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Transcript of the Testimony of David Farley

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STATEMENT UNDER OATH

OF

DAVID FARLEY

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 Monday, August 30, 2010, beginning at 4:00 p.m.

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

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* Exhibits Retained by MSHA *

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is August
5 30th, 2010. I'm with the Office of the Solicitor,
6 U.S. Department of Labor. With me is John Godsey, an
7 accident investigator with the Mine Safety and Health
8 Administration, MSHA, an agency of the United States
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 ATTORNEY KOERBER:

13 I'm Barry Koerber. I'm an Assistant
14 Attorney General. I'm assigned to represent the West
15 Virginia Office of Miners' Health, Safety and
16 Training. The interviewer will be Mr. Terry Farley.
17 He is the lead interviewer for the UBB accident
18 investigation.

19 MS. SPENCE:

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

22 ATTORNEY BAXTER:

23 There are also members of the
24 investigation team present in the room today. Mr.
25 Godsey, Mr. Farley and Ms. Spence will be conducting

1 the questioning today. Would you please swear the
2 witness in?

3 -----

4 DAVID FARLEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
5 AS FOLLOWS:

6 -----

7 ATTORNEY KOERBER:

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

10 A. David Earl Farley, F-A-R-L-E-Y.

11 ATTORNEY KOERBER:

12 Would you please state your address and
13 telephone number?

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

16 ATTORNEY KOERBER:

17 Are you appearing --- excuse me. Do you
18 have or are you expecting an attorney to be present
19 with you here today or do you have some other personal
20 representative that you would like to be here with
21 you?

22 A. My father.

23 ATTORNEY KOERBER:

24 Sir, would you just state your name for
25 the record.

1 (b) (7)(C)

2 (b) (7)(C)

3 ATTORNEY KOERBER:

4 Are you appearing here today pursuant to
5 a subpoena?

6 A. Yes, sir.

7 ATTORNEY KOERBER:

8 This is a copy of that subpoena that I'd
9 like to be marked as Exhibit One.

10 (D. Farley Exhibit One marked for
11 identification.)

12 ATTORNEY KOERBER:

13 And this is a copy of the return of
14 service, and it's signed by the person from the
15 Kanawha County Sheriff's Office showing that you was
16 served on the 9th day of August. And attached to that
17 is also another copy of the subpoena.

18 A. Okay.

19 ATTORNEY KOERBER:

20 If you would mark that as Exhibit Two.

21 (D. Farley Exhibit Two marked for
22 identification.)

23 ATTORNEY KOERBER:

24 Sir, the statute that allows the Director

25 --- or the statute that authorizes the Director to

1 issue subpoenas compelling witnesses to appear at
2 interviews such as this also requires the Director to
3 offer to each witness subpoenaed a \$40-a-day witness
4 fee, plus mileage roundtrip, as long as you drove in
5 your personal vehicle, at the rate of 15 cents a mile
6 and reimbursement for any tolls that you may pass on
7 your way here or back. In order to receive that money
8 I have two forms that must be filled out, one of which
9 is an IRS Form W-9, which is a request for your Social
10 Security number, because it is my understanding that
11 the \$40 witness fee is considered taxable income to
12 which you'll receive a 1099 miscellaneous so it can be
13 reported on your tax return for this year's tax
14 return. I have provided to you those forms. Have you
15 had the opportunity to complete them?

16 A. Yes, sir.

17 ATTORNEY KOERBER:

18 Did you give them back to me?

19 A. Yes, sir.

20 ATTORNEY KOERBER:

21 Thank you. Mr. Baxter?

22 ATTORNEY BAXTER:

23 All members of the Mine Safety and Health

24 Accident Investigation Team and all members of the

25 State of West Virginia Accident Investigation Team

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

15 Government investigators and specialists

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

1 MSHA permitted it, and may consult with your attorney
2 or the representative at any time. You may also
3 request a break at any time. Since this is not an
4 adversarial proceeding, formal Cross Examination will
5 not be permitted. However, your personal legal
6 representative may ask clarifying questions as
7 appropriate.

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

24 A. Yes, sir.

25 ATTORNEY BAXTER:

1 Do you have any questions?

2 A. No, sir.

3 ATTORNEY BAXTER:

4 After the investigation is complete, MSHA

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

14 A court reporter will record your
15 interview. Please speak loudly and clearly. If you
16 do not understand a question asked, please ask us to
17 rephrase it. Please answer each question as fully as
18 you can, including any information you've learned from
19 someone else. I would like to thank you in advance
20 for your appearance here. We appreciate your
21 assistance in this investigation. Your cooperation is
22 critical in making the nation's mines safer.

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

1 to be important. If at any time after the interview
2 you recall any additional information that you believe
3 might be useful, please contact Norman Page of MSHA at
4 the telephone number or e-mail address provided to
5 you. Any statements given by miner witnesses to MSHA
6 are considered to be an exercise of statutory rights
7 and protected activity under Section 105(c) of the
8 Mine Act. If you believe any discharge,
9 discrimination or other adverse action is taken
10 against you as a result of your cooperation with this
11 investigation, you are encouraged to immediately
12 contact MSHA and file a complaint under Section 105(c)
13 of the Act.

14 MR. FARLEY:

15 David, on behalf of the State of West

16 Virginia, I want to inform you that the West Virginia
17 State Mining Regulations also protect miners against
18 potential discrimination for participating in these
19 type interviews. I'd like to pass along some contact
20 information for the West Virginia Board of Appeals.
21 Now, the West Virginia Board of Appeals hears
22 complaints from miners concerning discrimination. If
23 that happens and should you experience any problems,
24 you should contact the Board. Also, you have my
25 business card and a business card for Bill Tucker, our

1 lead underground investigator, should you have any
2 questions.

3 A. Okay.

4 MR. FARLEY:

5 All right, sir. Thank you.

6 EXAMINATION

7 BY MR. GODSEY:

8 Q. David, as you see before you, we have a mine map
9 that depicts the three active sections that were on
10 April 5th. You have the 22 headgate, you have the 22
11 Tailgate, and you have the longwall, and that's the
12 tailgate for the longwall. Okay? And down there you
13 start from the 78 Crosscut. That's, you know, where
14 the switch was.

15 A. Yes, sir.

16 Q. Okay? Do you have any questions about that?

17 A. No, sir.

18 Q. And when we refer to this map and you say, well, I
19 was here, but say that you was on the 22 Tailgate, at
20 crosscut so and so. That way they don't know what
21 here is when she records it. Okay?

22 A. Okay.

23 Q. And I'll start off. Has anyone from the company
24 or any representative of the company discussed with
25 you or asked you questions about the explosion, about

1 what happened on April 5th?

2 A. Meaning like?

3 Q. Any representative of the company?

4 A. No, sir.

5 Q. Okay. And what are the number of years that
6 you've been working underground?

7 A. One year.

8 Q. Are you an employee of Performance Coal Company?

9 A. No, sir. I was an employee of David Stanley
10 Consultants.

11 Q. Now, what all --- when did you come to work at
12 Upper Big Branch Mine?

13 A. December 7th of 2009.

14 Q. Are you presently employed?

15 A. No, sir.

16 Q. What was your first job assignment at Upper Big
17 Branch?

18 A. Water crew.

19 Q. And what was your job title on April 5th?

20 A. Water crew.

21 Q. And what shift did you work?

22 A. Day.

23 Q. And your supervisor who was with you up there, do
24 you remember what his name was?

25 A. Jeremy Burdoff.

1 Q. And how long have you worked for Jeremy?

2 A. Probably three months.

3 Q. Do you remember what portal did you all enter?

4 A. We entered from the Ellis side.

5 Q. And would you know who did the pre-shift exam for
6 you all back in your work area?

7 A. Nobody.

8 Q. No one made ---?

9 A. No one goes down to where we was at but our fire
10 boss.

11 Q. Were you the only crew that went down there behind
12 that that did the pumping?

13 A. Yes, sir.

14 Q. And that was all on the dayshift?

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

16 Q. When you arrived at the mine, what time did you
17 usually arrive?

18 A. 5:00 in the morning.

19 Q. Did you meet outside with your supervisor and
20 discuss what you all were going to be doing that day?

21 A. Yeah.

22 Q. How many were in your crew?

23 A. Me, a fire boss and a red hat.

24 Q. Do you remember who he was?

25 A. Jason Stanley.

1 Q. Jason Stanley. And how far in --- where did you
2 all --- when you entered at Ellis, where did you all
3 --- into the track, where did you all stop to enter
4 the longwall? Where did you all go in at?

