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**Transcript of the Testimony of Eric Martin**

**Date:** August 23, 2010

**Case:**

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STATEMENT UNDER OATH

OF

ERIC M. MARTIN

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 23, 2010, beginning at 3:53 p.m.

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I N D E X

1		
2	STATEMENT	
3	By Attorney Ferguson	5 - 6
4	STATEMENT	
5	By Mr. Farley	6 - 8
6	OPENING STATEMENT	
7	By Attorney Ferguson	8 - 11
8	WITNESS: ERIC M. MARTIN	
9	EXAMINATION	
10	By Mr. Sherer	11 - 25
11	RE-EXAMINATION	
12	By Mr. Farley	26 - 27
13	EXAMINATION	
14	By Ms. Monforton	27
15	CLOSING STATEMENT	
16	By Attorney Ferguson	27 - 28
17	CERTIFICATE	29
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBIT PAGE	
2		PAGE
3	NUMBER	DESCRIPTION IDENTIFIED
4	One	Subpoena 6*
5	Two	Return receipt 6*
6	Three	Map 28*

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* Exhibit not attached

P R O C E E D I N G S

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ATTORNEY FERGUSON:

My name is Dana Ferguson. Today is August 23rd. I'm with the Office of the Solicitor, U.S. Department of Labor. With me is Eric Sherer, accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the United States Department of Labor. Also present are several people from the State of West Virginia. I ask that they state their appearance for the record at this time.

MR. FARLEY:

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

MS. MONFORTON:

Mr. Martin, I'm Celeste Monforton, with the Governor's independent team.

ATTORNEY FERGUSON:

There may or may not be some other additional members of the MSHA Accident Investigation team or the West Virginia Team in and out of the room today, but there's nobody else present right now. Mr. Sherer, or Eric, will be conducting the questioning today. Would you like to go ahead and swear the witness?

1 -----

2 ERIC M. MARTIN, HAVING FIRST BEEN DULY SWORN,  
3 TESTIFIED AS FOLLOWS:

4 -----

5 ATTORNEY FERGUSON:

6 Terry.

7 MR. FARLEY:

8 Okay. Mr. Martin, I have a couple  
9 housekeeping duties here before we start. I'd like to  
10 show you a copy of a subpoena that was sent to you.  
11 Does that appear to be an accurate copy of the  
12 subpoena that you received?

13 A. Yes.

14 MR. FARLEY:

15 Okay. I'd like to enter that as Exhibit  
16 One.

17 (E. Martin Exhibit One marked for  
18 identification.)

19 MR. FARLEY:

20 Also, I have a certified mail and return  
21 service document signed by (b) (7)(C) . Is that  
22 someone in your family?

23 A. Yes. That's my father.

24 MR. FARLEY:

25 I'd enter that as Exhibit Two.

1 (E. Martin Exhibit Two marked for  
2 identification.)

3 MR. FARLEY:

4 Also while I'm on the subject here, I  
5 would inform you that the West Virginia office of  
6 Miners' Health, Safety and Training and the West  
7 Virginia Mine Health and Safety regulations provide  
8 protection against discrimination in the West Virginia  
9 Code, Chapter 22A, Article One, Section 22. In the  
10 event you should have any problems, I'll pass along  
11 some contact information for the West Virginia Board  
12 of Appeals. It's a body which hears complaints from  
13 miners concerning discrimination. Should you have a  
14 problem, you should contact the Board immediately. I  
15 would caution you that should you need to file a  
16 claim, you should do so within 30 days of whenever it  
17 happens.

18 A. Okay.

19 MR. FARLEY:

20 Also, I'm obligated under State law to  
21 offer you a \$40 witness fee. In order to receive that  
22 witness fee, you have to complete a couple documents  
23 and provide your Social Security number. I'm also  
24 obligated to offer you 15 cents per mile in expenses  
25 --- expense money for your trip here. Do you wish to

1 accept the witness fee and the mileage fee?

