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Transcript of the Testimony of Owen Davis

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STATEMENT UNDER OATH
OF
OWEN DAVIS

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 Wednesday, September 1, 2010, beginning at 9:25 a.m.

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EXHIBIT PAGE

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DESCRIPTION

IDENTIFIED

One

Subpoena

8*

Two

Return of Service

And Subpoena

9*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is
5 September 1st, 2010. I'm with the Office of the
6 Solicitor, U.S. Department of Labor. With me is Erik
7 Sherer, an accident investigator with the Mine Safety
8 and Health Administration, MSHA, an agency of the
9 United States Department of Labor. Also present are
10 several people from the State of West Virginia. I ask
11 that they state their appearance for the record.

12 MR. FARLEY:

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

15 ATTORNEY KOERBER:

16 And I'm Barry Koerber with the --- I'm an
17 Assistant Attorney General assigned to represent the
18 West Virginia Office of Miners' Health, Safety and
19 Training.

20 MS. MONFORTON:

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

23 ATTORNEY BAXTER:

24 There are also several members of the
25 investigation team present in the room today. And Mr.

1 Sherer, Mr. Farley and Ms. Monforton will be
2 conducting the questioning today. Will you please
3 swear the witness in?

4 -----

5 OWEN DAVIS, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 -----

8 ATTORNEY KOERBER:

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

11 A. Owen Thomas Davis, D-A-V-I-S.

12 ATTORNEY KOERBER:

13 And would you please give us your address
14 and telephone number?

15 A. It's (b) (7)(C)

16 Cell number's (b) (7)(C)

17 ATTORNEY KOERBER:

18 Do you have an attorney with you here
19 today?

20 A. Yes, Mr. Hrko.

21 ATTORNEY KOERBER:

22 Okay. Sir, would you identify yourself
23 and your firm?

24 ATTORNEY HRKO:

25 Samuel Hrko, H-R-K-O. I'm with the Segal

1 Law Firm in --- at 810 Kanawha Boulevard, East,
2 Charleston, West Virginia.

3 ATTORNEY KOERBER:

4 Thanks. Okay. So Mr. Hrko, are you Mr.

5 Davis --- is Mr. Davis your client?

6 ATTORNEY HRKO:

7 Yes.

8 ATTORNEY KOERBER:

9 Mr. Davis, are you appearing here today
10 as a result of receiving a subpoena?

11 A. Yes.

12 ATTORNEY KOERBER:

13 This is a copy of the subpoena that I
14 would like to have marked as Exhibit One.

15 (B. Davis Exhibit One marked for
16 identification.)

17 ATTORNEY KOERBER:

18 And you can take a look at this ---

19 A. Okay.

20 ATTORNEY KOERBER:

21 --- compelling you here on September 1 at
22 9:00 a.m. And then you probably have not seen this.

23 This is the return of service filled out by the
24 Kanawha County Sheriff's Office, the gentleman who
25 served you on the ninth day of August at 10:04 a.m.

1 And attached to that is a copy of the same subpoena.

2 I'd like that to be Exhibit Two.

3 (B. Davis Exhibit Two marked for
4 identification.)

5 A. Yes.

6 ATTORNEY KOERBER:

7 Mr. Davis, the statute that authorizes

8 the Director to subpoena witnesses to interviews such
9 as this requires the Director to offer to each witness
10 subpoenaed a \$40 per day witness fee and mileage,
11 roundtrip from your home to here and back, so long as
12 you came in your personal vehicle, at the rate of 15
13 cents a mile plus reimbursement for any tolls that you
14 may have passed coming here or going back. In order
15 to receive that money, I have two forms that need to
16 be filled out, one of which is an IRS Form W-9, which
17 is a request for your Social Security number.

18 And it is my understanding that the \$40
19 witness fee is considered taxable income for which you
20 will receive a 1099 miscellaneous at some later date
21 and you'll have to report it on that --- on this
22 year's taxes when you file next spring. If you would
23 like to fill those forms out, we can do so after the
24 interview, or if you do not want to fill out the forms
25 and provide your Social Security number, you can

1 decline, but I need you to state your choice on the
2 record.

3 A. No, I'll fill them out.

4 ATTORNEY KOERBER:

5 Okay.

6 ATTORNEY HRKO:

7 Terry, before you get started --- I don't
8 want to interrupt here --- can I just ask and say one
9 thing on behalf of Mr. Davis? He's here today. He's
10 willing to answer your questions. As all of you know,
11 he's more than a fact witness in this case. He
12 suffered the loss of his son and he suffered problems
13 himself. As you'll find out, he was at the facility
14 on that day. Pursuant to, I guess statute and regs
15 and none of the fault of anyone here, he's in the dark
16 as to what happened, as maybe the investigative team
17 is, too, but he has that frustration, and I only ask
18 that all of you --- and I'm sure you will --- give him
19 a little leeway. If he needs a break ---

20 MR. SHERER:

21 Sure.

22 ATTORNEY HRKO:

23 --- and the letter that was handed to me
24 this morning indicates that. I just ask that you all
25 please take that into mind.