5 A. I'm not really for sure what break this is.

6 Q. Here is the break number right there. Which one
7 are you pointing to?

8 A. This is ---.

9 Q. This is 100 Crosscut. That's on Tailgate ---.

10 A. Yeah, we had --- we walked all of the --- down
11 towards the Bandytown fan.

12 Q. Did you walk all the way from the mouth of that
13 area to the back end?

14 A. We rode the mantrip to --- I'm not really --- I'm
15 not really for sure where we stopped the mantrip.

16 MR. FARLEY:

17 End of the track over there?

18 A. Yes, sir. And then we walked all of that.

19 BY MR. GODSEY:

20 Q. Once you got back there to --- once you arrived at
21 your work area, what --- just take us from there.

22 What would you normally do in a day?

23 A. It's a pretty far walk, so we had to walk down to
24 88 Break to check the pumps. Yeah, we had to check
25 these pumps.

1 Q. And that's on the One North Headgate? How many
2 pumps did you have there?

3 A. In that waterhole, probably about six.

4 Q. And what type of pumps were they?

5 A. Air pumps. It was air pumps.

6 Q. And did it pump the water from there down to
7 the ---?

8 A. It pumps it to the sump.

9 Q. Okay. Which went to the surface?

10 A. Yes, sir.

11 Q. Were you provided with a methane spotter or
12 anything while you ---?

13 A. No, sir, I wasn't.

14 Q. Who had one?

15 A. Jeremy Burdoff.

16 Q. Did he ever leave you all alone or anything? Were
17 you ever by yourself?

18 A. I was a black hat, so yeah.

19 Q. When you were by yourself, did you have a methane
20 spotter?

21 A. No, sir.

22 Q. Jeremy, did he go up and check the pumps before
23 you all went up there?

24 A. No, sir.

25 Q. Did that ever concern you?

1 A. Yeah.

2 Q. How much water would you say that was back there?

3 A. Oh, a lot.

4 Q. When you're saying a lot, what ---?

5 A. Like I mean at times, this 88 hole would be --- I
6 mean, it would be neck high. You had to walk on ---
7 you really couldn't get over into the Number Four
8 entry because, I mean, it was over your head in
9 certain holes and you couldn't --- I mean, as far as
10 water, and I was always afraid of falling into a hole
11 back there. And then the way I remembered it, like
12 this Number Four entry, from 88 Break all the way down
13 was full of water.

14 Q. Did it restrict the air or anything on the
15 headgate side to where you were talking? Did it ever
16 roof out?

17 A. Yeah. Yeah, it roofed out a few times.

18 Q. What did the supervisor do then?

19 A. Pumped more water. We was trying to find ways to
20 get the water down so we could get the headgate back
21 right.

22 MR. FARLEY:

23 What was it like on April the 5th? Was
24 that the last time you were in there?

25 A. Yes, sir.

1 MR. FARLEY:

2 What was it like on 85 --- or 88 then?

3 A. It was probably about chest high. And the pumps
4 were down, so I had to get out in the water to try to
5 get the pumps back up because you would have holes in
6 the --- I can't remember what kind of hoses those
7 were. It's a four-inch lay flat is what it was. We
8 had holes in them.

9 BY MR. GODSEY:

10 Q. Did your supervisor help you when you were up
11 there doing that?

12 A. No.

13 Q. Anybody else help you?

14 A. Yeah, my red hat, Jason Stanley.

15 Q. So your supervisor was never around when you were
16 doing that?

17 A. No.

18 Q. Where was he?

19 A. I have no clue.

20 Q. How often did you see --- after you went up there,
21 how often did you see him?

22 A. Well, me and Jason Stanley, we would try to get
23 the pumps running --- back up to running so we can get
24 --- because, you know, it was our job. So we would
25 try to get the water pumped out as much s we could.

1 So me and Jason would go check all the pumps because
2 it takes a good little while to get back there to
3 where Jeremy Burdoff needs to go do his air readings
4 and his methane readings.

5 Q. How often did he do his air readings and methane
6 checks?

7 A. Not a lot.

8 Q. When you're saying not a lot ---?

9 A. I'm trying to --- maybe once a week, maybe.
10 Sometimes not at all. He always carried his rescuer
11 and his methane reader on a hook and he would set them
12 down because he always said he didn't want to mess
13 them up by getting it in the water.

14 Q. Where did he set it down at?

15 A. There's some double doors at 88 Break. Well, it's
16 before --- right here. He would sit it there and he
17 would put a piece of cardboard or something over it in
18 case anybody ever came, which nobody ever came down
19 there.

20 MR. FARLEY:

21 When you were in this area on April 5th,
22 was the water roofed ---

23 A. No, sir.

24 MR. FARLEY:

25 --- in any location?

1 A. That's as far as we made it. Usually it roofs out
2 down here, but this is as far as we made it on April
3 5th.

4 MR. FARLEY:

5 You didn't go down there on April 5th?

6 A. No, because them pumps were in bad shape and I was
7 trying to get them back up and running.

8 MR. FARLEY:

9 Okay. How long had the pumps been down
10 that day?

11 A. Well, we had Friday and Saturday off.

12 MR. FARLEY:

13 Okay.

14 A. Well, we had Saturday and Sunday off. Sorry,
15 Saturday and Sunday off.

16 MR. FARLEY:

17 Okay.

18 A. And when we came back to work Monday, they was
19 down, so I'm not for sure. I mean, they could have
20 been down Friday for all I know, Friday.

21 MR. FARLEY:

22 Before April 5th, when was the last time
23 you were in here?

24 A. I cannot remember. I got moved to a mining
25 section, and Everett did a bunch of layoffs. The

1 superintendent did a bunch of layoffs, and I got put
2 back on the water crew. And my first day back I went
3 to shovel belt, and then the second day I had to go
4 build some stoppings, and April 5th was --- so I'm not
5 really --- I cannot remember.

6 MR. FARLEY:

7 Okay.

8 BY MR. GODSEY:

9 Q. Did you notice anything on April 5th, when you
10 came back down, about the change in the air velocity?

11 A. It was hot.

12 Q. Like when you say hot ---?

13 A. Like down here, when we're down here at 88 Break,
14 you've got to wear your long johns, three pairs of
15 socks. You would have a thermal shirt on, a jacket,
16 gloves, a beanie. I mean, you would have all kinds of
17 stuff. But that day, it was miserably hot. I ended
18 up taking --- because we've got to put our waders on,
19 and I ended up taking my long johns off. I mean, I
20 stripped down to where I was just in my boxers. I
21 mean, it was hot hot.

22 Q. Once you entered the tailgate and walked back
23 there, could you tell it right off?

24 A. It didn't feel like no air. Like all the way ---
25 I even said that that morning whenever me, Jeremy

1 Burdoff and Jason Stanley were driving in. I said, it
2 don't feel like no air is blowing. And Jason was like
3 --- because me and Jason always sat beside each other,
4 and he was like, it don't, does it? Because usually
5 when we're --- you can't really feel no air coming in
6 from Ellis hardly ever. But usually when you get like
7 down behind the longwall, you could feel air. But
8 that day, it was almost like there was nothing.

9 Q. What did Mr. Burdoff say when you said ---?

10 A. Nothing.

11 Q. He didn't respond at all to it?

12 A. No. He pretty much didn't acknowledge.

13 MR. FARLEY:

14 Now, was that on both sides? Was it over
15 here and over here?

16 A. Yes, sir. It was on --- it was on the back of the
17 longwall side and on --- I'm not really for sure what
18 side this is.

19 MR. FARLEY:

20 Headgate side.

21 A. The headgate side.

22 BY MR. GODSEY:

23 Q. Did you see him take any gas checks or anything
24 that day that you were in there, methane examinations
25 or anything?

1 A. He left us and we was down at 88 Break, and I
2 remember telling him that he needed to go and do his
3 stuff because we was going to be there for a while.

4 Q. And what was his stuff?

5 A. Like go do his air readings and his methane checks
6 and he needed to go do his date-up boards.

7 Q. Did he do it?

8 A. Well, it got to be about --- probably about 1:50,
9 that's what time we normally walk out of there, is
10 1:50, because it's a far walk, and I told the red hat
11 that --- out of the six pumps, we got four of them
12 back up and running. I told him that we needed to go
13 find Jeremy. And we walked to 100 Break, because
14 there's a date-up board at 102, and I seen that he
15 didn't make it to the date-up board. And usually, you
16 know, ---.

17 Q. How do you know he didn't make it to the date-up
18 board?

19 A. He didn't sign his name. He didn't ---.

20 Q. Are you saying there was no dates, times and
21 initials?

22 A. No, sir, not that day.

23 MR. FARLEY:

24 Where was the board?

25 A. It's at 102 Break, I'm pretty sure. And you've

1 got date-up boards --- you know, they've got date-up
2 boards all the way down through there, but you ---
3 this is the one that we walked to and we seen that he
4 didn't make it to that one, so ---.