2 A. No.

3 MR. FARLEY:

4 Okay. Thank you very much.

5 ATTORNEY FERGUSON:

6 All members of the MSHA Investigation

7 Team and all members of the State of West Virginia

8 Accident Investigation Team participating in the

9 investigation of the Upper Big Branch Mine explosion

10 shall keep confidential all information that's

11 gathered from each witness who provides a statement

12 until the witness statements are officially released.

13 MSHA and the State of West Virginia shall keep this

14 information confidential so that other ongoing

15 enforcement activities are not prejudiced or

16 jeopardized by a premature release of information.

17 This confidentiality requirement shall not preclude

18 investigation team members from sharing information

19 with each other or with other law enforcement

20 officials. Your participation in this interview

21 constitutes your agreement to keep this information

22 confidential. Do you have any questions about that?

23 A. No.

24 ATTORNEY FERGUSON:

25 Government investigators and specialists

1 have been assigned to investigate the conditions,  
2 events and circumstances surrounding the fatalities  
3 that occurred at the Upper Big Branch Mine-South on  
4 April 5th, 2010. The investigation is being conducted  
5 by MSHA under Section 103(a) of the Federal Mine  
6 Safety and Health Act and the West Virginia Office of  
7 Miners' Health, Safety and Training. We appreciate  
8 your assistance in this investigation. Since this is  
9 not an adversarial proceeding, formal Cross  
10 Examination will not be permitted. However, you may  
11 ask clarifying questions as appropriate. Your  
12 identity and the content of this conversation will be  
13 made public at the conclusion of the interview process  
14 and may be included in the public report of the  
15 accident, unless you request that your identity remain  
16 confidential or your information would otherwise  
17 jeopardize a potential criminal investigation. If you  
18 request us to keep your identity confidential, we will  
19 do so to the extent permitted by law. That means that  
20 if a judge orders us to reveal your name or if another  
21 law requires us to reveal your name or if we need to  
22 reveal your name for other law enforcement purposes,  
23 we may have to do so. Also, there may be a need to  
24 use information you provide to us or other information  
25 we may ask you to provide in the future in other

1 investigations into and hearings about the explosion.

2 Do you understand this?

3 A. Yes.

4 ATTORNEY FERGUSON:

5 Do you have any questions?

6 A. No.

7 ATTORNEY FERGUSON:

8 After the investigation is complete, MSHA

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

18 A court reporter will record your  
19 interview. Please speak loudly and clearly. If you  
20 do not understand a question asked, please ask it to  
21 be rephrased. Please answer each question as fully as  
22 you can, including any information you have learned  
23 from someone else. We would like to thank you in  
24 advance for your appearance. We appreciate your  
25 assistance. Your cooperation is critical in making

1 the nation's mines safer.  
2 After we have finished asking questions,  
3 you will have an opportunity to make a statement and  
4 provide us with any other information you believe to  
5 be important. If at any time after the interview you  
6 recall any additional information you believe might be  
7 useful, please contact Norman Page at the telephone  
8 number or e-mail address provided to you in your  
9 letter. Do you have any questions before we get  
10 started?

11 A. No.

12 ATTORNEY FERGUSON:

13 Okay. Eric?

14 EXAMINATION

15 BY MR. SHERER:

16 Q. Thanks for coming down here this afternoon, Mr.  
17 Martin. We're looking into what happened with this  
18 explosion. We're looking at the conditions and the  
19 practices, and we're doing a physical investigation of  
20 the mine right now. We need to determine what  
21 happened for two reasons. First is the families and  
22 the friends and the co-workers of these 29 miners  
23 deserve to know what happened. And the second reason  
24 is we want to prevent this type of explosion from ever  
25 happening again. So any information you can share

1 with us would be greatly appreciated. Roughly how  
2 many years of mining experience do you have?

