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Transcript of the Testimony of Bobby Baker

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STATEMENT UNDER OATH
OF
BOBBY BAKER

taken pursuant to Notice by Alison Salyards, a Court Reporter and Notary Public in and for the State of West Virginia, at the National Mine Health and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Monday, August 23, 2010, beginning at 1:03 p.m.

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NUMBER	DESCRIPTION	IDENTIFIED
One	Subpoena	10*
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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 23rd and we are here to conduct the interview of Bobby Baker. With me is Erik Sherer, an investigator with the Mine Safety and Health Administration. Also present are individuals with the State of West Virginia. I'll ask that they state their appearance for the record.

MR. FARLEY:

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

ATTORNEY KOERBER:

I'm Barry Koerber, an Assistant Attorney General assigned to represent the West Virginia Office of Miners' Health, Safety and Training.

MS. MONFORTON:

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

ATTORNEY WILSON:

Mr. Baker, first of all, I'm going to ask that you face the court reporter, and we'll have her swear you in.

1 -----

2 BOBBY BAKER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 -----

5 ATTORNEY WILSON:

6 Okay. And would you go ahead and state
7 your name for the record?

8 A. Bobby L. Baker, Jr.

9 ATTORNEY WILSON:

10 And would you tell us your address,
11 mailing address and telephone number?

12 A. It is (b)(7)(C)
13 Phone number, you said?

14 ATTORNEY WILSON:

15 Yes.

16 A. It is area code (b)(7)(C)

17 ATTORNEY WILSON:

18 And Barry Koerber with the State of West
19 Virginia is going to go over some preliminary matters
20 concerning the subpoena.

21 ATTORNEY KOERBER:

22 Mr. Baker, do you have an attorney or
23 personal representative with you here today?

24 A. Yes, Mr. Hardy's going to represent me.

25 ATTORNEY KOERBER:

1 Okay. Dave, would you state your name,

2 your ---

3 ATTORNEY HARDY:

4 Yeah.

5 ATTORNEY KOERBER:

6 --- firm's name and your affiliation with

7 the witness and/or Performance Coal?

8 ATTORNEY HARDY:

9 Okay. Yeah. I am David J. Hardy with

10 Allen, Guthrie & Thomas, PLLC. Mr. Baker asked me to

11 appear as his representative with him today, and he's

12 aware that I am also Counsel for Performance Coal

13 Company.

14 ATTORNEY KOERBER:

15 Mr. Baker, are you appearing here today

16 as a result of receiving a subpoena?

17 A. Yes, sir.

18 ATTORNEY KOERBER:

19 And the subpoena --- this is a copy of

20 that subpoena and it compels you to be here tomorrow

21 at 10:30; correct?

22 A. Yes.

23 ATTORNEY KOERBER:

24 And due to a scheduling issue, you have

25 agreed to come to your subpoenaed interview today at

1 one o'clock; correct?

2 A. That's right.

3 ATTORNEY KOERBER:

4 And we have agreed to release you from
5 the tomorrow at 10:30 a.m. time?

6 A. Yes.

7 ATTORNEY KOERBER:

8 Okay. And is this a copy ---? This is a
9 copy of the return receipt signed by Mary?

10 A. Mary Jane Baker, yes. That's my wife.

11 ATTORNEY KOERBER:

12 I would ask that this be Exhibit One and
13 this be Exhibit Two.

14 ATTORNEY WILSON:

15 Okay. The subpoena is marked as Exhibit
16 One and the return receipt copy is marked as Baker
17 Exhibit Two.

18 (Baker Exhibits One and Two marked for
19 identification.)

20 ATTORNEY KOERBER:

21 Mr. Baker, the statute that authorizes
22 the director to issue subpoenas to witnesses
23 compelling them to appear at interviews such as this
24 also requires the director to offer to each witness a
25 daily witness fee of \$40 per day plus round trip

1 mileage, so long as you drive in your personal vehicle
2 from your home to here and back home at the rate of 15
3 cents a mile plus reimbursement for any tolls that you
4 might pass on the round trip.

5 In order to receive that money, there is
6 two forms that you must fill out, one of which is an
7 IRS 179 which is a request for your Social Security
8 Number, because the \$40 witness fee is taxable income
9 and you will receive a 1099 miscellaneous at some
10 later date. Would you like to fill those forms out at
11 the end of the interview or would you like to decline?

12 A. I would decline.

13 ATTORNEY KOERBER:

14 Okay. Thank you.

15 A. You're welcome.

16 ATTORNEY WILSON:

17 All right. Mr. Baker, government
18 investigators and specialists have been assigned to
19 investigate the conditions, events and circumstances
20 surrounding the fatalities that occurred at the Upper
21 Big Branch Mine-South on April 5th, 2010. The
22 investigation is being conducted by MSHA pursuant to
23 Section 103(a) of the Federal Mine Safety and Health
24 Act and by the West Virginia Office of Miners' Health,
25 Safety and Training. There are other individuals

1 present in the room. Those individuals are with the
2 MSHA investigation team.

3 All members of the Mine Safety and Health
4 Administration Accident Investigation Team and all
5 members of the West Virginia Accident Investigation
6 Teams participating in the investigation of the Upper
7 Big Branch Mine explosion shall keep confidential all
8 information that is gathered from each witness who
9 provides a statement to investigators until witness
10 statements are officially released.

11 MSHA and the State of West Virginia shall
12 keep this information confidential so that other
13 ongoing enforcement activities are not prejudiced or
14 jeopardized by a premature release of information.
15 This confidentiality requirement shall not preclude
16 investigation team members from discussing with each
17 other the subject of the interview, or with other law
18 enforcement officials. Everyone's participation in
19 the interview constitutes their agreement to maintain
20 this confidentiality.