5 BY MR. GODSEY:

6 Q. Where was he?

7 A. I don't --- when we made it --- when we came back
8 out --- when me and Jason Stanley was walking back
9 out, we went through these double doors, and there's a
10 man door ---.

11 Q. Where was it at, 92 Break?

12 MR. FARLEY:

13 Ninety-two (92).

14 BY MR. GODSEY:

15 Q. On Headgate Four North.

16 A. You've got some --- there's as man door. I'm not
17 really for certain where the man door was, but he was
18 laying down.

19 Q. Okay. Laying down, was he asleep?

20 A. Whenever we went through the man door is whenever,
21 you know, he kind of bounced up.

22 Q. Would this happen all the time or a lot of times?

23 A. A lot of times, yeah. But he told me that he
24 wasn't feeling good, so he said that he wanted to go
25 ahead and get out of there.

1 MR. FARLEY:

2 Did you and Stanley get the pumps
3 started?

4 A. We got four of them out of six started. We didn't
5 get all six of them started.

6 MR. FARLEY:

7 Okay.

8 BY MR. GODSEY:

9 Q. Did you tell that to Jeremy?

10 A. That ---?

11 Q. Did you tell him that you didn't get all of the
12 pumps started?

13 A. Yeah. We didn't have enough hose clamps and we
14 didn't have the four-inch couplings. We didn't have
15 any, so we had to make do with what we had. And the
16 one pumps, I mean, as they're going in the water, it
17 rubs up against the track and it tears big holes in
18 hem. And I didn't have enough lay flat to fix the
19 other two pumps, so I had to turn them off and leave
20 them be.

21 MR. FARLEY:

22 Now, I'm not trying to put words in your
23 mouth at all, ---

24 A. Okay.

25 MR. FARLEY:

1 --- but the way I understand you is that
2 when you were here, working on these pumps and as
3 you're traveling these tailgate entries coming to that
4 location, you don't feel nearly as much air ---

5 A. Not at all.

6 MR. FARLEY:

7 --- as you did the last time ---

8 A. No.

9 MR. FARLEY:

10 --- you went there; right?

11 A. No.

12 BY MR. GODSEY:

13 Q. When you did it, did Jeremy take any air readings?

14 A. No.

15 Q. So in other words, he just went --- where did he
16 go?

17 A. He was walking --- he walked down through there
18 with us.

19 Q. Did you all have communications back there? Did
20 you all have any phones or anything?

21 A. A rock fell on the phone line and we didn't have
22 no phones down there. And I hated that because, I
23 mean, that's a far walk.

24 Q. How long was the phones out?

25 A. Let's see. I'd say close to two months. And I

1 kept telling him, and he always told me that they was
2 going to get an electrician down there. But I don't
3 know --- I don't know whether he even told them that
4 our phones were out. And he was the type of person
5 that if you went over his head to try to tell somebody
6 something was wrong, he'd get mad.

7 Q. Did you ever feel reluctant to go into work?

8 A. I hated it. I didn't even feel like a coal miner
9 working in the water.

10 Q. Did you ever have any near misses or anything in
11 there, any accidents?

12 A. I fell in the water. It scared me. It was well
13 over my head. I mean, it was terrifying, because
14 you're going in some dark water that you can't see.
15 You come up and you're so lost as to whether you can
16 go left or right.

17 Q. Was anyone with you?

18 A. Yes, Michael Williams.

19 Q. You got out and everything was all right?

20 A. Yeah. He shined his light to let me know ---.

21 MR. FARLEY:

22 Speaking of Michael Williams, did you
23 work back in this area ---

24 A. Yes, sir.

25 MR. FARLEY:

1 --- with him at some point?

2 A. Yes, sir.

3 MR. FARLEY:

4 When was the last time you were back here

5 with Michael Williams?

6 A. That was the time before I got moved to the mining
7 section. I'm not really for sure, but I got moved to
8 the mining section and by the time I went back down to
9 the water crew, he got laid off. And that was --- let
10 me think.

11 MR. FARLEY:

12 Was it --- we understand that one of the
13 guys back there, was it you or him or somebody
14 developed a pretty bad rash from rolling around in
15 that water.

16 A. Michael Williams. It was horrible. And that
17 water was the nastiest water. And Jeremy Burdoff knew
18 his skin was bad. I mean, his skin was bad, but he
19 would still yet send him out in that water. And I'd
20 tell him, because I don't --- I can't remember the
21 inspector's name, but he told us if the water was over
22 our boots and we didn't have the proper attire, then
23 we didn't have to get in that water.

24 MR. FARLEY:

25 Well, even if you have the so-called

1 proper attire, it reaches a point where if you fall
2 over, you may not be able to get back up.

3 A. Yeah, it was at ---.

4 MR. FARLEY:

5 And apparently you experienced that.

6 A. My thing with the water was is if something was to
7 happen if you had a rock fall or something, you can't
8 move in the water fast. I mean, there's railroad
9 track. I mean, well, there's the track and ---
10 there's all kinds of stuff down in that water.

11 MR. FARLEY:

12 It's just not the swimming pool down at
13 the YMCA?

14 A. No. No.

15 MR. DAVID F. FARLEY:

16 I would like to say something if I can.

17 I know this. He went down there, he was still part of
18 that red hat program, hadn't got his black hat. He
19 hadn't had his black hat I guess not quite a month.

20 MR. GODSEY:

21 And he was working down there.

22 A. I was working down there. I was working in the
23 water when I had my red hat.

24 BY MR. GODSEY:

25 Q. Did you ever work on any roof fall clean-ups down

1 there?

2 A. Yeah. I had a --- on the way back out I had to
3 clean up a rock fall at 42 Break.

4 Q. Was that on the tailgate?

5 A. Yes, it was on the ---.

6 Q. On the headgate side?

7 A. Headgate side, yes, sir. Because we had to ---
8 like I said, we had pumps in all the waterholes. We
9 had to check all the waterholes.

10 Q. Well, how did you clean the rock fall up?

11 A. By hand.

12 Q. And how big a fall was it?

13 A. It wasn't bad.

14 MR. FARLEY:

15 Let me back up on something. That date
16 --- that board where you date up, that was 102 you
17 think, ---

18 A. I'm pretty sure.

19 MR. FARLEY:

20 --- thereabouts?

21 A. Yes, sir.

22 MR. FARLEY:

23 Okay. Now, whereabouts did you find
24 Burdoff?

25 A. It was about --- you had to come through the

1 double doors. Like I said, I'm not for sure where
2 this man door is at.

3 MR. FARLEY:

4 Okay. But did you go back here to where
5 this date-up board was looking for him?

6 A. Yeah. Me and Jason Stanley, we walked to the
7 date-up board.

8 MR. FARLEY:

9 Okay.

10 A. Because I knew if he dated up on that board, then
11 I could go to the next board ---

12 MR. FARLEY:

13 Right.

14 A. --- to see how far behind I was from him. But he
15 didn't make it to this date-up board.

16 MR. FARLEY:

17 Okay. I'm going to write date board on
18 this map at Crosscut 102.

19 A. Yeah, it's right around in there.

20 ATTORNEY BAXTER:

21 And we'll mark the map as Farley Exhibit
22 Three.

23 (D. Farley Exhibit Three marked for
24 identification.)

25 MR. FARLEY:

1 And I'm also going to write saw no
2 initials on April 5th. All right.

3 A. Uh-huh (yes).

4 MR. FARLEY:

5 And then afterwards you went back the
6 other way and you found Burdoff?

7 A. Yeah. Well, we cut a --- we cut across and we got
8 a prop line that's in entry Number One. And that time
9 we took the prop line to see whether --- we was just
10 trying to find him in general.

11 MR. FARLEY:

12 Sure.

13 A. So we took the prop line back down through here
14 and then we cut across, came back through the double
15 doors, and then there's a man door. I'm not really
16 for sure what break it was, but he was outside of that
17 man door. And when we opened it, he jumped up real
18 quick.

19 MR. FARLEY:

20 Okay. Now, after you found him, did you
21 and Stanley separate from him again?

22 A. No.

23 MR. FARLEY:

24 Is that when you ---?

25 A. We left. He said he wasn't feeling good. He

1 wanted to go ahead and go.