1 MR. SHERER:

2 Sure. No problem.

3 MS. MONFORTON:

4 Absolutely.

5 ATTORNEY KOERBER:

6 Anytime he wants a break, just say so and

7 we will immediately break and it will not be a
8 problem.

9 ATTORNEY HRKO:

10 Thank you very much.

11 ATTORNEY KOERBER:

12 I assure you of that.

13 MR. FARLEY:

14 Whenever you want.

15 MR. SHERER:

16 Can we go off the record for a minute?

17 OFF RECORD DISCUSSION

18 ATTORNEY BAXTER:

19 Okay. All members of the Mine Safety and

20 Health Accident Investigation Team and all members of

21 the State of West Virginia Accident Investigation Team

22 participating in the investigation of the Upper Big

23 Branch Mine explosion shall keep confidential all

24 information that is gathered from each witness who

25 provides a statement until the witness statements are

1 officially released. MSHA and the State of West
2 Virginia shall keep this information confidential so
3 that other ongoing enforcement activities are not
4 prejudiced or jeopardized by a premature release of
5 information. This confidentiality requirement shall
6 not preclude investigation team members from sharing
7 information with each other or with other law
8 enforcement officials. The team members'
9 participation in this interview constitutes their
10 agreement to keep this information confidential.

11 Government investigators and specialists

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

20 You may have your personal attorney

21 present during the taking of this statement or another
22 personal representative if MSHA has permitted it and
23 may consult with your attorney or the representative
24 at any time. You may request a break at any time.

25 Since this is not an adversarial proceeding, formal

1 Cross Examination will not be permitted. However,
2 your personal legal representative may ask clarifying
3 questions as appropriate.

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

20 A. Yes.

21 ATTORNEY BAXTER:

22 Do you have any questions?

23 A. No.

24 ATTORNEY BAXTER:

25 After the investigation is complete, MSHA

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

10 A court reporter will record your
11 interview. Please speak loudly and clearly. If you
12 do not understand a question asked, please ask us to
13 rephrase it. Please answer each question as fully as
14 you can, including any information you've learned from
15 someone else.

16 We'd like to thank you in advance for
17 your appearance here. We appreciate your assistance
18 in this investigation. Your cooperation is critical
19 in making the nation's mines safer.

20 After we have finished asking questions,
21 you'll have an opportunity to make a statement and
22 provide us with any other information that you believe
23 to be important. If at any time after the interview
24 you recall any additional information that you believe
25 might be useful, please contact or have your

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

12 MR. FARLEY:

13 Mr. Davis, on behalf of the Office of
14 Miners' Health, Safety and Training, I need to inform
15 you that the West Virginia State Mining Regulations
16 provide protection against discrimination for coal
17 miners who participate in these type interviews. I
18 want to pass along some contact information for the
19 West Virginia Board of Appeals, which hears complaints
20 from miners about discrimination.

21 Should you have any problems of that
22 nature, you should contact them immediately. Now, I
23 would caution you that should you have that kind of a
24 problem, you need to file a claim within 30 days.
25 Also, you have my business card there in case you need

1 to ask any questions. Thank you.

2 ATTORNEY BAXTER:

3 Please state your full name and address
4 for the record.

5 A. Owen Thomas Davis, (b) (7)(C) ,

6 (b) (7)(C) .

7 ATTORNEY BAXTER:

8 And earlier you were asked if you have a
9 personal legal representative with you here today.

10 A. I think I was when you come in.

11 ATTORNEY BAXTER:

12 Yeah. And can you indicate who it is,
13 please?

14 A. Sam Hrko.

15 ATTORNEY BAXTER:

16 Okay. Did you voluntarily choose to have
17 Mr. Hrko as your attorney?

18 A. Yes, I did.

19 ATTORNEY BAXTER:

20 Do you feel like you had a choice in the
21 matter?

22 A. A choice as far as what?

23 ATTORNEY BAXTER:

24 Did you feel you were pressured in any
25 way to pick Mr. Hrko?

1 A. No, I went to him.

2 ATTORNEY BAXTER:

3 Okay.

4 A. I picked him.

5 ATTORNEY BAXTER:

6 And do you consent now to having him as
7 your personal representative?

8 A. Yes, I do.

9 ATTORNEY BAXTER:

10 Do you understand that Massey Energy, its
11 affiliates or its officers or directors or attorneys
12 may not represent or direct you in this matter?