3 A. Two.

4 Q. Were they all with the Massey organization?

5 A. Yeah.

6 Q. Did you start out working for Massey or did you  
7 start out as a contractor?

8 A. Contractor.

9 Q. Which contractor was that?

10 A. David Stanley.

11 Q. Okay. How long did you work with David Stanley?

12 A. About a month.

13 Q. Okay. Have you worked at any --- prior to the  
14 explosion, have you worked at any mine other than UBB?

15 A. Yes.

16 Q. What mine was that?

17 A. White Queen, Marfork.

18 Q. White Queen. When did you start with UBB?

19 A. I believe it was April of 2009.

20 Q. Okay. So you had been there about a year when ---

21 A. Yeah.

22 Q. --- the explosion happened? Were you employed at  
23 UBB when the explosion occurred?

24 A. No.

25 Q. When had you left that employment at UBB?

1 A. It was the Friday before. The Friday before the  
2 explosion.

3 Q. Any particular reason for quitting at UBB?

4 A. I didn't quit. They just transferred me.

5 Q. Oh, okay. Where did they transfer you to?

6 A. Parker Peerless.

7 Q. Okay. That was quite good timing on your part.

8 A. Oh, yeah.

9 Q. Where did you work at UBB?

10 A. I worked on the barrier section, Four section, the  
11 first number Four section.

12 Q. Okay. Were you working there prior to being  
13 transferred to ---

14 A. No.

15 Q. --- the other mine?

16 A. No. We mined that out and then we started driving  
17 the tailgate panel.

18 Q. So you were working on the 22 Tailgate?

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

20 Q. Had you worked on the tailgate since they started  
21 turning the entries out?

22 A. Yes.

23 Q. Okay. Which shift did you work on the tailgate?

24 A. Midnight.

25 Q. Midnight. That's primarily a maintenance shift,

1 isn't it?

2 A. Yeah, and move crew.

3 Q. Okay. Move crew. What did you do?

4 A. Move crew of the belt.

5 Q. How often do you have to move that section up?

6 A. Once every two months, every three. Just depends.

7 Q. Okay. And you'd move up the feeder and the power?

8 A. And the belt line.

9 Q. And the belt line. Okay. What was the last shift  
10 you worked on that section prior to the explosion?

11 A. Thursday night. It's the 3rd, I think.

12 MS. MONFORTON:

13 The 1st.

14 BY MR. SHERER:

15 Q. The 1st.

16 A. April 1st.

17 Q. Okay. Do you recall anything unusual about that  
18 night?

19 A. No. Just a normal night.

20 Q. Just a normal night. Do you recall anybody  
21 talking about anything unusual?

22 A. No.

23 Q. Let's talk about the ventilation just a bit. What  
24 was the air like on that tailgate section?

25 A. Good. We had pretty good air up there ---

1 Q. Okay.

2 A. --- from what I --- from the time I was up there,  
3 we had pretty good air.

4 Q. Did you ever notice that the air would be greater  
5 in quantity maybe one shift to the next and did it  
6 fluctuate or was it pretty steady?

7 A. It was pretty steady.

8 Q. Okay. Was there a sign over the power center?

9 A. A what?

10 Q. A sign hung up.

11 A. High voltage.

12 Q. Okay. Did you ever notice if that high voltage  
13 sign would flap back and forth in the air?

14 A. Yes.

15 Q. Was it always flapping about the same amount?

16 A. Yes.

17 Q. Okay. Did you carry a methane detector?

18 A. No.

19 Q. Who on your crew had a methane detector?

20 A. My boss. He carried one.

21 Q. Did you ever notice that methane detector alarming  
22 or did he ever talk about encountering any methane?

23 A. No.

24 Q. Okay. Who was your boss?

25 A. Jason Thomas.

1 Q. Okay. So everything was pretty normal on that  
2 Thursday night. Did you guys get out on normal time?

3 A. Yeah. Yes.

4 Q. Okay. When you're going in and out of the mine,  
5 did you ever notice any of the equipment doors that  
6 were damaged?

7 A. No.

8 Q. Okay. They were all in good shape?

9 A. Uh-huh (yes).

10 Q. When you came up to those doors, were they always  
11 closed?

12 A. Yes.

13 Q. Okay. Never found any of them open?

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

15 Q. Do you get many inspectors on that hoot owl shift?

16 A. That night?

17 Q. Or any night.

18 A. Every now and then we'd get a few.

19 Q. Okay. When they were on the property, would  
20 somebody call in on the mine phone and let you know  
21 they were coming?