2 MR. FARLEY:

3 Okay. All right.

4 BY MR. GODSEY:

5 Q. On average, during a day, how long would he be
6 separated from you two?

7 A. When I was first down there, when I got my black
8 hat, he was pretty excited about that. Like I said,
9 me and the red hat, we would try to go down through
10 there and work the pumps. So we'd be separated pretty
11 much all day until it was time to meet up.

12 Q. And neither one of you all had any kind of methane
13 monitor or spotter or anything?

14 A. No, sir.

15 Q. And that day, when you finally found Burdoff over
16 there and you all came out, what was it like when you
17 came out as far as air movement, temperature?

18 A. Well, it still wasn't no air movement and it was
19 still very hot. And as we was nearing to the Ellis
20 exit, it was like super smoky. It was just dusty
21 maybe and you couldn't see. And I remember telling
22 Jason Stanley, I was like, man, it's too early to be
23 rock dusting the beltline, you know, because everybody
24 is leaving. But we picked up the dust. It was before
25 you got to ---.

1 MR. FARLEY:

2 The Ellis Switch.

3 A. Yeah. It was --- we started --- this is the Ellis
4 Switch; right?

5 MR. FARLEY:

6 No, that's 78.

7 A. Where is the Ellis Switch?

8 MR. FARLEY:

9 Ellis Switch would be that way, further
10 out that way.

11 A. Well, it was on up towards the Ellis Switch is
12 where we started picking up all the dust and stuff
13 and ---.

14 BY MR. GODSEY:

15 Q. Did you ever have --- on the way out have
16 difficulty breaking or anything?

17 A. Yeah. I remember telling Jason Stanley to put his
18 jacket over his mouth.

19 Q. Did your eyes burn? Did you smell anything or
20 anything different?

21 A. No. It was just kind of like sitting in a sauna,
22 you know. You sit there for so long, it just feels
23 like you just keep breathing your same air. It feels
24 like all your air is leaving. That's kind of how it
25 felt on the way out, like it just felt like it was

1 super hard.

2 Q. You know they have a development section, the
3 portal section. Were they running that section that
4 day, cutting those overcasts and ---?

5 A. I cannot recall. You really couldn't see. I
6 mean, I don't think nobody was doing anything up
7 through that way. I mean, it was just --- it was hard
8 to see.

9 MR. FARLEY:

10 White dust; right?

11 A. Yeah, it was really dusty.

12 BY MR. GODSEY:

13 Q. Did you talk --- after you had the explosion, did
14 anybody ever contact you a day or two later that you
15 worked with about --- call you or talk to you about
16 what happened there?

17 A. Jeremy Burdoff.

18 Q. What did he say?

19 A. He said he was under investigation, that he was in
20 trouble because they found out that he didn't do his
21 date-up boards.

22 Q. Is that ---?

23 A. Actually, he said that we was in trouble.

24 Q. Said who was in trouble?

25 A. As in like the whole water crew, me, Burdoff and

1 Jason Stanley.

2 Q. How long after it --- I mean, how long after the
3 April 5th event did this happen?

4 A. April 7th, April 8th. It was just a couple days
5 right after.

6 Q. Is that all he said in the conversation?

7 A. Well, ---.

8 Q. Just take your time.

9 A. He just said --- he's like, we're in some serious
10 trouble. He's like, I'm under investigation. He's
11 like, I'm looking at doing time. He was like --- I
12 mean, he just kept saying --- I thought I was in
13 trouble, too, because --- I mean, I told my dad --- I
14 was like, man, I was like I think I'm going to be in
15 trouble. And I didn't know what to do. I've never
16 been in a situation like this before, and I didn't
17 know who was to blame, and I felt like if I would have
18 pushed Burdoff that day, you know, almost as if I
19 would just take his hand and walk down through there
20 while he did his readings, maybe he would have read
21 something differently that day and all this would have
22 turned out a lot different. But I just --- I was
23 trying to get those pumps up and running, and I really
24 thought that he went and did his job.

25 Q. Did he contact anybody else besides you? Mr.

1 Stanley, did he call him?

2 A. Not that I'm aware of.

3 MS. SPENCE:

4 David, can you tell us about the

5 stoppings you worked on with Mr. Williams?

6 A. Let's see. We had --- they would always have us
7 open and close some doors to try to get air to ---
8 excuse me, to try to get the air to flow right. So we
9 had to open and shut doors. And then they decided
10 that we needed to put some Kennedy stoppings in, and
11 --- let me see. We put them in, and it was in the
12 Number Three entry, around 80 Break. And we also put
13 them in the crosscut of --- in between Three and Four
14 of 80 Break. And then by the time I went back down
15 there on April 5th, they already tore those Kennedy
16 stoppings down. They said that they wasn't needed
17 because they took out our double doors and they put in
18 solid stoppings. They put a hole in the overcast and
19 they sealed it up and then put just a man door.

20 BY MR. GODSEY:

21 Q. Who did all of that?

22 A. I have no clue. That's when I was up there doing
23 my --- learning to run the continuous miner. I don't
24 know who put those in. Whenever I went down there
25 that day, everything was all new to me. I was like,

1 man, when did they do this? And Jason was like, oh,
2 they did it a while back. So I'm not for sure who did
3 it. I just know everything was a lot different.

4 MR. GODSEY:

5 Do you want to take a break?

6 ATTORNEY BAXTER:

7 We'll take a short break.

8 SHORT BREAK TAKEN

9 ATTORNEY BAXTER:

10 Back on the record.

11 BY MR. GODSEY:

12 Q. You said earlier that you had built some stoppings
13 back there. Can you show us where you did that.

14 Using a pink highlighter, it's pretty, can you mark it
15 on Headgate One North?

16 A. This is the headgate side?

17 Q. Yes, this is the headgate side.

18 WITNESS COMPLIES

19 A. We had --- we put a Kennedy stopping in, I think,
20 at --- yeah, 81 and 82 Break. We had to put a Kennedy
21 stopping in here. And we also put a Kennedy stopping
22 in the Number Three entry.

23 BY MR. GODSEY:

24 Q. That would be 82 Crosscut on the Headgate One
25 North.

1 A. We put also a Kennedy stopping in in the third
2 entry on 82 Break.

3 Q. You blocked the entry off?

4 A. Yeah. We sealed this entry off, yes, sir, and
5 then we built one right here. They already had them
6 built down through here. And like I said --- oh,
7 wait. We also put one in at 88 Break. We put
8 one ---.

9 Q. Eighty-six (86), 87, 88, right here.

10 A. We put one in the third entry right here.

11 Q. You blocked the third entry off?

12 A. Yes, sir, because ---.

13 MR. FARLEY:

14 Would that be in the middle entry or the
15 one on the far right?

16 A. This is the third one.

17 BY MR. GODSEY:

18 Q. Now, this would be the first entry?

19 A. It was, but like it went like ---.

20 Q. Okay. I see what you're doing.

21 A. And we put one ---.

22 MR. FARLEY:

23 Were there four entries where you built
24 the stopping or three?

25 A. There was only three entries where we built it.

1 MR. FARLEY:

2 Okay. So you got three here.

3 A. Yes, sir.

4 MR. FARLEY:

5 And then it picks up to four when you go

6 a little further?

7 A. Yes. But like I said, when I went back down there

8 April 5th, all of my --- all of the stoppings that me

9 and mike Williams built was down.

10 BY MR. GODSEY:

11 Q. And what was the time span difference from the

12 time you left and the time you came back out? I

13 forgot that. I missed that.

14 MR. DAVID F. FARLEY:

15 About a month.

16 BY MR. GODSEY:

17 Q. About a month?

18 A. About a month, month-and-a-half.

19 MR. DAVID F. FARLEY:

20 Yeah, it could have been longer than

21 that.

22 BY MR. GODSEY:

23 Q. Did you ask Jeremy about that, about why they had

24 done that?

25 A. Yeah. He said they didn't need them up. I mean,

1 from what I was understanding, they was all over our
2 case about getting them up. I mean, we hauled them
3 down on --- we didn't have no little mantrip. We had
4 to haul everything down by hand.

5 Q. Okay. Let's get back to that. When you traveled,
6 did you travel the track all the way up the headgate
7 entry --- excuse me, the tailgate entry? How far did
8 you travel to on the track? Can you point us out
9 there?

10 A. I'm not --- see, everything looks --- sorry.

11 Q. This is the switch. This would be the switch down
12 here, you know, where you cut up to go towards the
13 longwall and the 22, and this is where you go to the
14 track that went down the tailgate, going down the
15 Tailgate One North.

