STATEMENT UNDER OATH

OF

JAMES KLUG

Taken pursuant to Notice by Miranda D. Elkins, a Court Reporter and Notary Public in and for the State of West Virginia, at Wingate Inn, 350 Conference Center Way, Bridgeport, West Virginia, on Sunday, March 26, 2006, at 8:00 a.m.

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1 A P P E A R A N C E S
2
3 DENNIS J. SWENTOSKY
4 Supv. MS&H Specialist (Ventilation)
5 U.S. Department of Labor
6 Mine Safety & Health Administration
7 CMS&H, District 2
8 Paintersville Road
9 R.R. #1, Box 736
10 Hunker, PA 15639
11
12 DAVID STUART
13 1507 Stonehenge Road
14 Charleston, WV 25214
15
16 MICHAEL RUTLEDGE
17 Safety Director
18 State of West Virginia
19 Office of Miners' Health, Safety &
20 Training
21 142 Industrial Drive
22 Oak Hill, WV 25901
23
24
25

1 A P P E A R A N C E S (cont.)
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 22203
9
10 STEVEN P. MCGOWAN, ESQUIRE
11 Steptoe & Johnson, PLLC
12 Bank One Center, Seventh Floor
13 P.O. Box 1588
14 Charleston, WV 25326-1588
15
16
17
18
19
20
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1 I N D E X

2

3 INTRODUCTION 6 - 14
4 WITNESS: JAMES KLUG
5 QUESTIONS
6 By Mr. Swentosky 14 - 63
7 By Mr. Rutledge 63 - 72
8 By Mr. Swentosky 72 - 86
9 By Mr. Rutledge 86 - 93
10 By Mr. Swentosky 93 - 95
11 By Mr. Rutledge 97 - 101
12 By Mr. Swentosky 101 - 103
13 CERTIFICATE 104

14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

NUMBER	DESCRIPTION	PAGE IDENTIFIED
One	Map of mine	54
Two	Enlarged map of mine	72

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 and 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. I've been
16 assigned to conduct an
17 investigation into the
18 accident that occurred at the
19 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

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. MSHA accident
17 reports are made available to
18 the public in hope that
19 greater awareness about the
20 causes of accidents can reduce
21 their occurrence in the
22 future. Information obtained
23 through witness interviews is
24 frequently included in these
25 reports. Your statement may

1 also be used in other
2 enforcement proceedings.
3 I would like to thank
4 you in advance for your
5 appearance here today. We
6 appreciate your assistance in
7 this investigation. The
8 willingness of miners and mine
9 operators to work with us is
10 critical to our goal in making
11 the nation's mines safer. We
12 understand the difficulty for
13 you in discussing the events
14 that took place, and we
15 greatly appreciate your
16 efforts to help us understand
17 what happened.
18 This interview with Mr.
19 Jim Klug is being conducted
20 under Section 103(a) of the
21 Federal Mine Health & Safety
22 Act of 1977 as part of the
23 investigation by the Mine
24 Safety & Health Administration
25 and West Virginia Office of

1 Miners' Health, Safety &
2 Training into the conditions,
3 events and circumstances
4 surrounding the fatalities
5 that occurred at the Sago
6 Mine, owned by International
7 Coal Group in Buckhannon, West
8 Virginia, on January 2nd,
9 2006.
10 This interview is being
11 conducted at the Wingate Hotel
12 in Bridgeport, West Virginia,
13 on March 26th, 2006.
14 Questioning will be conducted
15 by representatives of MSHA and
16 the Office of Miners' Health,
17 Safety & Training.
18 Mr. Klug, this
19 interview will begin with me
20 asking a series of questions.
21 If you do not understand a
22 question, please ask me to
23 rephrase it. Feel free at any
24 time to clarify any questions
25 or statements that you make in

1 response to the questions.
2 After we have finished asking
3 questions, you will also have
4 an opportunity to make a
5 statement and to provide us
6 with any other information
7 that you believe may be
8 important. If at any time
9 after the interview you recall
10 any additional information
11 that you believe may be useful
12 in the investigation, please
13 contact Richard Gates at the
14 phone number or e-mail address
15 provided to you.
16 MR. KLUG:
17 Okay.
18 MR. SWENTOSKY:
19 Your statement is
20 completely voluntary. You may
21 refuse to answer any question
22 and you may terminate your
23 interview at any time. If you
24 need a break for any reason,
25 please just let me know.

1 The court reporter will
2 record your interview and will
3 later produce a written
4 transcript of the interview.
5 Please try and respond to all
6 questions verbally since the
7 court reporter cannot record
8 nonverbal responses. Also,
9 please try and keep your voice
10 up. Copies of the written
11 transcripts will be available
12 at a later date.
13 If any part of your
14 statement is based not on your
15 own firsthand knowledge but on
16 information that you learned
17 from someone else, please let
18 us know. Please answer each
19 question as fully as you can,
20 including any information you
21 have learned from someone
22 else. We may not ask the
23 right question to learn the
24 information that you have, so
25 do not feel limited by the

1 precise question asked.
2 If you have information
3 about the subject area of the
4 question, please provide us
5 with that information.
6 At this time, Mr.
7 Rutledge, do you have anything
8 you would like to add on
9 behalf of the Office of
10 Miners' Health, Safety &
11 Training?
12 MR. RUTLEDGE:
13 Yes, I have a brief
14 statement here. And it's just
15 that the West Virginia Office
16 of Miners' Health, Safety &
17 Training is conducting this
18 interview session jointly with
19 MSHA and is in agreement with
20 the procedures outlined by Mr.
21 Swentosky for the interviews
22 that will go on here today.
23 However, the Director of
24 Miners' Health, Safety &
25 Training does reserve the

1 right, if necessary, to call
2 or subpoena witnesses or to
3 require the production of any
4 record, document, photograph
5 or other relevant materials
6 necessary to conduct this
7 investigation. We appreciate
8 you being here today. If you
9 have any questions for anybody
10 from the State, please feel
11 free to call.
12 MR. SWENTOSKY:
13 Mr. Klug, are you aware
14 that you may have a personal
15 representative present during
16 the taking of this statement?
17 MR. KLUG:
18 Yes.
19 MR. SWENTOSKY:
20 And who is that
21 representative?
22 MR. KLUG:
23 My lawyer right here.
24 ATTORNEY MCGOWAN:
25 Steven McGowan, Steptoe

& Johnson.

MR. SWENTOSKY:

Thank you. And do you have any questions regarding the manner in which the interview will be conducted?

MR. KLUG:

No.

MR. SWENTOSKY:

And could you swear in Mr. Klug, please?

JAMES KLUG, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

BY MR. SWENTOSKY:

Q. Could you provide your name, and spell your last name for us, please?

A. James William Klug, K-L-U-G.

Q. And could we have your address and telephone number, please?

A. Route One, Box 213A, Proctor, West Virginia, 26055. Phone number is (304)455-3521.

Q. And are you appearing here today voluntarily?
A. Yes.
Q. And what mining company do you work for?
A. McElroy Coal Company.
Q. And what position do you hold underground?
A. I'm a prep plant mechanic.
Q. And what is your position on the mine rescue team?
A. Captain.
Q. And where were you and when were you notified of the explosion at Sago Mine?
A. I was home. It was approximately 10:30 or so in the morning, 10:30 a.m., when I was notified. Just --- that was just about 10:30.
Q. And who notified you of the explosion?
A. Jack Price, our safety supervisor.
Q. And at that time, what

1 information did he provide to you?
2 A. He said there was a fire or
3 explosion and just for us to notify
4 the guys and not to get excited, just
5 to let everybody know. And that was
6 it.
7 Q. And what did you do at that
8 time?
9 A. I notified the guys and told
10 them not to --- stay close to the
11 phone, not to go nowhere, you know,
12 pack a bag if they had it, you know,
13 if it wasn't ready, and we waited.
14 Q. And when were you given the
15 okay to take off?
16 A. Fifteen (15) minutes after the
17 game started.
18 Q. What time was that?
19 A. About --- what time did the
20 game start, the Mountaineer game?
21 8:00? Was it a little after 8:00?
22 I'm not for sure.
23 Q. I'm not from West Virginia, so
24 I don't know.
25 A. A little after 8:00 is when

1 the game started.
2 Q. Okay.
3 ATTORNEY WILSON:
4 8:00 p.m. that night?
5 A. Yeah.
6 BY MR. SWENTOSKY:
7 Q. And who notified you of that?
8 A. Jack Price.
9 Q. Jack Price. And what did he
10 tell you?
11 A. He said to go down and get
12 ready, we're getting ready to go.
13 Q. And when you say go down,
14 where ---?
15 A. Go down to our mine rescue
16 station and get ready to go.
17 Q. And where was that?
18 A. It's at Fish Creek portal at
19 Moundsville.
20 Q. And you did that?
21 A. Yes, sir.
22 Q. And what time did you leave
23 there?
24 A. About 10:00, you know. We
25 were on like standby. We got down

there and then had everything ready, and then they said go, so ---.

Q. And approximately what time did you leave? Do you have any idea?

A. I'm going to say 9:30, around that area. 9:30, 10:00, something like that.

Q. And you all came down at the same time?

A. Actually, some of the guys, it would have been a lot further for them to come down there than --- instead of going there, so we had everything in the trailer. I just hooked to it and left and picked one guy up on the way.

