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Transcript of the Testimony of Stephen Gigliotti

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STATEMENT UNDER OATH

OF

STEPHEN GIGLIOTTI

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 Tuesday, June 22, 2010.

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P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name is Derek Baxter. Today is June
5 22nd, 2010. I'm with the Office of the Solicitor,
6 U.S. Department of Labor. With me is John Godsey, an
7 accident investigator with the Mine Safety and Health
8 Administration, MSHA, an agency of the United States
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

16 John O'Brien, with the West Virginia
17 Office of Miners' Health, Safety and Training.

18 MR. MCGINLEY:

19 Patrick McGinley, with the Governor's
20 independent investigation team.

21 ATTORNEY BAXTER:

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

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

19 Government investigators and specialists
20 have been assigned to investigate the conditions,
21 events and circumstances surrounding the fatalities
22 that occurred at the Upper Big Branch Mine-South on
23 April 5th, 2010. The investigation is being conducted
24 by MSHA under Section 103(a) of the Federal Mine
25 Safety and Health Act and the West Virginia Office of

1 Miners' Health, Safety and Training. We appreciate
2 your assistance in this investigation.

3 You may have your personal attorney
4 present during the taking of this statement or another
5 personal representative, if MSHA has permitted it, and
6 may consult with your attorney or the representative
7 at any time. Do you have a personal representative
8 here today?

9 MR. GIGLIOTTI:

10 (Indicates no).

11 ATTORNEY BAXTER:

12 Is that a no? That's another thing that
13 we got to ---.

14 MR. GIGLIOTTI:

15 No, I do not.

16 ATTORNEY BAXTER:

17 Yeah, vocalize instead of nodding the
18 head. Okay. Your statement is completely voluntary.
19 You may refuse to answer any question. You may
20 terminate your interview at any time or request a
21 break at any time. Since this is not an adversarial
22 proceeding, formal Cross Examination will not be
23 permitted. However, your personal legal
24 representative may ask clarifying questions as
25 appropriate.

1 Your identity and the content of this
2 conversation will be made public at the conclusion of
3 the interview process and may be included in a public
4 report of the accident, unless your information would
5 otherwise jeopardize a potential criminal
6 investigation. We require that you refrain from
7 discussing your statement with others who may be
8 interviewed. Also, there may be a need to use the
9 information you provide to us or other information we
10 may ask you to provide in the future in other
11 investigations into and hearings about the explosion.
12 Do you understand?

13 MR. GIGLIOTTI:

14 Yes.

15 ATTORNEY BAXTER:

16 Do you have any questions?

17 MR. GIGLIOTTI:

18 No.

19 ATTORNEY BAXTER:

20 After the investigation is complete, MSHA
21 will issue a public report detailing the nature and
22 causes of the fatalities in the hopes that greater
23 awareness about the causes of accidents can reduce
24 their occurrence in the future. Information obtained
25 through witness interviews is frequently included in

1 these reports. Since we will be interviewing other
2 individuals, we require that you not discuss your
3 testimony with any person aside from your personal
4 representative or counsel.

5 A court reporter will record your
6 interview. Please speak loudly and clearly. If you
7 do not understand a question asked, please ask us to
8 rephrase it. Please answer each question as fully as
9 you can, including any information you've learned from
10 someone else. I would like to thank you in advance
11 for your appearance here. We appreciate your
12 assistance in this investigation. Your cooperation is
13 critical in making the nation's mines safer.

14 After we have finished asking questions,
15 you'll have an opportunity to make a statement and
16 provide us with any other information that you believe
17 to be important. If at any time after the interview
18 you recall any additional information that you believe
19 might be useful, please contact Norman Page at the
20 telephone number or e-mail address provided to you.
21 Please swear the witness in.

22 -----
23 STEPHEN GIGLIOTTI, HAVING FIRST BEEN DULY SWORN,
24 TESTIFIED AS FOLLOWS:
25 -----

1 EXAMINATION

2 BY MR. GODSEY:

3 Q. Steve, state your full name and spell your last
4 name.

5 A. Stephen, that's S-T-E-P-H-E-N, John, last name
6 G-I-G-L-I-O-T-T-I, Gigliotti.

7 Q. Home address?

8 A. [REDACTED]

9 [REDACTED]

10 Q. Telephone number?

11 A. [REDACTED]

12 Q. What is your current position?

13 A. Chief of Safety for Coal Mine Safety and Health.

14 Q. Where is your duty station?

15 A. Arlington, Virginia.

16 Q. Just give us a brief history of your jobs with ---
17 assignments with MSHA.

18 A. I worked for --- started out with Tech Support as
19 a ventilation engineer in Pittsburgh, and I was there
20 for nine years. And then I came down to Arlington on
21 a promotion, and I was on staff for the Director of
22 Tech Support from 1989 until --- officially until July
23 of 2006. But from 2004 to 2006, I took a bunch of
24 details. Some --- I had one in D-7 for about five
25 months as the acting district manager, and I took two

1 in D-6, District 6, as district manager, two different
2 stints. And then I had 30 days in District 4, all
3 between July --- all between 2004 and 2006. Then I
4 took also a number of details at headquarters of Coal
5 Mine Safety and Health, you know, in Arlington,
6 working for the Special Assistant and part time with
7 accident investigations and what else. I think that's
8 just about it. There was a bunch of details in there.
9 And then I finally got on --- I became full time
10 --- let me think of when it was. I think it was July
11 of '06 I became full time in coal, and I worked for
12 the Special Assistant. And then in January of '07 ---
13 I'm just thinking a little bit here for this. January
14 '07 I was asked to go down to District 6 again. So
15 maybe that was my second time. January of '07 I went
16 as DM in --- that's right, the mine fire, so ---
17 Number 3 mine fire, same time. So yeah, January of
18 '07 until --- I think I finally left there in May or
19 April. April of '07. April of '07 came back to
20 Arlington, and I was asked to be the acting Chief of
21 Safety, and I did that for a year. And then in May of
22 '08, if my memory serves me, I became permanent as the
23 Chief of Safety. And I've been permanent ever since.
24 I'm trying to think. Did I take a few details? I
25 think --- no, I haven't. Oh, I took --- that's right.

