

0001

1 STATEMENT UNDER OATH
2 OF
3 FRANKLIN THOMAS, II

4
5
6 Taken pursuant to Notice by Miranda
7 D. Elkins, a Court Reporter and
8 Notary Public in and for the State of
9 West Virginia, at the U.S. Bankruptcy
10 Court, 324 West Main Street,
11 Clarksburg, West Virginia, on Monday,
12 March 27, 2006, at 1:03 p.m.

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1 A P P E A R A N C E S

2
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11
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14 State of West Virginia
15 Office of Miners' Health,
16 Safety & Training
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18 Oak Hill, WV 25901

19
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21 1507 Stonehenge Road
22 Charleston, WV 25214

23
24
25

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1 A P P E A R A N C E S (continued)

2
3 ROBERT S. WILSON, ESQUIRE

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5 Office of the Regional Solicitor
6 1100 Wilson Boulevard
7 22nd Floor West
8 Arlington, VA 22209-2247
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1 P R O C E E D I N G S

2 -----
3 MR. SWENTOSKY:
4 My name is Dennis
5 Swentosky. I am an accident
6 investigator with the Mine
7 Safety & Health
8 Administration, an agency of
9 the United States Department
10 of Labor. With me is Bob
11 Wilson from the Solicitor's
12 Office, Mike Rutledge and Dave
13 Stuart with the West Virginia
14 Office of Miners' Health,
15 Safety & Training.
16 I've been assigned to
17 conduct an investigation into
18 the accident that occurred at
19 the Sago Mine on January 2nd,
20 2006, in which 12 miners died
21 and one was injured. The
22 investigation is being
23 conducted by MSHA and the West
24 Virginia Office of Miners'
25 Health, Safety & Training to

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1 gather information to
2 determine the cause of the
3 accident, and these interviews
4 are an important part of that
5 investigation.
6 At this time, the
7 accident investigation team
8 intends to interview a number
9 of people to discuss anything
10 that may be relevant to the
11 cause of the accident. After
12 the investigation is
13 completed, MSHA will issue a

14 written report detailing the
15 nature and causes of the
16 accident.
17 MSHA accident reports
18 are made available to the
19 public in the hope that
20 greater awareness about the
21 causes of accidents can reduce
22 their occurrence in the
23 future. Information obtained
24 through witness interviews is
25 frequently included in these

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1 reports. Your statement may
2 also be used in other
3 enforcement proceedings.
4 I would like to thank
5 you in advance for your
6 appearance here today. We
7 appreciate your assistance in
8 this investigation.
9 This interview with Mr.
10 Frank Thomas is being
11 conducted under Section 103(a)
12 of the Federal Mine Health &
13 Safety Act of 1977 as part of
14 an investigation by the Mine
15 Safety and Health
16 Administration and the West
17 Virginia Office of Miners'
18 Health, Safety & Training into
19 the conditions, events and
20 circumstances surrounding the
21 fatalities that occurred at
22 the Sago Mine owned by
23 International Coal Group in
24 Buckhannon, West Virginia, on
25 January 2nd, 2006.

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1 This interview is being
2 conducted at the United States
3 Bankruptcy Courthouse in
4 Clarksburg, West Virginia on
5 March 27th, 2006.
6 Questioning will be
7 conducted by representatives
8 of MSHA and the Office of
9 Miners' Health, Safety &
10 Training.
11 Mr. Thomas, this
12 interview will begin by me
13 asking you a series of
14 questions. If you do not
15 understand a question, please
16 ask me to rephrase it. Feel
17 free at any time to clarify
18 any statements that you make

19 in response to the questions.
20 After we have finished asking
21 questions, you will also have
22 an opportunity to make a
23 statement to provide us with
24 any other information that you
25 believe may be important.

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1 If at any time after
2 the interview you recall any
3 additional information that
4 you believe may be useful in
5 the investigation, please
6 contact Richard Gates at the
7 phone number and e-mail
8 address provided to you. And
9 we'll have that for you.
10 Your statement is
11 completely voluntary. You may
12 refuse to answer any question
13 and you may terminate the
14 interview at any time. If you
15 need a break at any time, for
16 any reason, just let me know.
17 The court reporter will
18 record your interview and will
19 later produce a written
20 transcript of the interview.
21 Please try to respond to all
22 questions verbally, since the
23 court reporter cannot record
24 nonverbal responses. Also,
25 please try to keep your voice

0011

1 up. Copies of the written
2 transcripts will be available
3 at a later date.
4 If any part of your
5 statement is based not on your
6 own firsthand knowledge, but
7 on information that you
8 learned from someone else,
9 please let us know. Please
10 answer each question as fully
11 as you can, including any
12 information that you have
13 learned from someone else. We
14 may not ask the right question
15 to learn the information that
16 you have, so do not feel
17 limited by the precise
18 question asked. If you have
19 information about a subject
20 area of a question, please
21 provide us with that
22 information.
23 At this time, Mr.

24 Rutledge, do you have anything
25 that you would like to add on

0012

1 behalf of the Office of
2 Miners' Health, Safety &
3 Training?

4 MR. RUTLEDGE:

5 Mr. Thomas, I have a
6 little statement here. That
7 the Office of Miners' Health,
8 Safety & Training is
9 conducting these interview
10 sessions jointly with MSHA,
11 and we are in agreement with
12 the procedures outlined by Mr.
13 Swentosky for the interview
14 we're going to do here today.
15 However, the Director of the
16 Office of Miners' Health,
17 Safety & Training reserves the
18 right, if necessary, to call
19 or subpoena witnesses or
20 require the production of any
21 record, document, photograph
22 or other relevant materials
23 necessary to conduct this
24 investigation.

25 We appreciate you being

0013

1 here. And we thank you for
2 your time. If you have any
3 questions concerning the State
4 part of this, you can contact
5 Mr. Mills at the numbers
6 there.