21 You are present. You are permitted to
22 have a representative with you. Mr. Hardy has stated
23 his appearance for the record with the disclosure that
24 Mr. Hardy is also representing Performance Coal
25 Company. Do you consent to his presence here today?

1 A. Yes.

2 ATTORNEY WILSON:

3 Okay. This is not an adversarial
4 proceeding. We're just trying to learn facts that you
5 may know about this case, so Cross Examination will
6 not be permitted. However, each of the parties will
7 be asking follow-up questions and Mr. Hardy may ask
8 clarifying questions, also.

9 Your identity and the content of this
10 conversation will be made public at the conclusion of
11 the interview process and your identity may be
12 included in a report of the accident that is released
13 to the public, unless you specifically request that
14 your identity remain confidential or if release of
15 your identity would jeopardize a potential criminal
16 investigation. If you request us to keep your
17 identity confidential, we will do so to the extent
18 permitted by law.

19 In other words, if some law such as the
20 Freedom of Information Act, or if a judge orders us or
21 the State to turn over your identity, we may have to
22 do so. Also, there may be a need to use the
23 information that you provide to us in other
24 investigations or hearings concerning the explosion.
25 Do you understand your right to request

1 confidentiality?

2 A. Yes.

3 ATTORNEY WILSON:

4 All right. Do you have any questions
5 concerning that?

6 A. No.

7 ATTORNEY WILSON:

8 After the investigation is complete, MSHA
9 will issue a public report detailing the nature and
10 the causes of the fatalities in the hope that greater
11 awareness about the causes of accidents can help
12 reduce their occurrence in the future. Information
13 obtained through witness interviews is frequently
14 included in those reports. We will be interviewing
15 other witness, and so that their testimony is
16 firsthand knowledge that they have and not information
17 they learned from other people, we request that you
18 not discuss your testimony with anyone other than Mr.
19 Hardy; okay?

20 A. Yes.

21 ATTORNEY WILSON:

22 A court reporter will be recording the
23 interview, so please speak loudly and clearly. If you
24 do not understand a question, please ask that we
25 rephrase the question; okay?

1 A. Okay.

2 ATTORNEY WILSON:

3 I would like to thank you for coming here

4 today. Your cooperation is important as we work

5 towards trying to determine the cause of the accident.

6 After we have finished asking questions,

7 we will provide you an opportunity to add any

8 additional information that you think may be important

9 to the investigation. Also, if after today's

10 interview you think of any additional information that

11 you think might be helpful, please contact us. You

12 can call Norman Page, who is MSHA's lead accident

13 investigator, at the contact information that's

14 contained in the letter that I provided to you here

15 today.

16 A. Okay.

17 ATTORNEY WILSON:

18 Okay? Terry, do you have anything?

19 MR. FARLEY:

20 Yes. Mr. Baker, on behalf of the Office

21 of Miners' Health, Safety and Training I'd like to

22 inform you that the West Virginia Coal Mine Health and

23 Safety Regulations also provide protection against

24 potential discrimination which might result from

25 participation in these type interviews. I'd like to

1 pass along some contact information for the West
2 Virginia Board of Appeals.

3 The board hears complaints from miners
4 concerning discrimination and other matters. Now,
5 should experience any such problems, you should
6 contact the board immediately.

7 A. Okay.

8 MR. FARLEY:

9 And I would caution you that if you
10 choose to file a claim, you need to do so within 30
11 days of the initial occurrence. Also, there's a
12 business card in case you have any questions.

13 A. Okay.

14 MR. FARLEY:

15 Thank you.

16 A. Thank you.

17 ATTORNEY WILSON:

18 And Celeste, did you have anything at
19 this point?

20 MS. MONFORTON:

21 No.

22 ATTORNEY WILSON:

23 Okay. Then at this time, Mr. Baker, I'm
24 going to turn it over to Erik Sherer and he'll begin
25 with the questioning.

1 A. Okay.

2 EXAMINATION

3 BY MR. SHERER:

4 Q. First thing, I want to thank you for coming down
5 this afternoon.

6 A. You're welcome.

7 Q. Trying to determine what led up to this explosion
8 is crucial. And there's two reasons we're doing that,
9 is --- the first is the families and the friends and
10 the co-workers of those 29 miners deserve it. They
11 need to know what happened.

12 A. They do.

13 Q. Second is we want to prevent this sort of
14 explosion from ever occurring again, so any
15 information that you can share with us is greatly
16 appreciated.

17 A. Okay.

18 Q. Roughly how many years of mining experience do you
19 have, Mr. Baker?

20 A. About nine and a half years.

21 Q. Nine and a half. Okay. Has that all been with
22 the Massey organization?

23 A. No.

24 Q. When did you start with the Massey organization?

25 A. Well, I've worked for them two different times.

1 Q. Okay.

2 A. The first time I worked for them I started in ---
3 I believe it was April of 2001. And then I think I
4 worked 'til January of 2006, and then I quit. And
5 then I come back, I think it was somewhere around
6 October of 2008, I believe, ---

7 Q. Okay.

8 A. --- to the present.

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

11 A. I started there the week before Christmas of 2009.

12 Q. Okay. And I assume you worked straight on through
13 until the time of the explosion?

14 A. Yes, I did.

15 Q. You mentioned you're still at Upper Big Branch
16 now?

17 A. Yes.

18 Q. Okay. What was your job title immediately
19 preceding the explosion?

20 A. You mean after the explosion?

21 Q. No, before the explosion.

22 A. Oh, before? I was a section foreman.

23 Q. Okay. Which section were you the foreman of?

24 A. The portal section or ---

25 Q. Okay.

1 A. --- Number Three.

2 Q. Number Three section. And we understand that was
3 moved up near the Ellis Portal several weeks prior to
4 the explosion?