22 A. Well, on hoot owl they'd usually ride in with  
23 us, ---

24 Q. Oh, okay.

25 A. --- but no, we never had any come up --- just come

1 up on us. They would usually just ride in with us.

2 So we all knew about it.

3 Q. Okay. Sure. Now, when you were working on the  
4 section, did you notice at the end of the shift you  
5 seemed to be unusually tired or fatigued?

6 A. Nothing other than ordinary.

7 Q. Just hard work?

8 A. Yep.

9 Q. Any of your co-workers complain about unusual  
10 fatigue or headaches?

11 A. No.

12 Q. Okay. Did you notice any strange smells while you  
13 were working on that section, ---

14 A. No.

15 Q. --- petroleum-like or kerosene-like smells?

16 A. No.

17 ATTORNEY FERGUSON:

18 And by that section, Eric, do you mean  
19 the tailgate section?

20 MR. SHERER:

21 Yeah. Uh-huh (yes). Sure.

22 BY MR. SHERER:

23 Q. Do you think the ventilation was adequate in this  
24 mine?

25 A. Yes.

1 Q. Okay. Have you got any personal opinion on what  
2 caused this explosion?

3 A. No. I have no idea. I wouldn't have a clue. I  
4 figured it was somewhere around the longwall myself,  
5 but that's just a guess.

6 Q. Any particular reason for guessing it's around the  
7 longwall?

8 A. No.

9 Q. Okay. Did you ever hear of anybody talking about  
10 problems with water back behind the longwall?

11 A. Yes.

12 Q. Tell us what you know about that, please.

13 A. I don't know a whole lot about it, but I just ---  
14 I know that there was a lot of water. I'm not even  
15 sure of where on the map, but I just --- I know there  
16 was because they always talked having to take them big  
17 pumps and set the pumps and how they'd come out  
18 soaking wet.

19 Q. Did you ever see anybody come out all wet?

20 A. Oh, yeah.

21 Q. How high would the water be on them?

22 A. They had waders, a couple pair of waders that they  
23 would wear. A few times they'd come out with their  
24 pants just soaked from the waist down.

25 Q. Yeah. Okay. Did you ever hear of the air being

1 reversed on this tailgate section?

2 A. No.

3 Q. Did you have too much air coming up the belt line?

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

5 Q. Okay. Now, we understand that things had changed  
6 around quite a bit in the month or so prior to the  
7 explosion as far as the direction the belts went and  
8 the direction you got onto the section and everything.  
9 Do you recall the changes that took place near the  
10 mouth of the section?

11 A. With the belts?

12 Q. With the belts and ventilation and the track, I  
13 understand.

14 A. We was taking this track here. Let's see. We was  
15 right here at the Glory Hole Switch, that's what we  
16 called it, and we'd take the track to right here, and  
17 then there was a set of doors --- let's see. Yeah,  
18 right there was a set of doors.

19 Q. Okay. I'm going to try to help you out here. You  
20 said you took the track up the headgate of the  
21 longwall.

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

23 Q. That's for the record, so that somebody that reads  
24 it later on will know ---

25 A. Yeah.

1 Q. --- what we're talking about. So you took the  
2 track up the headgate of the longwall and you went  
3 through some double doors?

4 A. Well, we didn't take the mantrip through them  
5 because the mule train would come back this way for  
6 the longwall, and then we'd just walk ---.

7 Q. Okay.

8 A. Of course, you know, it wasn't a real long walk.  
9 But once the mule train for the longwall come back so  
10 far, we couldn't take the mantrip because it would  
11 have been in violation, 500 foot.

12 Q. Sure.

13 A. So we started --- right here at the Glory Hole  
14 Switch, we'd just go straight up and go up by the  
15 Glory Hole and come back down here. I'm not sure what  
16 it's called, really.

