brought it to 78, and I
10 picked it up and brought it on out.

11 MR. SHERER:

12 So is that one that we understand
13 somebody was having trouble getting it down to 78?

14 A. Yeah.

15 MR. SHERER:

16 It kept hitting something or ---?

17 A. Uh-huh (yes). And the State inspector was Gerry
18 Pauley. He knew about it the next day, and he climbed
19 all over me.

20 MR. FARLEY:

21 Did he cite a violation?

22 A. No. He didn't see us moving it.

23 MR. FARLEY:

24 Okay.

25 A. But he told me he said, I'm going to catch you.

1 And I said, well, I'm not trying to --- I don't try to
2 break the law intentionally, but when I'm told to do
3 something, I got to do it.

4 ATTORNEY WILSON:

5 Who told you to do that?

6 A. The evening shift foreman.

7 MR. FARLEY:

8 Who was that?

9 A. At that time it was Andy Kolson.

10 MR. FARLEY:

11 Okay. Would that have been last year?

12 A. Uh-huh (yes).

13 MR. FARLEY:

14 Kolson left, apparently, ---

15 A. Yeah. Well, see ---

16 MR. FARLEY:

17 --- in December or something, didn't he?

18 A. Another thing, when he was --- right when they
19 started the longwall up, they issued a closure order
20 because people were inby working. Dayshift come out
21 and they told me what was going on. The evening shift
22 foreman come to me and said, I want you to go in
23 behind the wall and recover high-voltage cable, and I
24 told him I could not do it. He said, why not? I
25 said, there's a closure order on it. He said, you can

1 sneak in there. And I said, no, I will not do it, and
2 we had an argument.

3 MR. FARLEY:

4 Who was that?

5 A. Andy Kolson. And that's the only person that's
6 ever asked me to really knowingly break the law, above
7 and beyond, you know.

8 MR. FARLEY:

9 You think the last equipment move you
10 made, though, would have been ---?

11 A. That was it.

12 MR. FARLEY:

13 How often did you transport equipment
14 with people inby prior to that?

15 A. Well, if --- let's see. Just say the headgate
16 moved up and drove through, ready to pull off, they
17 would bring it to the mouth, you would haul it up to
18 the next headgate. It might be six months. It might
19 be a year.

20 MR. FARLEY:

21 How often would you do something like
22 maybe move a miner or shuttle car or something on a
23 flat car?

24 A. About the same, same length.

25 MR. FARLEY:

1 And I guess these moves would always be
2 made when there's ---

3 A. Uh-huh (yes).

4 MR. FARLEY:

5 --- no inspector around?

6 A. Yeah.

7 ATTORNEY WILSON:

8 Any ---?

9 MR. SHERER:

10 No.

11 ATTORNEY WILSON:

12 All right. Thank you, Mr. Earls. Was
13 there anything else that you wanted to add at this
14 time?

15 A. I don't think, not that I can think of.

16 ATTORNEY WILSON:

17 Okay. Well, if you do think of anything,
18 call us and let us know.

19 A. Okay. I will.

20 ATTORNEY WILSON:

21 Again, I want to thank you for your
22 cooperation in this matter, and we'll conclude and go
23 off the record.

24 A. Okay. Thank you.

25 ATTORNEY WILSON:

1 Thank you.

2 * * * * *

3 STATEMENT UNDER OATH CONCLUDED AT 4:46 P.M.

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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