7 MR. THOMAS:

8 Okay.

9 MR. SWENTOSKY:

10 Could you swear in Mr.

11 Thomas, please.

12

13 -----
14 FRANKLIN THOMAS, II, HAVING FIRST
15 BEEN DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17

18 BY MR. SWENTOSKY:

19 Q. Mr. Thomas, could you give us
20 your full name and spell your last
21 name for us, please?

22 A. Franklin Delano Thomas, II,
23 T-H-O-M-A-S.

24 Q. And could you provide us with
25 your address and telephone number,
please?

0014

1 A. [REDACTED]

2 [REDACTED]

3

4

5

Q. And are you appearing here today voluntarily?

6

7

A. Yes, sir.

8

9

Q. And how long have you worked for MSHA?

10

A. Three years.

11

12

Q. And how long have you been a member of the mine rescue emergency unit?

13

14

A. A little over two years.

15

16

Q. And what is your position on that team?

17

A. On the team?

18

Q. Yes, sir.

19

20

A. Wear apparatus, use the unit when I have to go in hazardous conditions.

21

22

Q. And what field office do you work out of?

23

24

A. Morgantown, District Three.

25

0015

Q. And your position in that

1

office?

2

A. Electrical inspector.

3

4

Q. And how were you notified of the explosion?

5

6

A. I had received a telephone call from Jeff Kravitz around 11 o'clock a.m. the morning of.

7

8

Q. And that would be January ---.

9

A. January 2nd.

10

11

Q. 2006. And you say Mr. Kravitz notified you?

12

A. Yes.

13

14

Q. And you say --- at what time was that again?

15

16

A. Around 11 o'clock, 11:30, in that area.

17

18

19

Q. And if you just would start after your notification and just kind of go through, you know, your activities and what you did and where you went, and traveling to the mine and then what you did at the mine until the time you left.

20

21

22

23

A. Okay. When I received the phone call, I told my wife and my

24

25

0016

1

family what I had to do, and asked

2

her to pack up my clothes and things

3

while I went to Morgantown and got

4

all --- got my vehicle and my gear

5

from the office. And I'd meet her on

6

the way back through to get that

7

stuff off of her. So I left the

8 house, went to the office, got my
9 vehicle, my gear, headed back ---
10 then I started heading toward
11 Buckhannon. I stopped off in
12 Fairmont and got my work clothes and
13 a change of clothes for the days to
14 come. Went on down to Sago Mine. I
15 believe I arrived there one o'clock.
16 Myself and Jan Lyall were the
17 only two there from the MSHA team at
18 that point in time, so we had no one
19 to --- our leaders weren't there, so
20 we had no one to tell who was there.
21 So we found, I believe it was Carlos
22 Mosley and told him we was there, and
23 he said to just wait until your team
24 --- supervisor shows up, and he'll
25 get you squared away. So while we

0017

1 was waiting, Virgil shows up with our
2 truck that has all of our equipment,
3 gear and stuff in it, and we helped
4 him get it parked and wired up to the
5 pole.

6 From that point on, we were to
7 just wait until we got further orders
8 to go underground. Around 5:30, I
9 believe it was, we got the order to
10 go underground. I was on the first
11 team to go in. I was with the
12 Robinson Run team, mine rescue team,
13 and we were to go in the intake, go
14 through the fan housing and walk that
15 way, because they believed --- they
16 thought there was water in the way of
17 the track entry, somewhere in there.
18 So we walked the intake, let's see,
19 to the head drive of Number Three
20 belt, and that's where we come out
21 onto the track.

22 We received instructions to
23 wait there, because another team was
24 coming in the track entry, they was
25 going to try to power up a pump to

0018

1 pump water in the track entry. So we
2 waited there until they got the power
3 on, or got the pump running, which
4 was probably, let's say, 20 minutes
5 to a half an hour. Finally that team
6 shows up. That team was to stay
7 there as our backup and we were to
8 advance. We were to advance every
9 500 feet and tie everything in
10 straight across all the headings.

11 We did so until we got to ---
12 we was Nine block on Four belt, and

13 that's when they --- they asked us to
14 come out. The team I was on, they
15 asked us to come outside. So we came
16 outside. At this point in time, I
17 can't remember if our backup team
18 came with us or not. I apologize for
19 that. We come outside, and that
20 pretty much is the end of my shift.
21 There was no debriefing. I
22 went to the hotel --- well, I got
23 information where my hotel was
24 supposed to be at. So I went to the
25 hotel, I checked in. And we were

0019

1 supposed to be back at the mine the
2 next day at --- I want to say two
3 o'clock. I believe it was two
4 o'clock, because we were going to be
5 working the afternoon shift, to show
6 up two hours early, before four
7 o'clock.
8 So we got to the mine, we got
9 briefed to go underground, and there
10 was --- and backup the Bailey team.
11 The Bailey team was in there, and
12 their backup team was --- their units
13 had been --- were expired. They had
14 to come out and get refilled. So we
15 traveled up to the mouth of Two Left
16 --- well, I'm --- back up. The mouth
17 of One Left, we get out of our
18 vehicle, we're instructed to go over
19 into the adjacent entry, which would
20 have been in the intake and walk up
21 to 56 block. We get to 56 block,
22 Bailey's team is there, and their
23 instructions were to go into Two Left
24 and explore.
25 They set off, and they went up

0020

1 into Two Left. And I believe they
2 made it as far as 19 block when the
3 communication started getting
4 raggedy, and they told them to come
5 out, back out to the fresh air base.
6 They get to the fresh air base, their
7 units are expired, so they're going
8 to have to go out and a new team is
9 going to have to come in.
10 So we wait for Bailey's team
11 to go home --- or go outside and a
12 new team come in, which I believe was
13 the Shumaker team. Just for
14 verification, I was with the
15 Tri-State team. They wanted us to
16 stay as backup, and they wanted to
17 send Shumaker's team in to tie-in

18 everything up to 19 block, I believe
19 it was. I also want you to put in
20 there, whenever they asked Bailey to
21 come out, they wanted them to walk
22 the belt entry out. So they walked
23 the belt entry out, some of them did.
24 Okay. Some walked the track, some
25 walked the belt.