17 Q. Okay. So you'd go up to what we're calling the  
18 Seven North mains or the North Glory mains ---

19 A. Yes.

20 Q. --- and basically turned down at the mouth of the  
21 22 Headgate section?

22 A. Yes. And then there was a fall ---.

23 Q. This right here.

24 A. Yeah. There was a fall right there. And they had  
25 to shoot that out and clean it up, and we just tramped

1       overtop of it. The tractor tramped over top of it,  
2       and we put the track in behind the belt line. We was  
3       going to take it up the belt line, our section belt  
4       line.

5       Q. Okay.

6       A. But we hadn't even got that far whenever the  
7       explosion happened.

8       Q. About where would you park the mantrip at?

9       A. About probably two, three breaks inby the fall  
10      right there. About right in there somewhere.

11      Q. And you're pointing to what we call the crossover  
12      between the two ---

13      A. Yes.

14      Q. --- the 22 sections? Okay. That last shift, when  
15      you got off the mantrip and went on the section or  
16      when you were coming back off the section, do you  
17      recall any chargers out near the mouth of the section?

18      A. Yes.

19      Q. Where were those, please, the battery chargers?

20      A. For the scoop?

21      Q. Yeah, or anything else.

22      A. There was a forklift charger. I think there was a  
23      power center sitting right here on the section.

24      MR. SHERER:

25      Give me a marker.

1 BY MR. SHERER:

2 Q. I'll get you to mark where these things are.

3 A. Okay. Let's see here. There's a belt head.

4 Q. Right there is a belt head.

5 A. There's a power center right here. You want me to  
6 write PC or ---?

7 Q. Yeah, just make a mark and --- yeah, that's fine.

8 A. Power center. And then there was a forklift  
9 charger directly behind that's still in this  
10 break-through right here.

11 Q. Okay.

12 A. There's a forklift charger.

13 Q. Okay.

14 A. And then you go through these two doors here and  
15 you go on through these two, there's a charger here  
16 and a charger here.

17 Q. Okay. Those two chargers are ---?

18 A. Scoop chargers.

19 Q. Those are both scoop chargers?

20 A. Yes.

21 Q. Do you have two scoops on the section?

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

23 Q. Okay. Would you ever charge --- put a charge on  
24 the mantrip while it was sitting up there?

25 A. Up here?

1 Q. Yeah.

2 A. No.

3 Q. Okay. So you didn't have a charger for the  
4 mantrip?

5 A. No, not up here. There was one right here, over  
6 here near the Glory Hole Switch.

7 Q. Okay. Could you mark that, please?

8 A. I don't remember exactly which break. I know it  
9 was one of these in through here.

10 Q. Just draw a big circle that takes in all of those  
11 places.

12 A. The charger was in one of those breaks.

13 MS. MONFORTON:

14 Just mark out here for the charger,  
15 mantrip charger.

16 ATTORNEY FERGUSON:

17 We won't remember later.

18 MR. SHERER:

19 Yeah. We need all the help we can get.

20 ATTORNEY FERGUSON:

21 Thank you.

22 BY MR. SHERER:

23 Q. Thank you. Did you ever have to take the mantrip  
24 back down there to charge it up?

25 A. No.

1 Q. Who used that charger down there?

2 A. Mostly the supply crews to bring motors in because  
3 they'd haul a lot to the longwall and stuff and then  
4 they'd put their motors on charge. We never used them  
5 for mantrips unless, you know, we was running from  
6 section to section and whatever.

7 Q. Yeah, picking up parts or whatever.

8 A. Yeah, just --- we never really used them but over  
9 there just in case.

10 Q. Okay.

11 A. I was at the longwall.

12 Q. Okay. Sure. Thank you. Did you ever have any  
13 occasion to walk the belt line?

14 A. Yeah. We'd check rollers and shovel belt and just  
15 stuff like that. I know one time me and a red hat,  
16 we --- there was a --- when we was doing the section  
17 move, before we even started running, there was a  
18 lifeline going down this belt line, and we had to go  
19 down and take it all down and then we had to hang it  
20 over in the track entry.