16 A. This is --- this is 70 Break; right?

17 Q. That would be about 75 --- about 76 Break, really,
18 where the switch is on the Tailgate One North.

19 A. See, the map --- see, I'm a little backwards
20 because the map ---.

21 Q. Just take your time and look at it.

22 A. The map that we had was, you know, it had our
23 Ellis side where we came in at.

24 Q. Okay. Do you want to go up there and show us on
25 the wall map?

1 A. See, we came in and this would put us to the glory
2 Hole, but we didn't go ---.

3 Q. The Glory Hole is up here?

4 A. Yeah. And we kept going --- we stopped our
5 mantrip at 70 Break and we walked all of this.

6 Q. So you stopped outby the switch at the 78 Break?

7 A. Yeah, we stopped --- where is the ---.

8 MR. FARLEY:

9 Seventy (70), up here.

10 BY MR. GODSEY:

11 Q. You're talking about 70 Break up here?

12 A. Yeah, that's where we stopped our mantrip.

13 Q. Would you care to mark that on the wall map?

14 WITNESS COMPLIES

15 BY MR. GODSEY:

16 Q. And where was the face of the longwall then?

17 MR. FARLEY:

18 Make a bigger mark.

19 ATTORNEY BAXTER:

20 And we'll mark this map as Farley Exhibit

21 Four.

22 MR. FARLEY:

23 Okay. That's good.

24 BY MR. GODSEY:

25 Q. And where was the longwall at, the face of the

1 longwall, the last part of that, when you were there?

2 A. I can't recall.

3 Q. Do you remember if it was inby you or outby you?

4 A. I remember we used to be able to park the mantrip
5 and we could watch the longwall as it was shearing ---
6 as it was shearing.

7 Q. How long could you do that?

8 MR. FARLEY:

9 And it was behind you; right?

10 A. Yes, sir.

11 MR. FARLEY:

12 The last time you were there, the
13 longwall would have been behind you; right?

14 A. Yes.

15 MR. FARLEY:

16 You would have went past the longwall; is
17 that correct?

18 A. Yes. I'm not really for sure how long. I mean,
19 probably about a month, month-and-a-half, you could
20 sit there and watch the longwall just --- the whole
21 time. You would sit there and --- because that was my
22 first time ever getting to see the longwall operate.

23 MR. FARLEY:

24 But on April 5th, when you came to the
25 end of the track, you would have passed the longwall;

1 right?

2 A. Yes, sir.

3 MR. FARLEY:

4 It was behind you?

5 A. And then as we ---.

6 BY MR. GODSEY:

7 Q. How about the air? Was that when it was real hot?

8 A. Yes, sir.

9 Q. How did you get your --- what entry did you all
10 travel to get back up?

11 A. We traveled the Number Two entry because the
12 bottom hooved up and it crushed our beltline. This is
13 all along functional section anyways. Like it was ---
14 it ran down. We didn't have no supplies then. There
15 was no rescue shelter. We didn't have none of that
16 stuff down there. We didn't --- we didn't even have a
17 lifeline. But we took the Number Two entry, like I
18 said, because the bottom hooved up and crushed the
19 beltline and we took it all the way down. And then
20 whenever we got down to here, we would either go check
21 our 88 Break pumps or we would follow the prop line,
22 and then we would go from Number Two to Number One
23 entry and follow the prop lines.

24 Q. And on that day that you said you built those
25 stoppings up there on the headgate, how high --- what

1 was the water depth up there then?

2 A. Water was doing actually really good and we got

3 --- 88 was --- I'm not going to say almost pumped out

4 because we had more on another side and we was

5 supposed to get more --- we was getting our trash

6 pumps in, so we was getting ready to put trash pumps

7 in down there. And I would say the water was probably

8 about knee high. But then when I went back down there

9 April 5th, the water was check high again. I was like

10 what happened?

11 Q. Was there any water --- air coming across the

12 water?

13 MR. FARLEY:

14 Now, when you say chest high, about chest

15 high on you. What are you, about six feet tall?

16 A. Yes, sir. You know the John Deere waders that

17 come up to ---? It just barely where it would go over

18 into them. I mean, you had to ---.

19 MR. FARLEY:

20 About breastbone level ---

21 A. Yeah.

22 MR. FARLEY:

23 --- on a six-foot tall man? Now, was

24 that in the Number Three entry over there or was that

25 all the way across.

1 A. That was all the way across. Well, you could ---.

2 MR. FARLEY:

3 The chest-deep water was all the way
4 across in Number Three entry?

5 A. Chest deep in Number Two and Number Three entry.

6 I mean, it was ---.

7 MR. FARLEY:

8 Chest deep in Two and Three?

9 A. Yeah.

10 MR. FARLEY:

11 What about Number One?

12 A. Wasn't no water in the Number one entry. Because
13 that was --- the main goal --- they said inspectors
14 didn't want you to have --- you at least had to have
15 one water-free travelway. That's what I was told. I
16 don't know. I was just trying to do my job.

17 MR. FARLEY:

18 Let's make sure we're real clear. Chest
19 deep in Two and Three?

20 A. Yes, sir.

21 BY MR. GODSEY:

22 Q. When you all left the surface to go underground,
23 how long did it take you to get to the end of the
24 track?

25 A. About 40 minutes.

1 Q. And what time did you say you started? Your shift
2 started ---?

3 A. I started at six o'clock. I always got there an
4 hour early.

5 Q. And do you remember where did you first remember
6 the low airflow on April 5th?

7 A. It was after we got pasts the Ellis Switch.
8 Because like I said, I mean, normally you didn't --- I
9 mean, it was just normal from the Ellis Switch because
10 that's where it veered off until you got to he other
11 side of the mountain or you can go to on Ellis side.
12 But whenever we got past Ellis Switch --- what dies
13 that make it, 42 Break up here, I don't think it's on
14 it, that's when you can notice because there's a
15 switch at 42 break.

16 Q. Okay.

17 A. You know, if you had another mantrip coming,
18 someone would have to get in the switch. That's when
19 I noticed that the air was messed up.

20 Q. Do you remember which way the air traveled on the
21 track on the Ellis Portal, which way it would usually
22 flow?

23 A. It's hard to tell because as you're going it blows
24 in your face, and as you're going out, it's different.
25 I'm not really for sure.

1 MR. FARLEY:

2 On April 5th, when you parked your trip
3 here at the end of the track, about somewhere around
4 Number 70 in the tailgate entries, and you walked the
5 rest of the way, ---

6 A. Yes, sir.

7 MR. FARLEY:

8 --- now, on that tailgate side you got
9 one, two --- actually one, two, three, four, five
10 entries. How many of those entries could you actually
11 travel through? How many of them were actually
12 passable?

13 A. Just ---.

14 MR. FARLEY:

15 On that day which one did you travel in?

16 A. Number Two entry.

17 MR. FARLEY:

18 Number Two?

19 A. Yes, sir.

20 MR. FARLEY:

21 Okay. Now, how was Number One?

22 A. I never went over there. I never been on ---
23 there's still places --- like everything was --- I had
24 never been over there, so I couldn't tell you.

25 MR. FARLEY:

1 But you traveled up Number Two, you
2 think?

3 A. Yes, sir.

4 BY MR. GODSEY:

5 Q. Did you all do any blasting or anything behind
6 there with explosives?

7 A. They did, but I didn't work there.

8 Q. Now, who are they?

9 A. Jason Stanley and Wesley Honaker and Andy
10 something. I can't remember that guy's last name.
11 Now, they --- because I remember them telling me that
12 I missed all the fun. And then when I first started
13 we didn't --- they didn't do no blasting. But I guess
14 it was probably like a week before I started working
15 there they did the blasting down there.

16 Q. What did they do? What did they ---?

17 A. At 100 Break, in the Number Four entry, in the
18 Number One Headgate, ---

19 A. Yes, sir.

20 Q. --- the water was supposedly roofed like --- I
21 mean, they said it was touching the top, so they ---
22 I'm not for sure who went down there and blasted it,
23 but someone blasted a trench to where the water would
24 drain to try to get it to drain down through here.

25 Q. Do you know how long a trench did they create?

1 A. Well, it's between --- it's between the breaks, so
2 I mean, what was that, 50 ---?

3 Q. I think maybe 100.

4 A. Yeah, about 100 foot.

5 Q. Did Jeremy ever --- did he ever go through and
6 tell you how much methane he ever encountered back
7 there?

8 A. No.

9 Q. Did you ever see any bubbles or anything in water?

10 A. Yeah, all the waterholes. Michael Williams ---
11 because that's ---. Jeremy was always lazy. And I
12 can't sit around while I'm working, so me and Mike
13 would --- because I was a red hat at the time and Mike
14 was a black hat. So me and mike would always go do
15 what we had to do. That was always our thing. Mike
16 had a detector at that time, and I remember him
17 holding it over a waterhole and that thing went crazy.
18 It was just bubbling crazy. I mean, it looked like a
19 sauna. It was just bubbling.