0021

1 Now we're back to where
2 Shumaker is going in, so they sent
3 --- they --- sorry. Shumaker was
4 asked to backup Tri-State, and Tri-
5 State was going to walk the furthest
6 most left entry, no one's been in
7 that entry yet. So they proceed to
8 walk in there. I wasn't going with
9 them. The MSHA guy that was with the
10 Bailey team, who had enough air, he
11 was going to go with them. So they
12 start going up into that entry, I
13 believe it is the return entry,
14 Number One entry. I think they get
15 two blocks or so, and they're told to
16 come back out. There was no reason -
17 -- they didn't give us no reason or
18 anything, they just told them to come
19 back out.

20 The next game plan was to let
21 Tri-State be a backup team and send
22 Shumaker in and go all the way to the
23 faces if communications --- we could
24 figure out a way to get the
25 communications to allow the team to

0022

1 do that. So we moved the fresh air
2 base from 56 to 58 block. We're
3 still in the intake, okay. We got
4 our mine phone there. We got the
5 hard line on the spool there with us,
6 you know, our lifeline. And what we
7 did is, we stretched it out over ---
8 you know, over to the track entry and
9 up probably a half a block right
10 there in the Two Left switch to where
11 a guy would sit there on that
12 headset, and there'd be a guy with a
13 walkie-talkie listening to the
14 advancing team. The guy with the
15 headset would translate his
16 information back to the fresh air
17 base on that hard line, then they'd
18 call it outside. That's how it was
19 set up.

20 Shumaker's team heads up into
21 Two Left in the track entry. I
22 believe around Nine or Ten block they

23 had to drop off a man for radio
24 communications so he could talk.
25 They went up in there further,

0023

1 heading towards the face. I'm not
2 sure if they had to drop another man
3 or not, so I will not say, for radio
4 communications. Sometime after that,
5 the guy --- I'm sitting at the fresh
6 air base where both the hard line's
7 at and the mine phone's at, and the
8 guy on the hard line, the words came
9 out of his mouth, 12 alive. The guy
10 on the mine phone called outside 12
11 alive. Nothing was confirmed before
12 he called outside.

13 The next communication was we
14 need help to get them out there, one
15 man out, there was no --- just we
16 need help, ask for help. So the guy
17 on the mine phone called outside for
18 help. A couple minutes go by and
19 they give us the permission to go
20 ahead and help. So we don our
21 apparatus, me, a state official, the
22 captain of the Tri-State team, and I
23 believe two more members of the
24 Tri-State team. We left two guys
25 out. One at the Two Left switch to

0024

1 receive communications on the walkie-
2 talkie, then transfer it on the
3 lifeline to the guy at the mine
4 phone, and he was to transfer
5 information outside, you know, two
6 guys.

7 So we run up in there. We all
8 get up there, pull the curtain open,
9 and they're working on one man. I go
10 around, and I'm shaking and --- I'm
11 thinking they're asleep, because
12 still in my mind, I'm thinking, you
13 know, they --- there's 12 alive.
14 After I get through three or four of
15 them, I realize that's not the case,
16 but I still go through and I shake
17 them and yell at them, and myself and
18 the captain for Shumaker team decide
19 to check vitals with all of them. So
20 we go around and we check the vitals,
21 shake them some more, no response
22 from none of them.

23 While there's still guys
24 working on the McCloy boy, we decide
25 to get him out. Get a stretcher,

0025

1 load him on a stretcher, get a couple

2 more of the self-contained breathing
3 apparatuses that they wear on their
4 belt. We got one on him. And he's
5 responding to it when we get it in
6 his mouth. He's acting like he's
7 trying to breathe through it. And
8 six of us lift the stretcher up and
9 we take off, and everybody else
10 follows.

11 We take turns --- it's such a
12 far walk, we all take turns, because
13 there was --- I think there was three
14 left over that was not carrying the
15 stretcher. So as we walk --- we're
16 carrying them out, we take --- when a
17 guy gets tired we switch in and give
18 that guy a break. About halfway out
19 there, I realize that outside
20 believes that there's 12 alive. I
21 get a walkie-talkie, I call the fresh
22 air base and tell them to call
23 outside and notify them that we do
24 not have 12, we only have one. I did
25 not get no response back from the

0026

1 fresh air base. So I just pretty
2 much quit calling. By that time we
3 was at 10 or 11 block anyhow.
4 We get to the mouth of Two
5 Left switch and there's a bunch of
6 men ready to help, thinking there's
7 still 12. We tell them what's
8 happened. So we get a BG-4 unit and
9 put it on the McCloy boy. He
10 responds to it well. We ended up
11 carrying him from the mouth of Two
12 Left to where the Jeeps are parked,
13 which is --- I believe was at 44
14 block, the mouth of One Left,
15 somewhere in that vicinity. We load
16 him on the Jeep with the men that was
17 at the mouth of the section when we
18 got out there, they head out with
19 him. We call outside and tell them
20 what happened. I didn't call, one of
21 the team captain's --- Shumaker's
22 team captain, I believe, called
23 outside and told them what's going
24 on. We waited for instructions, they
25 called and said for us to come

0027

1 outside.
2 So on the way out, we run into
3 a couple mantrips, someone gets out
4 of the mantrip that was coming in and
5 asked where's the rest of them. And
6 in our bunch --- the rest of who?

7 And the rest of the men, the other
8 miners. Well, they're all dead.
9 Complete silence. It took a few
10 minutes for it to sink in with that
11 bunch of people that was coming in.
12 They turned around and we all come
13 outside, and I believe that was the
14 end of my activity at the Sago Mine.
15 Yes, that was the end of my activity
16 at the Sago Mine.

17 Q. Okay. Thank you. If we could
18 just kind of go back to whenever you
19 arrived at the mines and kind of go
20 through with me and fill in some
21 blanks.

22 A. All right.

23 Q. So then, approximately, what
24 time, again, did you arrive at the
25 Sago Mine?

0028

1 A. I believe one o'clock.

2 Q. And that's on January 2nd?

3 A. January 2nd.

4 Q. Okay.

5 A. 1:00 p.m.

6 Q. Okay. And what activities
7 were going on at that time, do you
8 recall?

9 A. The teams were arriving. All
10 the mine rescue teams were arriving,
11 setting up their gear and their
12 trailers and getting ready to go
13 underground.