21 Q. Okay. What condition was that belt in the last  
22 shift or two you worked?

23 A. It was in pretty good shape. We kept up with it.

24 Q. What about rock dust on the belt?

25 A. Oh, we had a lot of dust.

1 Q. A lot of rock dust?

2 A. Yes, a lot of rock dust.

3 Q. Was there any float coal dust on top of the rock  
4 dust?

5 A. Not that I can remember.

6 Q. Okay.

7 A. Usually about once or twice a week we'd, you know,  
8 spot shovel our section belt and --- or our Two belt  
9 and we'd shovel it and dust it, rock dust it pretty  
10 good.

11 Q. Okay.

12 A. So we kept up with it pretty good.

13 Q. Good.

14 MR. SHERER:

15 That's all the questions I've got. Thank  
16 you.

17 ATTORNEY FERGUSON:

18 I just want to clarify for the record  
19 before we forget that the belt line --- the witness  
20 was discussing the belt lines in the crossover.

21 MR. SHERER:

22 Uh-huh (yes).

23 ATTORNEY FERGUSON:

24 Thank you.

25 EXAMINATION

1 BY MR. FARLEY:

2 Q. Were you aware of any explosives stored someplace  
3 in this crossover while you were working on 22  
4 Tailgate?

5 A. Stored, no. But like I said before, they --- in  
6 this crossover where the fall was, they had to shoot  
7 --- I think there was a big, ginormous rock that they  
8 had to shoot out. That was the only explosives I know  
9 of.

10 Q. When did they shoot that fall?

11 A. A date? I'm not even sure.

12 Q. 2010?

13 A. Yeah. Yeah, it was 2010.

14 Q. January or February?

15 A. I'd say March.

16 Q. Okay. All right.

17 A. But as far as being stored, after they shot it  
18 out, I'm not --- I'm not sure.

19 Q. I think Eric asked you how long you worked as a  
20 contractor. How long were you a contractor before you  
21 became a member, as they call it?

22 A. About a month.

23 Q. Okay. What are you doing at Parker Peerless now?

24 A. I run a scoop on production.

25 Q. Okay. Is that a better situation for you there?

1 A. Yeah. I like it better. I was on move crew for a  
2 year-and-a-half. Time for a change.

3 Q. Okay.

4 EXAMINATION

5 BY MS. MONFORTON:

6 Q. Mr. Martin, where did you have your 80 hours of  
7 training?

8 A. Out here. I don't even remember the name of it.  
9 I'm not even sure of the name of it. Mountain State  
10 maybe. Mountaineer, something like that. Burge  
11 Spillman.

12 MR. FARLEY:

13 Mountaineer Mine Safety, something like  
14 that?

15 A. Yeah.

16 A. Burge Spillman taught it.

17 OFF RECORD DISCUSSION

18 MS. MONFORTON:

19 My only question.

20 MR. SHERER:

21 I don't have any.

22 ATTORNEY FERGUSON:

23 Mr. Martin, on behalf of MSHA and the  
24 Office of Miners' Health, Safety and Training, I want  
25 to thank you for appearing and answering questions

1       today. Your cooperation is very important to the  
2       investigation as we work to determine the cause of the  
3       accident. We request that you not discuss your  
4       testimony with any person aside from a personal  
5       representative. After questioning other witnesses, we  
6       may call you if we have any follow-up questions. If  
7       at any time you have additional information regarding  
8       the accident you'd like to provide to us, please  
9       contact us at the information provided to you. If you  
10      wish, you may go back over any answer you've given to  
11      make any corrections or you may also make a statement  
12      that you would like to make at this time. Do you have  
13      anything?

14      A. No.

15      ATTORNEY FERGUSON:

16      Thank you very much for coming in.

17      MR. SHERER:

18      Thanks, Mr. Martin.

19      ATTORNEY FERGUSON:

20      And let the record reflect the map is

21      marked as Eric Martin Three.

22      (E. Martin Exhibit Three marked for  
23      identification.)

24                                   \* \* \* \* \*

25                                   STATEMENT UNDER OATH CONCLUDED AT 4:19 P.M.

1 STATE OF WEST VIRGINIA )

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CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20

21



22

*Alison Salyards*

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