1 I took an acting Special Assistant from --- in
2 Arlington from April of '09 until the end of December
3 '09. And that's pretty much it.

4 Q. Okay. When did you assume district manager,
5 acting, for District 4?

6 A. I started down here officially on June 14th of
7 2004.

8 Q. And just briefly, what was you doing before you
9 came to District Number 4?

10 A. I think I was --- if I remember right, I was on a
11 detail with --- I was still with, officially, Tech
12 Support, but I was on detail in headquarters, and I'm
13 pretty sure I was under Melinda Pon, under --- on her
14 staff as Special Assistant. I'm pretty sure. And
15 they asked me to go down to District 4. At the time
16 they were rotating people through there because we
17 didn't have a district manager full time, and there
18 was a couple guys before me. The guy that was in
19 there right before me was John Pyles, and they were
20 --- his tour was done. I want to say he did 90 ---
21 about 120 days, something around there, maybe longer,
22 and then they asked me to go down for 30 days.

23 Q. So you acted for 30 days?

24 A. Yeah. My final day was July 10th, 2004.

25 Q. What did you do after that assignment?

1 A. After that assignment, I think I went back to Tech
2 Support, if I remember right.

3 Q. And what did you do at Tech Support?

4 A. Back on the staff again. I was doing that for
5 about two years.

6 Q. Did you supervise anyone?

7 A. Yeah. For a short period of time I supervised
8 somebody --- about four people in Tech Support, but I
9 don't remember ---.

10 Q. Who were they?

11 A. Who were they in Tech Support?

12 Q. Uh-huh (yes).

13 A. A good question. Let me think now. Vivian Mills,
14 Tim Thompson. You know, some of these came and go, so
15 I don't know exactly. If you're asking right when I
16 left, July of '04, who was I supervising, these are
17 the --- I had four people under my supervision at one
18 point, Tim Thompson, Vivian Mills, and I think there
19 was Jim Custer and might have been Pat Kuhn.

20 Q. How do you ---?

21 A. K-U-H-N. I have to go back and look at some of
22 that, but I think that's right.

23 Q. Are you aware of the methane outburst at UBB on
24 February 18th, 2004?

25 A. I read about it, yeah. I didn't know about it at

1 the time I was district manager, though.

2 Q. Pardon me?

3 A. I did not know about it at the time I was the
4 district manager down here.

5 Q. When was the first time that you saw the memo
6 dated July 14th, 2004, with a methane outburst at
7 Performance Coal?

8 A. It's dated July 15th, 2004.

9 Q. Yeah.

10 A. And the first time I saw it was after the
11 explosion at Upper Big Branch in April of this year.
12 Charlie Thomas sent an e-mail. I think that's the
13 first time I saw it. I might have saw it right before
14 that, but I remember Charlie sent it, too. There was
15 a bunch of e-mails flying around, but I remember
16 Charlie sending it. But it was after the explosion.
17 That's the first time I saw it. I was gone on July
18 10th, 2004. This thing showed up July 15th. So I was
19 gone for five days already.

20 Q. Okay. And have you talked to --- did you talk to
21 anyone in the district at all about this?

22 A. After I left ---

23 Q. Yeah.

24 A. --- District 4?

25 Q. Uh-huh (yes).

1 A. After I left District 4 in 2004?

2 Q. Right.

3 A. No.

4 Q. Okay.

5 A. No. I went back to my old duties and that was it.

6 Q. How do you think this type of event can be
7 prevented?

8 A. Methane outbursts?

9 Q. Uh-huh (yes).

10 A. Well, I mean, I read through the recommendations
11 from Tech Support, you know, after this --- within the
12 last two or three weeks I read through them, and some
13 of the recommendations were to increase the air on the
14 face. They said to, I forget, put some different
15 safety provisions in there when you're cutting and
16 welding, also watch how your shields are loading up.
17 If they start loading up real quickly, then that's an
18 indication something is going on. Those are the three
19 big things that I remember. I'm just parroting what
20 Tech Support said in their report.

21 Q. Who replaced you when you left District 4?

22 A. Jesse Cole. Jesse Cole was --- he was --- he sat
23 with me for about the last week, maybe
24 week-and-a-half, my 30 days, but we never got into
25 that issue at all. Speed mining was the big issue

1 when I was there, and Erik Sherer, sitting right
2 behind me, was one of the main guys coming down to
3 help out on that.

4 Q. Had anyone ever told you --- brought to your
5 attention that this had happened before at Upper Big
6 Branch?

7 A. No.

8 Q. Or any of the mines surrounding Big Branch?

9 A. No. I don't --- no, I don't remember any of that.
10 No, I don't remember that at all.

11 Q. So you don't remember anything about ---?

12 A. Nope.

13 ATTORNEY GODSEY:

14 Do you got anything?

15 A. No, I don't.

16 MR. FARLEY:

17 A couple questions.

18 EXAMINATION

19 BY MR. FARLEY:

20 Q. Steve, you indicated that you started as acting
21 district manager in District 4, you started officially
22 June 14th, 2004?

23 A. (Indicates yes).

24 Q. When you say you started officially on that date,
25 were you there earlier for any period of time?

1 A. I was trying to remember now because --- in fact,
2 that's where I think I met you. There was a fatal,
3 guy jumped out of a truck, I can't remember the name
4 of the mine, a couple days prior to that. It was on a
5 Thursday or a Friday. Because I --- for some reason
6 I'm kind of --- I want to say it was a Friday. I'm
7 pretty sure it was a Friday. Because I was replacing
8 John Pyles, and I wanted to get briefed by him, you
9 know, just give me a quickie, what --- and he said ---
10 this is kind of funny, but he said to me, he says, do
11 you mind if I leave a couple hours early. I want to
12 get home. I've been here for six months. I want to
13 get out. I said, okay, go ahead. I'm here. I wasn't
14 even officially there yet. The seat was still warm
15 and the phone rang and there was a fatal. So I was
16 holy heck, and --- so me and Chris Weaver ran down to
17 the Logan field office, mine out of Logan, and that's
18 where I think I met you, one of the first times. I'm
19 pretty sure you were there.

