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**Transcript of the Testimony of David Pompie**

**Date:** August 13, 2010

**Case:**

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Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH  
OF  
DAVID POMPIE

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 Friday, August 13, 2010, beginning at 10:20 a.m.

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

2

3   ROBERT S. WILSON, ESQUIRE

4   U.S. Department of Labor

5   Office of the Regional Solicitor

6   1100 Wilson Boulevard

7   22nd Floor West

8   Arlington, VA 22209-2247

9

10   TERRY FARLEY

11   West Virginia Office of Miners' Health,

12   Safety and Training

13   1615 Washington Street East

14   Charleston, WV 25311

15

16   ERIK SHERER

17   Mine Safety and Health Administration

18   1100 Wilson Boulevard

19   Arlington, VA 22209-3939

20

21   BETH SPENCE

22   West Virginia Independent Investigation

23   58 Frontier Road

24   Alum Creek, WV 25003

25

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ATTORNEY WILSON:

Good morning. My name is Bob Wilson. I am with the Office of the Solicitor, United States Department of Labor. Today is August 13, 2010, and we are here to conduct an interview of David Pompie. With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration. Terry, do you want to state your appearance?

MR. FARLEY:

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

MS. SPENCE:

I'm Beth Spence, with the Governor's independent investigation.

ATTORNEY WILSON:

Mr. Pompie, you received a subpoena to be here; is that correct?

MR. POMPIE:

Yeah.

ATTORNEY WILSON:

All right. Mr. Farley is going to go over some preliminary matters pertaining to the

1 subpoena. If you would, would you face the court  
2 reporter, and she'll swear you in.

3 -----  
4 DAVID POMPIE, HAVING FIRST BEEN DULY SWORN, TESTIFIED  
5 AS FOLLOWS:

6 -----

7 MR. FARLEY:

8 I'd like to enter as Exhibit one a copy  
9 of the subpoena which was issued to Mr. Pompie.  
10 (Pompie Exhibit One marked for  
11 identification.)

12 MR. FARLEY:

13 Does that look like the copy you  
14 received?

15 A. Yeah.

16 MR. FARLEY:

17 Also I want to enter as Exhibit Two the  
18 Return of Service for the same subpoena.  
19 (Pompie Exhibit Two marked for  
20 identification.)

21 MR. FARLEY:

22 Sir, under the West Virginia Code we're  
23 obligated to offer you a modest witness fee of \$40 per  
24 day for appearing, the even more modest amount of  
25 money of 15 cents per mile in traveling to get here.

1 Now, in order to receive that money, if you wish to  
2 receive it, you would need to complete these two forms  
3 for me. Do you wish to receive the witness fee and  
4 mileage?

5 A. No.

6 MR. FARLEY:

7 Okay. You decline. Thank you very  
8 much. Go ahead and start.

9 ATTORNEY WILSON:

10 All members of the Mine Safety and Health  
11 Administration Accident Investigation Team and all  
12 members of the State of West Virginia Accident  
13 Investigation Teams participating in the investigation  
14 of the Upper Big Branch Mine explosion shall keep  
15 confidential all information that is gathered from  
16 each witness who provides a statement until witness  
17 statements are officially released. MSHA and the  
18 State of West Virginia shall keep this information  
19 confidential so that other ongoing enforcement  
20 activities are not prejudiced or jeopardized by a  
21 premature release of information. This  
22 confidentiality requirement does not preclude  
23 investigation team members from sharing information  
24 with each other or with other law enforcement  
25 officials. Everyone's participation in the interview

1       constitutes their agreement to maintain  
2       confidentiality.