13 A. Not 'til now, which it really didn't matter,
14 because I've got somebody?

15 ATTORNEY BAXTER:

16 Okay. And Mr. Hrko, you indicated
17 earlier you are legally representing the witness here?

18 ATTORNEY HRKO:

19 Correct.

20 ATTORNEY BAXTER:

21 Do you understand that you may not
22 communicate with Massey Energy, its affiliates or its
23 officers or directors or attorney concerning the
24 substance of this representation regarding this
25 interview?

1 ATTORNEY HRKO:

2 Well, I understand that the contents of
3 this interview would be confidential.

4 ATTORNEY BAXTER:

5 Okay. And are you being paid by a third
6 party to provide this representation?

7 ATTORNEY HRKO:

8 No, sir.

9 ATTORNEY BAXTER:

10 Thank you.

11 ATTORNEY HRKO:

12 Now, caveat. I'm employed by the Segal
13 Law Firm, and asking me who pays me, the Segal Law
14 Firm is not, to my knowledge, being compensated by
15 anybody to represent Mr. Davis except him.

16 ATTORNEY BAXTER:

17 Okay. Very good.

18 EXAMINATION

19 BY MR. SHERER:

20 Q. Again, Mr. Davis, I want to express our sorrow in
21 the loss of your relatives. And we're very grateful
22 that you came in this morning, and we want to ask you
23 first some background questions. Then we want to ask
24 you to help us put together some of the things that
25 was going on on April the 5th. Roughly, how many

1 years of mining experience do you have?

2 A. Well, strip mining I've had around ten to eleven
3 years, and seven of those years was with Massey.

4 Q. Okay.

5 A. Five years was with Catenary Coal Company or Cabin
6 Creek.

7 Q. Uh-huh (yes).

8 A. Catenary laid me off, me and my son, both, because
9 I got him a job right out of high school. He went to
10 work with me because he wanted to make the money. And
11 then his Uncle Timmy, which was my brother, Timmy
12 Davis wanted him to come to work on the longwall,
13 where he was good with his hands and he loved to work.

14 Q. Sure.

15 A. So he went to work underground for Timmy, and
16 eventually he talked me into it. Come on, old man, go
17 with me. He said, I want you to go with me so I did.
18 I took my test, my class and my test and all, and I
19 started there. And underground, I was there probably
20 three months, maybe, before the accident happened.

21 Q. And that was your first underground?

22 A. Yes.

23 Q. What was your job description?

24 A. I started off on the production on the longwall as
25 pretty much a laborer, stocking cribs and building

1 stoppings and ---

2 Q. Sure.

3 A. --- just doing pretty much whatever they told me
4 to do. I said, then Timmy put me on the loader crew
5 or motor crew at nightshift. So I was on the motor
6 crew, delivering supplies and stuff to the longwall.
7 And then Timmy put me on the track crew and told me I
8 needed to learn how to lay the track. Then Timmy had
9 me set up, was going to do some headgate moves and
10 stuff, because we was getting close to being finished,
11 because I asked, so why you got me listed on
12 everything, Timmy?

13 He said, well, because, buddy, you can do it. He
14 said, I already got you listed. It's just --- I've
15 not showed no favoritism just because you're my
16 brother. You got to get it. So he just said he
17 wanted me to learn everything I could learn and put me
18 doing whatever he could make me do.

19 Q. Sure.

20 A. And that was the last job I was doing. I was
21 working on the track crew, putting the new --- putting
22 the track down with Ralph and Jackson.

23 Q. Okay. And you say you were working on the evening
24 shift?

25 A. I was dayshift.

1 Q. Oh, dayshift.

2 A. Uh-huh (yes). Me and Cory, Timmy, Josh, all of us
3 was on dayshift. And my understanding there, the way
4 it worked, that's just how it happened. They put us
5 all on dayshift except for Cody, my other nephew.
6 Because they was five Davises there, plus Josh. We
7 considered him a Davis. He didn't have much Napper in
8 him.

9 Q. Okay. Who's your boss? Who'd you report to?

10 A. I reported to --- well, nightshift it was Keith
11 Stanley.

12 Q. Uh-huh (yes).

13 A. And dayshift it was pretty much --- all I was with
14 during the daytime was Ralph.

15 Q. Okay. Ralph ---?

16 A. Ralph. I can't remember his name, just ---.

17 Q. Plumley?

18 A. Plumley, yeah.

19 Q. Okay. Where were you guys working on April the
20 5th?

21 A. We was laying a section of track going down that
22 miner section.

23 Q. To the tailgate miner section or the headgate?

24 A. I can't remember.

25 Q. Do you recall how many breaks that section was in?

1 A. Right offhand I can't.

2 Q. Okay. Was it a long way in or a short way?

3 A. Like, I was trying to think. Man, I pretty much
4 just shut it all out and ---

5 Q. Okay.

6 A. --- pretty much forgot it.

7 Q. Sure.

8 A. I remember going through a set of doors down
9 there, but I think --- I can't remember.

10 Q. Okay. That's fine. Do you recall anything that
11 was unusual that day prior to the explosion?

12 A. Just like I told Mr. McIntyre when we went up
13 there to see the president, air.

14 Q. Air. Ventilation?

15 A. We didn't have the ---. Before it felt like on
16 Thursday --- you wore your sweatshirt in. I actually
17 wore my sweatshirt for an hour or so until I got
18 warmed up.