5 A. Yes, that's correct.

6 Q. Do you recall roughly how many weeks prior to the
7 explosion that was moved?

8 A. I would say maybe three or four weeks, maybe.

9 Q. Three or four weeks. And then what were you guys
10 doing up there?

11 A. We just ---. Just basic --- cutting out overcasts
12 and belt channels to --- you know, to get it ready so
13 we can start running coal.

14 Q. Okay. We understand that you were going to
15 develop a little, short panel for the longwall; is
16 that correct?

17 A. Yes.

18 Q. Okay. Now, when you went up there, who told you
19 what to do?

20 A. It was mainly Gary May.

21 Q. Gary May.

22 A. I mean, even sometimes Wayne Persinger would tell
23 us stuff to do.

24 Q. Okay. Do you recall if there was a vent plan that
25 you were going by, ventilation plan?

1 A. I don't recall, no.

2 Q. Okay. Thank you. So you were cutting out
3 overcasts and belt channels and such.

4 A. Yes.

5 Q. Did you have any occasion to go back through the
6 area, I think, that's referred to as LBB or Lower Big
7 Branch?

8 A. No, I never went up, you know, all the way up this
9 far. We was all the way down here. I think that was
10 Ellis Five Head, I believe.

11 Q. Uh-huh (yes). Sure.

12 A. We was all --- we was in this area.

13 Q. Okay.

14 A. We did build a couple of stoppings and it went
15 this way. I think right there where those double
16 doors ---. We did build a row of stoppings across
17 right there, and I mean they're marked on the map.

18 Q. Okay. And the witness is pointing to an area in
19 the Little Big Branch entry just south of the Ellis
20 Five Head, roughly in the location --- and does it got
21 break numbers, no --- where the proposed ---. I guess
22 that would be ---. Would this be the headgate or ---?

23 A. Yeah, this was going to be the panel we was
24 actually working on.

25 Q. Okay.

1 A. The headgate.

2 ATTORNEY WILSON:

3 All right. Just let's go ahead and mark

4 this as Baker Exhibit Three.

5 (Baker Exhibit Three marked for

6 identification.)

7 ATTORNEY WILSON:

8 And if you would, just circle the area

9 with the red highlighter just indicating the area

10 where you built the stoppings.

11 A. You want me to just circle them all for him?

12 ATTORNEY WILSON:

13 Yeah.

14 MR. SHERER:

15 Yeah.

16 ATTORNEY WILSON:

17 Yeah, just the general area there.

18 MR. SHERER:

19 Yeah.

20 ATTORNEY WILSON:

21 And maybe off on the side here just

22 write, stoppings, with an arrow.

23 ATTORNEY WILSON:

24 Perfect. Thank you.

25 A. You're welcome.

1 BY MR. SHERER:

2 Q. Okay. So you guys were doing construction. What
3 else did you do as part of the construction up there?

4 A. Well, some people would, like, hang some belt
5 structure, because I mean there was nothing up there.
6 I mean, everything had to get done. I mean, some
7 people hung belt structure and some people laid
8 waterline, just your basic stuff to, you know, get
9 ready to run.

10 Q. Okay. How many crews were working up there? Do
11 you know?

12 A. There was three crews, I'm pretty sure. I'm
13 pretty sure the hoot owl was there, also.

14 Q. Okay. Let's talk about the last shift you worked
15 prior to the explosion. When would that have been?

16 A. I was there the day of the explosion.

17 Q. Okay. You were working what, the dayshift?

18 A. Yes.

19 Q. Okay. What were the conditions like that day?

20 A. They were fine. I mean, we was cutting an
21 overcast and I mean, everything was going, you know,
22 fine for the whole day and we was on our way outside
23 and --- when the explosion happened.

24 Q. Okay. Did you notice anything unusual that day?

25 A. No.

1 Q. Okay. Did you hear anybody talk about anything
2 unusual?

3 A. No.

4 Q. Okay. Now, we know that that was a long weekend
5 for a lot of the folks at the mine. What was the last
6 shift prior to that that you worked?

7 A. It was either Thursday or Friday. I can't
8 remember if that was a three-day weekend or not.

9 Q. Okay. Some people seem to have gotten a three-day
10 weekend; some people didn't.

11 A. Well, the best I can remember, I think we did work
12 Friday, but I mean, I could be wrong.

13 Q. No, that's fine. Again, did you notice anything
14 unusual on that Friday?

15 A. No.

16 Q. Okay. Did you notice in the last few shifts you
17 worked prior to the explosion, was anything out of the
18 ordinary going on ---

19 A. No.

20 Q. --- that you know of?

21 A. Everything seemed normal.

22 Q. Okay. Did you hear anybody complain of any
23 problems that seems a little bit odd now?

24 A. No.

25 Q. Okay. Now, you were there the day of the

1 explosion. You mentioned that you were coming out at
2 the time of the explosion. Were you in the mantrip
3 that was going back up to the Ellis Switch?

4 A. Yes.

5 Q. Okay. Tell us about what you recall of the
6 explosion itself. What'd you see and feel and hear?

7 A. Well, the first thing was we just had a bunch of
8 air, you know, coming to our face and just debris. It
9 was, like, little chunks of coal and rock. It was
10 like trash. I mean, like, just small stuff, nothing
11 big or ---. And as soon as that happened, we had just
12 a lot of pressure in our ears. Like, you know how
13 your ears will pop?