20 Q. Did it make noise? I mean, could you hear it from
21 any distance?

22 A. Yeah, you could hear it bubbling in the water from
23 a good distance. I mean, you could hear it, yeah.

24 Q. Did you ever experience being exhausted or
25 anything in that area, I mean, being more tired in the

1 evening than usual?

2 A. No. Just from besides the walk, no.

3 Q. Did he say how much methane he encountered?

4 A. I can't remember what it was exactly. That was a
5 while back. I just remember it going crazy. I'm not
6 really for sure what it read up to.

7 Q. How much heaving, floor heave did you experience
8 back there?

9 A. A lot.

10 Q. Did it make a lot of noise?

11 A. Just the --- call it a hissing sound. You'd get
12 the hissing sound, and that's on up towards the
13 Bandytown fan.

14 Q. Do you know about what crosscut that was?

15 A. We have a bridge that leads you to the Bandytown
16 fan. I'm not for sure where that bridge was. Yeah, I
17 can't remember where the bridge was, but I would say
18 it was anywhere between 120 and 125. I cannot
19 remember where that bridge was.

20 Q. How long a bridge was it and what was it
21 constructed of?

22 A. Just a little bridge just wide enough to where you
23 could walk across it. It was probably about 150 ---
24 it was probably about 150 foot.

25 Q. And how deep was the water?

1 A. Oh, no, that was deep. That was the --- the
2 bridge that went across was the bridge that ran all
3 the water to the sump. I'm not for sure how deep that
4 was.

5 MR. FARLEY:

6 Was that area graded ---

7 A. To the sump?

8 MR. FARLEY:

9 --- down to the sump?

10 A. Yeah. Yeah.

11 MR. FARLEY:

12 Very deep; right?

13 A. The sump hole?

14 MR. FARLEY:

15 Yeah, as in maybe 16 feet?

16 A. Oh, I don't --- someone told me that the sump hole
17 was like 40 foot deep. I don't know how deep the sump
18 hole was. That's where the --- we had the big sump
19 pump drew up from the top. They came down and just
20 tried to get all the water out. I don't know how deep
21 that water hole was.

22 BY MR. GODSEY:

23 Q. Did the bridge have any rails on it or ---?

24 A. Yeah, it had rails on it. I'm not for sure how
25 deep that was. It was deep. I'd say that it would be

1 over your head. I never got in there before.

2 Q. Did you ever notice --- did you have a lot of
3 water coming through the roof or ---?

4 A. Uh-uh (no).

5 Q. It was coming through the floor then?

6 A. I guess it --- I'm not for sure where all that
7 water came from.

8 Q. What was the roof conditions like down there?

9 A. Bad.

10 Q. Bad as in?

11 A. You would always have rock falls and they would
12 always fall on the waterlines. I mean, it was bad.
13 It was bad top, bad bottom. The bottom always hooved
14 up on you. In some places I mean, I could stand tall
15 in one day and go back down there and the next day and
16 I'd have to bend down.

17 Q. Did they ever install any supplemental supports or
18 anything in there, any timbers or ---?

19 A. We took some timbers down. We installed a bunch
20 of timbers all --- I mean, like all down through there
21 we installed timbers and we set the Heinzmann jacks,
22 the sand jacks.

23 Q. How did you get them down there?

24 A. By hand.

25 Q. How many people helped you?

1 A. Us three, me, Jeremy and Jason.

2 Q. Did Jeremy help you a lot?

3 A. He'd take one down there. There was times I was
4 carrying two sand jacks at a time. And whenever I was
5 dragging timbers, I would hook the rope hangers to
6 them and I'd drag two timbers at a time.

7 Q. On the day of the accident, April 5th, when you
8 all came in, did you notice how the rock dust was on
9 the mainline or on the track --- I mean, the track and
10 the belt?

11 A. Where at?

12 Q. From the Ellis Portal up in. What was the
13 condition of the track? Was it rock dusted or was
14 there float dust in areas or ---?

15 A. I can't remember whether the beltline was dusted
16 or not.

17 Q. Okay. What about the tailgate entry over there,
18 where you all were coming up the tailgate entry on the
19 track, was it white, black?

20 A. Going in?

21 Q. Uh-huh (yes).

22 A. Man. From 70 Break down, like from here down, I
23 don't never think I seen --- because this belt didn't
24 run because, like I said, this is the old Number Two
25 section. Like I said, that was out of order, so ---.

1 I never seen it dusted since I've worked there.

2 Q. What was the color of it? I mean, was it black or
3 white?

4 A. It was black.

5 Q. Real black?

6 A. Yeah.

7 Q. For the entire length?

8 A. Yeah, for the whole --- I don't --- like I said,
9 since I've been there, I've never seen that dusted.

10 Q. Did you ever see any inspectors come back there?

11 A. One time.

12 Q. Okay.

13 A. That was --- I cannot remember his name, but that
14 was the guy that told me that I did not have to get in
15 the water if it was above my boot, and I didn't ---
16 because I didn't --- when you wear a size 14, it's
17 hard to find some waders that fit you. And Burdoff
18 wanted me to get in the water in just my boots, and I
19 was like, no, way, I don't want my skin to look like
20 Mike's. So I didn't, not until they got me some
21 waders. I didn't get in no more.

22 Q. Mike, did he go to the doctor to see what the rash
23 was or ---?

24 A. He went to the doctor, but he didn't say that it
25 was because of the water because he didn't want to get

1 fired.

2 Q. Who didn't want to get fired?

3 A. Mike. Because Burdoff told him that --- he built
4 that up in his head, saying that if he did go and he
5 said it was because of that, there would be a chance
6 they wouldn't keep them. They ended up letting him go
7 anyways. But he never ---.

8 Q. How long after this came up about the rash did
9 they let him go?

10 A. Probably about a month, month-and-a-half.

11 Q. Have you talked to him since?

12 A. I seen him at Wal-Mart once.

13 Q. And did he ever find out what was the cause of it?

14 A. Uh-uh (no).

15 Q. That was the hardest working person I ever seen.

16 I mean, he worked hard, like all the time. Like no
17 matter what the job was --- even after the doctor told
18 him that he needed to stay out of the water, if they
19 told him that he needed to get in the water at work,
20 he was there. And when I seen him at Walmart --- I
21 guess I seen him at Walmart probably in June and he
22 was --- he was upset, you know.

23 Q. You said that you went to the active section one
24 time. Which one --- do you remember which one that
25 was?

1 A. I went to the Number One section.

2 Q. Which one was that?

3 a. It was going to the Glory Hole. This is where
4 they were supposed to put in the new longwall.

5 Q. Are you saying 22 Headgate?

6 A. Well, I was more --- we didn't go to the 22
7 Headgate.

8 Q. Eight North?

9 A. Yeah. We was driving --- supposed to be for the
10 new longwall. I asked Everett --- you know, I was in
11 the water. I told him I didn't feel like a coal
12 miner, so I asked him could he put me on some
13 equipment. And it was like the next day he asked me
14 if I wanted to learn to run a miner. And I was like,
15 yeah, anything. That's when I went and started to
16 learn how to run a miner.

17 Q. How long did you do that?

18 A. A month, month-and-a-half.

19 Q. Okay.

20 MR. FARLEY:

21 When was that?

22 MR. DAVID F. FARLEY:

23 That would be April 5th, so that would be

24 --- back up about six weeks from that.

25 MR. FARLEY:

1 Okay.

2 MR. DAVID F. FARLEY:

3 Because they just got back in water for
4 about three days.

5 A. About the end of February.

6 BY MR. GODSEY:

7 Q. Did you have plenty of air on the section,
8 ventilation where you all were mining?

9 A. No, not really. Uh-uh (no).

10 Q. Did they ever mine with less air than they needed?

11 A. I know you wasn't supposed to run the scrubbers,
12 but that was something that --- as me being an
13 apprentice miner, you know, that's what I was told to
14 do, was run a scrubber so we can have air.

15 MR. FARLEY:

16 Do you remember the section power center?

17 A. On?

18 MR. FARLEY:

19 On the section when you were trying to
20 learn to run the miner?

21 A. Yeah.

22 MR. FARLEY:

23 Do you remember the section power center?

24 A. Yes, sir.

25 MR. FARLEY:

1 Do you remember a sign hanging at one end
2 of the power center?

3 A. Uh-huh (yes).

4 MR. FARLEY:

5 Okay. Do you remember that?

6 A. To let you know that the power center was there?

7 MR. FARLEY:

8 Yeah. It probably said high voltage.

9 A. Yeah. Yeah. Okay.

10 MR. FARLEY:

11 High voltage sign. Do you remember that
12 sign?

13 A. No.

14 MR. FARLEY:

15 Okay.

16 A. I don't remember it actually.

17 MR. FARLEY:

18 The reason I asked you if you remembered
19 the sign,, in talking to other people it was usually a
20 pretty good indicator of how the ventilation was on a
21 given day because if the ventilation was bad, the sign
22 was usually hanging still like that.