19 Q. Sure.

20 A. Then I'd peel it.

21 Q. Uh-huh (yes).

22 A. But for some reason that day I didn't wear my
23 sweatshirt. It just wasn't ---. I didn't have that
24 --- the wind like we ---. I don't know, it was just
25 --- it was muggy.

1 Q. Okay.

2 A. It just didn't seem right. It wasn't the same.

3 Q. So you didn't think there was as much ventilation?

4 A. There wasn't as much, because the signs that are
5 in where we parked our cars, where we had our track
6 when we was laying tracks --- it was usually before,
7 like, on Thursday, you see the signs a-blowing.

8 Q. Uh-huh (yes).

9 A. Waving back and forth. And this day here they was
10 kind of still. They just --- the was just hanging
11 still. That was the main thing I remember, but like I
12 say, I didn't pay much attention to it, because
13 everybody else didn't pay much attention to it. We
14 went on doing what we was supposed to do.

15 Q. Sure. Now, did anybody on the crew have a methane
16 monitor?

17 A. It was just me, Jack and --- me and Ralph and
18 Jackson. I don't know.

19 Q. Do you recall if any sort of monitor or spotter
20 went off in alarm that day?

21 A. I never heard nothing.

22 Q. Okay.

23 A. Like I say, we laid track all day.

24 Q. Uh-huh (yes).

25 A. Never heard nothing.

1 Q. Okay. Let me ask you about the bigger picture.
2 You obviously worked on and around the longwall quite
3 a bit while you were there. What did you think about
4 the overall ventilation on the longwall?

5 A. Well, when we was over there taking down --- when
6 we would make power moves and stuff like that, it was
7 all right. I mean, you had plenty of --- there wasn't
8 nothing really going on. Now, prior to Thursday,
9 which I was on track crew probably a couple weeks, I
10 wasn't on longwall much other than taking something
11 over if somebody needed something or somebody forgot
12 something, because we always come in later. I'd tote
13 it over and carry it to them.

14 Q. Sure. When you were running the motor, do you
15 recall anything odd that you had to take in during
16 the ---

17 A. No.

18 Q. --- month or so prior to the ---?

19 A. No, we was taking in new fire suppression systems
20 for the --- like, when we was parking up and charging
21 the equipment, stuff like that where they had them
22 hanging. We was taking stuff like that in, but mainly
23 what we took was cribs and block.

24 Q. Okay. Just normal supplies.

25 A. And the old cars. Yeah, just normal stuff.

1 Q. Okay. What'd you think about the rock dust around
2 the headgate of the longwall?

3 A. Well, the whole time I was over there, I can only
4 remember one time that I actually figured they was
5 dusting, because it was coming all the way down to
6 where we were, where we was picking up and cleaning
7 and moving stuff and setting water pumps and what have
8 you, building some stoppings. But the dust and stuff
9 was coming where they was dusting, because some people
10 was complaining about it. Some people were telling
11 them, just, hey, don't worry about it. You're doing
12 what you're supposed to be doing.

13 Q. So one time you recall they were dusting. What
14 about when you came on the headgate? Did you ever
15 notice it'd been dusted in a shift prior to that?

16 A. Nope.

17 Q. Okay. What did the rock dust on average look
18 like? Was it clean and white or was it getting dirty
19 or was it getting black?

20 A. It was more black than anything, as far as I can
21 remember. I don't remember ever coming in and
22 actually seeing the light colored dust on the walls or
23 nothing.

24 Q. Okay. Did you have an occasion to go up this
25 connector between the two miner sections?

1 A. If I ain't mistaken, we was pulling the track ---.
2 As we was moving, we was pulling all the track after
3 we moved everything up and set it up after our power
4 moves and stuff, I'd go back and I'd deload the track
5 and everything. We'd pull the track and we'd take it
6 across, but as far as paying any attention, I don't
7 ---.

8 Q. Sure, sure. I understand. Did you have much
9 occasion to get back behind the face of the longwall
10 on the headgate?

11 A. No.

12 Q. Okay.

13 A. I don't think there ever was.

14 Q. Okay.

15 A. I mean the furthest I ever went was, like, the
16 last open break. And sometimes Timmy would take us
17 over, but if we was moving or stocking crib or
18 something, he'd take us over. I remember he took me
19 over once to let me see the longwall. And then on the
20 back side, I remember going in and setting some posts
21 on the tail end.