14 Q. Sure.

15 A. It was like that.

16 Q. Okay. Did you carry a methane detector with you?

17 A. Yes, I did.

18 Q. What model was that?

19 A. The Solaris --- I'm not sure of the model number,
20 but it was the ---

21 Q. Okay, okay.

22 A. --- Solaris, which they all have.

23 Q. Did you have a carbon monoxide sensor on it?

24 A. Yes, it does.

25 Q. Do you recall if that sensor went into alarm?

1 A. I don't believe it did.

2 Q. Okay. Did you don an SCSR when the explosion hit
3 you?

4 A. We didn't don them. We did open them, but we
5 didn't --- we never activated them.

6 Q. Okay. Do you mind telling me why you didn't
7 activate them?

8 A. Well, the main reason I didn't activate it is
9 because I did have my Solaris.

10 Q. Okay.

11 A. And you know, I just ---. I had it clipped on my
12 bibs, ---

13 Q. Uh-huh (yes).

14 A. --- and you know, after it happened, I took it off
15 and I just looked at it the whole time and, you know,
16 I was just watching it the whole time we was going
17 back outside.

18 Q. Okay. Do you recall what the oxygen reading was
19 when you were watching it?

20 A. I'm not sure exactly what it went to, but I mean,
21 the alarm did go off for low oxygen. But I think ---
22 I think the lowest I seen it was, like, 19.3 or 19.2
23 or something like that, but I mean when the explosion
24 happened, I mean, it immediately happened, but ---.

25 Q. Sure.

1 A. And then it just started --- the oxygen started
2 building back up.

3 Q. Sure. The reason I'm asking this, Mr. Baker,
4 you're one of the few survivors of one of these type
5 of explosions that actually had a functioning multigas
6 detector, so I'm not trying to be intrusive, but this
7 is information that may be very helpful to us. So the
8 oxygen got down to about 19.3. Did you notice if any
9 carbon monoxide was showing up?

10 A. I don't remember seeing any, no.

11 Q. Okay. Did you check the methane?

12 A. Yes, it was zero, also.

13 Q. Okay.

14 A. It was normal.

15 Q. Okay. So it was just low oxygen, then ---

16 A. Yes.

17 Q. --- that caused it to go into alarm? Roughly how
18 long did that low oxygen period last? I know it was
19 probably very hectic, but just make a guess.

20 A. I would say maybe a minute.

21 Q. Okay.

22 A. I mean ---. I mean, everybody was panicking. It
23 was just ---

24 Q. Oh, sure, yeah.

25 A. --- one of those things that seemed like it was

1 taking forever.

2 Q. Uh-huh (yes). Okay. Somebody mentioned that that
3 mantrip, they felt like it was actually pushed back on
4 the track by the force of the explosion.

5 A. Yeah. I'm not going to say it was actually the
6 force. I mean, I'm not sure. It could've been. I
7 mean, I know it did roll back, but I mean, we had
8 stopped the mantrip, and I mean, I don't know if it
9 could've been, like, a little elevation or it could've
10 just been rolling back or something. I mean, I'm not
11 sure if it was the force or ---

12 Q. Sure.

13 A. --- maybe it was on a downhill slant or something.
14 I don't really know.

15 Q. Did it blow your hardhat off or did it blow
16 anybody's hardhat off?

17 A. Not that I know of, no.

18 Q. Okay. Did you have your safety glasses on?

19 A. Yes, I did.

20 Q. Okay. Now, what did you do after the explosion
21 pressure hit you guys and started to go back down?
22 What'd you do at that point in time?

23 A. Well, we just stopped the mantrip and I just
24 hollered for everybody to, you know, to open their
25 rescuers. And then I mean we just flipped the switch

1 on the mantrip and went out the Ellis Portal and just
2 got outside.

3 Q. Okay. About how long do you think it took you to
4 get out to the Ellis Portal?

5 A. I would say probably 10 or 15 minutes, maybe.

6 Q. Okay. Did you have any problems going back out
7 that way?

8 A. Well, to begin with, see, the electrician was the
9 operator of the mantrip. I think he just couldn't see
10 to get the switch turned. I mean, we probably sit
11 there for maybe 20 seconds or ---.

12 Q. Sure.

13 A. I mean, it seemed longer than that, but I'm sure
14 it probably wasn't, but I think he just maybe had
15 something in his eyes or something and he couldn't see
16 to flip the switch and ---. But I mean, he finally
17 got it switched and we, you know, started getting out
18 of there.

19 Q. Did he have his safety glasses on?

20 A. I don't know.

21 Q. This would be a great PR spot to --- all of you
22 need to where your safety glasses on the mantrip.

23 A. Yeah, yeah.

24 Q. So you started back out toward the Ellis Portal.

25 Was there any debris on the track you had to clear or

1 anything like that?

2 A. No, we didn't have to stop and move anything.

3 Q. Okay. What was the visibility like?

4 A. It was pretty good. I mean, we never was in no
5 smoke or anything. It was just air.

6 Q. Just air. Was there any dust suspended?

7 A. No, I don't think so.

8 Q. Okay. When you got out of the Ellis Portal, what
9 was going on out there?

10 A. Well, everybody was just standing around, just ---
11 I mean, just kind of figuring out what happened, I
12 guess. I mean, I guess to begin with some people
13 thought it was just a big fall. I mean, I knew it
14 wasn't, because I mean, I seen the air readings on my
15 spotter and ---.

16 Q. Did you let anybody know that you'd gotten low
17 oxygen on your spotter?

18 A. I'm pretty sure I did.

19 Q. Okay. Who would have told? Do you recall?

20 A. It would have probably been Wayne Persinger.

21 Q. Okay. What did Mr. Persinger do when you told him
22 that?

23 A. I'm not sure.

24 Q. Okay. Now, we understand that there was a group
25 that went into the mine sometime relatively soon after

1 the explosion. Do you recall that group of people?