3       Mr. Pompie, government investigators and  
4       specialists have been assigned to investigate the  
5       conditions, events and circumstances surrounding the  
6       fatalities that occurred on April 5th, 2010, at the  
7       Upper Big Branch Mine-South. An investigation is  
8       being conducted by MSHA, pursuant to Section 103(a) of  
9       the Federal Mine Safety and Health Act and by the West  
10      Virginia Office of Miners' Health, Safety and  
11      Training, and we appreciate your assistance in this  
12      investigation. This is not an adversarial proceeding.  
13      Each of the parties will be allowed to have follow-up  
14      questions but no Cross Examination. You are permitted  
15      to have a legal representative present with you. Do  
16      you have a representative with you today?

17      A. No.

18      ATTORNEY WILSON:

19      Your identity and the content of this  
20      conversation will be made public at the conclusion of  
21      the interview process and may be included in a public  
22      report of the accident, unless you request that your  
23      identity remain confidential, or if releasing your  
24      information would otherwise jeopardize a potential  
25      criminal investigation. If you request us to keep

1 your identity confidential, we will do so to the  
2 extent permitted by law. In other words, if a judge  
3 orders us to reveal your name or some other law  
4 requires that we reveal your name, we may do so.  
5 Also, there may be a need to use the information that  
6 you provide to us in other investigations or hearings  
7 concerning the explosion. Do you understand your  
8 right to request confidentiality, and do you have any  
9 questions concerning that?

10 A. Yeah, I understand. I have no questions.

11 ATTORNEY WILSON:

12 After the investigation is complete, MSHA  
13 will issue a public report detailing the nature and  
14 the causes of the fatalities in the hope that greater  
15 awareness about the causes of accidents can reduce  
16 their occurrence in the future. Information obtained  
17 through interviews is an important part of those  
18 findings and is included in those reports. We have  
19 interviewed a number of witnesses, and we plan on  
20 interviewing additional witnesses after today, so we  
21 ask that you not discuss your testimony with anyone  
22 else until after all of the interviews have been  
23 completed. A court reporter will be recording the  
24 interview, so please speak loudly and clearly. If you  
25 do not understand a question that is asked, please ask

1 for us to rephrase the question. Okay?

2 A. All right.

3 ATTORNEY WILSON:

4 Please answer each question as fully as

5 you can, including any information that you may have

6 learned or heard from someone else. Again, I would

7 like to thank you for your appearance here today. We

8 appreciate your assistance. After we have finished

9 asking questions, you will have an opportunity to make

10 a statement and provide any additional information

11 that you believe may be useful. Also, if after the

12 interview today is completed you think of any

13 additional information, you may contact Norman Page,

14 who is MSHA's lead accident investigator. And here's

15 a letter to you concerning your appearance here today,

16 and that includes information --- contact information

17 for Mr. Page here at the Mine Academy. The letter

18 also contains information concerning your rights as a

19 miner under the Mine Act? All right?

20 For the record, would you please state

21 your full name and would you give us your address and

22 telephone number?

23 A. David Joseph Pompie, (b) (7)(C)

24 (b) (7)(C)

25 ATTORNEY WILSON:

1 Thank you.

2 MR. FARLEY:

3 I forgot one thing. Mr. Pompie, on

4 behalf of the Office of Miners' Health, Safety and

5 Training, I have to advise you that the West Virginia

6 Code --- West Virginia Mine Health and Safety

7 Regulations also offers protection to miners against

8 potential discrimination from participating in these

9 type interviews. I'm going to pass along some contact

10 information from the West Virginia Board of Appeals.

11 They hear complaints from miners regarding

12 discrimination. Should you have any problems, feel

13 free to contact the Board or either of the individuals

14 listed on the memo, which include myself and our lead

15 underground investigator, Bill Tucker. And I would

16 caution you that should you have a problem, you need

17 to file a complaint within 30 days of when it happens.

18 Okay?

19 A. Okay.

20 EXAMINATION

21 BY MR. SHERER:

22 Q. First of all, I want to thank you for coming down

23 here, Mr. Pompie. This is very important. We're

24 trying to answer two basic questions. The first is

25 what happened. And we're doing that for the families

1 and the friends and the coworkers of those 29 miners.  
2 The second one is that we're trying to determine the  
3 causes and circumstances that led to this explosion so  
4 we can prevent similar explosions in the future. So  
5 any help, any information you can give us is greatly  
6 appreciated. Roughly, how many years of mining  
7 experience do you have, Mr. Pompie?