22 Q. Okay. Did you get up around the headgate where
23 these curtains were across the entries?

24 A. I can't remember.

25 Q. Okay. You mentioned you were on the tailgate.

1 Did you take the motor back down the tailgate side?

2 A. I think it was me and Jeff. I can't think of the
3 other fellow's name now. I have a problem
4 remembering. I can't remember his name.

5 Q. That's okay.

6 A. He talked all the time, all the time talked,
7 because I'd tune him out. That's probably why I don't
8 remember his name, because he talked a lot.

9 Q. I understand.

10 A. But what we did, we took the motor up and brought
11 the motor back down. We took the fork truck over and
12 we took some posts over, because they wanted some
13 additional post sets, so it was me and Jeff and I
14 can't remember. As I said, I can't remember his
15 name, ---

16 Q. That's okay.

17 A. --- but we went over and set some. But it was,
18 like, only twice that I was over, because we actually
19 had to go back and --- he's a boss, preacher, black
20 hair. He had a nickname.

21 Q. There's a lot of folks with nicknames.

22 A. I can't --- he preached my brother's funeral.

23 Q. I'll be darned.

24 A. I can't remember his name.

25 Q. That's okay. We don't need his name.

1 A. But we went over there once and --- because the
2 batteries went dead on the fork truck. We went over
3 and picked it up and brought it back. Like I said, I
4 was only over there twice, to set them, then to get
5 the fork truck.

6 Q. When you were over there, what did you think about
7 the rock dust on the tailgate?

8 A. I really didn't pay much attention.

9 Q. Okay.

10 A. Like I said, if I was there, we was there to get
11 in and get back out ---

12 Q. Okay, sure.

13 A. --- because the further I went, the lower it got,
14 and I told them, I said I wanted to scoot on back and
15 get ---

16 Q. Sure.

17 A. --- on down there and get what we did and get out.

18 Q. Sure. Was the floor heaving up?

19 A. Yeah, I remember looking --- now where we were,
20 but I could see back, you know, so far where you see,
21 and I could see the post that had trilled out and
22 broke, what have you.

23 Q. Okay. Do you recall if there was much air back
24 there when you went down through there?

25 A. I don't know if you --- like I said, I don't know.

1 I wasn't there, what, three months. I don't know what
2 you're calling good air. Good air for me is when I
3 see my signs a-blowing and ---

4 Q. Sure.

5 A. --- the ribbons a-waving, and bad air is when ---
6 or not so good is when you're not seeing anything
7 moving or you can't feel it in your face.

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

9 A. I really don't know.

10 Q. Okay. You guys were mainly pulling the track as
11 the mule train pulled up?

12 A. Yeah. Every time that they'd move the mule train
13 up, we'd go back and we'd pull the track and we'd
14 stack it up, pull it up. And then we'd load it up.
15 We'd either take it out or didn't. Whoever was
16 running the motor would take it over to where we was
17 laying track, because Ralph was always wanting track.

18 Q. Sure, uh-huh (yes). Now, we understand that there
19 was two new doors built on the headgate of the
20 longwall roughly a month prior to the explosion.

21 A. Uh-huh (yes).

22 Q. Do you recall those two new doors?

23 A. Yes.

24 Q. Did they have a opening on the side?

25 A. They had a opening on the left-hand side, going

1 in, had a big hole.

2 Q. Was that hole the way --- was it half way up?

3 A. Yeah, probably about a four-block stack, maybe.

4 Q. Uh-huh (yes).

5 A. And then I'm not sure after that as far if they
6 was any on that left-hand side or not.

7 Q. Did you notice if that hole either got bigger or
8 smaller?

9 A. No, I never really paid much attention to it.

10 Q. Okay.

11 A. Because --- well, I was the door guy.

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

13 A. I was going --- but anyway, when I'd go to open
14 them up, like I said, I noticed the hole, but I never
15 really paid much attention to it.

16 Q. Okay, sure. What about --- we understand there
17 was a lot of track doors going into and out of this
18 mine. Were those doors kept in good condition?

19 A. Well, some of them was and some of them wasn't.

20 Q. Okay.

21 A. It was like when you'd first start in over on the
22 UBB side and you'd come in, some of the doors over
23 there look like they'd been hit a couple times or
24 something's --- you know. Whether it was carrying
25 them in from dayshift to evening, nights, whatever,

1 they just hit the doors and some of them was pretty
2 ragged. Some of them was hard to shut.