2 A. I believe so, yeah.

3 Q. Now, we understand it was Mr. Persinger and I
4 think Mr. Blanchard, Mr. Whitehead and several others.

5 A. Yes.

6 Q. Who all do you recall going in?

7 A. I remember Mr. Persinger and Mr. Blanchard. And
8 I'm not sure about Jason Whitehead. I mean, I have
9 heard that he did. I mean, I'm not ---

10 Q. Sure.

11 A. --- sure that he did. I don't remember.

12 Q. Okay. Anyone else?

13 A. Yeah, Gary May and Rick Foster and Berman Cornett.
14 And I believe they come in from the other side.

15 Q. Oh, okay. They came up from UBB?

16 A. Yes, but they all come out the Ellis Portal.

17 Q. Okay.

18 A. That's where they brought the guys out that was
19 found on the mantrip.

20 Q. Uh-huh (yes). Were you involved in the rescue and
21 recovery effort?

22 A. No.

23 Q. Okay. Had you had any occasion to go into either
24 of the --- either of the two development sections,
25 Headgate 22 or Tailgate 22 ---

1 A. No.

2 Q. --- of the longwall prior to the explosion?

3 A. No. I'd fire bossed one one day. As far as I'd
4 went was to the end of the track on the headgate
5 section, far as I'd went.

6 Q. When did you do that fire bossing, just roughly?

7 A. I'd say it's probably about a month before the
8 explosion, maybe.

9 Q. Okay.

10 A. I remember those guys on that side of the mines
11 had their annual retraining on that Saturday, and me
12 and two --- there was three of us altogether, was the
13 three section bosses from the other side. We went
14 over there that Saturday and fire bossed.

15 Q. What'd you think about that side of the mine?

16 A. From what I seen it looked okay.

17 Q. When you were working underground, did anybody
18 ever call in to tell you there were inspectors on the
19 property?

20 A. Yes.

21 Q. How common was that?

22 A. I mean, just whenever they showed up, I guess.

23 Q. Yeah, sure.

24 A. I mean, I usually knew if they was outside, but I
25 never did --- I mean, I usually didn't know where they

1 were going, but I knew they was outside.

2 Q. Did you ever see anybody tearing apart a methane
3 monitor?

4 A. No.

5 Q. Ever see anybody calibrate a methane monitor?

6 A. Yeah, I've seen one calibrated, yeah.

7 Q. Okay. Never saw anybody take the cover off one?

8 A. No.

9 Q. Okay. Did you ever see anybody put a bag or
10 something over the sniffer?

11 A. Never.

12 Q. Okay. Did you ever hear of anybody doing anything
13 like that?

14 A. I mean, I've heard of it, but not at that mines,
15 no. I've just heard people talking.

16 Q. Okay. Do you think the ventilation at this mine
17 was adequate?

18 A. From where I was working, yes.

19 Q. Okay. Did you have enough time to do everything
20 you needed to do?

21 A. Yeah.

22 Q. Okay.

23 A. Yes.

24 Q. To do all your pre-shifts and on-shifts?

25 A. Yes.

1 Q. Did anybody ever indicate that you shouldn't put
2 down any hazardous conditions in those pre-shifts or
3 on-shift books?

4 A. Never, no.

5 Q. Okay. What's the last hazardous condition you
6 recall putting in a pre-shift or on-shift book?

7 A. I would say probably water in the face, maybe.

8 Q. Okay. Did you ever put down someplace where you
9 had bolts with the heads snapped off, anything like
10 that?

11 A. No, I don't think so.

12 Q. Okay. Did you always have enough air?

13 A. Yeah.

14 Q. Okay. When you were cutting for overcasts or belt
15 channels out on the Ellis Portal, ---

16 A. Uh-huh (yes).

17 Q. --- do you recall which way the dust was moving
18 when they were cutting out there?

19 A. It was going back outby to the --- out the Ellis
20 Portal.

21 Q. Okay. Was it always going in that direction?

22 A. The best I can remember, yes.

23 Q. Okay.

24 MR. FARLEY:

25 Now, was that on every day you were

1 cutting overcasts and belt channels there or ---?

2 A. Yeah.

3 BY MR. SHERER:

4 Q. Okay.

5 A. I mean --- I mean, as far as I know, I mean --- I
6 mean, once you cut, I mean ---. I mean, if it come
7 out here and wouldn't go inby, I mean, I don't really
8 know, because I mean, it would be too dusty for you to
9 actually walk over there and see. I mean, it would
10 come over and then go out the Ellis Portal.

11 Q. Okay.

12 A. I mean, when we was cutting, we was --- you know,
13 everybody was mainly on, you know, the --- I guess you
14 would call that the inby side of the equipment.

15 Q. Okay. Do you recall taking air readings where you
16 were doing the cutting?

17 A. No, we never did air readings. They just told us
18 as long as we had --- as long as there was air flow,
19 it was a construction area.

20 Q. Okay. Who told you that?

21 A. The best I can remember, Gary May.

22 MR. SHERER:

23 Okay, okay. Thank you. That's all the
24 questions I've got for right now.

25 A. You're welcome.

1 EXAMINATION

2 BY MR. FARLEY:

3 Q. Can you take a marker and show me precisely where
4 you were cutting the belt channel on April 5th?

5 A. Well ---.

6 Q. Or the shift before.

7 A. On April the 5th we was cutting overcasts.

8 Q. Okay.

9 A. And I believe it was right here (indicating). I
10 guess that's the --- I don't know. I guess they call
11 that Number Two. I'm not sure if it was going left or
12 right or that way, but I believe right here was the
13 overcast, because it was right over the track.