8 A. Seven.

9 Q. Seven. And has all that been with the Massey  
10 company?

11 A. No.

12 Q. Where did you start at?

13 A. At Massey.

14 Q. Okay. Did you leave at some point in time?

15 A. Yeah, and went to Pocahontas.

16 Q. Okay. About when was that, just roughly?

17 A. Probably after about three years.

18 Q. When did you come back to Massey?

19 A. I worked for Pocahontas for a little over a year.

20 Q. Okay. So about three years ago you came back to  
21 Massey?

22 A. Yeah.

23 Q. How long had you been working at Upper Big Branch  
24 prior to the explosion? About when did you come up  
25 here?

1 A. I think I worked there for a little over a year.

2 Q. Okay. So you were there about a year.

3 Q. What is your job description?

4 A. Most of the time I was a roof bolter.

5 Q. Now, I understand you worked several different  
6 sections bolting. Where were you working prior to the  
7 explosion?

8 A. A week before the explosion I left Upper big  
9 Branch and went to Marfork Mines.

10 Q. Okay. So you weren't even there a week, roughly a  
11 week before the explosion. Where had you worked prior  
12 to that in the mines?

13 A. I went in the Ellis Portal.

14 Q. Where they were developing for a new longwall  
15 panel?

16 A. Right.

17 Q. About how long did you work up there?

18 A. Probably two months.

19 Q. Okay. So you were up there about two months.  
20 Let's talk about that part of the mine a little bit.  
21 Two months would place you roughly --- the first of  
22 February, going up in that part of the mine, wouldn't  
23 it?

24 A. Yeah, probably something like that, middle of  
25 February.

1 Q. Okay. Middle of February. What did you do up  
2 there? Did you run a roof bolter?

3 A. No. We was just doing odd jobs, getting it ready,  
4 building stoppings, just doing whatever we needed to  
5 be doing, cleaning.

6 Q. Who were you working for up there?

7 A. Working directly for Marvin Perdue.

8 Q. Okay. So Mr. Perdue was the boss. Did he have  
9 anybody else helping him up there?

10 A. Yeah. Yeah, there were several of them.

11 Q. Who was that, please?

12 A. I don't --- I couldn't tell you their names ---

13 Q. Oh, okay.

14 A. --- exactly.

15 Q. Exactly. So you guys were working on ventilation.  
16 Was there any sort of plan that you guys were  
17 following?

18 A. Not that I was aware of.

19 Q. Okay.

20 A. I mean, there may have been one, but ---.

21 Q. Would Mr. Perdue tell you where to build stoppings  
22 and where to knock out stoppings?

23 A. Yeah.

24 Q. Okay. Would he --- who did the --- do you know  
25 who did the pre-shift examinations for this work?

1 A. No.

2 Q. Okay. Were there any areas up there where you saw  
3 dates, times and initials, like a DTI board?

4 A. Yeah. You seen dates and initials everywhere.

5 Q. Okay.

6 A. I don't know if they was --- what dates they were  
7 or anything, but yeah, you seen them everywhere.

8 Q. Okay. Did you guys primarily work around the  
9 Ellis Portal entries or did you work down in the LBB  
10 section?

11 A. I'm not sure about it really.

12 Q. Okay.

13 A. We was about 15 breaks underground, something like  
14 that, 20 breaks.

15 Q. Okay. So you guys were --- did you do any work on  
16 the roof down there?

17 A. Like spot bolting or anything?

18 Q. Yeah. Sure.

19 A. No.

20 Q. Okay. Did you even have power down there?

21 A. We had a roof bolter in there. We put up monkey  
22 faces one time.

23 Q. Okay.

24 A. So yeah, we had power of some kind.

25 Q. Okay. Did you ever hear of anybody saying

1 something like we got inspectors on the property or we  
2 got company?