14 Q. And who was the person that
15 you made contact with initially?

16 A. Initially, it was Jan Lyall,
17 when I drove on there. But Jan was
18 the --- he's equal to me. He's not
19 my supervisor or nothing.

20 Q. And he was already at the
21 mine?

22 A. Yes. He got there like five
23 or ten minutes before I did.

24 Q. Okay. And then who was the
25 next person that you come into

0029

1 contact with?

2 A. I think I said Carlos, but I
3 don't think that's right.

4 Q. Do you want to take a break
5 for a minute?

6 A. Can I think about this? I
7 can't --- it ain't coming to my head.

8 Q. That's fine. If you can't
9 remember ---.

10 A. I don't think I actually
11 talked to a supervisor until later

12 that day.
13 Q. Okay. That's fine. We don't
14 need to know exactly.
15 A. Okay. I'm sorry.
16 Q. No, that's fine. So then
17 after you spoke to whoever ---.
18 A. Jan.
19 Q. Then what did you do after
20 that?
21 A. I got dressed, got my work
22 clothes and stuff on. Helped out
23 wherever I could help, you know, with
24 the other teams.
25 Q. Sure.

0030

1 A. Finally, Virgil showed up,
2 well then, I had to really hustle. I
3 had to get the trailer pulled in and
4 get it parked and get it powered up.
5 We get all of our gear out for all
6 the guys, pretty much, you know,
7 setting up shop.
8 Q. Okay. And when you say the
9 truck, are you talking about the Blue
10 Goose, or ---?
11 A. No. Our trailer that carries
12 our apparatus ---.
13 Q. Oh, okay. The silver trailer?
14 A. Yeah.
15 Q. Okay.
16 A. Is it silver? No, it's blue.
17 It's blue. But it's like the silver
18 trailer.
19 Q. Okay. So after you did that,
20 what did you do after that?
21 A. Waited for instructions to go
22 underground.
23 Q. Okay. Approximately, what
24 time did you go underground?
25 A. 5:30.

0031

1 Q. 5:30. And what team were you
2 traveling with at that time?
3 A. Robinson Run.
4 Q. Robinson Run?
5 A. Robinson Run, I believe had
6 two teams. I can't remember if it
7 was one or two. I know the captain's
8 name, but ---.
9 Q. And you were part of the
10 initial team that went underground?
11 A. I was the first team that was
12 underground.
13 Q. Okay. And you went in the ---
14 you say you went in the intake?
15 A. Yes.
16 Q. That would be the fan entry,

17 ---
18 A. Yes.
19 Q. --- being the blowing system?
20 And who else was it besides the
21 Robinson Run team?
22 A. State official --- man. Oh,
23 Barry. I can't remember Barry's
24 whole name.
25 Q. Okay. That's fine. That's
0032
1 fine. So then you traveled in the
2 intake entry up to ---?
3 A. The head of Number Three.
4 Q. Okay. And then you mentioned
5 that there was another team which
6 came in the track entry?
7 A. Yes.
8 Q. And were they advancing at the
9 same time you were?
10 A. No, we was --- we stopped ---
11 Q. You stopped.
12 A. --- at that drive. Okay. And
13 waited for them to advance in.
14 Q. Again, what were they going
15 --- what happened when they got in
16 there?
17 A. They put --- there was water
18 over the track, they had to pump.
19 Q. And did you have conversation
20 with them? With them, meaning the
21 other team members.
22 A. I just talked to the MSHA
23 representative, the actual captain of
24 the two teams had conversation with
25 each other when we met.
0033
1 Q. Okay. And who was that, do
2 you recall?
3 A. Mark Coon was the captain of
4 Robinson Run. I can't remember the
5 team that was with it.
6 Q. Okay. So then after this, you
7 say that the pump was turned on?
8 A. Yeah. They powered the pump
9 up.
10 Q. And then they proceeded to
11 pump the water out?
12 A. Yes.
13 Q. And then, is that the point
14 then when you came out of the mine?
15 A. No.
16 Q. No? Where did you go from
17 there?
18 A. We went to Nine block 44 belt.
19 Q. And was that the furthest
20 extent of your exploration?
21 A. Yes, that day.

22 Q. That day. Then you came out?
23 A. Yes.
24 Q. Okay. And then from that
25 point on then, when you come out, you

0034

1 were debriefed?
2 A. That day?
3 Q. Yes.
4 A. No.
5 Q. Okay. Then you went back to
6 the hotel, and then you came back on
7 January 3rd; is that correct?
8 A. Yes.
9 Q. And when you came back on
10 January 3rd, what time did you arrive
11 at the mine?
12 A. Two o'clock.
13 Q. Okay. And what time did you
14 go underground?
15 A. 4:00 or 5:00.
16 Q. Okay.
17 A. That's the best I can give
18 you.
19 Q. Okay. That's fine. And what
20 team did you travel with that day?
21 A. It was the Tri-State team.
22 Q. Okay. And did you travel on
23 the bus up to the fresh air base?
24 A. Yeah --- well, no. We
25 traveled on a bus as far as it would

0035

1 go.
2 Q. As far as it would go? Where
3 is that?
4 A. Yes, because the track was
5 blocked.
6 Q. Oh, okay. And that was at the
7 One Left area; is that correct?
8 A. Yes. I want to say 44 block.
9 If you had a map, I could show you.
10 Q. And once you got to that
11 point, then you went to a fresh air
12 base?
13 A. Yeah. We went over into the
14 intake. We walked to the fresh air
15 base.
16 Q. And where was that located?
17 A. Fifty-six (56) block.
18 Q. And you're with the Tri-State
19 team?
20 A. Yes.
21 Q. And what teams were up there
22 at the fresh air base at that time?
23 A. Bailey and --- I can't recall.
24 Q. And then once you got up
25 there, then what occurred?