20 Q. Could have been.

21 A. So that was like maybe the Friday before. I
22 remember I spent the entire weekend, ---

23 Q. Okay.

24 A. --- you know, dealing with this fatal, and then
25 --- so Monday --- I don't know. Monday was the 14th.

1 I didn't look at the calendar, but that's the official
2 date I was there.

3 Q. Okay.

4 A. But I was there like a day early or something.

5 Q. Okay. Do you know how long Pyles was in place as
6 acting district manager before you arrived in District
7 4 there?

8 A. A pretty long time, but it was either --- he
9 either went 120 or 180 days. He went a pretty long
10 time.

11 Q. Okay.

12 A. And they were gone --- like they had --- I think
13 Allen was previously before him, and he went like
14 close to six months, 120 days, four to six months, and
15 then John Pyles went in there four to six months. And
16 the whole time they were trying to get a permanent
17 district manager there. And I guess they had some
18 time left over. If I remember right, they had already
19 selected Jesse Cole. I don't know if it was right
20 before I got there or shortly after. I think it was
21 shortly after. And so it was a done deal. That's
22 right. After I got there, it was a done deal. Jesse
23 Cole was coming in. But they said, why don't you
24 finish out your --- you know, serve 30 days, so I did
25 that.

1 Q. I was trying earlier to remember the last
2 permanent district manager prior to your time spent as
3 acting district manager, and for the life of me
4 couldn't think of the guy's name. I can see his face
5 but couldn't think of his name.

6 A. It was --- was it Pat Brady? I think it was Pat
7 Brady.

8 Q. Okay.

9 A. Yeah, it had to have been Pat Brady. It was Pat
10 Brady, and he went to --- I think he's the director of
11 the Academy here, I'm pretty sure. Pretty sure Pat
12 Brady.

13 Q. That sounds about right.

14 A. Yeah, it was Pat Brady and then Jesse Cole was
15 the --- followed him permanently. There was nobody in
16 between.

17 Q. During your stint as acting DM in District 4 there
18 in 2004, do you recall who the assistant district
19 managers were at the time?

20 A. Yeah. Rich Kline was the assistant on the
21 technical, assistant district manager-technical. Link
22 Selfe was one of the assistants on the --- district
23 managers on the enforcement side. And I think Ron
24 Wyatt --- yeah, Ron Wyatt came in, and he was
25 acting --- that's right, he was acting district

1 manager at the same time as me, like 30 days. I can't
2 remember the guy he replaced. I think he retired. I
3 never met him. If I heard the name, I'd remember it,
4 but I ---. But he was there. Ron Wyatt was there at
5 the time.

6 Q. Okay.

7 A. So there was Ron Wyatt, one enforcement guy, Link
8 Selfe was there, and Rich Kline.

9 MR. FARLEY:

10 John, I think that's all I've got.

11 EXAMINATION

12 BY MR. MCGINLEY:

13 Q. You've been involved with mine safety issues for a
14 long time. How frequently are methane outbursts like
15 the ones documented in these two memos, the March 4th,
16 2004 and July 15th memo that you've heard?

17 A. How frequently does something like that happen?

18 Q. Yeah, in your experience.

19 A. I don't think it really --- this is kind of just
20 my gut feeling on this, and I can't give you a number
21 or anything, but I don't think it happens that often,
22 kind of an anomaly of sorts. I mean, you know,
23 certain --- different seams have different
24 characteristics, but an actual outburst that they're
25 talking about that's inherent in the --- you know, in

1 the strata, I don't think it's that --- I mean, you
2 can get them occasionally, but different --- but I'm
3 not sure if it's enough to overwhelm the whole
4 section, the pressure ---.

5 Q. How about overwhelming a whole mine?

6 A. A whole mine?

7 Q. Yeah, have everybody pulled out for two or three
8 days?

9 A. No. That'd be very, very rare.

10 Q. Extraordinary?

11 A. Yeah. I wouldn't think it would be very often
12 that would happen.

13 Q. Did you know that's what happened with regard to
14 the 2004 inundation?

15 A. Which one?

16 Q. 2004. The one that occurred in February of 2004.

17 A. No, I didn't know that.

18 Q. Nobody told you that?

19 A. No. I didn't read through that. I read through
20 the one that was directed to me. I didn't glance at
21 the other one. I glanced quickly, but I didn't read
22 it like I did this July 15th one.

23 Q. Well, that was the one. The July 15th was
24 directed to you. So do you know that MSHA hasn't been
25 able to find any records other than the --- there were

1 two memos. You knew there were two memos; right, the
2 one March 4th and July 15th?

3 A. I knew after the explosion, yes. After the
4 explosion --- after the explosion this year ---

5 Q. Right.

6 A. --- I knew there was --- I found out there was two
7 memos.

8 Q. And you looked at both of them?

9 A. I glanced at the one on March 5th, I think it was,
10 and I read through most of the one on July 15th
11 directed to me.

12 Q. Why did you not read both of them?

13 A. I wanted to make sure what the one said on July
14 15th.

15 Q. You were only interested in the one ---?

16 A. Since that's the one that was directed at me, I
17 wanted to see what was said and --- so I paid more
18 attention to that one. I glanced at the other one. I
19 don't remember exactly what it said, but ---.

20 Q. You didn't think that would be related to the time
21 you were there? You weren't curious?

22 A. I just looked at the one on the 15th. It wasn't
23 that I wasn't curious. I just looked at the one that
24 everybody was talking about that I --- you know, that
25 my name was on, and I was like, you know, ---.

1 Q. For the record, you identified Charlie Thomas.
2 You said he sent you an e-mail with --- was it one or
3 both of the memos?

