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Transcript of the Testimony of Keith Snow

Date: September 9, 2010

Case:

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STATEMENT UNDER OATH
OF
KEITH SNOW

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 and Safety Academy, 1301 Airport Road, Room C-137, Beaver, West Virginia, on Thursday, September 9, 2010, beginning at 9:00 a.m.

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A P P E A R A N C E S

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A P P E A R A N C E S (Cont.)

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

8*

Two

Return of Service
and Subpoena

8*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

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

12 MR. FARLEY:

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

15 ATTORNEY MCATEER:

16 I'm Davitt McAteer with the Governor's
17 independent investigative team.

18 ATTORNEY KOERBER:

19 And I'm Barry Koerber. I'm an Assistant
20 Attorney General and I'm assigned to represent the
21 West Virginia Office of Miners' Health, Safety and
22 Training.

23 ATTORNEY BAXTER:

24 There may also be members of the
25 investigation team present in the room today. And Mr.

1 Sherer, Mr. Farley and Mr. McAteer will be conducting
2 the questioning today. Will you please swear the
3 witness in?

4 -----

5 KEITH SNOW, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
6 FOLLOWS:

7 -----

8 ATTORNEY KOERBER:

9 Sir, would you please state your full
10 name for the record and spell your last name?

11 A. Keith Allen Snow. That's S-N-O-W.

12 ATTORNEY KOERBER:

13 And would you please state your address
14 and telephone number?

15 A. [REDACTED]

16 [REDACTED]

17 ATTORNEY KOERBER:

18 And are you expecting an attorney or
19 other personal representative to appear with you here
20 today?

21 A. No.

22 ATTORNEY KOERBER:

23 Are you appearing here today as the
24 result of receiving a subpoena?

25 A. Yes.

1 ATTORNEY KOERBER:

2 And this is a copy of that subpoena, and

3 I'd like that to be marked as Exhibit One.

4 (Exhibit K. Snow One marked for

5 identification.)

6 ATTORNEY KOERBER:

7 This is a copy of the return of service,

8 filled out by Frank Newman of the Raleigh County

9 Sheriff's Office, showing service on September 2nd at

10 8:50 a.m. And attached to that document is another

11 copy of the subpoena, and I'd like that to be marked

12 as Exhibit Two.

13 (Exhibit K. Snow Two marked for

14 identification.)

15 ATTORNEY KOERBER:

16 Mr. Snow, the statute that authorizes the

17 Director to subpoena witnesses to appear at interviews

18 such as this also requires the Director to offer to

19 each witness subpoenaed a \$40 a day witness fee and

20 roundtrip mileage from your home to hear and back at

21 the rate of 15 cents a mile, so long as you drove in

22 your personal vehicle, and reimbursement for any tolls

23 that you may have passed on the way here and back. In

24 order to receive that money, two forms must be filled

25 out, one of which is an IRS Form W-9, requesting your

1 Social Security number, because it is my understanding
2 the \$40 witness fee is considered taxable income, to
3 which you'll receive a 1099 Miscellaneous sometime
4 later on in the year. If you would like to fill out
5 those forms, we can do so at the end of the interview,
6 or if you would rather not fill out the forms, you can
7 decline, but the choice is yours and you must make
8 your decision now.

9 A. I decline it.

10 ATTORNEY KOERBER:

11 Okay. Thank you.

12 ATTORNEY BAXTER:

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

1 information with each other or with other law
2 enforcement officials. The team members'
3 participation in this interview constitutes their
4 agreement to keep this information confidential.

5 Government investigators and specialists

6 have been assigned to investigate the conditions,
7 events and circumstances surrounding the fatalities
8 that occurred at the Upper Big Branch Mine-South on
9 April 5th, 2010. The investigation is being conducted
10 by MSHA under Section 103(a) of the Federal Mine
11 Safety and Health Act and the West Virginia Office of
12 Miners' Health, Safety and Training. We appreciate
13 your assistance in this investigation.

14 You may have your personal attorney

15 present during the taking of this statement or another
16 personal representative if MSHA has permitted it and
17 may consult with your attorney or the representative
18 at any time. You may request a break at any time.

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 the
22 public report of the accident, unless you request that
23 your identity remain confidential or your information
24 would otherwise jeopardize a potential criminal
25 investigation. If you request us to keep your

1 identity confidential, we will do so to the extent
2 permitted by law.

3 That means that if a judge orders us to
4 reveal your name or if another law requires us to
5 reveal your name or if we need to reveal your name for
6 other law enforcement purposes, we may do so. Also,
7 there may be a need to use the information you provide
8 to us or other information we may ask you to provide
9 in the future in other investigations into and
10 hearings about the explosion. Do you understand?

11 A. Uh-huh (yes), yes.

12 ATTORNEY BAXTER:

13 Okay. And do you have any questions?

14 A. No.

15 ATTORNEY BAXTER:

16 And also, we have someone joining us here
17 at the question table. Perhaps you can identify
18 yourself for the record?

19 MR. MCGINLEY:

20 I'm Patrick McGinley with the Governor's
21 independent investigation team.

22 ATTORNEY BAXTER:

23 After the investigation is complete, MSHA
24 will issue a public report detailing the nature and
25 causes of the fatalities in the hope that greater

1 awareness about the causes of accidents can reduce
2 their occurrence in the future. Information obtained
3 through witness interviews is frequently included in
4 these reports. Since we will be interviewing other
5 individuals, we request that you not discuss your
6 testimony with any person aside from your personal
7 representative or counsel.