0036

1 A. Well, Bailey got their orders
2 that they wanted Bailey to advance
3 into Two Left. So Bailey went into
4 Two Left.
5 Q. Went into Two Left. Okay.
6 And you were at the fresh air base at
7 that point?
8 A. Yeah.
9 Q. And what were your activities
10 there?
11 A. Just to backup. Wait --- you
12 know, if --- backup's backup, you
13 know.
14 Q. Okay. And who was on the mine
15 phone at that time?
16 A. The captain of Tri-State.
17 Q. And once Bailey went in, they
18 went to Two Left, and what block did
19 you say they went up to?
20 A. I think they said 19 block.
21 Q. Nineteen (19) block. And then
22 once they got there, what occurred?
23 A. They were told to come out.
24 Q. Come out? Okay. And then
25 after they came out, what occurred?

0037

1 A. Bailey --- their units were
2 done, so they had to send them
3 outside and another team had to come
4 in.
5 Q. Okay. Did they --- do you
6 recall what quality readings they
7 were recording at that time, did you
8 hear any quality readings, air
9 quality readings, CO, methane?
10 A. No.
11 Q. Okay.
12 A. I believe in the track entry
13 there the oxygen was good and the CO
14 was like 100 and some --- 100 or 200
15 parts per million.
16 Q. Okay. And then once Bailey
17 came out, then what occurred?
18 A. We waited for another team to
19 come.
20 Q. All right. And who then came
21 in?
22 A. It was Shumaker.
23 Q. Could it have been the McElroy
24 team?
25 A. I'm not sure. Very well could

0038

1 have been. Yes, it could have been.
2 Q. Okay. So you're not sure
3 which team it was?
4 A. No. Not after you say that,
5 no, I'm not sure. I get both of

6 those mines mixed up, even to this
7 day.
8 Q. Once the McElroy or Shumaker
9 team arrived, what was said then?
10 A. That Tri-State was to advance
11 in the return entry, Number One entry
12 of Two Left.
13 Q. And what was their purpose
14 over there, to tie something in?
15 A. It's one of the entries that
16 we didn't get to yet.
17 Q. I see.
18 A. You know, the belt has already
19 been looked at, the track's been
20 looked at and the intake's been
21 looked at. So they were more or less
22 ---.
23 Q. Tying?
24 A. Yeah.
25 Q. Tying up that end. Okay. So
0039
1 the Tri-State went over there. Were
2 you traveling with them?
3 A. No.
4 Q. No. You were still at the
5 fresh air base?
6 A. I was in the crosscut where
7 they went. I was sitting there
8 watching them go across the belt.
9 Q. Okay. And were you assigned
10 to that team that day, or were you
11 just watching?
12 A. I'm not assigned to anything.
13 Q. I understand.
14 A. But the MSHA person that was
15 with the Bailey team went with the
16 Tri-State team.
17 Q. Okay. All right. Then they
18 went over, and they checked that
19 entry and then they came back?
20 A. Well, they didn't make it up
21 there far enough to check that entry.
22 They were called back.
23 Q. Okay. They were called back.
24 And do you know the reason that they
25 were called back?
0040
1 A. No.
2 Q. Okay. So they were called
3 back and then they, in fact, did come
4 back?
5 A. Yeah.
6 Q. Okay. And then what happened?
7 A. They decided to send Shumaker,
8 McElroy team, whatever, to send them
9 up to the faces of Two Left.
10 Q. Okay. And where did that

11 information come from?
12 A. Outside.
13 Q. Outside?
14 A. Off the mine phone.
15 Q. Okay. And at that point then,
16 Shumaker or McElroy, they started
17 inby; is that correct?
18 A. Uh-huh (yes). Hold up. After
19 we got the communication system to
20 where we could utilize it as best we
21 could. That means we moved the fresh
22 air base from 56 to 58 block.
23 Q. Okay.
24 A. And we used our lifeline from
25 58 block up to the switch of Two

0041

1 Left.
2 Q. And that switch at Two Left,
3 and you were still in the track
4 entry?
5 A. Yes. The main track entry.
6 Q. The main track entry.
7 A. We weren't in the track entry
8 in Two Left, because once you rounded
9 that turn the CO was too high to
10 be ---.
11 Q. And what was those levels at
12 that ---?
13 A. Between 100 and 200.
14 Q. Okay. And so then you dropped
15 a person off with a headset, and he
16 had a radio. Was there two people
17 there or one person there?
18 A. Two people.
19 Q. Two people?
20 A. Yeah.
21 Q. And who was ---?
22 A. And I stayed --- and I was
23 there at that point in time.
24 Q. Okay. And who was the person
25 on the headset, do you know?

0042

1 A. Tri-State member Terry Lilly
2 or Kerry Lilly.
3 Q. Okay. He was on the headset,
4 and who had the --- who was there
5 left with the radio?
6 A. I don't know the gentleman's
7 name, but he was from Tri-State team.
8 Q. He was also a Tri-State team
9 member. Okay. And then what --- is
10 that the furthest you went at that
11 point?
12 A. Yes.
13 Q. Okay. And did you stay there
14 with them?
15 A. No. I went back over to the

16 fresh air base.
17 Q. Okay. And the McElroy team,
18 Shumaker team, they proceeded inby?
19 A. Uh-huh (yes).
20 Q. Okay. And when you went back
21 to the fresh air base, then what
22 occurred?
23 A. As I advanced in there, you
24 know, they ended up dropping one man
25 off there. The communication was

0043

1 like around Nine or Ten block, and
2 they went on in there, and a few
3 minutes later we hear --- I hear the
4 guy on the headset, the words come
5 out of his mouth just like this, 12
6 alive. Immediately, the captain for
7 Tri-State called outside and said 12
8 alive.

9 Q. Okay. When you say the guy at
10 the headset, that's the guy at 59
11 block?

12 A. Fifty-Eight (58) block. You
13 got one headset here at 58 and you
14 got one headset here at the track
15 switch at Two Left.