14 Q. If you would, please, just draw a line out there
15 and put overcast or ---.

16 WITNESS COMPLIES

17 BY MR. FARLEY:

18 Q. And the date that you did it, if it was April 5th
19 or ---.

20 A. Yeah, we was working on it that day.

21 Q. Okay. Now, the continuous mining machine that you
22 used, where did it originate from? Where did it come
23 from? How did you get it there?

24 A. Well, I didn't have nothing to do with them
25 bringing the equipment in, but I mean, as far as I

1 know, they had brought it up this Number One entry
2 from the Ellis Portal, because I mean, there was the
3 buggies and the feeders and everything was up there
4 setting.

5 Q. All right. Now, would they have used the Number
6 One entry all the way?

7 A. Yes. There was stopping line right there between
8 One and Two.

9 Q. Okay. Now, is that a roof fall right there in
10 Number One entry?

11 A. No.

12 Q. Was there water there?

13 A. Yeah, it was water.

14 Q. Okay, all right. All right. Did you ever work in
15 the north part of the mine inby 78?

16 A. No, I never.

17 Q. Did you ever participate in any equipment moves
18 elsewhere in the mine?

19 A. No.

20 Q. Okay.

21 EXAMINATION

22 BY MS. MONFORTON:

23 Q. Mr. Baker, I just have a couple of follow-up
24 questions. Who was on your crew on April 5th? Do you
25 remember some of the guys?

1 A. Yeah, I think I can remember them. Danny Ferrell
2 and Bill Sullivan. That was the two miner men. Josh
3 Williams, Charlie Williams, Jeremy Reed.

4 MR. FARLEY:

5 I'm sorry. Jeremy ---?

6 A. Jeremy Reed.

7 MR. FARLEY:

8 Reed, excuse me.

9 A. And there was one more. I can't think of his
10 name.

11 BY MS. MONFORTON:

12 Q. Would Roger Toney ---?

13 A. Yes, Roger Toney.

14 Q. Roger? Okay.

15 A. And there's still one more, though.

16 Q. Okay. Who was the electrician?

17 A. Jeremy Reed was the electrician.

18 Q. And what equipment was on that section on April
19 5th?

20 A. I think there was two buggies. The feeder was up
21 there, but it wasn't in usage, just setting over out
22 of the way. It didn't have no power on it. The roof
23 bolters and the miners.

24 Q. Okay. Based on the training that you received on
25 using the SCSRs, ---

1 A. Uh-huh (yes).

2 Q. --- what did you learn in your training in terms
3 of when you're supposed to don the SCSR? How do you
4 know when to put it on?

5 A. When you get, I guess, bad gas readings or smoke.

6 Q. Would it be correct to say, then, that your crew
7 was waiting for you to instruct them to put on the
8 SCSR? Is that how you learned --- I mean, is that the
9 procedure you learned in the training?

10 A. No, that's not really procedures, I guess. I
11 guess they probably were waiting on me. I mean, like
12 I said earlier, I mean, I just --- I had that spotter
13 and I was constantly looking at it, and that's the
14 reason we didn't put them on. I mean, we had them,
15 you know, open and around our neck, you know, ready
16 to ---.

17 Q. Uh-hug (yes).

18 A. You know, that's all we had to do is stick it in
19 our mouth and ---

20 Q. Okay.

21 A. --- you know, activate it.

22 MS. MONFORTON:

23 Okay. Okay. Those are my only
24 questions.

25 EXAMINATION

1 BY ATTORNEY WILSON:

2 Q. Just to clarify a couple things, the area inby the
3 Ellis Switch that you've been talking about, where you
4 were working cutting overcasts and so forth, ---

5 A. Uh-huh (yes).

6 Q. --- do you recall approximately when you started
7 working in this area?

8 A. Are you talking about just in this general area
9 where we was at?

10 Q. Right, when you started doing rehabilitation work
11 in this area.

12 A. It was probably three or four weeks before the
13 explosion we started working in that area.

14 Q. Okay. And you've been working there pretty much
15 full time for the three or four weeks before ---

16 A. Yes.

17 Q. --- April 5th?

18 A. Uh-huh (yes).

19 Q. And you indicated that you were cutting an
20 overcast?

21 A. Yes, that's what we was doing the day of the
22 explosion.

23 Q. And then you'd also ---. Do you recall when you
24 built the stoppings that you've indicated on the map
25 here?

1 A. We did those --- I believe it was when we had
2 first, you know, went down there, so it was, I mean, I
3 guess three or four weeks before the explosion.

4 Q. So that was one of the first things you did?

5 A. Yeah, that's one of the first things we done.
6 Yes.

7 Q. Okay. Did you knock out any stoppings anywhere?

8 A. I believe there was some that were knocked out,
9 but I mean, we didn't do them. But I believe somebody
10 else had done some.

11 Q. And how would you know what was needed to be done?
12 So for example, you know, when cutting of the
13 overcast, you know, who told you that was required to
14 be done?

15 A. It was either Gary May or Wayne Persinger. They
16 was usually the ones that told me what to do every
17 day. Most --- mainly they would have, like, a small
18 map and this, and they would just have everything
19 marked on it, you know, like, you know, there needs to
20 be an overcast, you know, a belt head there, and
21 that's the way it was.

22 Q. Now, how often were Mr. May and Mr. Persinger
23 actually on the section there where you were doing the
24 work?

25 A. I never seen Gary May there, but I did see Wayne

1 Persinger. I mean, he was there, I mean, basically
2 every day, I mean, if he was on dayshift. I mean, if
3 he was on evening shift, he never ---. I think I
4 still might've seen him maybe once or twice when I was
5 working evening shift, but he was there that day.