4 A. Both of those memos.

5 Q. They were attached to his e-mail?

6 A. Yes.

7 Q. And would you, for the record, identify who
8 Charlie Thomas is?

9 A. Charlie Thomas is the acting Deputy Administrator
10 for Coal Mine Safety and Health.

11 Q. And when did he send you that? I know you
12 said ---.

13 A. Right after the explosion, you know, a couple days
14 after. So you know, within a week or two, something
15 like that.

16 MR. MCGINLEY:

17 On behalf of our team, we'd like MSHA to
18 provide us with all the e-mails that relate to the
19 methane outbursts and also communications subsequent
20 to the explosion relating to the existence of the
21 memos. As well, we'd like MSHA to search the files in
22 District 4, in the Pittsburgh Technical Center, in the
23 archives and at headquarters, because obviously we're
24 operating at somewhat of a disadvantage not having
25 additional records of these occurrences to assist us

1 in understanding what had happened at the time and
2 what happened subsequently.

3 ATTORNEY BAXTER:

4 We can discuss that off the record.

5 MR. MCGINLEY:

6 Okay. Well, I just wanted to make sure
7 that was on the record.

8 BY MR. MCGINLEY:

9 Q. In answering questions, you went pretty fast
10 through the folks that you recall were acting district
11 managers in District 4. Can you --- I couldn't write
12 fast enough.

13 A. Oh, acting district managers? I'm pretty sure, if
14 memory serves me, Allen Dupree was the first one, I
15 think. I'm pretty sure.

16 Q. And that would have been what time frame? I'm not
17 asking for an exact date.

18 A. Well, I was there, you know, --- if Allen and John
19 Pyles went six months apiece, which is pretty close, I
20 think, four to six, so say they went six months, and I
21 was down there in June of '04, it would have been like
22 June of '03, whenever Pat Brady left. So between
23 somewhere around June of '03 to June of '04 Allen was
24 first up and then came John Pyles. They both took
25 pretty lengthy stints, if I remember right. I don't

1 think there was anybody in between the other guy. I
2 don't think.

3 Q. So they were both approximately 120 days?

4 A. 120 to six months. They were there for a pretty
5 long time. Allen was --- that's right. I remember
6 one thing, the one event you'd probably look up,
7 somebody could find it, was he was involved, when he
8 was down there, if memory serves me, with that
9 Pinnacle Mine fire. So whenever that was occurring he
10 was --- he had his hands full with that, too.

11 Q. And that was whom?

12 A. Allen Dupree.

13 Q. Okay. And then you arrived somewhere around the
14 middle of June of 2004 ---

15 A. June 14th.

16 Q. --- and left July 10th?

17 A. July 10th.

18 Q. During the course of the time you were there and
19 at the end, did you write any memoranda relating to
20 how the office was operating and what --- what did you
21 do during that time, if you recall?

22 A. Reviewed a ton of plans, a ton of plans. I mean,
23 that district is so big. Worked long, long, long
24 hours, weekends, mostly plans. I'm trying to think
25 what else. I mean, it was mostly plans. Speed mining

1 took up a lot of time.

2 Q. For the record, ---

3 A. Speed mining ---.

4 Q. --- speed mining?

5 A. What is that?

6 Q. For the record, what do you mean by speed mining?

7 A. They had a petition which they were violating.

8 They were --- a petition --- they petitioned to mine
9 within the 150-foot barrier on the gas well that they
10 had. I think it's 75.1700. And they violated that
11 petition by not plugging their gas well. They were
12 getting gassed off. They didn't plug their gas well,
13 and so we --- Erik come down and we --- and somebody
14 else with Erik. I can't remember. Erik worked with
15 somebody, but --- Erik Sherer, and we had to --- we
16 had to eventually shut down our longwall I think for a
17 couple days. But that took a ton of time, tons of
18 discussions with Arlington and our district --- all
19 our inspectors in the districts, and we had to write
20 citations, make sure they were all worded correctly
21 and, you know, that took a lot of time. I bet that
22 took almost half my time, getting that all straight.
23 So that and --- what else? Oh, the fatal, the fatal I
24 was involved in. That took time. Let's see what
25 else. Those are the big ones. Mostly plans. Mostly

1 plans and then dealing with, you know, just regular
2 administrative e-mails and, you know, things like
3 that. Lots and lots and lots of time on plans. Come
4 in every day, plans are, you know, two feet high off
5 the desk every day.

6 Q. So coming into District 4 after there had been two
7 acting managers and you're going to be there for a
8 month, did you know when you left you would only be
9 there for a month?

10 A. Yeah. They told me 30 days when I --- you know,
11 when I went down. They kept the paperwork and they
12 told me 30 days. So I knew exactly --- well, I knew
13 exactly, and then Jesse Cole, they --- I'm almost
14 positive they hired him or made him permanent right
15 after I got that 30-day detail. I knew he was coming.
16 So I mean, just --- you know, but they said you can
17 finish up in 30, but he's going to start on this day.
18 And then, like I said, he sat with me for a week,
19 week-and-a-half, mostly on the speed mining issue. He
20 wanted to get up to speed, no pun intended, but he ---
21 I mean, he didn't get in my way or anything. He let
22 me, you know, do what I had to do, but he wanted to
23 make sure he knew exactly what was going on.

24 Q. So considering the fact that the district had been
25 without a permanent manager for close to a year at

1 that time, did you note any particular problems with
2 the operation of the district, I mean, anything that
3 jumped out at you as needing attention?

4 A. Not really. I mean, I didn't note anything that
5 comes out of my --- you know, comes to my mind. I
6 just know instinctively that you have to have some
7 permanency. And I heard discussions about morale,
8 things like that, that you know, any time you have
9 acting situations, it's never as good as a permanent
10 person. But I don't remember anything that jumped out
11 at me that --- not that I can remember anyway, that
12 said, man, if we had a permanent guy, this wouldn't
13 have happened.