16 Q. Okay. The person at the
17 headset at the fresh air base is the
18 one you're talking about?

19 A. Yes, sir.

20 Q. And he said 12 alive; is that
21 correct?

22 A. Yes.

23 Q. So then what occurred?

24 A. Well, we all jumped around for
25 glee and everything else. We pat

0044

1 each other on the back, what a
2 miracle.

3 Q. Okay. And then the person ---
4 who was on the mine phone, the actual
5 mine phone to the surface?

6 A. The team captain, the Lilly
7 --- the young Lilly boy. It wasn't
8 the Kerry or Terry, it was the young
9 Lilly boy, the son.

10 Q. Okay. Then he transferred
11 that information to the surface?

12 A. Yes.

13 Q. Okay. And what did he say, do
14 you recall?

15 A. What do you mean what did he
16 say? What he told them outside?

17 Q. Yeah.

18 A. He said 12 alive.

19 Q. Okay. So after the
20 information came, and then --- what

21 was said after that then, or where
22 did you go after that?
23 A. After which information? The
24 information we just got, the 12
25 alive?

0045

1 Q. Yes.
2 A. We stayed there.
3 Q. Okay. Then what did you ---
4 okay. When did you move, or --- just
5 kind of take me through that?
6 A. We waited right there, and
7 then finally communications come back
8 that they needed help.
9 Q. Okay.
10 A. Mr. Lilly called outside to
11 see if we could go help. Outside
12 finally said we could go help.
13 Q. Okay. Then --- and how many
14 of you then donned your --- you
15 mentioned that you donned your
16 apparatuses?
17 A. Me, the state official.
18 Q. And do you know who that was?
19 A. It was --- I mean, to look at
20 him, I would know who he is. I don't
21 know his name.
22 Q. Okay. Go ahead.
23 A. The team captain for
24 Tri-State, which would have been the
25 young Mr. Lilly and two of his people

0046

1 from the team.
2 Q. And then you guys pursued in
3 the --- was it --- would that be four
4 of you?
5 A. Five of us.
6 Q. Five of you?
7 A. Yeah.
8 Q. And then you proceeded inby?
9 A. Yes.
10 Q. And you went up the track.
11 Did you stop and talk to anybody on
12 the way up?
13 A. Nope.
14 Q. And then you went straight to
15 the barricade ---
16 A. Yes.
17 Q. --- where the men were?
18 A. Yes.
19 Q. And were you the first one
20 through?
21 A. Well, not --- the other team
22 was the first ones through.
23 Q. Okay. But I mean in your
24 group?
25 A. Yes.

0047

1 Q. Okay. So then you went in,
2 did you start examining the others,
3 or what did you do there?

4 A. Well, I looked around to see
5 what was going on first. I noticed
6 they was working on one man. And I
7 figured I better start working with
8 somebody.

9 Q. Yes.

10 A. And the first guy I come to, I
11 start working on him, no response.
12 And I just keep going around them.

13 Q. And did you have an
14 opportunity to examine all of them,
15 or ---?

16 A. Yes. I looked at every one of
17 them, except the McCloy boy.

18 Q. Yes.

19 A. I did not look at him until it
20 was time --- until we all decided to
21 bring him out.

22 Q. Okay. And did any of the
23 individuals that you examined, did
24 they have any goggles on? Were they
25 wearing any goggles?

0048

1 A. No.

2 Q. Were they around their neck at
3 all, do you recall?

4 A. What, the goggles?

5 Q. Yes.

6 A. I can't recall that.

7 Q. You can't recall that? And
8 your assessment --- and what was your
9 assessment of the individuals as you
10 examined them?

11 A. No vital signs. They were
12 dead.

13 Q. Okay. And after your
14 assessment of the individuals, then
15 what occurred?

16 A. We decided to get the McCloy
17 boy out, because time was critical
18 for him, you know.

19 Q. Okay. And did you have any
20 conversation with the rescuers that
21 were working on Mr. McCloy? Did you
22 guys have any conversation with them?

23 A. No, not that I can recall.

24 I'm sure something was said, but I
25 can't recall anything that would have

0049

1 been said. I don't know what you
2 would need to talk about other than
3 get him out.

4 Q. Okay. So then, you --- did

5 you help load him on a stretcher at
6 all?
7 A. They loaded him on the
8 stretcher. I was on the first end of
9 carrying him.
10 Q. Okay. And so then you ---
11 then you left carrying the stretcher.
12 And as you went down, did you meet
13 anyone else coming up at all?
14 A. Not on Two Left section.
15 Q. Okay. Just kind of take me
16 through that as you're taking --- you
17 started out down --- you took him
18 down the track entry?
19 A. Uh-huh (yes).
20 Q. And over and down the track
21 entry?
22 A. Yes. I took him down the
23 track entry, got him to the mouth. I
24 tried to communicate with the fresh
25 air base about we only had one, but

0050

1 no response.
2 Q. And you said that was around
3 Eight or Nine block or something like
4 that that you had tried to make that
5 contact?
6 A. No, it was about halfway out
7 of there.
8 Q. And the radio that you had, is
9 that a radio that you took in with
10 you?
11 A. It was a radio that someone
12 else had that I took. When the guy
13 took my place carrying, I asked him
14 for his radio, he gave it to me.
15 Q. Okay. And then you tried to
16 communicate that to the fresh air
17 base, but got no response?
18 A. Right.
19 Q. Okay. And so then you didn't
20 see anybody coming in until you got
21 to the mouth of the section?
22 A. The first people we ran into
23 was right at the switch, right at the
24 Two Left switch.
25 Q. Okay. And that would have

0051

1 been there where the headset was?
2 A. Yes. The inby headset.
3 Q. Inby headset? And what was
4 said there?
5 A. We told them what --- what the
6 team prior to me found, and what we
7 done, and what we think needs to be
8 done with this boy. And they agreed.
9 We put a BG-4 on him and headed

10 towards the jeeps, the mantrips.
11 Q. Okay. So then when you got to
12 the jeeps, did you actually carry ---
13 did you assist in carrying Mr. ---
14 him out?
15 A. I carried him to the jeep, and
16 I was caput. Someone took my place
17 and loaded him on the vehille.
18 Q. Okay. And then what did you
19 do?
20 A. I sat right there at the ---
21 in the jeep that was left. We sat
22 and waited for what we was to do
23 next. For the calling center tell us
24 what to do next.
25 Q. Okay. And the jeep had left?