3 A. You hear it all the time.

4 Q. Okay. Thank you.

5 A. I mean, I don't know if I heard it when I was  
6 there, per se, but I mean, you hear it all the time.

7 Q. Yeah. Sure. Okay. Thank you. What did you  
8 think about the ventilation at this mine? Did you  
9 think that there were any --- did you think the  
10 ventilation was adequate at all times?

11 A. When I was down here, you know, I don't know. But  
12 like when I was on the working sections, yeah, it  
13 seemed to be.

14 Q. Okay. Did you ever hear anybody complaining about  
15 not having enough air?

16 A. Sometimes like --- you know, you got to, you know,  
17 stop what you're doing and see what the problem is.  
18 Usually there's something down, backup curtains or  
19 something like that.

20 Q. Sure. Anyplace in particular you'd hear people  
21 complain about low air or was it just a few people  
22 scattered about?

23 A. No, no place in particular.

24 Q. Okay. Ever hear anybody complaining about  
25 methane?

1 A. No.

2 Q. Okay. Ever hear anybody complaining about float  
3 coal dust?

4 A. No.

5 Q. Have you been back to Upper Big Branch since the  
6 explosion?

7 A. No.

8 Q. Have you talked to any of the miners from Upper  
9 Big Branch since the explosion?

10 A. Yeah.

11 Q. Based on whatever you know, whatever you've heard,  
12 what do you think was the cause of this explosion?

13 A. A massive amount of methane rush in from  
14 somewhere.

15 Q. Do you think it was on the longwall?

16 A. I don't know. I would say.

17 Q. Did you ever go to the longwall?

18 A. Never did, no.

19 Q. Never did. Did you ever work in any of the  
20 sections developing for the longwall?

21 A. Yeah.

22 Q. Did you work on the headgate or the tailgate?

23 A. I'm not sure what it was. I guess --- I think  
24 they called it One section.

25 Q. One section, that would have been the headgate, we

1 understand. Did you work on it back when it was  
2 getting close to where they put that fan in, that  
3 Bandytown fan?

4 A. No. I wasn't working there when they put that ---  
5 when they bored that big ---?

6 Q. Uh-huh (yes).

7 A. No, I wasn't working up there then. I was  
8 working ---.

9 Q. Okay. Do you remember any problems when you were  
10 working on One section?

11 A. No. If I was working on One section, I was  
12 running a buggy.

13 Q. Okay. Was there any problems with methane  
14 anywhere along there that you remember?

15 A. No. I never heard anybody mention any methane.

16 Q. Okay. Let's talk about track doors a bit. We  
17 understand there was a lot of doors you had to go  
18 through to get to various places in this mine. Did  
19 you ever come up and find any of those doors left  
20 open?

21 A. NO.

22 Q. Okay. Were those doors in good repair or were  
23 they beat up ---?

24 A. They wasn't beat up like I've seen before, no.  
25 And they wasn't automatic doors. You had to get out

1 and open them.

2 Q. So they were in fairly good repair?

3 A. Yeah.

4 Q. Okay. Did you ever have to get off in some of the  
5 entries away from the main belt and track entry  
6 anywhere, like an intake or return?

7 A. Yeah. Yeah.

8 Q. Do you recall what condition those entries were  
9 in, particularly the rock dust?

10 A. I would say fair.

11 Q. So they weren't totally white, but they weren't  
12 totally black?

13 A. No. They weren't never totally black.

14 Q. Okay. A little gray?

15 A. Yeah. I mean, you could tell they've been rock  
16 dusted, definitely. I mean, you might see a spot of  
17 black, but that would just be where a rib rolled or  
18 something like that.