14 Q. What about other problems that weren't linked to
15 the absence of a permanent district manager?

16 A. Other problems that weren't ---?

17 Q. Were not linked but that you felt needed
18 attention.

19 A. Oh, well, one thing that comes to mind was --- it
20 was like an administrative thing, actually. And I
21 think a lot of districts do this. And maybe I was
22 just too new, didn't know any better. There was one
23 guy I remember who was a --- I don't know what his
24 title was, but he was on some kind of extended leave
25 or something. And I got with Sandy Humphrey and we

1 wrote him a letter to come back. That's one thing I
2 remember. So maybe if a permanent guy was there,
3 maybe they would have had him back already, but I just
4 didn't think he --- I thought he was kind of --- in my
5 mind, he was abusing the system. I don't remember his
6 name. So we tried to get him back.

7 Q. Was it fair to say that you didn't feel like you
8 were there that long enough in District 4 to get a
9 real feel for how things were operating?

10 A. Yeah. I mean, that's --- I'd say that's pretty
11 fair. I mean, I --- you know, I got my feet wet,
12 don't get me wrong, but it was fast and furious. I
13 mean, it was --- I mean, I got the feel for as much as
14 you can in 30 days.

15 Q. What about staffing, adequate staffing?

16 A. No. In fact, when I come back, I told Ray
17 McKinney that I thought that district was way too big
18 --- he was the administrator at the time, to have only
19 one district manager. It needs split. And it still
20 needs split. It's still too big.

21 Q. Did you put that recommendation in writing?

22 A. Yeah. I gave him --- I didn't send a memo, but
23 I --- I think if --- if memory serves me, I put
24 together like a --- just a little quickie --- little
25 Microsoft Word --- if they had Microsoft Word at the

1 time. It might have been WordPerfect. I can't
2 remember six years ago, but it was like a listing,
3 bullet-type thing. And one of those --- one of the
4 issues that I remember I brought up was --- to him was
5 that I thought the district was too big.

6 Q. So you had a bullet-point memo or note to him.

7 Was it all about District 4?

8 A. Yeah, things that I gleaned from my time in the
9 district. And that was one. I don't really remember
10 too much else. There might have been some little
11 things. I don't remember. But that was one. And I
12 think --- that had been discussed even before I got
13 down there, if I remember, but I kind of saw it
14 firsthand, that I just thought that it was --- in my
15 limited time there, I just thought it was too big.
16 That was my recommendation.

17 Q. So you said in answer to an earlier question, in
18 the context of learning about the memoranda concerning
19 the methane floor burst in Upper Big Branch that there
20 were a lot of e-mails going around?

21 A. Yeah. This year, after the explosion, yeah, there
22 was --- I saw those reports a couple different times
23 after the explosion.

24 Q. Those ---.

25 A. I just remember the one from Charlie, but I think

1 somebody else sent it or something to me. I probably
2 got it filed somewhere.

3 Q. And you mentioned that you were especially
4 interested --- I don't want to put words in your mouth
5 but I'm trying to accurately paraphrase, because your
6 name was on one of the memos?

7 A. Yes.

8 Q. And that concerned you because you had not
9 received that memo; is that accurate, at the time?

10 A. You mean just within a few weeks?

11 Q. When you were at District 4 or subsequent.

12 A. Yeah. I wanted to see when that thing was dated.
13 And then I went back and looked at my --- the times
14 that I was actually here, six years ago. And then,
15 you know, like I said, that's how I know those dates
16 off the top of my head, is I was gone by July 10th and
17 the thing didn't even show up until five days later,
18 the 15th. So that's why I wanted to make sure ---.

19 Q. Did you know there was as draft of that memo that
20 was prepared in late May of 2004?

21 A. No, I didn't know that.

22 Q. Did you do any search yourself through MSHA files
23 for documents relating to these two memoranda or
24 related to the reported methane outbursts?

25 A. No.

1 Q. Did you talk to anybody about these documents,
2 especially with regard to your name being on them?

3 A. I mean, the only talking I did about it was Rich
4 Stoltz asked me one day --- a few weeks ago what ---
5 when I was here, and at the time I didn't know the
6 exact dates, six years ago, and I told him mid-June to
7 mid-July. And I said --- you know, I sort of knew
8 where he was going, and I asked him, why is that. And
9 he said --- he said, I just need to know, and you
10 know. He's on the investigation team. And I sort of
11 knew where he was getting at. I'm trying to think of
12 anybody else asked me anything. I mean, I just
13 said --- you know, brief discussions, but I don't
14 remember who ---.

15 Q. Can't remember who?

16 A. No, not offhand. I mean, I didn't talk to anybody
17 in depth about them, just --- I talked about them just
18 that my name showed up on this report, and I can't
19 remember who ---.

20 Q. You talked to Rich and others, but you can't
21 remember their names?

22 A. Yeah. I don't remember. Off the top of my
23 head --- I mean, I might have --- I'd just be
24 guessing. I might have talked to --- I might have
25 talked to Charlie Thomas, you know, for a second or

1 something, you know, to --- and all it was, was hey,
2 do you know my name showed up on this report and --- I
3 mean, it might have been him. I can't remember. I
4 remember distinctly talking to Rich. It was down in
5 the cafeteria. I'm pretty sure it was the cafeteria
6 here.

7 Q. Did he raise it with you?

8 A. Yeah. He asked me when I was here six years ago,
9 and I --- like I said, I told him approximate dates,
10 because that's all I knew at the time. And that's all
11 the further the discussion went.

12 Q. When you read that --- when you read the memos,
13 you read the July 15th memo and you sort of skimmed
14 through the March 4th memo, what significance did you
15 see with regard to those memos and the explosion of
16 Upper big Branch on April 5th?

17 A. The only significance is that I had heard that it
18 was --- you know, that somebody thought that that
19 geology may be similar to what we ran into at the
20 longwall --- that was present at the longwall April of
21 this year. I had heard that.

22 Q. Where did you hear that?

23 A. I talked to Kevin Stricklin about it, and that's
24 just --- you know, nobody knows for sure, but there
25 --- there's a theory anyway that geology may be

1 similar, that --- to what they have on the longwall
2 now or in that area. I shouldn't say the longwall.
3 Maybe that area of the mine. That's what --- that's
4 the only ---.