Q. And what time did you arrive at the mine? Or did you all arrive at the mine the same time?

A. No. We had orders to stop at the Plantation Motel. That was our staging point. So we all ---.

Q. That's along 79 there?

A. Yes.

Q. And so you all met at the

Plantation?
A. Yes.
Q. Then what did you do?
A. We called and told them we were at the Plantation. And they said they needed our air pump and our dryer.
Q. And when you say they?
A. Mr. Bill Blackwell called and said they needed, you know, our equipment to pump up the bottles and stuff.
Q. Who is Mr. Blackwell?
A. He's a safety --- he's a fire marshall for Consol.
Q. Okay.
A. And he said that the traffic was really busy, so just bring that. So we unhooked the trailer and we brought the pump and the dryer in the truck.
Q. And when he said they, do you have any idea if it was an individual from the mine site or ---?
A. I don't understand the

1 question.
2 Q. You said that Mr. Blackwell
3 said they needed the dryer.
4 A. Well, they means the benchmen,
5 the people that work on the machines
6 and make sure our bottles are pumped
7 up and --- you know, every team has a
8 benchman, and there was already a
9 benchmen there, and they needed the
10 stuff, so ---.
11 Q. So that was your people,
12 meaning Consol people, at the Sago
13 Mine?
14 A. Not necessarily Consol people,
15 just any mine rescue team member.
16 Our pump will pump up --- adaptable
17 for all the bottles and stuff, their
18 air bottles, so ---.
19 Q. So you then took that
20 equipment to Sago Mine?
21 A. Yeah. There was three of us
22 that took that to the Sago Mine.
23 Q. And what three? Who was that?
24 A. Jack Price, our safety
25 supervisor, and Mike Clark, our map

1 man, and myself.
2 Q. And yourself. And do you have
3 any idea what time that might have
4 been?
5 A. That was already 12:00 ---
6 well, 12:30.
7 Q. 12:30. And that would have
8 been January 3rd at that time?
9 A. Yes.
10 Q. And so you took that equipment
11 to the mine?
12 A. Yes.
13 Q. And approximately what time
14 did you arrive at the mine?
15 A. It was probably a half-hour
16 drive. One o'clock, a little after
17 1:00, something like that.
18 Q. And when you arrived at the
19 mine, who did you speak to or who met
20 you at the mine?
21 A. The benchmen that was there.
22 There was different benchmen there,
23 and we started setting up a filling
24 station for the bottles and the
25 dryers in position for drying their

1 machines and stuff.
2 Q. Do you know those individuals
3 that you met there?
4 A. Randy Brotbach (phonetic).
5 How do you pronounce his name?
6 Q. Bombach (corrects
7 pronunciation).
8 A. Bombach. Randy Bombach. And
9 he's a benchman for the Enlow team
10 and stuff. That's all we did was
11 deliver --- help carry the stuff in,
12 set it up, and then we went home. We
13 were told to go back to the motel.
14 Q. And that would have been back
15 to the Plantation?
16 A. Yeah.
17 Q. And then when was the next
18 time that you were called out?
19 A. Well, they had us scheduled to
20 come out at eight o'clock that night.
21 Q. That night, eight o'clock on
22 January 3rd?
23 A. January 3rd.
24 Q. Okay.
25 A. And so us being a mine rescue

team, we were there about 6:30 p.m. That's when we got --- that's when we all got there. We come early in case they needed help or something.

Q. Okay. And who did you meet there? And just kind of fill me in on who you met and what you did.

A. There was Bill Blackwell. There was all kinds of --- I mean, there was --- there was Rick Marlow. There was --- there was just, you know, other team members from other, you know, ---.

Q. Sure. And at that time, when you met them, what was your activities at that point?

A. When we first got there, we made sure all our machines was benched and checked out, made sure they were ready to go, got all our stuff ready and had it setting there, and then we just waited.

Q. And did you have any conversation with the command center at that point at all?

A. No. Well, they were busy. Us being a team, we don't go running in there. They got their job to do, so we don't bother them. When they want us, they come and get us.

Q. Okay. I guess from this point then, if you could kind of just start and lead me through what you did until

--- on January 3rd, just start and tell me what you did until the time you actually left the property the next time.

A. Well, let's see. It was approximately about 7:30 p.m. on January 3rd. I think it was John --- Mr. John Higgins, he's with Consol, come back and ask if we were ready. Well, I took it for granted that we were ready for outside backup, which you know, we were outside for four hours, backing the two teams inside. And he said, no, I want you guys to get them on, get them ready, you're going in, which was four hours before

1 our time, which we didn't understand
2 that. But it's no problem, you know.
3 And they took me in the back room and
4 gave me a list of names so I can
5 identify, a checklist, and --- so
6 then we got ready and we went down to
7 the pit mouth and we waited for the
8 Enlow team to come out, because we
9 needed their ride to go back in. So
10 when the Enlow team come out, a short
11 conversation, where they were, what
12 they seen, they went here and then
13 turned around and went up in towards
14 the face, and that's where --- the
15 last they seen tracks and stuff, and
16 so on. So then we proceeded on into
17 the mine. We had orders to go to 43
18 stopping and sever the track, you
19 know, make sure there's no electrical
20 --- you know, take all the track
21 apart there at 43. And then when we
22 got that done, here come a supply
23 car, which we needed, you know,
24 supplies, brattice material, posts,
25 stuff. So we unloaded the supply car

1 and then we proceeded up to, I think
2 it as 53 block where the Tri-State
3 team was there waiting on us. So we
4 got up there. They told me to call
5 outside. I called outside and they
6 said that the Tri-State team had a
7 faulty mask, which it was broke. And
8 they were an inexperienced team.
9 They never done anything really like
10 this and wanted to know if we would
11 bypass that team and have them as a
12 backup. In order to have them as a
13 backup, I had to leave one of my guys
14 back because one of their guys was
15 --- their apparatus was
16 malfunctioned, so he couldn't be a
17 backup. So anyhow, they asked us if
18 we would step over the limits and go
19 all the way in, 2,700 feet in. By
20 the way, whoever made that decision
21 was a good person to do that. And we
22 said, no problem, we'll go. And they
23 wanted us to stop at 15 crosscut,
24 give an air quality reading, and then
25 proceed all the way up in. Then

1 that's when it started.
2 From 53 block over to the
3 mouth of the section there was a
4 hardline and there was a gentleman
5 standing, he was I think --- I'm
6 pretty sure he was from the Tr-State
7 team, but I'm not positive. But he
8 was standing there with the lifeline
9 and a radio. And we dropped our guy
10 off around the bus, and that was
11 probably about Ten block, because
12 that's when the radio started getting
13 staticky. So we dropped him off
14 there. We went to 15 block, gave our
15 air quality reading, and then we took
16 off up into the faces. And we got up
17 into --- my orders were to go to the
18 break and check the sump area. They
19 thought maybe they might have fell in
20 the sump or something like that. But
21 when we got up in there, they wanted
22 me to check the borehole, which the
23 borehole was perfect. I mean, to me
24 it was right on the money. And we
25 seen some cans and thought it might

have been a barricade, but it was --- you know, from a distance. It was just cans and stuff. And then we looked to the right and we seen some cans we thought might be reflectors from a hat or something, but it was just cans run over. And we got up to --- I think it was the very last crosscut in the track, on the left side there was a curtain that was --- it was up. It was nicely hung, I mean, like sealed. And we all stopped and looked and thought maybe that might be a barricade. You know, we just looked at it. So we went on up in and circled back around, and that's when we was in the last open and that's when we heard the noises that Randy McCloy was making. So myself and a State inspector went one way and the federal inspector, Ron, and Mike Clark and Jim Smith, which them two are off of McElroy's team, they went back around to maybe see if that was a barricade. But when I

1 went through the curtain ---
2 actually, two curtains, one across
3 the last open, then one diagonal,
4 they were all there in the last ---
5 Number Three entry.
6 I proceeded up --- I mean, it
7 was obvious who was making the noise,
8 and I went directly to him and
9 proceeded trying to help him. As the
10 other team members came in and the
11 State and the federal inspectors come
12 in, they proceeded with the rest of
13 them, checking pulse, checking
14 everything. And as you all know,
15 there was only one that ---. So he
16 was in a sitting up position, and I
17 was trying to get his lips pried open
18 to try to get air to him, and I
19 couldn't get him. And there was a
20 big giant
21 --- big, big man laying on top of
22 him. And a mine rescue guy, Jim
23 Smith, he helped get that guy off of
24 him so we could stretch him out to
25 get him in a position where we could

1 get some air to him. And in that
2 time, I gave the order for someone to
3 get help up here because I knew we
4 weren't going to be able to carry him
5 out or if we had anybody else yet,
6 you know. It was all in a matter of
7 minutes this was all happening. And
8 I had a radio and either the State or
9 federal had a radio, but they needed
10 my radio, so they came and got my
11 radio. And that was the last radio
12 transmission thing I heard until we
13 got out at the neck. But we
14 proceeded and we found a stretcher
15 and we put him on the stretcher, and
16 we tied him down. And at that time,
17 the other apparatus --- our backup
18 team, what little bit we had to come
19 up, came up and we proceeded to carry
20 him out. And before we --- as they
21 started, Kris, from the --- the
22 captain of the Tri-State team, which
23 is an EMT, him and I went over all
24 the gentlemen one more time to make
25 sure, and then it was time to go. We

1 were getting close on air and it was
2 just time to go, and I made the
3 decision to leave. So we carried him
4 all the way out, nonstop switching,
5 people carrying while we were
6 running. We got him all the way to
7 the neck and there was Kevin
8 Strickland, a bunch of people
9 standing there, and they're going,
10 where's the rest of them. And that's
11 just when we all --- everybody
12 carrying that stretcher just died.
13 They just went ---. That's when we
14 first knew that miscommunications
15 ---.
16 So I went over to the fresh
17 air base and called outside and
18 talked to Rick Marlow. And it was
19 apparent that he didn't know. And
20 finally, I had to tell him, you know.
21 They wanted me to tell him items,
22 item one, item two, you know. They
23 didn't want no names coming over
24 because they said people were
25 eavesdropping and stuff like that.