19 Q. Okay. Did you ever hear of any problems with  
20 water at this mine?

21 A. Yeah.

22 Q. Where was that at; do you recall?

23 A. I believe it was on the longwall or behind the  
24 longwall they was having trouble with water.

25 Q. Did anybody tell you how deep it got?

1 A. I just heard them boys --- they had their own pump  
2 crew, a few people that did that stuff, and I heard  
3 them, waist deep and ---.

4 Q. Is there anything that stands out as odd or  
5 unusual that last week or so you worked?

6 A. No.

7 MR. SHERER:

8 That's all the questions I've got.

9 EXAMINATION

10 BY MR. FARLEY:

11 Q. Just to clarify and make sure I understood what  
12 you were saying, you left UBB and went to Marfork  
13 about a week before the explosion?

14 A. The Monday before.

15 Q. And the last place you worked at UBB was down  
16 around the Ellis Portal area, about 15 crosscuts inby  
17 on that construction project?

18 A. Yes.

19 Q. Now, prior to that you've worked on what's called  
20 the 22 Headgate section?

21 A. Yes.

22 Q. And you were there about two months?

23 A. Yeah, something like that, a month-and-a-half, two  
24 months. Yeah, they was running up split air and then  
25 they went down to sweep air. They did away with

1 running both the miners at a time.

2 Q. Okay. On the 22 Headgate, do you recall anybody  
3 complaining to upper management about ventilation  
4 issues?

5 A. No.

6 Q. Do you recall continuous miner operator or roof  
7 bolters complaining about lack of air on the 22  
8 Headgate?

9 A. No.

10 Q. Okay.

11 EXAMINATION

12 BY MS. SPENCE:

13 Q. What shift did you work?

14 A. Dayshift.

15 Q. Both when you were working on 22 Headgate when you  
16 were working down on the construction project?

17 A. Yeah.

18 Q. Thank you.

19 MS. SPENCE:

20 That's all.

21 RE-EXAMINATION

22 BY MR. FARLEY:

23 Q. When you worked on the 22 Headgate, was Dean Jones  
24 your foreman?

25 A. No. It was --- they called him Head. He was one

1 of the guys in the explosion.

2 MR. SHERER:

3 Steve Harrah?

4 A. Yeah, Steve.

5 MR. SHERER:

6 That was the 22 Tailgate.

7 A. So it was the tailgate. See, I wasn't sure which  
8 one it was.

9 MR. SHERER:

10 Okay. Thank you.

11 A. Yeah, it was Steve.

12 BY MR. FARLEY:

13 Q. Okay. So you actually may have worked down here  
14 then instead of up here, is that the way you remember  
15 it?

16 A. Yeah, it was with his crew.

17 Q. With Harrah. Okay. All right. I got you. All  
18 right.

19 MR. FARLEY:

20 That's all I've got.

21 MR. SHERER:

22 That's all I've got.

23 ATTORNEY WILSON:

24 Okay. Let's go off the record.

25 OFF RECORD DISCUSSION

1 ATTORNEY WILSON:

2 Mr. Pompie, on behalf of MSHA and the  
3 Office of Miners' Health, Safety and Training, I want  
4 to thank you for appearing and answering questions  
5 today. After questioning other witnesses, we may call  
6 you if we have any follow-up questions. And if you  
7 think of any additional information, please contact  
8 us. As I indicated, the letter that we provided to  
9 you does have some information concerning your rights  
10 as a miner under the Mine Act.

11 Before we finish up, I want to give you  
12 an opportunity. If there's anything else that you  
13 would like to add to the record, anything that you  
14 think might assist us in the investigation, you can  
15 provide that information to us now.

16 A. No, I have none.

17 ATTORNEY WILSON:

18 Okay. Then again, thank you for your  
19 appearance here today, and we'll go off the record.

20 \* \* \* \* \*

21 STATEMENT UNDER OATH CONCLUDED AT 10:43 A.M.

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1 STATE OF WEST VIRGINIA )

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CERTIFICATE

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



*Alison Salyards*