23 A. Yeah, I know what you mean, but I don't ---.

24 MR. FARLEY:

25 And if there was plenty of ventilation,

1 it was probably doing that.

2 A. I know that we didn't have no air in general up
3 through there because that was a big issue. Because
4 there was --- when I first first started, we got a
5 violation whenever --- because I remember I was
6 nervous about going to learn to run a miner, but I was
7 also excited. And the inspector told us that we
8 couldn't go under, so I ended up having to come home
9 that day because we didn't have no air on the section.
10 I mean, it wasn't --- it wasn't hot. I mean, it was
11 hot --- I remember --- because I had worked at a mine
12 before that. I worked at ICG, and I remember being up
13 on their section. It was cool. And being up on that
14 section, I mean, it was --- you didn't have no breeze.
15 It just sucked. You'd want to stand in front of the
16 scrubber to get cooled down. I mean, ---.

17 BY MR. GODSEY:

18 Q. Did the foreman --- before you'd go into a place
19 to mine, did the foreman --- did he always check his
20 air behind the curtain?

21 A. Yeah.

22 Q. Did you all ever mine without curtain?

23 A. No. That was Patrick's big thing. Like if we
24 didn't have the right ventilation, if the air wasn't
25 right, then we stopped and we'd try to get the

1 ventilation right. That was Patrick's big thing.

2 Q. What was the highest methane you read on the
3 monitor on the miner?

4 A. 2.5.

5 Q. That's while you were mining?

6 A. No. It gassed off. I mean, it quit, but you
7 know, --- it stops at --- does it stop at 1 percent or
8 1. ---.

9 Q. One percent.

10 A. Yeah. And then it stops at 1.5. The miner cuts
11 off. And I just watched the little --- I watched the
12 monitor just go up. I just sat back and watched it.
13 And then we started dropping check curtain and we
14 started hanging solid curtain. And we got the air
15 back and it went back down.

16 Q. Who was Patrick?

17 A. That was our section boss.

18 Q. What was his name?

19 A. I can't remember whether it was Patrick Hilbert or
20 Patrick Gilbert. I cannot remember his last name.

21 Q. How long did the methane stay in the place like
22 that before you got it down?

23 A. Not very long. It was almost kind of like we hit
24 like a little gas pocket. It just sat there --- I
25 think the longest we was down because of gas was maybe

1 like one or two minutes. It wasn't long at all
2 because as soon as --- Goose was the miner man that
3 trained --- that was training me. I don't remember
4 what his real name was. Nobody never called him that.
5 But as soon as it went to one percent, he already shut
6 it of and we was dropping curtain.

7 Q. What did the section foreman do? I mean, did he
8 back the miner out or what on the cut or ---?

9 A. No, we didn't. I don't think we did back the
10 miner out.

11 Q. Did you continue mining there?

12 A. No. Oh, yeah. No. Once we got the gas back
13 right?

14 Q. Uh-huh (yes), got it down.

15 A. Yeah. We continued to mine.

16 Q. Did that problem arise again with methane? Did
17 you keep having problems with methane?

18 A. No. Uh-uh (no). Not that I can recall. Like I
19 said, it only gassed off one time.

20 Q. And what about --- did you have any water on the
21 section there then?

22 A. Yeah, we had just a little --- it was a little
23 waterhole. They said it was coming from behind where
24 we was mining, but we had a pump back then and we was
25 pumping it out.

1 Q. Did you all have any water --- any bubbles coming
2 through those waterholes?

3 A. Yeah. We had one little --- yeah, there was one
4 place that was bubbling. I can't remember it was at.

5 Q. Did you ever take any gas examinations around
6 that?

7 A. Uh-uh (no), not that I was aware of.

8 Q. Did you ever feel any --- how long did you say you
9 worked up there?

10 A. About a month, month-and-a-half.

11 Q. Did anybody ever complain about being exhausted or
12 anything up there?

13 A. Uh-uh (no).

14 ATTORNEY BAXTER:

15 Is that a no?

16 A. Yeah, no. Sorry. No.

17 BY MR. GODSEY:

18 Q. Were you ever on the longwall?

19 A. No.

20 Q. How about Tailgate 22?

21 A. No, sir.

22 Q. Okay.

23 A. I always wanted to see it operate, though.

24 Q. Okay. Is there anyone else that you know of that
25 we could talk to that may have some information on

1 what happened April 5th?

2 A. No. I didn't know too many people. Like I said,
3 when I first started there, I was back there. It was
4 like a world of our own. They didn't even consider us
5 coal miners. They just called us water dogs.

6 Q. What was Mr. Stanley's attitude about it? Did he
7 talk to you about it, what he thought about working
8 back there?

9 A. Oh, he hated it, too. I mean, it was miserable.
10 You got --- like at that time, before April 5th, it
11 was cold, I mean ridiculous cold. And you'd have to
12 get in water. You'd be wet for the rest of the day.
13 And your job still wasn't done because you still had
14 pumps to check. It just sucked. You'd get your feet
15 wet and you had to walk around with squishy feet all
16 day. I mean, ---.

17 MR. FARLEY:

18 But on April 5th it was not cold?

19 A. No, it was hot.

20 BY MR. GODSEY:

21 Q. And very little, if any, air moving?

22 A. It was hardly none. I'd say none. There wasn't
23 --- you didn't even get a wind. Because I remember
24 when I went down there April 5h and as soon as we went
25 through these double doors, usually when you go

1 through them double doors it's just --- it hits you.
2 We went through them, and them doors didn't even slam
3 shut. Like usually the wind is so hot, them doors
4 would shut. We went through them double doors and it
5 was like --- I remember I was like --- I was like it's
6 hot. And Burdoff was like, yeah, it's hot.

7 Q. I meant to ask you this, but did you smell
8 anything different, any odors or anything like --- any
9 kind of different smell?

10 A. It just stunk down there. You know, I mean, ---.

11 Q. Like sulfur water? I mean, would it ---?

12 A. Yeah. You would get like the --- kind of like an
13 old battery smell, you know, like --- it was just ---
14 it just stunk down there.

15 Q. Like a battery charging station?

16 A. No. It just --- like the stuff like --- you know
17 when a battery blows up and ---?

18 Q. Yeah.

19 A. That's what everything down there smelled like.
20 It just stunk in general.

21 Q. And had you smelled that before?

22 A. No, not since I worked at this mine. That was
23 just --- it was, like you said, that's the return, so
24 you had --- everybody used the restroom and then you
25 had hydraulic --- the gear oils and stuff is being

1 dumped in this water. I mean, everything that you can
2 even imagine was in that water, and it just stunk in
3 general. Like it could be any kind of smell. You
4 wouldn't smell anything but that.

5 ATTORNEY BAXTER:

6 And a minute ago you testified that when
7 you opened those double doors it was hot on the other
8 side. Can you indicate on the map where that was
9 again?

10 A. It was ---.

11 MR. FARLEY:

12 Draw a circle around it, please.

13 WITNESS COMPLIES

14 BY MR. GODSEY:

15 Q. Ninety-two (92)?

16 A. Yeah, 92 Break.

17 Q. On One North Headgate.

18 MR. FARLEY:

19 When you were there on April 5th --- do
20 you see that stopping where I've got my finger?

21 A. Did I see it that day?

22 MR. FARLEY:

23 Do you see it? Do you see it right there
24 on the map where it shows that stopping? Do you see
25 it right here?

1 A. Yeah. I know what you're talking about. I'm
2 trying to think if I seen it or not.

3 MR. FARLEY:

4 Right there. Let's just circle it.

5 A. No. I think --- I'm almost positive whenever they
6 knocked the stopping that we built out, they took this
7 one. Well, they put a hole in it. That's what it
8 was. Yeah, there was a stopping there, but it
9 had ---.

10 MR. FARLEY:

11 It had a hole in it?

12 A. Yeah. It had two or three blocks knocked out of
13 it.

14 MR. FARLEY:

15 Okay.

16 A. Because that way they said that was --- what do
17 you call them?

18 MR. FARLEY:

19 So you got --- at that point you've got
20 three entries. One of them's got a stopping in it
21 with a couple, three blocks knocked out of it; right?