1 So I told him we had 11 items, and he
2 said, what. I said, we got 11 items.
3 And he said, forget the code. What
4 do you mean? I said, there's 11
5 deceased people. And he was just ---
6 he was speechless. He couldn't ---.
7 So he told me to make sure everybody
8 --- a head count and just bring
9 everybody outside, we're going to
10 regroup and go back in. And that's
11 what we did. And I made sure the
12 State had all their guys. I made
13 sure the federal guys had all their
14 guys. And I made sure all my guys
15 --- which every one of us was missing
16 a guy but found out that they went
17 with Randy to go out, so ---. But we
18 made sure everybody was accounted
19 for, and we proceeded out. And we
20 met people on the way in, a doctor
21 and all this stuff, and turned them
22 around. We all went out. They
23 regrouped outside for, I don't know,
24 ten minutes and then went back in.
25 And that was about it.

Q. Thank you. I guess one thing we should do is the team members, you have yourself, and could you just give me your team names of your guys?
A. My name is Jim Klug, the captain. Mike Clark is the map man. Jim Smith is a gas man. Denny Crow is a gas man. Kelvin Jolly is a fresh air base man. And then we have Bob Rohde as a benchman, which was outside. And Danny Beyser, he was outside. He was taking the air quality readings every half hour at the pit mouth. And that's about it.
Q. Okay. We'll start back on the surface there, whenever you were first advised that you would be going underground. You mentioned that --- and approximately what time was that again?
A. Probably around 7:30.
Q. Okay. That's what I thought. You said they took you in a back room ---
A. Yes.

1 Q. --- and talked about names?
2 Describe that a little bit. Who was
3 that that took you back there, first
4 of all?
5 A. I think it was John Higgins, a
6 Consol guy. He took me back to an
7 ICG guy that had a copy of the names.
8 Q. Do you know who that ICG guy
9 was?
10 A. No. He was a big, big, big
11 guy.
12 Q. Okay.
13 A. A real heavyset guy.
14 Q. And what was the extent of
15 that conversation?
16 A. Don't show no one this list.
17 You don't know --- no one knows this
18 list. You're the only one that knows
19 the list. Don't even tell your team
20 members. This is secret. The less
21 people know about it, the better.
22 Q. And what did that list
23 contain?
24 A. All the missing people's names
25 with a number in front of them.

1 Q. And you took that list with
2 you?
3 A. Yes, sir.
4 Q. Do you still have that list?
5 I think I got a copy of it.
6 MR. SWENTOSKY:
7 Do you have a copy of
8 it?
9 ATTORNEY MCGOWAN:
10 I don't know. But any
11 papers that we had were
12 earlier requested by MSHA, and
13 Consol turned over a packet of
14 papers which I believe would
15 contain everything we had. If
16 you don't have the list, let
17 me know. We'll be happy to
18 start looking for it or to get
19 you a copy.
20 MR. SWENTOSKY:
21 Okay.
22 BY MR. SWENTOSKY:
23 Q. And after that conversation
24 ---.
25 A. I think I got a copy of it.

1 There you go.
2 Q. Thank you. And after, we'll
3 just get a copy of that. Thank you.
4 So after your conversation in this
5 back room concerning this list, okay,
6 then what did you do?
7 A. Went out and made sure all my
8 guys were ready to go. We took 14
9 CSC100 self-contained apparatuses
10 with us.
11 Q. Self-contained rescuers?
12 A. Yes. We took them with us,
13 hoping that we would find these guys
14 and walk them out. So we got them,
15 which that's, you know --- and plus,
16 just made sure everybody was ready to
17 go and ---.
18 Q. And at that time, then did you
19 go into the pit?
20 A. Yeah. We went into the pit
21 and we waited down there by the
22 loudmouth until the other team come
23 out.
24 Q. And just prior to going
25 underground, did you get any

1 additional instructions on what you
2 were to do?
3 A. The only thing was said, and
4 that was a conversation from
5 everybody that we were going to be
6 close. There was no other place for
7 them to be. And the anxiety was
8 really high.
9 Q. And do you know who told you
10 that?
11 A. It was just all over ---
12 everybody.
13 Q. Just everybody?
14 A. Everybody.
15 Q. And approximately what time
16 did you start underground?
17 A. We were at the pit mouth for
18 probably a half hour at least. So
19 I'm going to say we --- 8:30 we were
20 probably on a bus getting ready to go
21 under.
22 Q. And was just your team on that
23 bus or ---?
24 A. One state and one federal guy.
25 Q. And do you know who those

1 people were?
2 A. Ron ---
3 Q. Hixson.
4 A. --- Hixson and a White.
5 ATTORNEY MCGOWAN:
6 Eugene White?
7 A. Yes.
8 BY MR. SWENTOSKY:
9 Q. So Ron Hixson was the federal
10 man?
11 A. Yeah.
12 Q. And Eugene White was the State
13 man?
14 A. Yes.
15 Q. And so then you proceeded
16 underground?
17 A. Yes.
18 Q. And did you make any
19 additional stops or meet anyone going
20 underground?
21 A. No. We went straight up to 43
22 crosscut and took the track apart
23 like they ordered us to.
24 Q. And 43 crosscut, is that ---
25 do you know if that's a long --- I

1 know they number their crosscuts
2 where they have like each belt line
3 is numbered separately. Do you know
4 ---?
5 A. Let's see. Would be one belt,
6 two belt, --- I think it was like
7 Four belt. Was it Four belt? Yeah,
8 Four belt.
9 Q. Was that near One Left?
10 A. Yeah. Uh-huh (yes).
11 Q. And was there another bus
12 sitting there?
13 A. Yes.
14 Q. And is that the bus that the
15 One Left crew had taken; do you know?
16 A. I ---.
17 Q. Okay.
18 A. It probably --- I don't know.
19 I couldn't tell you.
20 Q. But there was a bus sitting
21 there?
22 A. Yes.
23 Q. And you stopped there. And
24 you took the track apart at that
25 location?

A. Yes.
Q. Okay. And then once you did that, what did you do?
A. Once we got the track --- we were just finishing up the trak, and a gentleman came --- an employee for that coal mine came with a motor and a supply car full of building materials, you know, for ventilation, posts for in case there's a fall or something, which we do need that stuff there on hand.
Q. Sure.
A. And we unloaded that. And that just took us a couple minutes. There was a bunch of us there throwing stuff, so ---. And then we proceeded on up into the fresh air base.
Q. And where was that fresh air base located?
A. It was on --- one entry on the right from the track at 53 wall.
Q. Okay. And at that point, what did you do at the fresh air base?

A. When I got up there, just brief talk with everybody about the mask and stuff, and then they told me to call outside, which I called outside. And that's when they asked if --- since that one team's mask is broke and they're inexperienced in atmospheres that we were going to be in, if we would bypass them. And it was all asked. And we said, yeah, no problem.

Q. Was there a team inby at that point exploring or was there anybody inby the fresh air base?

A. Uh-uh (no).

Q. And that team that you're speaking about was what team?

A. The Tri-State team.

Q. Tri-State team. And from that point, then what did you do?

A. Well, I turned around and asked our guys if they wanted to go past the limit, which was no question, you know, and they were all cinching up, getting ready to go, and

1 made the decision for Denny Crow to
2 stay back.
3 Q. And Denny Crow was part of
4 your team?
5 A. Part of the McElroy team, yes.
6 Q. And he stayed at the fresh air
7 base?
8 A. He stayed at the fresh air
9 base.
10 Q. Okay.
11 A. And then we went over to the
12 entry --- the beginning of the
13 section.
14 Q. Let me just ask you, was there
15 anyone else that stayed at the fresh
16 air base with Mr. Crow?
17 A. Yeah, the Tri-State team.
18 Q. The whole Tri-State team,
19 okay.
20 A. But there was one Tri-State
21 guy over at the neck of the section
22 with a hardline back to the fresh air
23 base, and then he had a radio with
24 him.
25 Q. I wonder --- maybe what we

1 could do at this point so we get this
2 all lined up, maybe if we could ---
3 we'll go to the map.
4 A. Okay.
5 Q. And if you could just kind of
6 show me where the fresh air base was
7 and tell me, you know, what
8 communications were there, and then
9 we'll just step in and just dot those
10 communications, what they were. Can
11 we do that?
12 A. Yeah.
13 OFF RECORD DISCUSSION
14 BY ATTORNEY SWENTOSKY:
15 Q. During an off-the-record
16 discussion, you have marked some
17 radio communication and other
18 communications lines, and we'll start
19 by identifying that. Okay, Jim?
20 A. Yeah.
21 Q. You have marked the fresh air
22 base in the ---.
23 ATTORNEY MCGOWAN:
24 Why don't you let him
25 explain what he did?

1 MR. SWENTOSKY:
2 All right.
3 BY MR. SWENTOSKY:
4 Q. You have marked the fresh air
5 base where?
6 A. At 58 wall. In between 57 and
7 58 wall.
8 Q. And that was in the intake
9 entry, to the right of the track
10 entry; ---
11 A. Yes, sir.
12 Q. --- is that correct? And what
13 communication did you have there?
14 A. A hardline outside to the
15 surface.
16 Q. And what else did you number?
17 A. And we had a lifeline from
18 that fresh air base to the track
19 entry of the neck of Two Left, with a
20 headset.
21 Q. And was that at 59 crosscut,
22 actually in the track entry?
23 A. Standing right on the track
24 going into 59 crosscut.
25 Q. And he had a headset and he

1 also had a radio; is that correct?
2 A. He had a radio, yes, sir.
3 Q. And how many team members at
4 that point did you have with you in
5 your travels?
6 A. From inby, back a person
7 there, I had myself, Mike Clark, Jim
8 Smith, Kelvin Jolly, a state and a
9 federal person.
10 Q. And then a state and federal
11 person which you previously
12 identified ---
13 A. Yes.
14 Q. --- earlier?
15 A. No. The State guy was a
16 different guy. Mr. White stayed
17 back.
18 Q. And who was the State
19 individual?
20 A. I don't know. You guys should
21 have it on record. I really couldn't
22 tell you.
23 Q. Okay. And who was the
24 individual that stayed with the
25 headset and a radio at 59 crosscut?