5 Q. When did you talk to Kevin Stricklin about it?

6 A. Was it last week? It was the week before last.

7 I'm pretty sure the week before last.

8 Q. What was the context in which you had that
9 discussion?

10 A. I was on the Internal Review Team, and he told me
11 that you're going to have to --- we're going to have
12 to remove you from the Internal Review Team because I
13 was here six years ago and my name showed up on this
14 report. And I was kind of in disbelief, and I sent
15 him an e-mail and said, I was already gone by the time
16 the report even hit my desk. I was gone five --- you
17 know, and he said, well, we cannot --- you know, I
18 don't remember his exact words, but we have to ---
19 it's so sensitive a situation because, you know, MSHA
20 is investigating itself, and it's controversy right
21 there. And to have --- for you to get interviewed
22 about this report or your time at --- when you were
23 down here, it wouldn't be good that you would be a
24 signatory on the Internal Review Report, so we have to
25 move you off. And in that same conversation, he told

1 me that he spoke to the one geologist that was --- he
2 may have --- I think he wrote the March report, I
3 think, Sandin Phillipson, ---

4 Q. Uh-huh (yes).

5 A. --- and Sandin said there's a chance --- I don't
6 know his exact words, but he said something like you
7 can draw a straight line. There might be a ---
8 there's a fault or something he can see or something
9 that --- you know, that fault line runs right through
10 that area that they were mining at the time. So
11 there's that possibility that that geology would be
12 similar to what they had six years prior.

13 Q. A fault or a run?

14 ATTORNEY BAXTER:

15 I don't think we should go into
16 conversations with the accident investigation team.
17 This is material ---.

18 MR. MCGINLEY:

19 Well, this is material to our
20 investigation.

21 ATTORNEY BAXTER:

22 Can we go off the record, please?

23 MR. MCGINLEY:

24 I'd like to stay on the record.

25 ATTORNEY BAXTER:

1 No. I want to go off the record right
2 now.

3 MR. MCGINLEY:

4 No. Just put on the record the reason.

5 ATTORNEY BAXTER:

6 The reason is because you're starting to
7 go beyond the facts that this witness knows and you're
8 starting to ask questions of his conversations with
9 team members during our investigation.

10 MR. MCGINLEY:

11 Well, we've been trying to find out
12 information about these memoranda and what happened
13 now for --- it's going on a month, and his testimony
14 is helpful in that regard.

15 ATTORNEY BAXTER:

16 Okay. Can we go off the record, please?

17 MR. MCGINLEY:

18 That's fine.

19 OFF RECORD DISCUSSION

20 BY MR. MCGINLEY:

21 Q. So Mr. Gigliotti, you're not aware of any
22 documents in MSHA's files or possession that you have
23 seen or heard about that relate to the methane
24 outburst at Upper Big Branch in 2003 and 2004, except
25 the July 15th, 2004 and the March 4th, 2004

1 memorandum?

2 A. That's the only two documents that I'm aware of.
3 And like I said, I was only aware of them after the
4 explosion, the explosion this year.

5 Q. I'm going to show you a copy, you've seen this
6 before, the July 15th memorandum. And at the end
7 there are cc's.

8 MR. MCGINLEY:

9 Maybe we should make this --- I don't
10 know. We don't have to make it part of the record. I
11 think it's already in the record.

12 ATTORNEY BAXTER:

13 I think so.

14 BY MR. MCGINLEY:

15 Q. This would be page five ---

16 A. Okay.

17 Q. --- of the July 15th memorandum.

18 A. Yeah.

19 Q. What do those cc's indicate to you?

20 A. That it was --- well, Mike Gauna --- I think Gauna
21 and George Aul wrote the report. So Gauna is cc'd.
22 Roof control files. It says ventilation, George Aul.
23 He's one of the other authors, Denny Beiter, Rich
24 Stoltz. So they were cc'd on this thing.

25 Q. Is this the same Rich Stoltz that you were talking

1 about earlier?

2 A. Yeah, same one.

3 Q. So did he recall --- I withdraw that.

4 A. I didn't ask him. I didn't ask him. I'm sure he
5 did, though.

6 Q. What does vent mean in this?

7 A. Ventilation division.

8 Q. Where is that located?

9 A. At the time it was in --- well, now it's right ---
10 It's in Bruceton, Pennsylvania.

11 Q. Not West Virginia, Pennsylvania?

12 A. Yeah, Pennsylvania.

13 Q. And does that indicate that a copy of this
14 memorandum was sent to Bruceton, Pennsylvania?

15 A. Yes.

16 Q. Would you expect a memorandum of this nature to be
17 maintained in MSHA's records?

18 A. Yeah, I'm sure they have it. Well, I can't say
19 I'm sure, but they probably do.

20 Q. And what is roof control files? What does that
21 refer to?

22 A. The ventilation --- or roof control will have a
23 copy also.

24 Q. And where would that be located?

25 A. They're --- everything ---.

1 Q. At that time.

2 A. At that time, everything, except --- well, you got
3 Triadelphia. That's the equipment certification
4 people, Triadelphia, West Virginia. Everything else
5 is in Bruceton, from like about 1990 --- I don't know,
6 '02 or something. So they would have all been there
7 by that time. This is 2004, so everybody is in
8 Bruceton, except the --- I take that back. They split
9 those divisions. At most, that's kind of a split.
10 They got some roof control and --- that's right. They
11 got some roof control and some ventilation. Maybe
12 some Toxic Materials Division people also in
13 Triadelphia, but the split was kind of the safety and
14 health people in Bruceton and the approval people are
15 in Triadelphia. But like I said, there's some
16 divisions that are ---.

17 Q. So where would this memo have gone? Maybe that's
18 a better way to ask.

19 A. Wherever they keep the files. Let's put it that
20 way. Where they keep the files. It would have gone
21 to roof control and then ventilation is probably the
22 main file, but probably up in Bruceton, probably.