6 Q. He was there on the 5th?

7 A. He was there on the day of the explosion, yes.

8 Q. Now, what about other upper management? Anyone
9 else ever present in this area?

10 A. No. I remember seeing Everett Hager. I mean, he
11 was down there one day, but I mean, he didn't really,
12 you know, come over to where we was working at.

13 Q. And just one other question. You indicated that
14 you had done a fire boss run up near Headgate 22; is
15 that right?

16 A. Yes.

17 Q. Do you recall what your observations were with
18 respect to the rock dusting of the area?

19 A. I mean, everything looked good. I mean, the belts
20 looked good and the rock dust looked good, but like
21 I'd say, I mean, I didn't actually fire boss that part
22 up there. There was three of us and we kind of, like,
23 did sections of the belts. Like, I would do this part
24 and the other guy would do that part, and it was the
25 other two guys that did the parts up there, and I did

1 --- I think this is ---. Is that Ellis Six Head right
2 there, I believe?

3 MR. SHERER:

4 Uh-huh (yes).

5 A. Okay. I did that part up to the next head on ---
6 I guess ---. I don't know if it's seven head or I
7 don't know how they're numbered.

8 MR. SHERER:

9 Okay.

10 BY ATTORNEY WILSON:

11 Q. And do you recall who the other two guys were?

12 A. It was Jack Martin and Brian Collins.

13 RE-EXAMINATION

14 BY MR. SHERER:

15 Q. Okay. I've got a few follow-ups. When you were
16 cutting those overcasts and belt channels, did you
17 have water on the miner?

18 A. Yes.

19 Q. Where'd you get that water from?

20 A. It was from the --- you know, the main water line
21 over up near the belts. They'd brought a pressure
22 pump up, and it was sitting right beside the track
23 and, you know, we had the line from the miner hooked
24 into the pressure pump.

25 Q. Okay. Do you know if the belt still had fire

1 suppression outby or inby where you tapped into?

2 A. Like, inby going towards ---?

3 Q. Yes.

4 A. As far as I know it did, yes.

5 Q. Okay. Do you think they still had fire
6 suppression outby?

7 A. At the time, as far as I knew they did.

8 Q. Okay. Do you recall who set that water system up
9 for you?

10 A. No, we'd went --- you know, we'd went underground
11 one day and it was already set up. I don't know who
12 had hooked it up.

13 Q. Okay. Did you have to open up any of the
14 equipment doors around this area to cut these
15 overcasts and belt channels?

16 A. No.

17 Q. Okay. Was there any motors and flat cars you guys
18 were using when you were doing that construction?

19 A. I mean, a lot of times there would be maybe two
20 guys if we'd needed something. Instead of them coming
21 in on the mantrip with us, they would, you know, bring
22 the motor and, I mean, whatever it was that we needed.
23 I think that the day of the explosion, two of the guys
24 had brought a motor with the grid for the belt head.

25 Q. Okay.

1 A. They had brought it in that day.

2 Q. Do you know who was running that motor?

3 A. It was Roger Toney and --- I don't recall who was
4 with him.

5 Q. Okay.

6 A. But Roger was, you know, the operator of the
7 motor. I do remember that.

8 MR. SHERER:

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

10 ATTORNEY WILSON:

11 Terry, any follow-up? Celeste?

12 MS. MONFORTON:

13 No.

14 ATTORNEY WILSON:

15 David, did you have anything?

16 ATTORNEY HARDY:

17 No, no. Thank you.

18 ATTORNEY WILSON:

19 Okay. Let's just a short, quick break.

20 We'll go off the record and then we'll come back and
21 finish up.

22 SHORT BREAK TAKEN

23 ATTORNEY WILSON:

24 We'll go back on the record. Erik?

25 BY MR. SHERER:

1 Q. You mentioned there was a motor and a flat car up
2 there. Do you recall where that motor was left when
3 you --- where that motor was parked when you left the
4 section?

5 A. I'm pretty sure the motor was --- it was sitting
6 right out where --- outby where we was cutting the
7 overcast. And the flat car was over on the other side
8 in the switch over this way. I think it was here,
9 isn't it? It was straight across. Like, the flat car
10 was over here and the motor was over here.

11 Q. Okay. And you're pretty sure about that?

12 A. The best I can remember, that's where it was.

13 Q. Okay. What if I told you that it was actually
14 parked in the area where the double doors were shown,
15 right by that overcast? The door was open. The motor
16 was parked up in that area.

17 A. Well, what if I said I might have marked that
18 wrong?

19 Q. Okay.

20 A. Okay. The motor --- I know the motor was next to
21 the door. I did mark this wrong. The motor was right
22 there in front of the doors and the overcast was on
23 the other side.

24 Q. Okay.

25 A. I marked that wrong. Do you want me to ---?

1 Q. Sure.

2 ATTORNEY WILSON:

3 Okay. Now, why don't we ---?

4 MS. MONFORTON:

5 Maybe mark it in ---.

6 ATTORNEY WILSON:

7 Why don't we do it in --- so it's

8 clear ---.

9 A. I'm actually glad you ---

10 ATTORNEY WILSON:

11 Yeah.

12 A. --- said that because ---.

13 ATTORNEY WILSON:

14 What you originally marked, you marked in

15 green, so let's mark now in blue ---

16 A. Okay.

17 ATTORNEY WILSON:

18 --- where you believe the overcast

19 actually was.

20 A. Okay. The overcast is the very next break inby

21 that.

22 BY MR. SHERER:

23 Q. Okay.

24 A. And then the motor was right on the other side of

25 the doors.