3 Q. Uh-huh (yes).

4 A. But as far as closing-wise, they all still closed,
5 because I had to open them all and I had to close them
6 all.

7 Q. Okay. Did you ever come upon any of those doors
8 and find them open?

9 A. That one set of doors, like, two or three, two or
10 three in, every now and then if you didn't get it shut
11 just right, sometimes it would come open, but then
12 you'd turn around, you'd stop, you'd go back and you'd
13 shut them again.

14 Q. Sure, uh-huh (yes). Do you know if at shift
15 change crews would open the doors and then leave them
16 open for following crews to come through?

17 A. As far as I can tell, when we'd go in ---.
18 Mainly, like I said, we'd go in well after ---

19 Q. Okay.

20 A. --- some of the other ones. And it was usually
21 just us. Say, if we was carrying more than one car
22 of course, yeah, we'd leave them open, pull all the
23 way in, then shut them, ---

24 Q. Sure.

25 A. --- but never open the others to ---

1 Q. Okay.

2 A. --- go all the way through and then shut them, no.

3 Q. Okay. Thank you.

4 A. As far as other people, I can't account for what
5 they did or what they say. As far as me and what we
6 did, we never did.

7 Q. Okay, sure. Did you participate in any of the air
8 changes that went on on the headgate of the longwall?

9 A. If you're talking about building the stoppings,
10 yeah.

11 Q. Okay.

12 A. Yeah, we've built some stoppings up in there. Or
13 there over on the other side ---. Like I said, I
14 wasn't on longwall very much. I remember helping
15 build. Mainly I was the carryout guy.

16 Q. Okay. Got to do the ---

17 A. Yeah.

18 Q. --- hard work?

19 A. But as far as stacking and foaming or something
20 like that, no.

21 Q. Okay. We understand there was a set of doors near
22 this crossover. And we've also heard that these doors
23 were replaced with a stopping just a few days prior to
24 the explosion. Do you recall those particular doors?

25 A. I can remember doors down there. As far as being

1 replaced, I can't remember, because like I say, I was
2 over on the track crew.

3 Q. Okay.

4 A. I can remember the doors being down there, but for
5 some --- what break was it at? Do you have any idea?

6 Q. Yes, it's 25, 26, 27, 28 ---.

7 A. Because we used to stack ---

8 Q. Twenty-eight (28).

9 A. --- material. We used to stack material in this
10 area when we'd bring it down.

11 Q. Uh-huh (yes).

12 A. And I remember ---. I don't know if I remember
13 seeing a stopping built or not.

14 Q. Okay. Appreciate it. What did you think about
15 the overall ventilation in this mine?

16 A. Like I said, I'm a short-timer. When I went in, I
17 felt the wind. I know the wind was good. Like I
18 said, I didn't think much about it then. The only
19 time that I noted anything different was, like, on,
20 like, Thursday. I had Friday Saturday and Sunday off
21 because they give us Friday off, Saturday and Sunday.
22 It was kind of shocker, you know, but we took it.

23 Q. Sure.

24 A. And come Monday when we got in there, then I
25 noticed that there was a difference, but ---.

1 Q. Okay. And you indicated you didn't wear your
2 sweatshirt, I think, so the difference was less air?

3 A. It felt to me like it was, yeah.

4 Q. Okay.

5 A. It was more --- I don't know if you want to say
6 humid or nothing, but it was ---. Because the wind
7 would get you cold.

8 Q. Sure.

9 A. Especially if you're sweating.

10 A. And then I didn't wear it. Actually I rolled it
11 up and put it behind my head on the ride in and ---

12 Q. I hear you.

13 A. --- on the ride out.

14 Q. Sure. I think you mentioned that it felt muggier
15 to you.

16 A. Yeah, yeah. Just felt like I sweated a lot more
17 that day than the usual.

18 Q. Okay. When you were underground, did you ever
19 hear anybody on the mine phone or did anybody ever
20 come up to you and tell you that inspectors were on
21 the property or coming in?

22 A. I'd hear it every now and then or, you know, or
23 somewhere around us, not exactly, because I wasn't
24 around no mine phones or nothing.

25 Q. Okay, sure.

1 A. You know, if someone come walking by here or
2 something, they say mine inspectors are back here
3 fellows.

4 Q. Uh-huh (yes).

5 A. Stay right or something of that sort, you know.

6 Q. Sure.

7 A. Because like I said, I'm a short-timer. They kept
8 me ---. You just ---

9 Q. Sure.

10 A. --- do what you got to do.

11 MR. SHERER:

12 Uh-huh (yes), yep. That's all the
13 questions I've got for right now.

14 EXAMINATION

15 BY MR. FARLEY:

16 Q. My only thing is I don't think you recall exactly
17 where you were laying track on April 5th; is that
18 right?

19 A. Yeah. I have a hard time remembering, anyway. I
20 mean ---

21 Q. Now ---?

22 A. --- I had a bad year and this just topped it all
23 off and I kind of shunned stuff out, and sometimes I
24 remember real well; sometimes it takes me a little bit
25 and then I'll ---