0052

1 A. Yeah, that jeep was gone.
2 Q. Okay. And then once --- and
3 you waited right there, and then who
4 gave you the word that you needed to
5 get outside?
6 A. McElroy, Shumaker's team
7 captain, whatever team that you
8 determine that to be. The team
9 captain.
10 Q. Okay. And at that point then
11 you left?
12 A. Yes.
13 Q. Everyone left?
14 A. Everyone.
15 Q. And then you mentioned that
16 you met someone, or another bus
17 coming in at that time?
18 A. Yes.
19 Q. And what was the conversation
20 there?
21 A. Where's the rest of them? The
22 rest of who? The other men. Well,
23 they're dead. Silence.
24 Q. And then at that point, then
25 you left, you ---?

0053

1 A. We followed them out.
2 Q. You followed them out ---
3 A. Yes.
4 Q. --- on the surface? And when
5 you got out on the surface, did you
6 have a debriefing or anything?
7 A. Not really, no. No, we didn't
8 have a debriefing. Everybody was in
9 shock. There was no debriefing.
10 There was people scattered out in
11 their own little bunches talking.
12 No, no one talked to me specifically
13 about anything.
14 Q. Okay. Then so did you just go

15 and get dressed and leave, or ---?
16 A. No, I hung out for a while,
17 and finally, I believe it was --- our
18 trailer, our rescue trailer, we have
19 a guy that runs it while we got teams
20 underground, and that guy was the one
21 that said that we needed to go home.
22 And it was either Virgil or Jerry
23 Cook that told us we need to go home.
24 Q. When you speak of Virgil, are
25 you speaking about Virgil Brown?

0054

1 A. Virgil Brown.
2 Q. Okay.
3 A. Yeah, it was one of those two.
4 But see, I didn't get --- I wasn't
5 told that to my face. The guys that
6 was riding to the mine with me was
7 the ones that come and said, hey,
8 Frankie, you're supposed to go.
9 Q. And then you left the mine?
10 A. Yes.
11 Q. Did ever return to the mine?
12 A. Not until the accident
13 investigation team asked me to come
14 up and look at a few things, help
15 them out.
16 MR. SWENTOSKY:
17 Mike?
18 A. I'm sorry, yes, I did return
19 to the mine. I returned that next
20 day and rounded up my gear and stuff,
21 and closed down shop, you know, but I
22 didn't go in the mine.
23 BY MR. SWENTOSKY:
24 Q. You were there just to get
25 your equipment?

0055

1 A. Yeah.
2 MR. SWENTOSKY:
3 Mike?
4 BY MR. RUTLEDGE:
5 Q. Frank, you said you helped
6 carry Mr. McCloy out. What position
7 on the stretcher were you first in
8 when you helped carry him out?
9 A. The right outby corner.
10 Q. Okay. Right outby. So that
11 would have been next to Mr. McCloy's
12 feet?
13 A. Yes, I believe so.
14 Q. And he had his boots on?
15 A. Yes.
16 Q. Ordinary Matterhorn mining
17 boots?
18 A. Yes. Matterhorn boots, I
19 believe it was.

20 Q. Laced up, tied up?
21 A. I couldn't tell that because I
22 think his pants legs were overtop of
23 them. I couldn't tell if they were
24 tied in a bow or not.
25 Q. How was Mr. McCloy secured to
0056 the stretcher?
1 A. They had --- one of the kits
2 that they both opened up had straps,
3 and then they strapped them on with
4 it.
5 Q. Okay. You said when you got
6 to Two Left switch that you put a ---
7 or someone put a BG-4 on Mr. McCloy?
8 A. Well, they didn't --- someone
9 carried the four and they took the
10 face mask off and put the positive
11 pressure hose in his mouth.
12 Q. I'm sorry, you said they took
13 the face piece off of the apparatus?
14 A. Well, maybe that was a
15 discussion we had. We didn't put the
16 face piece --- or the whole mask on
17 him. I think we just inserted the
18 --- just like you would insert the
19 hose from the self-contained rescuer.
20 They just took that --- on wide
21 areas, they just put that in his
22 mouth. Do you know what I mean? The
23 T where the exhalation hose,
24 inhalation hose come together, they
0057 put that T in his mouth.
1 Q. Okay. And did somebody have
2 to hold that in his mouth, or ---?
3 A. Yes. Someone carried the unit
4 and someone held that in his mouth,
5 plus carried the stretcher at the
6 same time.
7 Q. Okay.
8 A. The self-contained rescuer
9 wasn't working too good. We couldn't
10 get it to stay in his mouth. The
11 little one, the one we started out
12 with.
13 Q. But my original question, or
14 the reason I asked about this, you
15 originally said that when you put
16 that on and that seemed to help
17 him, ---
18 A. It did.
19 Q. --- or seemed to do better.
20 A. Yeah.
21 Q. What seemed to be better? I
22 mean, did ---?
23 A. He went after it. His
24

25 reaction was like he was just --- you
0058

1 know, laying there like that. When
2 he breathed that first breath, he
3 was like going after it.

4 Q. So it stimulated his breathing
5 or increased his breathing rate, or
6 seemed to make him breathe deeper,
7 or ---?

8 A. It just seemed like he wanted
9 it. You could tell he wanted that,
10 you know. It's hard to describe. As
11 soon as he got the first fresh breath
12 of air, I mean, it was like
13 --- that's what he wanted. And I did
14 notice that if it did fall out of his
15 mouth, he would go after it. His
16 head would go to the side, you know.
17 I don't know if that means anything,
18 but that's what happened.