A. He was a Tri-State man. He was with the Tri-State team.
Q. And do you recall who that was?
A. No.
Q. Okay. And from there, what did you do?
A. We proceeded on up in. We went to Number Ten crosscut, where there's a bus there. There was a lunch bucket on there, and we searched it. There was nothing in it. There was only one lunch bucket. And the radio started getting a little staticky right in that area. In between Eight and Ten, that's where we dropped Mr. Kelvin Jolly off with a handheld radio to relay messages.
Q. And so then his --- you left him there, and then he traveled in the track entry back and forth between Number Ten and Number Seven crosscut; is that correct?
A. Approximately something like

that. I wasn't there, so I couldn't really tell you, but in that --- he was in that area.

Q. And the reason he traveled back and forth was ---?

A. Better communications back and forth.

Q. So whenever he would receive something from you, then he would travel outby to some extent ---

A. Yes.

Q. --- so that he could talk with the person down at 59?

A. Yeah. That's what I was told.

Q. Okay. So then at --- when you left Mr. Jolly off, then what did you do?

A. We had orders to stop at 15 crosscut and give an air quality reading to see what kind of readings we had. No quantity, just quality. And then proceed all the way in, check the borehole and see what we could find. Just go up in, sweep the faces and then if nothing was there,

to work our way back out.
Q. And when you stopped at 15 crosscut, do you recall what those quality readings were?
A. No, not --- I can give you a closest, like 300 parts per million. Air was like 19.5, something like that. I mean, I can't give you the exact, you know, but they ---.
Q. Any methane?
A. No.
Q. And after you took the quality readings at 15 crosscut, then you proceeded up the track; is that correct?
A. Yes, sir. We proceeded up the track. We looked up the track and we seen something shiny, looked like a wall, a Kennedy stopping. But what it was was cans, oil cans on a supply car, so ---.
Q. Do you recall where that was?
A. That was into the track, where the supply cars were.
Q. Okay.

A. And then we passed the supply cars and we looked to the left, over --- I think in this area here. That would be --- what entry would that be?

Q. Four is the belt. Five is the track.

A. Probably Six or Seven entry we seen something shiny and --- it was about right in here.

Q. Right in here, you're speaking about ---?

A. Twenty-three (23) crosscut, I'd say Seven entry, seen something shiny. And we proceeded over there, thought it might be some reflective tape or something on a person. And it was just an oil can. So when we came back over, we went up to 25 crosscut, in between 25 crosscut --- in between Four and Five entry and 25 crosscut there was a curtain. It was nice. I mean, it was pretty well tight. So we all just stopped and looked at it and thought, you know

--- we all just looked, you know. Everybody just looked at it. We thought we'd go on up in, come across the last open and circle back around. So when we got up to 26 crosscut, which is the last open, we heard the noises that Randy was making, Randy McCloy was making, and that's when we took off, tried to find the noises. Mike Clark, Jim Smith and Ron cut back down Number Four entry to come back to the 25. Thought maybe that was like a barricade.

Q. And that was at station 4276?

A. Yeah. Because they come back and went this way. But before they could get down into it, the State inspector and I went through here and into Number Three face, and that's where we found them all.

Q. And when you say --- just go over that a second again. You were at the 26th crosscut and the last open crosscut of the belt entry?

A. Yes, sir.

Q. Which would have been Number Four entry?
A. Yes.
Q. Okay.
A. And that's when we split. Myself and another guy went towards Number Three, and the other three guys went down Number Four.
Q. And then over toward Three through Number 25 crosscut; is that correct?
A. They just --- no. They just come down to here and stopped because we already found them here. And they circled --- they stopped and come back up and went into the Number Three entry face of where we were.
Q. And what did you do at that point?
A. I immediately went to Randy because he was apparently the only one, and other team members started checking everybody else.
Q. Can you show me or draw on there what --- where the curtains

1 were at that time?
2 A. Yeah.
3 MR. SWENTOSKY:
4 Let's go off the
5 record.
6 WITNESS COMPLIES
7 BY MR. SWENTOSKY:
8 Q. You've indicated a check
9 curtain at 25 crosscut; is that
10 correct?
11 A. Yes.
12 Q. Between Four and Five entry?
13 A. Yes.
14 Q. And that's at station 4277 in
15 the Number Five entry and station
16 4276 in Number Four entry. And just
17 describe to me here what curtains you
18 have placed on the map.
19 A. Then the last open, in the
20 area of Three and Four, there was a
21 check curtain hanging across, that
22 was loosely hung. Then we went
23 through it and there was like a
24 diagonal. I wouldn't know how to
25 describe that. It was just like a

diagonal.
Q. So that's across Number Three entry?
A. Yes.
Q. Which you've indicated on the map?
A. Yes.
Q. And I notice that you made a partial check between Three and Four with the open end on the inby side; is that correct?
A. Yes.
Q. And that's what was open?
A. Yes.
Q. So then ---?
A. And the diagonal was open, too.
Q. On both the outby and inby ends?
A. Yes. Well, the diagonal --- it was balled up. It was sealed on the outby end, but it was balled up. It wasn't ---.
Q. And how close to the rib corner was the inby?

A. A foot.
Q. And those were the only other curtains that you made notice of during your trip in?
A. Yes.
Q. Okay. Thank you. We can sit back down.

ATTORNEY SWENTOSKY:
And for the record, our descriptions were on Exhibit Number One.

(Klug Exhibit One marked for identification.)

BY MR. SWENTOSKY:
Q. When you entered the barricade, you said that you had heard some noises and you then went directly to Mr. McCloy, ---
A. Yes.
Q. --- which we know at that time --- at that time you didn't know who it was, but ---.
A. Yes, sir.
Q. And then what did you do?

1 What did you do then?
2 A. Well, Mr. McCloy --- as I went
3 in there and I went directly to him,
4 my other team members started going
5 around and checking everybody else.
6 State, feds, they all was there
7 checking. And we all knew. I mean,
8 I don't want to --- we knew. And Mr.
9 McCloy was in a sitting position,
10 leaning up against the rib.
11 Q. Would that have been the left
12 rib, ---
13 A. Yes, the left rib, ---
14 Q. --- furthest one in?
15 A. --- furthest one in. He was
16 the furthest one in on the left rib.
17 Q. Okay.
18 A. And there was a very, very big
19 gentleman laying on top of him. This
20 fellow was on top of him.
21 Q. Yes.
22 A. So Mr. Jim Smith and myself
23 got the big guy off of Randy and we
24 pulled him down to where we could
25 work on him.

1 Q. Sure.
2 A. And that's when I gave the
3 orders we needed help. And my radio
4 was there, and they came and got my
5 radio.
6 Q. When you say they, who do you
7 mean?
8 A. It was the state and the feds.
9 And I know that was --- they got the
10 radio because none of my guys had a
11 radio. And they took the radios and
12 Mike Clark went and got a stretcher
13 and brought it back, and then he went
14 and proceeded to look for
15 medical-grade oxygen. And Jim Smith
16 and I was preparing for transport.
17 Q. And then after that, then you
18 decided to take Mr. McCloy out?
19 A. Well, at that time they called
20 for help, and people came up in and
21 everybody rechecked the bodies again.
22 And I made the call, you know, we got
23 to get him out of here, we got to get
24 him to fresh air. And the guys
25 picked him up and started with him.

1 And Kris, the captain of the
2 Tri-State team, and myself stayed
3 back and went one more time,
4 checking, you know, and decided that
5 there was no survivors and we had to
6 go. So we caught up with the
7 stretcher and proceeded out.
8 Q. Do you know who carried that
9 stretcher?
10 A. No, sir, I don't.
11 Q. That's fine. So you caught up
12 with the people who was carrying Mr.
13 McCloy?
14 A. Yes, sir.
15 Q. And at that time had you had
16 any contact with the fresh air base?
17 A. No, sir.
18 Q. Okay. Go ahead and take it
19 from there.
20 A. We just switched off people.
21 We had approximately, let's see ---
22 there was approximately six guys
23 carrying --- and I was holding the
24 oxygen in his --- in Randy's mouth.
25 There was seven people on the

1 stretcher and we had two people that
2 was running beside, ready to jump in
3 when someone needed them. We
4 switched off on the run. We never
5 stopped, you know. We came through
6 waterholes. People fell down, losing
7 their hats, and still getting up and
8 running with it. We picked up Mr.
9 Kelvin Jolly where he was, and he
10 proceeded help carrying. And when we
11 got, you know, over the debris at the
12 overcast and carried through there,
13 then we got to the fresh air base,
14 and that's when they asked where the
15 rest of the people were.
16 Q. And who asked you that; do you
17 recall?
18 A. I'm not saying. I know Kevin
19 Strickland was there. There was a
20 couple other people there. They just
21 asked where the rest of them were. I
22 said, there is no others. And that
23 was just when everybody just --- the
24 whole ye-hah stuff went sour.
25 Q. At the fresh air base?