1 Q. Sure. Now, ---

2 A. --- kind of gear up.

3 Q. --- were you with Plumley all day on the 5th?

4 A. Yeah, me, Plumley and Jackson.

5 Q. Jackson. What's Jackson's ---?

6 A. I don't know.

7 Q. Okay. Is that the last name?

8 A. I think so.

9 Q. Okay. But you were with Plumley all day? Okay.

10 A. Except for when we came out, we hopped a ride on
11 another mantrip. We was going to try to take one but
12 they caught us, so I ended up hopping a ride with
13 Jason Stanley's crew.

14 Q. Okay. All right.

15 A. That was the only time I was with anyone
16 different.

17 Q. Okay. Where'd you hop a ride with them on the way
18 out?

19 A. We pulled the --- we pulled ours up and we parked
20 it. We always kind of, like, left it for the fire
21 boss. And I was trying to get familiarized again to
22 whereabouts we was laying the track, but we'd park the
23 mantrip up for the fire boss, and we'd just hop a ride
24 with someone else on the way out. Kiplinger is
25 usually who we would ---. Kippy would give us a ride

1 out. So it was where Kiplinger was working. I can't
2 remember.

3 MR. FARLEY:

4 Okay.

5 RE-EXAMINATION

6 BY MR. SHERER:

7 Q. Okay. I got one additional question. You say you
8 got on the --- hopped a ride with Jason Stanley's
9 crew, and we understand he was pumping water way back
10 behind the wall that day. Do you recall if he was all
11 wet?

12 A. I didn't pay no mind.

13 Q. Okay.

14 A. But usually he was. Usually he was wet plum up on
15 his waist or --- Jason was always wet because he was
16 always bitching.

17 Q. Okay.

18 ATTORNEY HRKO:

19 What was his name?

20 MR. SHERER:

21 Jason Stanley.

22 ATTORNEY HRKO:

23 Okay.

24 BY MR SHERER:

25 Q. He's a good kid.

1 A. Yeah, real good kid.

2 Q. When you got on that ride with him, do you recall
3 any dust in the air or any fog in the air?

4 A. On the way out, yep, because we was giving Ralph a
5 hard time, because Ralph was driving. We was telling
6 him to hurry up, Ralph. Get on it. Let's get up out
7 of here. We don't know --- it was just nasty. Like,
8 it felt like I could taste it. I don't know. I told
9 him I was --- the dust, the dirt, whatever. I told
10 him, I said, hurry up. Let's get on up out of here.

11 Q. Sure. Now, we understand they were cutting some
12 overcasts and a belt channel out near the Ellis Portal
13 for that new longwall panel. Do you think the dust
14 was coming from that?

15 A. I don't know.

16 Q. Okay.

17 MR. SHERER:

18 Okay.

19 RE-EXAMINATION

20 BY MR. FARLEY:

21 Q. On April 5th --- now, let me make sure of
22 something --- were you laying track or were you
23 picking up track?

24 A. We was laying track. They had a miner section
25 down there and I can't remember what the miner section

1 --- what they was calling it. But like I said, all I
2 was interested in was laying the track. It was me and
3 Jackson. We was laying three break a day.

4 Q. Okay.

5 A. And then some --- and only thing we'd let Ralph
6 do, Ralph was pretty much just tightening the bolts,
7 because Ralph was an older gentleman.

8 Q. Sure.

9 A. Me and Jackson was toting the track, the stirrups,
10 the whole nine yards. We was doing it.

11 Q. Right.

12 A. And that's where we worked at all day long,
13 wherever that was that they was laying the track
14 toward the miner section.

15 MR. FARLEY:

16 Okay. Well, we got it.

17 MR. SHERER:

18 That's all the questions I got.

19 ATTORNEY BAXTER:

20 On behalf of MSHA and the Office of
21 Miners' Health, Safety and Training I want to thank
22 you for appearing and answering questions today. Your
23 cooperation is very important to the investigation as
24 we work to determine the cause of the accident. We
25 request you not discuss your testimony with any person

1 aside from your personal representative. After
2 questioning other witnesses, we may call you if we
3 have any follow-up questions.

4 If at any time you have additional
5 information regarding the accident that you'd like to
6 provide to us, please contact us at the contact
7 information that was previously provided to you. If
8 you wish, you may now go back over any answer you've
9 given during this interview. You may also make any
10 statement that you'd like to make at this time.

11 ATTORNEY HRKO:

12 Can I ask him a question on the record?

13 ATTORNEY BAXTER:

14 Sure.

15 MR. SHERER:

16 Sure.

17 ATTORNEY HRKO:

18 I thought ---. You understood the
19 answer, but I think the record was probably unclear.
20 Tommy, when you were asked the question whether or not
21 you had a methane monitor on that day, can you
22 re-answer that question?