23 Q. And what does vent files mean? Is that
24 different ---? Apparently it's different than
25 the ---.

1 A. Well, you got two divisions there, roof control
2 and ventilation.

3 Q. Well, there's vents twice in the cc's.

4 A. Oh, well, the vent people are all --- Beiter and
5 Stoltz. Then you got vent files.

6 Q. What does SUBD75 refer to?

7 A. Subpart (b), part 75. They filed by the CFR.

8 Q. And then below the cc's there's a line that says
9 MSHA and there's a variety of --- it appears to be a
10 telephone number.

11 A. Yeah. See that TRI, it's probably Triadelphia
12 because that's a 304 number.

13 Q. Yes.

14 A. So they probably have, I guess --- well, I'm
15 assuming Aul is probably in Triadelphia, at that
16 number, (304), and Pittsburgh Vent --- I'm not sure
17 what GH stands for, but then Upper Big Branch
18 ventilation. That's just, you know, some kind of
19 designation. They could find that file wherever they
20 filed it.

21 Q. With an extraordinary event like the one that
22 occurred --- or the ones that occurred at these
23 methane floor bursts at Upper Big Branch in 2003 and
24 2004, would you expect that there would be MSHA
25 records of the inspectors' presence at the mine, for

1 example, and what was done with regard to the
2 withdrawal of men in order to establish ventilation
3 and so forth?

4 A. Yeah, you could probably find those.

5 Q. And where would you look, would you say?

6 A. You'd have to go back --- they probably did it
7 under a spot inspection, would be my guess. You'd
8 have to go under the files back then for --- at the
9 district and you could probably find some kind of
10 records. They probably did a spot inspection of what
11 was going on, would be my guess. They would probably
12 have notes and I'm sure there was a citation probably
13 written somewhere along the line and you could
14 probably find what happened.

15 Q. Would those documents also be sent to archives at
16 some point?

17 A. There's a possibility it could be because I
18 think --- if memory serves me, I think after three
19 years they send --- they start archiving stuff. I
20 think it's three years.

21 Q. Do you think the documentation of these methane
22 bursts were important enough to be required to be
23 retained in an archive?

24 A. Now, I do, yeah.

25 Q. If you had seen this report at the time?

1 A. If I had seen it at the time?

2 Q. Yes.

3 A. I mean, I'm not going to speculate on that. I
4 mean, it's --- you know, those --- even if I would
5 have seen that report at the time, I'm sure I would
6 have paid some attention to it. But to --- you know,
7 I don't think it --- I don't think --- nobody got ---
8 if memory is right, nobody got hurt, even though I
9 guess there's a possibility, but ---. I mean, I ---.

10 Q. Well, if there was enough gas, methane in the mine
11 to withdraw miners and keep them out for
12 two-and-a-half days, that would be fairly significant,
13 wouldn't it?

14 A. Yeah.

15 Q. Especially in light of the fact that this is such
16 an extraordinary event?

17 A. Yeah.

18 Q. That certainly would have gotten your attention at
19 the time?

20 A. Yeah, although I told you a couple times I didn't
21 see the report, ---

22 Q. No, I understand that.

23 A. --- so you know ---. But yeah, if I'd have known
24 that, yeah, I might have paid more attention to it,
25 yeah. That's probably a pretty good possibility.

1 That's hopefully I would have anyways.

2 MR. MCGINLEY:

3 Well, I'm finished for the moment. I
4 think I'll have some other questions.

5 RE-EXAMINATION

6 BY MR. GODSEY:

7 Q. Have you ever visited the Upper Big Branch Mine?

8 A. Not to my knowledge. I don't remember being
9 there. Not to my knowledge.

10 Q. When you came to District 4, did the previous
11 district manager go over anything that was pending or
12 any ---?

13 A. Did he what?

14 Q. Did he go over anything that was pending or
15 problems that ---?

16 A. You know, I was trying to remember. You know, I
17 went in to see John Pyles. I wanted to catch him
18 before he left. And like I said, I think it was his
19 last day. Like I said, it was a Friday, I think. I'm
20 pretty sure it was a Friday. And I just remember ---
21 and I wanted to get there a little early so we'd have
22 time to go over anything. I'm taking over this
23 monster district and, you know, --- and all I remember
24 is the district --- or that briefing he gave me was
25 very, very, very brief, and I was kind of stunned that

1 that's about all he had to tell me. And I don't
2 remember exactly what he said, but I don't remember
3 him saying anything about this. I mean, if he would
4 have --- and I'm not trying to point fingers, but if
5 he would have said, listen, you better really pay
6 attention to this Upper Big Branch Mine. We had a
7 couple incidences and all. You know, if he had gone
8 into, you know, great detail of here's the report and
9 you better read this, you know, if he would have made
10 those kind of points to me, I would have like perked
11 up, you know, especially, you know --- I mean, I'm
12 walking into this not knowing, you know ---.

13 I mean, I just --- when I first got the
14 assignment, Ray McKinney asked me to come down to
15 District 4, I was like, you know, because I knew it
16 was the biggest, baddest district we've got in MSHA.
17 And I even went to, I think, it was Bill Crocco and I
18 said, what do you think. I mean, I don't know. This
19 is quite an assignment he's asked me to do. And he
20 said --- you know, he said, you'll be all right, just
21 --- you know, you'll be okay. But I don't remember
22 any briefing on this by John Pyles to me at all.

23 Q. Did you brief --- what did you brief with Jesse
24 Cole? When Jesse Cole took over, what did you go over
25 with him?