A. This was at the neck of the section. It wasn't at the fresh air base.
Q. Okay.
A. When we got to fresh air, which was where the guy had the hardline and the radio, that's where everybody was standing.
Q. And that was at the track entry there at 59?
A. Fifty-nine (59).
Q. And who did you say was ---?
A. There was a bunch of people there. I didn't --- I'm not very good on names, but there was a bunch of people there. And they jumped in --- we needed medical-grade oxygen. No one had it. And a guy had his machine there, because that's what we run, medical-grade oxygen, and we took his machine and put it on Randy. A BG-4 we put on Randy.
Q. And do you know whose machine that was?
A. No, sir, I don't. At that

1 time, I was more concerned --- I knew
2 there was people there that could
3 take over right there, because we
4 were wore out.
5 Q. Yes.
6 A. And I went directly to the
7 fresh air base from there to call out
8 my findings.
9 Q. And you went ahead of the
10 stretcher or did the stretcher ---?
11 A. The stretcher went straight
12 down the track.
13 Q. Ahead of you?
14 A. I went straight over to the
15 fresh air, in the fresh air entry.
16 They went straight down the track.
17 Q. Yes.
18 A. And when you went over to make
19 the call, you were going to call
20 outside; is that correct?
21 A. Yes, sir.
22 Q. Were they calling for you or
23 you just decided to call outside?
24 A. I needed to call outside.
25 Q. And you said that when you got

1 to 59 crosscut and the people there,
2 you say that's whenever they found
3 out that there were no ---?
4 A. Yes, they didn’t --- no one
5 knew --- yeah. That's when the no
6 survivors and all the survivors,
7 that's when it --- I can't describe
8 what it was like.
9 Q. And those are all rescue
10 people, there wasn't anybody ---?
11 A. No. There was probably five
12 or six rescue people. The rest of
13 them were just bare-faced employees
14 or state and federal guys or company
15 people, whoever. It was just whoever
16 came to help, they were there to
17 help. They were just volunteers,
18 whoever. Whatever they could do,
19 they could do.
20 Q. And who did you speak to on
21 the surface?
22 A. Rick Marlow for Consol.
23 Q. And what did you tell him?
24 A. I told him we had 11 items.
25 And he said, what? I said, we have

1 11 items. He said, that's enough of
2 this code. Tell me what you mean. I
3 said, we got one live guy and 11 dead
4 guys. Then that's when he proceeded
5 to tell me that we're going to have
6 to regroup, do a head count, make
7 sure everybody is accounted for, come
8 on outside, and that's what we did.
9 Q. And Mr. McCloy, they had
10 already taken him?
11 A. Yeah. I ran to tell them that
12 there was another --- they said there
13 was more people coming in to help.
14 Q. When you say they, meaning
15 ---?
16 A. Rick Marlow said there's a bus
17 coming in. Now, once you started in,
18 there was no communications.
19 Q. Right.
20 A. Now, he said that there was a
21 supply carload of rescue guys with
22 apparatuses and stuff coming in, to
23 watch them. They can't get ahold of
24 them.
25 Q. Yes.

A. So I ran down to tell the people that had Randy to watch the traffic coming in, but they've done already left. They were gone. So I just made sure that we did a head count of everybody, I disconnected the phone and followed them out.

Q. And just a few moments ago you mentioned at 59 crosscut, you said Mr. Strickland was there?

A. Yes, sir.

Q. Are you sure?

A. I'm pretty sure. He's a tall guy? Yeah, I'm pretty sure. I can't be --- I'm thinking he was.

Q. Okay. And when you ---?

MR. SWENTOSKY:

Well, before we go to that, Mike, do you have anything?

MR. RUTLEDGE:

A couple of things.

BY MR. RUTLEDGE:

Q. Jim, the fellow that gave you the list, you thought was --- or you

1 knew was a company employee?
2 A. Yeah. The guy that took me
3 back there was a very, very big man,
4 400 pounds. I don't know his name.
5 There was no hand shaking-type deal
6 down there, you know. And then there
7 was a guy that he gave us all the
8 maps and all this stuff. He's the
9 one that runs this off back there in
10 the room. I didn't know any names or
11 nothing.
12 Q. Okay.
13 A. Mr. Higgins was with us when I
14 got that.
15 Q. John Higgins from Consol?
16 A. Yes.
17 Q. You had stated a couple of
18 times that someone asked you about
19 going in and advancing 1,000 feet,
20 about going to the face or going all
21 the way or whatever.
22 A. Uh-huh (yes).
23 Q. Do you remember who that was?
24 A. Not at the fresh air base I
25 don't.

Q. But that was someone at the fresh air base or someone in the command center?

A. No, someone --- I was at the fresh air base, and someone at the command center asked.

Q. But you don't know who that was?

A. No.

Q. Also you said that the federal man that came in with your team, was it Ron Hixson, ---

A. Yes.

Q. --- and then there was a State guy, that you thought his name was White?

A. White, yeah.

Q. Eugene White. All right. And then you said that when you started inby, that Mr. White stayed at the fresh air base?

A. Yes.

Q. And that another State man went with you?

A. Uh-huh (yes).

Q. That state man, was he there with the previous team or ---?
A. Yes, he was there with the previous team.
Q. Which would have been Tri-State?
A. Yeah. He was supposed to go in with Tri-State. And he didn't get bypassed --- Mr. White didn't bypass him. He went with us.
Q. Okay. And while you were inby, you had a man on the telephone to the fresh air base, okay, at the fresh air base, ---
A. Outside.
Q. --- talking to the command center outside?
A. Yeah.
Q. Was that Dennis Crow?
A. No. That was a Tri-State guy.
Q. Dennis was ---?
A. Dennis was our guy just left back. He was just standing back there.
Q. But the Tri-State guy was on

1 the phone to the command center?
2 A. Yes. Now, when we got back
3 out, there was Viper --- a Viper guy
4 on the phone when we got back out.
5 Q. You said you were also given
6 some instruction to break the track
7 you said where?
8 A. Forty-three (43).
9 Q. Forty-three (43).
10 A. I'd say belt Number Four, 43
11 crosscut.
12 Q. Do you know who specifically
13 gave you that instruction?
14 A. Just the command center.
15 Q. Somebody in the command
16 center?
17 A. Yes. Because they wanted to
18 sever the track there.
19 Q. I apologize for repeating, but
20 this --- a little bit of a new
21 information. You said that when you
22 saw Mr. McCloy, that a large man was
23 laid over on top of him?
24 A. Yes, sir.
25 Q. So McCloy was sitting up; is

1 that correct?
2 A. He was sitting up against the
3 rib.
4 Q. With his back against the rib?
5 A. Yes, sir. Well, sort of
6 slotted down a little bit, but yeah.
7 Q. And it appeared that maybe the
8 person who was next to him had fallen
9 on him or what?
10 A. Fell over --- just fell over,
11 yeah.
12 Q. And he was laid across his
13 legs or ---?
14 A. Across his chest.
15 Q. Across his chest?
16 A. Yes. Randy's arm was on top
17 of him, so ---.
18 Q. Okay. You and one of your
19 team members moved this man off ---
20 A. Yes, Jim Smith.
21 Q. --- of McCloy? And you said
22 you tried to get to --- to attend to
23 him. Did you try to put a
24 self-rescuer on him or ---?
25 A. Yeah, CSC100.

1 Q. Okay. And was that --- was it
2 easy to do? Did it work? Did it
3 seem like it was making any
4 difference?
5 A. The first one, no. Jim
6 Smith was --- see, I'm not familiar
7 with them. Jim Smith was familiar
8 from Winsor. He used them at Winsor.
9 And we popped the first one and
10 nothing happened, nothing, no air,
11 the little bag didn't fill up,
12 nothing. We popped the second one,
13 we got some air in it and --- like I
14 say, I'm not familiar with them, but
15 he did something, and he said, this
16 one is working. And I pried Mr.
17 McCloy's lips open and we stuffed
18 this in his mouth and put his
19 nosepiece on him.
20 Q. You put the nose clip on his
21 nose?
22 A. Uh-huh (yes).
23 Q. And then you said earlier that
24 you --- you were holding that ---
25 A. Yeah.

Q. --- as a --- as they took him outside?
A. He couldn't --- he wasn't holding the mouthpiece in.
Q. So you were physically holding the mouthpiece ---
A. Yes, sir.
Q. --- in his mouth? Was that the only --- that was the second one that you tried?
A. Oh, you probably found three or four of them down the track, because we didn't know how long they was lasting. We didn't know what was going on, so we was popping new ones and putting them in him.
Q. So you used three or four?
A. I couldn't tell you how many, but I know we used ---
Q. Several.
A. --- several of them going down the track.
Q. All the way down the track entry?
A. Yes, sir.

1 Q. When you got to the Two Left
2 switch there, to fresh air, you all
3 turned the stretcher, Mr. McCloy over
4 to ---?
5 A. Yeah, we were done.
6 Q. I understand that. Do you
7 recall who specifically maybe that
8 you ---?
9 A. This gentleman here has got me
10 thinking, but I swore Kevin was
11 there, because he's a big man and I
12 know him.
13 Q. But Ron Hixson was with you;
14 right?
15 A. Yeah. Ron was with me, yeah.
16 And we turned --- there was people
17 there helping. And I said we need
18 medical-grade oxygen. And a
19 gentleman there, I don't know who he
20 was, he had his machine. He never
21 had it on. He just slapped it on him
22 because we have medical-grade oxygen
23 with positive pressure, and we forced
24 air into him.
25 Q. Okay. Again, I apologize if

I'm repeating, but you said you gave --- you had a radio, and you gave that --- you had hollered at your team members to get help up there or something?

A. I hollered for whoever was there up at the face, where everybody was, to get help. So they came over and wanted the radio. And Jim Smith was kneeling on it, and he said, here it is, and he gave it to them. And that's the last that Jim Smith and I heard of anything or seen a radio until we got to Kelvin Jolly. But there was nothing said about all of them alive or nothing.