23 A. I didn't have one.

24 ATTORNEY HRKO:

25 Did Ralph or Jackson?

1 A. I don't know about Ralph, but I know Jackson
2 didn't have one, either.

3 ATTORNEY HRKO:

4 Okay.

5 MR. SHERER:

6 Thank you.

7 ATTORNEY HRKO:

8 And is there anything you want to re-
9 answer or anything you want to clear up?

10 A. As far as I know, there's not.

11 ATTORNEY HRKO:

12 Can we go off the record ---

13 ATTORNEY AXTER:

14 Sure.

15 ATTORNEY HRKO:

16 --- for a second?

17 OFF RECORD DISCUSSION

18 RE-EXAMINATION

19 BY MR. SHERER:

20 Q. Okay. We just had a discussion about a cell phone
21 and a video associated with that cell phone, and would
22 you please describe that for the record, Mr. Davis?

23 A. Like I said, that once I was outside in my truck
24 after everything had went down, I took my phone as I
25 was by my truck, in my truck, away from everything,

1 and done some videos of the mine rescue efforts, of
2 the trucks pulling in and a short time after
3 everything happened. And I was just wanting to let
4 everyone know that it's out there that someone had
5 taken it in case it surfaced or somebody had some ---
6 I just don't want to be held or in trouble or whatever
7 over the cell phone videos.

8 Q. Okay. And where was that phone lost or where was
9 it missing?

10 A. Actually, it was on 219 up next to Snow Shoe.

11 Q. And about when did it go missing?

12 A. Two, three months ago.

13 Q. Okay.

14 A. Two months ago, so ---.

15 Q. And you were at a Freedom Fest?

16 A. Freedom Fest Bike Rally, yeah.

17 Q. Okay. Do you recall who was the service provider
18 for that phone?

19 A. AT&T.

20 Q. Do you recall the number of that phone?

21 A. (b) (7)(C) .

22 Q. Okay. Thank you.

23 MR. FARLEY:

24 And that's 304?

25 A. 304, yes.

1 ATTORNEY HRKO:

2 And I would ask that if anybody finds it

3 or whatever, at least to the extent allowed by law ---

4 MR. SHERER:

5 Sure.

6 ATTORNEY HRKO:

7 --- any other images or personal stuff

8 would be protected as best as can be.

9 MR. SHERER:

10 Yeah, if we can possibly find that phone,

11 we'll certainly get it back to you.

12 MR. FARLEY:

13 What did it look like?

14 A. Just like this (indicating).

15 MR. FARLEY:

16 Okay.

17 A. Outer box is on it, and cover shields.

18 MR. SEHRER:

19 Okay. What color was it?

20 A. White.

21 MR. SHERER:

22 Okay. Thank you.

23 A. White with a black cover.

24 MR. SHERER:

25 Okay.

1 ATTORNEY BAXTER:

2 Mr. Davis, did you notice anyone going
3 underground at that time, going back underground?

4 A. After the incident?

5 ATTORNEY BAXTER:

6 Uh-huh (yes).

7 A. Yeah. If I ain't mistaken, it was Jack Roles,
8 Everett and Blanchard, because I think those are the
9 ones that found the men on the mantrip and then sent
10 them outside. I'm wanting to say the guy's name was
11 (b) (7)(C) because actually I heard them say they found

12 (b) (7)(C) I thought it was my brother. And when they
13 came out, I seen the men stacked up on top of one
14 another. I ran to the mantrip, me and Cody, both.
15 Jack was there, and we started unloading them and
16 laying them out, checking, starting CPR and
17 everything.

18 MR. SHERER:

19 Sure.

20 A. And we found one that I think was working on ---
21 had a slight heartbeat. We got him loaded up in the
22 ambulance and we got him out, and the other guy was
23 setting and talking, (b) (7) (C) which was the one I thought
24 was my brother, but he was the one setting and
25 talking. Because when I heard his name, I thought,

1 well, if that's (b) (7)(C) that's my brother. He's got my
2 boy and my nephew.

3 MR. SHERER:

4 Sure.

5 A. But it didn't work out like that.

6 ATTORNEY HRKO:

7 Do you want to take a break?

8 A. No, I'm fine. I do this every day, every night.

9 ATTORNEY BAXTER:

10 I think that's all the questions we have.

11 Thank you. We appreciate you coming in and sharing
12 all this with us.

13 MR. SHERER:

14 Again, we're extremely sorry for this
15 whole thing. Personally I wish none of us was here.

16 * * * * *

17 STATEMENT UNDER OATH CONCLUDED AT 10:12 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