22 A. Yeah.

23 MR. FARLEY:

24 And the other two's got chest-deep water
25 on a six-foot tall man?

1 A. Yes, sir.

2 MR. FARLEY:

3 All right.

4 MS. SPENCE:

5 And David, was April 5th the first day

6 you had ever experienced that kind of heat back there?

7 A. Yeah. Yeah.

8 MS. SPENCE:

9 Thank you.

10 BY MR. GODSEY:

11 Q. And also the smell?

12 A. Well, that smell was just there in general,

13 like ---.

14 Q. And on the second day back when you was on the
15 water crew, where did you say those stoppings --- is
16 that where you marked earlier?

17 A. Yes, sir. I marked them with the highlighters.

18 I'll make them darker.

19 Q. Just write out from it say stoppings built,
20 stoppings. Did you have any stoppings crushing out
21 back there from floor heave or from ---?

22 A. I can't --- I don't remember exactly where they
23 was at, but as you are walking up through here you had
24 a bunch of them that was crushing because of the top
25 and because of the bottom.

1 Q. And did you ever replace any of them?

2 A. Uh-uh (no). No, sir, we didn't.

3 Q. Okay. On April 5th, the end of the shift, Jeremy,
4 Mr. Stanley and you, you all departed early?

5 A. Yes. It was about --- let's see. It takes us an
6 hour to walk to get to the double doors. And I'd say
7 we got down there probably about eight o'clock. And
8 he left us at --- 11:00 something he left us.

9 Q. Then you went and looked for him and you found him
10 about what time?

11 A. It was about 1:45, 1:50. Because like I said,
12 that's the time we walked out.

13 Q. So you walked out?

14 A. Yeah.

15 Q. And then you came on out. Just take us from there
16 outside.

17 A. When I opened up the man door to where he was at,
18 and I remember telling him, I was like, you're lazy.
19 You know, I did tell him that. Me and Jeremy had
20 differences because I was always afraid that he'd get
21 somebody hurt. And that was --- that was always my
22 thing with Jeremy. And I remember telling him that he
23 was lazy. He was like, no, I just don't feel good. I
24 was like, there's days that I don't feel good, but I
25 still do what I got to do. And then he didn't talk to

1 me the whole walk back to the mantrip. And me and
2 J.J. continued to talk about that it was hot, and J.J.
3 was cussing about Burdoff because he was saying that
4 he's a piece of crap and something.

5 Q. Was Burdoff hearing this?

6 A. No. I mean, he left us. Like he walked --- he
7 just took out, you know.

8 Q. And left you without anything?

9 A. Yeah. Like he was probably about ten --- probably
10 about ten breaks ahead of us. And when we got up to
11 the mantrip Jeremy was like --- usually we still got
12 like 10, 15 minutes to kill, because we don't take no
13 lunch down there. So when we got to the mantrip we
14 usually eat. But that day Jeremy slams his stuff down
15 on --- excuse me, he slams his stuff down on top of
16 the mantrip and he was like, I don't feel good. We're
17 leaving. And I was like, right on. Like I said, as
18 we was going up through here, about the Ellis Switch,
19 it was smoky or dusty, whatever you want to call it.

20 Q. About what time did you all leave up there?

21 A. It was probably about --- probably about 2:20.

22 Yeah, we left the 70 Break about 2:20 because I
23 remember that was the fastest we --- I mean, we was
24 rolling. He was walking as fast as he could. And I
25 just kept thinking. I remember --- you know, I always

1 though he would leave us. I was always --- a thought
2 that I always had about him, I always thought that he
3 would leave us down there and we'd have to walk all
4 the way out, because once you get past --- I don't
5 know where the certain point is at, but once you get
6 past a certain point, our trackers and our radios
7 don't work. The only radio we can use is --- put it
8 on Channel Five, we can talk between each other. So
9 we would have been screwed, you know. I always
10 thought he would leave us.

11 Q. When you all came out, did you see the longwall?
12 Did you all pass by the longwall?

13 A. Yeah. But I wasn't --- we sat on the other side
14 of the mantrip, me and ---.

15 Q. Could you hear it if it had been running?

16 A. Yeah, you could hear it. I can't remember --- I
17 don't remember hearing it. I don't remember hearing
18 it at all.

19 Q. On your way out, did you pass or talk to anybody
20 that was on the side of the track or ---?

21 A. Oh, yeah. We picked up the track crew. That was
22 at --- that was probably --- that's probably about 42
23 Break we picked up the track crew.

24 Q. Was that Ralph Plumley?

25 A. Yeah, Ralph Plumley and Eric Jackson and --- I

1 can't remember the other man's name.

2 Q. Do you remember if they talked about anything that
3 was different that day than what had been previously?

4 A. Uh-uh (no). They sat up in the front of the
5 mantrip. I don't know what they talked about.

6 Q. Did they mention anything about the dust coming
7 out?

8 A. Yeah. Ralph was --- Ralph was cussing about it,
9 saying that it was too early --- the same thing I was
10 back there saying, it was too early to rock dust the
11 beltline. But it didn't look like rock dust in
12 general.

13 Q. Did it smell like cutting rock?

14 A. No. Uh-uh (no).

15 Q. When you all passed the portal section, could you
16 hear them running or anything, trying to cut?

17 A. No. I heard them that morning, but I can't
18 remember hearing them that evening.

19 Q. Do you remember which --- did you see any of the
20 dust when they were working that morning coming off of
21 it?

22 A. Uh-uh (no). It wasn't dusty at all that morning.

23 Q. What time did you get outside?

24 A. It was about 3:05.

25 Q. Once you got outside, how long after that did the

1 event occur?

2 A. It was right after. We was the last mantrip to
3 actually make it out with nobody even hurt.

4 ATTORNEY BAXTER:

5 What color was the dust when you were
6 coming out?

7 A. It was like a --- it was like a grayish color. It
8 just --- it didn't look like rock dust. I've rock
9 dusted the belts before, but that didn't look like
10 rock dust.

11 BY MR. GODSEY:

12 Q. Did it have an odor. Let me ask you, did it have
13 a certain odor?

14 A. I can't remember. I just remember putting my
15 jacket over my nose.

16 Q. Did you have to take deep breaths when you tried
17 to breathe? Would it try to take your breath?

18 A. Yeah, it just --- I mean, it just --- it dried
19 your mouth is what it seemed like, you know, like ---.

20 Q. Is it different than anything you've ever
21 experienced before?

22 A. Yeah.

23 Q. And you say you worked for ICG. How long did you
24 work for them?

25 MR. DAVID F. FARLEY:

1 July the --- about ---.

2 A. Wait. I didn't start in July. I worked there for
3 six months, but I got messed over on my time on
4 Raleigh Mines. They didn't give me my whole time
5 because I didn't --- I worked for the contractor. I
6 didn't get my whole time working with Raleigh Mines,
7 so I had to actually pull another two months as a red
8 hat because I remember my brother-in-law, because he's
9 a section boss at ICG, he was picking on me about
10 being a year red hat.

11 BY MR. GODSEY:

12 Q. Did David Stanley or any of the people who works
13 for them ever contacted you? Anybody at the company
14 contact you, ask you about ---?

15 A. It made me mad, too.

16 Q. Sir?

17 A. It made me mad that nobody never contacted to see
18 how nobody was. It just seemed like you just kind of
19 fell off. It was like ---. I still got my stuff down
20 there and everything.

21 Q. Still in the locker room down there?

22 A. Uh-huh (yes).

23 ATTORNEY BAXTER:

24 On behalf of MSHA and the Office of
25 Miners' Health, Safety and Training, I want to thank

1 you for appearing and answering questions today. Your
2 cooperation is very important to the investigation as
3 we work to determine the cause of the accident. We
4 request that you not discuss your testimony with any
5 person aside from your personal representative. After
6 questioning other witnesses, we may call you if we
7 have any follow-up questions. If at any time you have
8 additional information regarding the accident that you
9 would like to provide to us, please contact us at the
10 contact information that was previously provided to
11 you.

12 If you wish, you may now go back over any
13 answer you've given during this interview and you may
14 also make any statement that you would like to make at
15 this time.

16 A. (Indicates no).

17 ATTORNEY BAXTER:

18 Again, I want to thank you for your
19 cooperation in this matter.

20 * * * * *

21 STATEMENT UNDER OATH CONCLUDED AT 5:32 P.M.

22 * * * * *

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and for the State of West Virginia, do hereby certify:

That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date and that the transcribed deposition of said witness is a true record of the testimony given by said witness;

That the proceeding is herein recorded fully and accurately;

That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.



Alison Salyards