Q. Right. But you don't know who you gave that radio to or ---?

A. No.

OFF RECORD DISCUSSION

BY MR. SWENTOSKY:

Q. We have a map we'll call Exhibit Two.

(Klug Exhibit Two marked for

1 identification.)
2 BY MR. SWENTOSKY:
3 Q. And it's a large-scale map.
4 It's one inch to 20 feet. And you've
5 indicated there was a check curtain
6 that was sealed on both sides; is
7 that correct?
8 A. It was just one check curtain.
9 I do not know what was on the back
10 side of it. We just --- there was
11 one check curtain.
12 Q. And you have indicated that
13 that check curtain is in crosscut 25;
14 is that correct?
15 A. Yes, sir.
16 Q. Between the belt and track
17 entry?
18 A. Yes, sir.
19 Q. And then you --- and it was
20 sealed on both sides?
21 A. Yes.
22 Q. The outby and inby side ---
23 A. Yes.
24 Q. --- of the crosscut, okay.
25 And the check curtain that you have

1 indicated between Three and Four
2 entry in the last open crosscut,
3 describe that, would you, please.
4 A. It was open probably about a
5 foot on the inby side of the
6 crosscut. It wasn't sealed. It was
7 about a foot, just where you can walk
8 through back and forth.
9 Q. On the outby rib, it was tight
10 against that rib; is that correct?
11 A. I can't tell you that. I was
12 --- my line of sight was to go for
13 that noise.
14 Q. Okay. It appeared to be
15 against the rib?
16 A. Yes.
17 Q. And the angled curtain, which
18 you have drawn across Number Three
19 entry from the outby rib of the
20 intersection on the left side,
21 looking inby, and on the right side
22 quarter, on the inby side of Number
23 Three entry, could you describe that
24 curtain for me, please?
25 A. The inby side was

1 approximately about a foot away from
2 the corner of the rib.
3 Q. Okay.
4 A. The outby side of the curtain
5 was balled up. It wasn't sealed, but
6 it was an abundance of curtain balled
7 up. It was like sealed, but it
8 wasn't sealed. It was just excess
9 curtain balled up.
10 Q. Can you tell me whether or not
11 it appeared that it had been sealed
12 up and then someone went out through
13 or ---
14 A. No.
15 Q. --- anything like that at all?
16 A. No, I can't tell you that.
17 Q. Okay. And when you found Mr.
18 McCloy, you mentioned it was Kris
19 from --- the Tri-State person or ---
20 who was that that helped you?
21 A. When we first initially found
22 him?
23 Q. Yes.
24 A. That was Jim Smith ---
25 Q. Jim Smith.

A. --- from the McElroy team.
Q. McElroy team. And how did you --- can you describe to me how you assessed him?
A. There was really no assessing going to it. We couldn't find a pulse. We couldn't --- just other than him making a (makes sound effect) noise, that's the only way that we could tell that he was still somewhat alive. And we just proceeded working on him as best as we could, trying to get oxygen to him, getting him on a stretcher, preparing him to get ready to go.
Q. And you could kind of hear him breathing and ---?
A. It was ---.
Q. Did you check for a pulse?
A. Yeah. He was too stiff to even find a pulse.
Q. But you could hear him breathing?
A. Yeah. He was making a gasping noise. That was it.

1 Q. Okay. And have you --- in
2 your experience with all your mine
3 rescue experience, have you had this
4 situation occur before?
5 A. No.
6 Q. Never had that situation?
7 A. Uh-uh (no).
8 Q. Okay. Did anyone in the
9 barricade, did they have any SCSRs
10 on, actually on?
11 A. No. They were laying beside
12 them. They had their goggles on,
13 but ---.
14 Q. Any of them have a nosepiece
15 on?
16 A. No. They were just laying
17 beside them.
18 Q. But some of them did have
19 their goggles on?
20 A. Yeah. They had their goggles
21 and stuff on.
22 Q. And Mr. McCloy, did it appear
23 that there was more than --- or did
24 you see more than one SCSR around him
25 or just his --- the one ---?

A. No.
Q. Did it appear that he had one --- did he have goggles on?
A. Yes, sir, he had goggles on.
Q. And where was his SCSR laying --- or what you thought his SCSR was; do you recall?
A. No, sir. I mean, I'm sorry, but ---.
Q. No, that's fine. You're doing great. You're doing great. I really appreciate you. I know it's hard, but we appreciate you. And how many SCSRs did you use in the barricade for Mr. McCloy?
A. Probably three. I'm pretty sure three.
Q. Three. And that was ---?
A. The first one we couldn't get working. The second one we got working. And in the process of getting ready to take off, we decided to get a third one so we'd have a fresh one on the way, you know, we wouldn't have to stop or whatever.

1 Q. Okay. And just from looking
2 around the barricade, do you have any
3 idea why maybe he may have survived
4 and the other ones didn't?
5 A. He was the furthest one up in,
6 up in the entry, in the face.
7 Q. The furthest one toward the
8 face?
9 A. Yes. I have opinions, but I
10 mean, I'd be ---.
11 Q. If you want to share them,
12 that's fine. It's great.
13 A. It's not going to be illegal.
14 The big gentleman that fell over on
15 top of him ---
16 Q. Yes.
17 A. --- was on his chest, and he
18 didn't --- he wasn't taking as deep
19 as breaths as the rest of the people.
20 And I think that's probably --- it
21 kept him warm.
22 Q. So the gentleman on him
23 prevented Mr. McCloy from taking
24 deeper breaths, is that what you
25 mean?

A. That's my opinion. I'm no doctor.
Q. Yes, I understand. I understand that. That's fine.
A. But he was a big gentleman and --- yeah. And plus the warmth, kept him warmer, too.
Q. If you could, going back to the angle curtain, can you just kind of --- and I know it was quick and maybe you don't recall, but that curtain, was it like tight against the roof or did it have any coal laying on it, on the bottom, to try and seal it up or --- just describe what you saw. And I know it was fast and all that, so just whatever you can remember.
A. It wasn't sagging from the top, but it did look like it was put up --- it just looked like it was put up --- I don't --- it wasn't --- it wasn't a barricade, but it wasn't a normal --- it wasn't sagging, but I didn't see any coal on the bottom,

you know.
Q. Nothing to seal like down on the bottom?
A. No.
Q. Did it appear at all like someone may have come --- that it had been up and then someone came out through it or ---?
A. It was open about a foot.
Q. Okay. Do you recall what the CO readings were outside the barricade and inside the barricade? Do you recall what those were?
A. Right at Randy McCloy it was 426 parts per million. And the air was like 19.8, 19.5, 19.8.
Q. And you're talking about oxygen?
A. Yeah.
Q. Okay. Do you recall the methane at all?
A. There wasn't hardly any, two-tenths, something like that, just hardly any.
Q. Was there any other readings

1 that you recall outside the barricade
2 or anyplace else ---
3 A. No.
4 Q. --- in the barricade that you
5 recall? I think we left off whenever
6 you had spoken to someone outside and
7 then at that point then you ---
8 everyone was ordered out of the
9 mines; is that correct?
10 A. Yes, sir.
11 Q. And I believe you said you
12 made a head count of everyone?
13 A. Yes, sir.
14 Q. And you said something about
15 someone you thought was missing?
16 A. Well, every --- the federal
17 guys, the state guys and one of my
18 guys was missing, but here they went
19 with Randy.
20 Q. How did you find that out?
21 A. By McElroy has yellow hats.
22 And they said a yellow hat guy was
23 driving the bus, which was ---
24 happens to be Denny Crow, the guy who
25 was out. And then the other --- the

1 state and the fed guy said, well, our
2 guys went with Randy, so ---. So
3 everybody was accounted for.
4 Q. And then you loaded up in a
5 bus and went out; is that correct?
6 A. Yes, sir.
7 Q. And just describe --- take it
8 from there and ---.
9 A. Well, we started out and then
10 we met a supply carload of people, a
11 doctor and everybody wanting to know
12 where the rest of them were. And we
13 said they're all deceased, you know,
14 we have orders to go outside. And so
15 everybody got back on their rides and
16 we went outside.
17 Q. And you say a doctor ---?
18 A. He said he was a doctor. He
19 came in.
20 Q. And he talked directly to you?
21 A. No. He just --- he was just
22 hollering, where's the rest of them,
23 and we all said, they're deceased.
24 Let's go. We got orders to go
25 outside.

1 Q. How did you know he was a
2 doctor?
3 A. That's what they said. That's
4 what the rumors were.
5 Q. Okay. And so once you told
6 them that everybody else was
7 deceased, what then occurred?
8 A. We turned around and everybody
9 went outside. And when I got
10 outside, I was just totally blown
11 away with ambulances everywhere, and
12 I just felt --- I just felt that it
13 was, you know, my responsibility,
14 something happened, you know, under
15 my shift and it just devastated me.
16 Q. And when you arrived on the
17 surface, what did you do then?
18 A. I went to --- went up --- I
19 immediately went and scrubbed my
20 hands, washed my hands all up and all
21 this stuff. Then they took me into
22 the command center and debriefed me
23 there.
24 Q. And who was that?
25 A. John Higgins was with me and

1 Elizabeth Chamberlain, our ---
2 Q. Okay.
3 A. --- okay, was with us. And we
4 went to the debriefing. They had
5 myself and Kris, captain of the
6 Tri-State team there, and told them
7 basically what we told you. And then
8 we went back and sat down, took a
9 little break, and then we went to the
10 MSHA trailer and got debriefed there
11 for a couple minutes.
12 Q. And who was there at that one?
13 A. Ron was there. I don't know.
14 Q. Do you know who was --- on
15 your first debriefing with Ms.
16 Chamberlain and Mr. Higgins, do you
17 know who else was in that debriefing?
18 A. No, sir, I don't. You know,
19 there's too many names for me to
20 remember.
21 Q. Okay.
22 A. So then we went back and we
23 sat in the shower house because we
24 were actually backup for the teams
25 underground then. And then when the

one team come out, they told us to pack up and go back to the motel.

Q. And what team was that that come out?

A. I don't know. When they said a team was out, they told us to get, so we ---.

Q. And who told you that?

A. Mr. Blackwell and Higgins and stuff, they told us to go back to the motel.

Q. And when you left the mine property, did you ever return?

A. No, sir.

MR. SWENTOSKY:

Mike?