1 Q. Okay, okay. Now, when you were cutting, you said
2 that the dust and stuff was going out the Ellis
3 Switch.

4 A. Yes.

5 Q. Who arranged the ventilation in this area? Did
6 you or your people?

7 A. Yeah, me and, you know, my guys, you know, we did
8 it. We had hung curtains to where the --- so the dust
9 wouldn't, you know, come straight back on the miner
10 man. We had actually opened these two doors and had
11 the air or the dust to come and then go over and then
12 back out.

13 Q. Okay. So the doors were open?

14 A. Yes.

15 Q. Well, how'd you prop those doors open?

16 A. I think they just, you know, stayed open by
17 theirself.

18 Q. Okay.

19 A. But we had closed them, you know, after we were
20 done, before we had left that day, as far as I can
21 remember.

22 Q. Okay.

23 MR. FARLEY:

24 Now, that day meaning April 5th or
25 before?

1 A. April 5th, that same day.

2 BY MR. SHERER:

3 Q. Okay. And did anybody tell you how to ventilate
4 that particular area or ---?

5 A. No. I mean, that's the only way I could really
6 think of doing it, because I mean how the air was ---.
7 I mean, if we didn't, I mean, you wouldn't have been
8 able to see to really cut it, because the dust
9 would've just been going straight onto the miner man.
10 And the buggy man, he wouldn't have been able to see
11 to load the buggy.

12 Q. Okay. Now, you mentioned that, I think, it was
13 Mr. Persinger had a small map of this area.

14 A. Uh-huh (yes).

15 Q. Did he give you a copy of that map?

16 A. Yeah, I'm pretty sure he did.

17 Q. Okay. Do you know if that was part of an approved
18 plan?

19 A. I don't know.

20 Q. Okay.

21 RE-EXAMINATION

22 BY MR. FARLEY:

23 Q. Did you work in that same area the Saturday before
24 the explosion?

25 A. Not that Saturday, no. I was off.

1 Q. Okay. What about the Friday before?

2 A. Yeah, I'm pretty sure we was there Friday.

3 Q. Okay. Well, do you recall if there was anybody
4 else there on Saturday?

5 A. I believe there was some guys that worked on
6 Saturday that was from the other crew. I'm not sure
7 who it was. I mean, if I saw his face, I would know
8 him, but I can't remember their names. He was on the
9 other crew. He wasn't on my crew. I think there was
10 two of them.

11 Q. Okay.

12 A. They had come out and worked on dayshift on that
13 Saturday.

14 Q. Okay.

15 RE-EXAMINATION

16 BY MR. SHERER:

17 Q. Again, who told you how to do this in this area?

18 A. Where to cut or --?

19 Q. Where to cut and how to ventilate, if anybody?

20 A. Well, I mean, like I said, Wayne would give me the
21 map and just, you know, pretty much showed, you know,
22 where everything was at. And I mean, me and the miner
23 men and --- well, I had both the miner men there just,
24 you know, trying to figure out a way to do it, you
25 know, to keep them from, you know, eating all the

1 dust.

2 Q. Okay. Thank you.

3 A. You're welcome.

4 ATTORNEY WILSON:

5 Terry? Celeste, anything? Dave, did you

6 have any?

7 ATTORNEY HARDY:

8 No.

9 ATTORNEY WILSON:

10 Okay. Then Mr. Baker, on behalf of MSHA

11 and the Office of Miners' Health, Safety and Training,

12 I want to thank you for appearing today and answering

13 our questions. Your cooperation is important to the

14 investigation as we work to determine the cause of the

15 accident.

16 After questioning other witnesses, we may

17 call you if we have any follow-up questions, and if at

18 any time you have any additional information that you

19 would like to provide to us, please contact us either

20 directly or through Mr. Hardy at the information that

21 was provided to you. The letter does --- that we've

22 given to you does contain information concerning your

23 rights as a miner, and your statement here today is

24 considered protected activity. You can find

25 additional information concerning your rights under

1 the Mine Act at MSHA's website, which is www.msha.gov.
2 Before we finish, I do want to give you
3 an opportunity. If there's anything else that you
4 would like to add to the record, any information that
5 you think might be useful, any other people that you
6 think we should talk to or if you just have a
7 statement that you want to make, you can do that at
8 this time.

9 MR. FARLEY:

10 I'm sorry. I apologize. I would like to
11 ask one more question, if I may.

12 RE-EXAMINATION

13 BY MR. FARLEY

14 Q. Concerning the map in the area of the Ellis
15 Portal, ---

16 A. Uh-huh (yes).

17 Q. --- you know, we see arrows on the map indicating
18 airflow directions.

19 A. Right. Uh-huh (yes).

20 Q. Now, based on what you see in the area where you
21 were working outby toward the Ellis Portal, does this
22 map accurately reflect the direction of the airflow?

23 A. As far as I know, yes.

24 MR. FARLEY:

25 Okay, all right. Thank you. Sorry I

1 didn't get that sooner.

2 ATTORNEY WILSON:

3 Okay. Mr. Baker, is there anything else
4 that you wanted to add to the record?

5 A. There's nothing I can think of to, you know, to
6 add or ---. I'm sure you all probably either done
7 talked to everybody else or are going to talk to them,
8 so ---.

9 ATTORNEY WILSON:

10 Okay. Then again, I want to thank you
11 for your cooperation, and we'll go off the record.

12 * * * * *

13 STATEMENT UNDER OATH CONCLUDED AT 1:56 P.M.

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1 STATE OF WEST VIRGINIA)

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CERTIFICATE

I, Alison Salyards, a Notary Public in and
for the State of West Virginia, do hereby certify:
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on said
date and that the transcribed deposition of said
witness is a true record of the testimony given by
said witness;
That the proceeding is herein recorded fully
and accurately;
That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further that I
am not a relative of any attorney or counsel employed
by the parties hereto, or financially interested in
this action.



Alison Salyards