19 MR. RUTLEDGE:
20 Okay. I don't have
21 anything further right now.

22 BY ATTORNEY WILSON:
23 Q. Just a quick question. Kevin
24 Strickland was your district manager?
25 A. Yes.

0059
1 Q. During the time frame when you
2 were carrying Mr. McCloy out of the
3 section to the fresh air base, to
4 your knowledge, was Mr. Strickland
5 underground?

6 A. Not to my knowledge.

7 MR. RUTLEDGE:
8 I had one other
9 question here.

10 BY MR. RUTLEDGE:

11 Q. Do you know ---?

12 A. Well, Jeff, would --- he was
13 the one that hooked him up with that
14 BG-4, so if I'm wrong, you might want
15 to ask him.

16 Q. Jeff?

17 A. From the State.

18 Q. Okay. Did you know Jim Klug?

19 A. Who?

20 Q. Jim Klug.

21 A. Do I know a Jim Klug?

22 Q. Yeah. Team captain, mine
23 rescue team captain named Jim Klug?

24 A. I don't know him personally,
25 no. The name sounds familiar, but I

0060
1 don't know him personally. I don't
2 know what his face looks like.

3 Q. I understand the emotions and,

4 you know, the hectic times between
5 all this was going on there. Give me
6 your best estimate of the time that
7 elapsed between the time that the
8 first 12 alive communication was
9 called outside and the time that
10 someone would have communicated
11 outside that, no, that's not the
12 case, there's only one alive?
13 A. The actual call that was made
14 outside you're saying?
15 Q. I'm just --- what's the time
16 difference between those two, from
17 the first call that was made outside
18 that there's 12 alive to the next
19 call ---?
20 A. That I know for sure, there
21 was a call made and someone heard, it
22 was confirmed?
23 Q. Uh-huh (yes).
24 A. I'm trying to think of the
25 time in my head.

0061

1 Q. Take your time. Take your
2 time. I know it was a very hectic
3 time.
4 A. I'm sorry.
5 Q. Let me just rephrase or re-ask
6 that one. You were at the fresh air
7 base, okay, when you heard the call
8 of 12 alive.
9 A. Uh-huh (yes).
10 Q. Okay. And they called out ---
11 and then a few minutes later they
12 asked --- the people at the face
13 asked for help to come to them, they
14 needed more help.
15 A. Right.
16 Q. Okay. The guy that was on the
17 phone called the command center and
18 said, you know, they need help up
19 there, we want to go help them. You
20 said the command center gave them the
21 okay to do that.
22 A. Okay.
23 Q. You went up with the other
24 team members to the face and you
25 assessed several --- or all the

0062

1 miners ---
2 A. All of them.
3 Q. --- that were in that Number
4 Three. Got Mr. McCloy on a
5 stretcher, came outside. At one
6 point outside you took the radio and
7 tried to call out, but there was only
8 one ---.

9 A. At one point as we was
10 carrying him out of Two Left section,
11 like midway out.
12 Q. Right. But you got no
13 response from that?
14 A. Right.
15 Q. So later then, when you got to
16 Two Left, someone ---.
17 A. To the mouth of the section.
18 Q. Okay. Someone called outside
19 with the fact that ---
20 A. The facts, yes.
21 Q. --- there was only one alive.
22 A. Right.
23 Q. And I'm just looking for some
24 kind of a total of time ---.
25 A. That's what I was trying to

0063

1 add in my head. Twenty-Five (25)
2 blocks is going to take us, what
3 eight to ten minutes to walk that in
4 there, carrying him out, it took us
5 longer than that. It probably took
6 us --- I'd say it took us 15 minutes
7 to carry him out, off the section.
8 Somewhere between 15 to 20 minutes.
9 Now we're looking at 25 minutes. The
10 time that elapsed while we was
11 waiting at the fresh air base to get
12 the okay to go in, that was another
13 five minutes. I was up there for
14 probably --- I was on the section in
15 that entry where the men were at, at
16 most or at least 15 minutes, so we're
17 looking at 45 minutes.
18 Q. Okay.
19 A. Does that sound about right?
20 Q. I'm just trying to get an
21 estimate. That's fine.

22 MR. RUTLEDGE:
23 I don't have any
24 further ---.
25 BY MR. SWENTOSKY:

0064

1 Q. One other thing about --- you
2 helped put Mr. McCloy in the mantrip?
3 A. No.
4 Q. You didn't?
5 A. Uh-uh (no).
6 Q. Okay. You just took him up
7 there?
8 A. I was busted. I was wore out.
9 Someone else took him up there.
10 Q. Did you see him in the
11 mantrip?
12 A. Did I see him in the mantrip?
13 Q. Yeah, after they got him in.

14 A. Uh-huh (yes).
15 Q. Was his feet towards the
16 outside, or was he in headfirst?
17 A. He was in headfirst, I
18 believe. Take a couple minutes here.

19 MR. SWENTOSKY:
20 Do you need a couple
21 minutes? Yeah, let's go off
22 the record.

23 SHORT BREAK TAKEN

24 MR. SWENTOSKY:
25 On behalf of MSHA, I

0065

1 would like to thank you for
2 appearing and answering
3 questions today. Your
4 cooperation is very important
5 to the investigation as we
6 work to determine the cause of
7 the accident. We ask that you
8 not discuss your testimony
9 with any person who may have
10 already been interviewed or
11 who may be interviewed in the
12 future. This will ensure that
13 we obtain everyone's
14 independent recollection of
15 the events surrounding the
16 accident.

17 After questioning other
18 witnesses, we may call you if
19 we have any follow-up
20 questions that we feel that we
21 need to ask you. If at any
22 time you have additional
23 information regarding the
24 accident that you would like
25 to provide to us, please

0066

1 contact us at the contact
2 information that was
3 previously provided to you.
4 If you wish, you may
5 now go back over any answer
6 that you have given during the
7 interview, and you may also
8 make a statement that you
9 would like to make at this
10 time.

11 A. I have nothing further.

12 MR. SWENTOSKY:
13 Okay. Frank, thanks
14 for coming in.

15 * * * * *
16 SWORN STATEMENT CONCLUDED
17 AT 2:02 P.M.
18 * * * * *

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20
21
22
23
24
25