BY MR. RUTLEDGE:

Q. Jim, when your team started to explore up into Two Left, when did you put your apparatus on?

A. Right at the neck, right ---.

Q. At Two Left switch there?

A. Two Left switch. If you stepped inby, it went up to like 130 parts per million. Anything over 50

1 parts per million, we're required to
2 wear our masks.
3 Q. So you had your apparatus on
4 the entire time you were traveling up
5 ---
6 A. The entire time, yes, sir.
7 Q. --- and up in the barricade?
8 What kind of apparatus do you use?
9 A. A BG-4.
10 Q. Okay. And as far as you know,
11 you were the first team to explore
12 the face area up there?
13 A. Yes, sir.
14 Q. And when Mr. McCloy was
15 brought back out to Two Left switch
16 there, you said that a mine rescue
17 apparatus was put on him at that
18 time?
19 A. Yes, sir.
20 Q. And what kind of apparatus was
21 that?
22 A. It was a BG-4. I'm pretty
23 sure it was a BG-4.
24 Q. And is that a positive
25 pressure apparatus?

A. Yes, sir, positive pressure, plus a bypass to force some into it.
Q. And did you see that bypass being used or do you think it was used?
A. No. That's when I found out that there's miscommunications and there was qualified people there to take over, and I wanted to do the other stuff.
Q. When you had started out and you met this other trip and these people were questioning you about where the other guys were, and there's a gentleman there that you maybe learned later was a doctor or whatever, did that individual or did anybody else in that group of people question you about the conditions of the other men that were still in the ---
A. No.
Q. --- face of Three?
A. They took our word for it.
Q. So there was no ---?

A. No, there was no arguments, no nothing. That just ---.
Q. Uh-huh (yes). Again, I apologize. I know you've been asked this before. But just to try to get it as straight as possible, you and your team member are attending to or getting ready to attend to Mr. McCloy, and you instructed someone --- you gave a general instruction there to get us some help up here or something?
A. I hollered, get help. We need help now.
Q. Okay. And a state or federal or both guys were there and took the other radio that you had?
A. My radio --- we handed it to someone. State, federal and Mike Clark left Three entry --- Number Three entry. Mike went and got the stretcher for us and proceeded to look for medical-grade oxygen. Now, what happened --- he did not have a radio. What happened after that, I

1 do not know, sir.
2 Q. Okay. Have you talked with
3 --- and Kelvin Jolly was your team
4 member that was left out in the ---
5 A. Yes.
6 Q. --- track entry to relay
7 communications?
8 A. Yes, sir.
9 Q. Have you talked with him since
10 then about any communications that
11 went through him to the fresh air
12 base?
13 A. He said everything was like a
14 little staticky, in and out, in and
15 out, you know, running back and
16 forth.
17 Q. And he never told you or
18 talked to you about what
19 communications he may have heard from
20 inby or what he may have relayed
21 outby?
22 A. No, not really, sir.
23 Q. And just for the record,
24 you've stated that you didn't --- or
25 you don't remember seeing any

1 curtains in that Number Three entry
2 outby that diagonal curtain?
3 A. I never went outby that inby
4 corner ---
5 Q. Okay.
6 A. --- of the diagonal curtain.
7 Q. We appreciate your patience
8 with us. Thanks.
9 A. No problem.
10 Q. Excuse me. I'm sorry. I do
11 have one other question here. You
12 stated that Mr. McCloy was farthest
13 in Number Three and was up on the
14 left-hand side?
15 A. Yes, sir.
16 Q. Were all the people inby that
17 last open crosscut at Number Three?
18 A. No, sir. There was two
19 gentlemen in that crosscut from Three
20 to Two. There was two gentlemen in
21 it.
22 Q. Okay. That would have still
23 been inby the barricade?
24 A. Yes. It was inby but diagonal
25 to it.

Q. They were separate from everybody else in that crosscut left, where everybody else ---
A. Yes, sir.
Q. --- was in the face?
A. The two older gentlemen.
Q. Two older gentlemen?
A. Yeah, they were the older ones.
Q. Okay. And did they appear any different than any of the other people there?
A. Yes. They were --- this is my opinion. They were placed in a funeral home position, laid down, feet straight, nice and perfect, like some other of the guys put them over there and laid them out like that.
Q. So it's possible then or it's your belief or opinion even that they may have been moved there by some of the other people there? They were in a placed position then that you think was ---?
A. Yes. My opinion, the rest of

1 them were leaning up against a rib or
2 laying in a fetal position, like
3 they're sleeping and stuff, and these
4 two were perfectly --- like some
5 religious person put them in that
6 position.
7 Q. They were laying side by side
8 or head to toe or ---?
9 A. One was this way and one was
10 this way.
11 Q. Were they covered up?
12 A. No, they weren't covered up.
13 There was nothing to cover them up
14 with.
15 MR. STUART:
16 And for the record,
17 when you said like this, you
18 had your arms crossed over or
19 folded over ---
20 BY MR. RUTLEDGE:
21 Q. Arms crossed over your chest.
22 MR. STUART:
23 --- your chest.
24 MR. RUTLEDGE:
25 All right. Thanks.

1 BY MR. SWENTOSKY:
2 Q. You had mentioned one of your
3 team members, I think --- was it Mr.
4 Klug (sic), that went outside with
5 Mr. McCloy?
6 A. Yes. He was driving the bus.
7 He was the only one that knew how to
8 drive the bus.
9 Q. And he was the only one off of
10 your team that went to the surface?
11 A. Yes, sir.
12 Q. Okay. And when you met the
13 --- or run into the trip with the
14 other people on the way out and you
15 said there was a doctor there, do you
16 know if he made any examination of
17 Mr. McCloy? Do you know that at all?
18 A. Hearsay, he looked in, said
19 get him outside. That was hearsay.
20 Q. And who was that hearsay from?
21 A. Mr. Denny Crow said he just
22 stopped, looked in there, said, get
23 him outside, and that was it.
24 Because there was nothing he could
25 have done. We had medical-grade

1 oxygen on him.
2 Q. Okay. Do you have anything
3 that you would like to add that might
4 be relevant to the investigation or
5 opinions or just anything that you
6 would like to add?
7 A. No.
8 MR. SWENTOSKY:
9 On behalf of MSHA, I
10 would like to thank you for
11 appearing and answering
12 questions today. Your
13 cooperation is very important
14 to the investigation as we
15 work to determine the cause of
16 the accident. We ask that you
17 not discuss your testimony
18 with any person who may have
19 already been interviewed or
20 who may be interviewed in the
21 future. This will ensure that
22 we obtain everyone's
23 independent recollection of
24 the events surrounding the
25 accident. After questioning

1 other witnesses, we may call
2 you if we have any follow-up
3 questions that we feel that we
4 need to ask you. If at any
5 time you have additional
6 information regarding the
7 accident that you would like
8 to provide to us, please
9 contact us at the contact
10 information that was
11 previously provided to you.
12 The Mine Act provides
13 certain protections for miners
14 who provide information to
15 MSHA and, as a result, are
16 treated adversely. If at any
17 time you believe that you have
18 been treated unfairly, please
19 --- because of your
20 cooperation in this
21 investigation, you should
22 immediately notify MSHA. If
23 you wish, you may now go back
24 over any answer that you have
25 given during the interview,

and you also may make a statement that you would like to make at this time.

A. I don't have any statement.

MR. SWENTOSKY:

Thank you for your cooperation in this matter.

OFF RECORD DISCUSSION

MR. SWENTOSKY:

We just have a few more questions. Let me just remind you that you're still under oath. And we have some questions we would like to ask you about the curtains up at the barricade area in the Two Left section. Mike.

BY MR. RUTLEDGE:

Q. Jim, here's the map that we marked earlier.

A. Is that Number Two?

Q. Yes, that's Exhibit Number Two that's marked Klug. The curtain that's located in this 25 crosscut there, again, you said that was put

1 up tightly or put up in a ---
2 A. Yes.
3 Q. --- workmanlike manner?
4 A. Yes, sir.
5 Q. Were there any timbers or
6 anything around on either side of
7 that curtain?
8 A. I didn't see no timbers. It
9 just was a nice, tight curtain.
10 Q. Was it in the center of the
11 crosscut or more to one side than the
12 other?
13 A. It wasn't in the center. It
14 favored the Number Five --- it
15 favored the track entry just a little
16 bit. It wasn't centered, but ---.
17 Q. Did you notice whether that
18 was put up with nails or with spads
19 or with pieces of wire?
20 A. I didn't notice that. I just
21 noticed that it was tightly put up.
22 Q. And just from your best
23 recollection of what it looked like,
24 do you think --- or give us your
25 opinion, if you don't mind. Do you

1 think that was something that these
2 guys put up or do you think that was
3 part of the normal ventilation
4 system?
5 A. I couldn't tell you that
6 because I don't know their mining
7 ventilation, you know. Normally, you
8 would have a curtain at 25 crosscut
9 because of the forced air up through
10 26. So my opinion, it was probably a
11 ventilation curtain, you know.
12 Q. Okay. Now, the ones that are
13 up in crosscut 26, the first one that
14 was encountered there, that was in
15 the crosscut between Three and Four,
16 again, you think it was put up in a
17 workmanlike manner, in an efficient
18 way?
19 A. I don't know what that one ---
20 I just --- my opinion is I don't see
21 why it was there. Because if it's
22 there, it's going to block the air
23 from going through there. So I don't
24 know --- like I say, I don't know the
25 ventilation process.

1 Q. In your mining experience,
2 though, it has no purpose there for
3 normal mine ventilation?
4 A. No.
5 Q. Did you happen to notice if it
6 was, again, put up with nails or
7 spads or wire or how?
8 A. No. Like I say, I went right
9 through the opening on the inby side
10 of it, it was like a foot opening. I
11 went right through it. I didn't pay
12 any attention.
13 Q. And the next one that was up
14 diagonally in that intersection, you
15 went right by it as well?
16 A. Yeah. It had an opening in it
17 to --- about a foot wide or so.
18 Q. So it was easy for you just to
19 brush it aside and walk right on in?
20 A. Yeah.
21 Q. Again, you didn't notice how
22 that was put up, how it was attached?
23 A. No, the only way --- I don't
24 know how it was attached, but I knew
25 it was balled up in the corner back

here because we went back and was inspecting these two gentlemen back here. And that's how I know it was balled up back there.