1 A. You know, like I said, he was there for about a
2 week, week-and-a-half, and mostly what we did was the
3 speed mining. And you know --- so I don't know if I
4 had like gave him any formal briefing of anything I
5 knew because mostly, you know, the stuff that I was
6 --- most of the stuff that I remember were, you know,
7 plans that, you know, one plan after another, you
8 know, just look at it and talk to your guys and get
9 the issues, are they complying with the law, you know,
10 that kind of thing. And I do remember at a very late
11 hour, I think it was my last day, there was a couple
12 other Tech Support reports sitting there that I had
13 --- I mean, like I said, you could barely get --- I
14 mean, in 12 hours or 14-hour days, you couldn't get
15 that in box cleaned out if you --- you had to be
16 Superman. And there was things that were in there
17 that --- including a couple Tech Support reports, not
18 these, but others that I didn't get a chance to get
19 to. And I wrote notes to them. I said, you better
20 pay attention to these. Look at them and ---
21 handwritten notes. And I said, you know, I'm sorry I
22 have to do this, but I'm out of time. You know, I
23 don't have time. It was like, you know, eight, nine
24 o'clock at night or something. I was leaving, my last
25 day or something. And I said, take a look at these

1 reports, whatever they say. Because I know from
2 experience, being around, is that you got to pay
3 attention to these reports because, you know, Tech
4 Support --- our technical arm is suggesting things.
5 You got to either abide by them or go in writing and
6 say why you're not going to do them, you know. So
7 that's why if I would have seen these, I would have
8 done --- hopefully, I would have done, you know, the
9 same thing there. I would have --- in my 30-day time
10 period, I would have got with my guys and said, you
11 know ---.

12 And that brings up a thought that I had, is that
13 you really got to --- and I don't know if maybe the IT
14 team has done this, to look at the ventilation plan
15 and the roof control plan to see if any of these
16 recommendations were actually implemented. They might
17 have been without a formal memo or something. Jesse
18 Cole may have grabbed these reports and said, here,
19 implement these in the plans. He might have done
20 that. I don't know. But I think, if I remember, your
21 question was did I give any briefing on Upper Big
22 Branch.

23 Q. Yeah.

24 A. No.

25 Q. Yeah, brought him up to date on what you ---?

1 A. Who up to date? I don't remember.

2 Q. Just the whole district.

3 A. No. I just --- we just talked, you know, about
4 --- he was --- like I said, he was in on a lot of the
5 meetings on speed mining, so he was up to speed on
6 what was going on. And like I said, I left him some
7 handwritten notes from one or two --- probably like
8 two Tech Support reports that would come in. And you
9 know, I just wrote him a note and said, here. And I
10 felt bad doing it because I said, you know, I didn't
11 get a chance to even go through these, I've been so
12 busy. But you know, word to the wise --- and he'd
13 been around, so he knew. I said, you know, you need
14 to brief these things and do something with them. But
15 I tried to clean out that in box the best I could for
16 him. I tried my best. Only so many hours in a day.

17 MR. GODSEY:

18 Do you have any?

19 MR. FARLEY:

20 No.

21 RE-EXAMINATION

22 BY MR. MCGINLEY:

23 Q. Did you know that there were no documents that
24 were identified that relate to the March and July 2004
25 memos before you came in here?

1 A. Say it again one more time.

2 Q. Did you know that MSHA --- no one in MSHA had been
3 able to identify any documents that relate to these
4 memos or the occurrence at the mine?

5 A. Did I know beforehand?

6 Q. Yes.

7 A. No, I did not.

8 Q. I didn't know that.

9 A. I'm surprised, but ---.

10 Q. I'm sorry, you ---?

11 A. I'm surprised.

12 MR. MCGINLEY:

13 I don't have any other questions.

14 ATTORNEY BAXTER:

15 On behalf of MSHA and the Office of
16 Miners' Health, Safety and Training, I want to thank
17 you for appearing and answering questions today. Your
18 cooperation is very important to the investigation as
19 we work to determine the cause of the accident. We
20 require that you not discuss your testimony with any
21 person aside from your personal representative. After
22 questioning other witnesses, we may call you if we
23 have any follow-up questions that we feel that we need
24 to ask you. If at any time you have additional
25 information regarding the accident that you would like

1 to provide to us, please contact us at the contact
2 information that was previously provided to you.
3 If you wish, you may now go back over any
4 answer you've given during this interview. You may
5 also make any statement that you would like to make at
6 this time.

7 A. Yeah, I want to make just a couple points. In
8 reading through the --- this July 15th memo, 2004, it
9 referenced a meeting that was held on March 26th of
10 2004. And I didn't arrive until July 14th, so I
11 didn't even --- I wasn't even aware of the meeting
12 that occurred. I guess I --- I don't know where I
13 was. I don't know if I was on a mine site. Tech
14 Support was there and some MSHA people were there. So
15 I wasn't aware of that meeting.

16 And the other thing is --- that jumped out at me
17 from working with Tech Support for a long, long time,
18 normally we sit down with the district managers before
19 we put anything in writing just to make sure that
20 they're cool with everything, you know, not that we're
21 going to --- not that Tech Support is going to not
22 make a statement, but sometimes you got to like ---
23 you know, you got to make sure that they're aware ---
24 at least aware. And when this all came up, I started
25 thinking about, you know, that no one contacted me

1 while I was there for 30 days --- or actually 27 days
2 to say, hey, we need to sit down with you on this
3 report, because obviously it was being written at the
4 time I was there. And I didn't know they were on the
5 site, didn't know it was being drafted. I didn't even
6 know about the March 5th report. So normally --- like
7 I said, the normal way of doing business is you
8 contact the DM before --- if you're on a mine site and
9 you do some studies, whatever you're doing, roof,
10 vent, the two biggies, you contact the district
11 manager and you say, hey, we've got this draft and
12 we're ready to put the final to it, and we'd like to
13 go through these recommendations to make sure you
14 don't --- you know, that you can live with these
15 things. You know, we're not here to hang you. You
16 know, we're not going to lie or anything, but we're
17 not --- just make sure we're on base, too, you know,
18 to make sure we don't put something in writing that's
19 not doable, you know, that nobody can achieve. And so
20 anyway, that --- no one ever contacted me while I was
21 there, and then I left, you know. So then the rest is
22 history. But I just wanted to make that statement.

23 ATTORNEY BAXTER:

24 Okay. Anything else?

25 A. No.

1 ATTORNEY BAXTER:

2 Again, I want to thank you for your
3 cooperation in this matter.

4 A. Okay.

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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