Q. Do you think that you were the first person to travel through those curtains, the first person on any rescue team or ---?

A. Oh, yeah.

Q. There was no other team member or ---

A. No other team member.

Q. --- state or federal guy that would have went behind you?

A. Uh-uh (no).

ATTORNEY WILSON:

Behind you or in front of you?

BY MR. RUTLEDGE:

Q. Behind you --- or everybody else was behind you?

A. Yes, sir.

Q. No one else was in front of you. Thanks.

A. Yes, sir. I was the very

first one.

Q. You were the first one through there.

BY MR. SWENTOSKY:

Q. I just have one question. Do you think --- and this is just your thought process. Do you think that the victims put it up or did it look like it was a normal ventilation curtain that was put up?

A. My --- hearsay is --- they usually used this for dinner, hearsay. Okay. That's from hearsay. And that one diagonal was to keep the air off of them, you know, because it's cold underground and stuff, ---

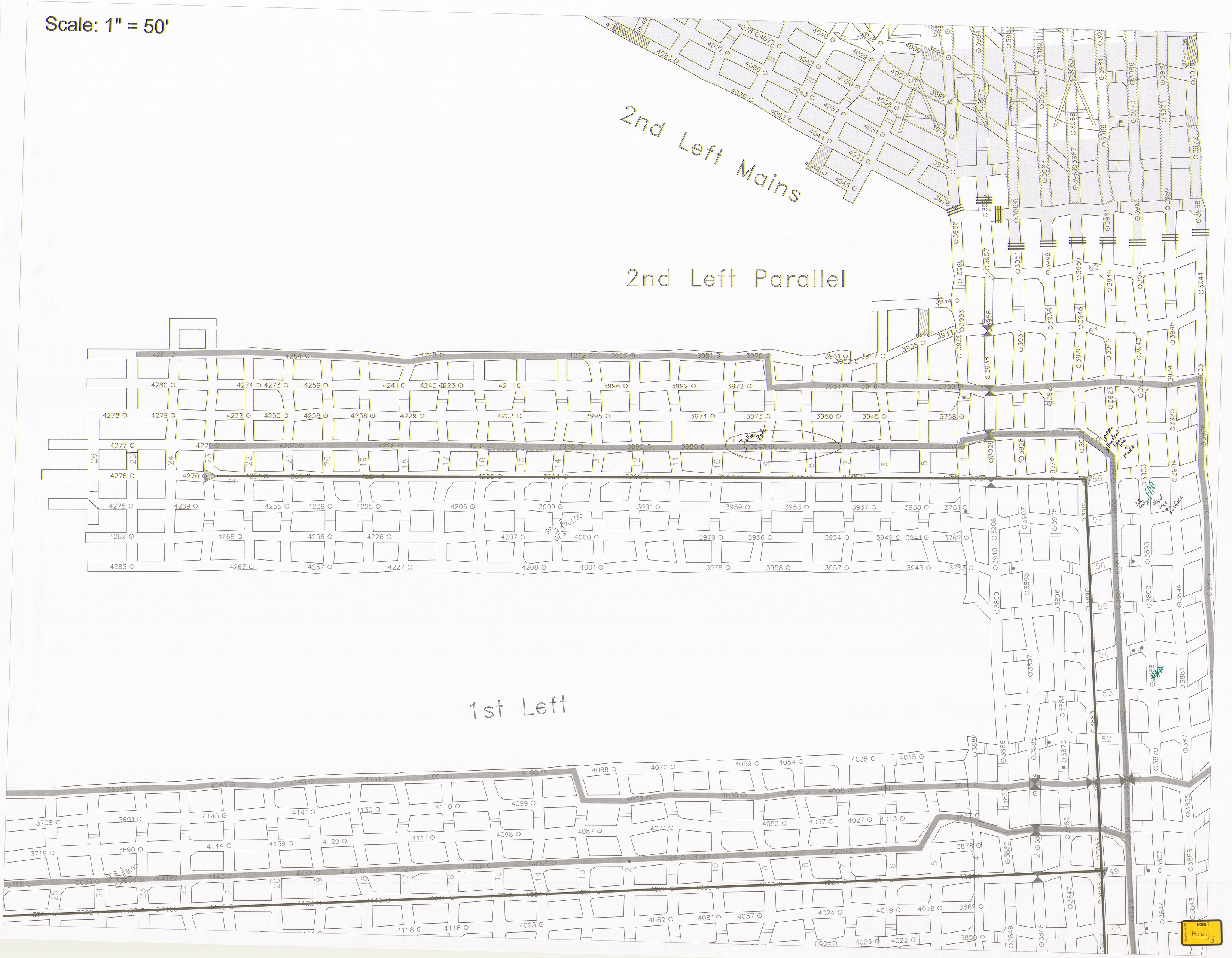
Q. Sure.

A. --- especially, you know --- but that was hearsay. And I don't --- I couldn't tell you. I couldn't tell you if they put it up for --- if it was already up or if they put it up for a barricade, I couldn't tell you that.

Q. And let me ask you this. Was

1 the bottom dusty up around that area?
2 A. I don't understand the
3 question.
4 Q. If the bottom was dusty, did
5 it look like there was a lot of
6 footprints around or could you tell
7 that at all or maybe didn't even
8 notice or ---?
9 A. No, I didn't notice. I
10 apologize for not having all the
11 information for you guys.
12 Q. No. You did what you needed
13 to do, and we appreciate that.
14 MR. RUTLEDGE:
15 I don't have anything
16 further. Appreciate you
17 trying to clear that up for
18 us.
19 MR. SWENTOSKY:
20 Thanks.
21 * * * * * * * *
22 STATEMENT CONCLUDED AT 9:48 A.M.
23 * * * * * * * *
24
25

Scale: 1" = 50'


2nd Left Mains
2nd Left Parallel
1st Left
GPS 2
GPS 1
Fire Hydrant
Shutter Valve at Curb
Valve Box
Filled Valve at surface
EXHIBIT
Klug 1

Scale: 1" = 20'

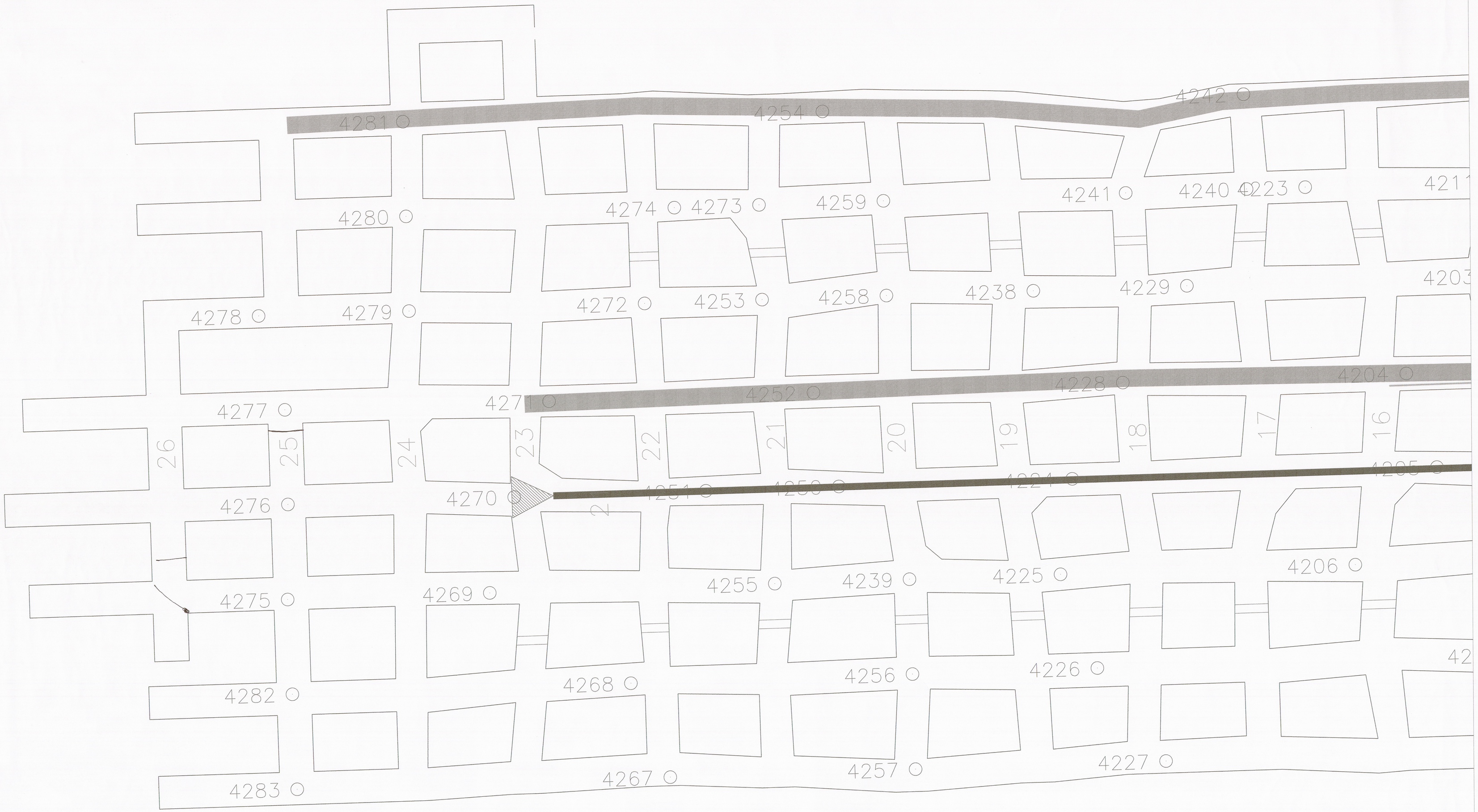


EXHIBIT
Klug 2