8 A court reporter will record your
9 interview. Please speak loudly and clearly. If you
10 do not understand a question asked, please ask us to
11 rephrase it. Please answer each question as fully as
12 you can, including any information you've learned from
13 someone else.

14 I'd like to thank you in advance for your
15 appearance here. We appreciate your assistance in
16 this investigation. Your cooperation is critical in
17 making the nation's mines safer.

18 After we have finished asking questions,
19 you'll have an opportunity to make a statement and
20 provide us with any other information that you believe
21 to be important. If at any time after the interview
22 you recall any additional information that you believe
23 might be useful, please contact Norman Page of MSHA at
24 the telephone number or e-mail address provided to
25 you.

1 Any statements given by miner witnesses
2 to MSHA are considered to be an exercise of statutory
3 rights and protected activity under Section 105(c) of
4 the Mine Act. If you believe any discharge,
5 discrimination or other adverse action is taken
6 against you as a result of your cooperation with this
7 investigation, you're encouraged to immediately
8 contact MSHA and file a complaint under Section 105(c)
9 of the Act.

10 MR. FARLEY:

11 Mr. Snow, on behalf of the Office of
12 Miners' Health, Safety and Training, I'd like to
13 inform you that the West Virginia Mine Safety
14 Regulations, specifically West Virginia Code, Chapter
15 22A, Article 1, Section 22, provides protection
16 against potential discrimination for participating in
17 these type of interviews. And I'd like to pass along
18 some contact information to you for the West Virginia
19 Board of Appeals.

20 The Board is charged with the
21 responsibility of hearing discrimination complaints
22 from coal miners, and should you have any such
23 problems as a result of your participation here,
24 please contact the board immediately at the address
25 there. And we'd caution you that should you have a

1 need to file a claim, you need to do so within 30 days
2 of whenever the offence occurs.

3 A. Okay.

4 MR. FARLEY:

5 Thank you.

6 ATTORNEY BAXTER:

7 Oh, and one other preliminary matter. We
8 also have another gentleman with us here today. Could
9 you please identify yourself for the record?

10 ATTORNEY WICKLINE:

11 Sure; Scott Wickline of the law firm of
12 Allen Guthrie & Thomas, here on behalf of Performance
13 Coal.

14 MR. SHERER:

15 Okay.

16 EXAMINATION

17 BY MR. SHERER:

18 Q. Good morning, Mr. Snow.

19 A. Good morning.

20 Q. I want to thank you for coming down here this
21 morning. We're investigating the accident at Upper
22 Big Branch Mine and we're doing that for two reasons.
23 We're trying to do that for the families and the
24 friends and the coworkers of the 29 victims. They
25 deserve some closure. And the second reason we're

1 doing it is we want to prevent similar types
2 explosions from ever occurring again. So any
3 information you can share with that'll help us with
4 that, we really appreciate it. Roughly, how many
5 years of mining experience do you have?

6 A. Twelve (12), 13 years.

7 Q. Okay. When did you start with the Massey
8 organization?

9 A. In '98.

10 Q. Okay. So almost all your experience has been with
11 Massey?

12 A. Uh-huh (yes).

13 Q. When did you start working at Upper Big Branch?

14 A. I'd only been there probably 14 months.

15 Q. Okay. What was your job title at Upper Big Branch
16 at the time of the explosion?

17 A. I was midnight maintenance foreman on the barrier
18 section.

19 Q. Okay. What were the duties of the midnight
20 maintenance foreman?

21 A. Oversee, you know, the work listed to be done to
22 the equipment, basic maintenance on all the face
23 equipment ---

24 Q. Okay.

25 A. --- for the section.

1 Q. Did you get involved in any of the outby type
2 work?

3 A. Very little.

4 Q. Okay. Did you go by any nickname in the mine?

5 A. Yes.

6 Q. What was that?

7 A. Snowman.

8 Q. Were you salaried or hourly?

9 A. Hourly.

10 Q. Okay. Did you have anybody that reported to you?
11 Did you direct any --- the work of anybody else?

12 A. Just of the guys that worked beneath me or for me.

13 Q. Okay. Who were those people?

14 A. I had Timmy Daniel, Carl Wall and Alan Ball.

15 Q. Okay. Could you requisition parts or supplies?

16 A. Yes.

17 Q. Okay. Did you plan the work of those people that
18 worked for you?

19 A. Sometimes, yes.

20 Q. Okay. What was the last shift you worked prior to
21 the April 5th explosion?

22 A. It would've been the fifth date of our midnight
23 shift, so that would've been Tuesday night.

24 A. Okay. That would be when you were scheduled to
25 come back. Was it Tuesday the prior week?

1 A. No. I've got the days mixed up here.

2 Q. Oh, okay.

3 A. The 5th was on what day?

4 Q. The 5th was a Monday.

5 A. On a Monday.

6 Q. And it was a long weekend. It was Easter weekend.

7 A. Okay. We would've worked Sunday night, which
8 would've been my fifth.

9 Q. Okay. When you worked on Sunday night, do you
10 recall anything unusual?

11 A. No, sir.

12 Q. Okay. Did you overhear anything on the mine phone
13 or anybody talking about anything that seemed unusual
14 in the mine?

15 A. No, sir.

16 Q. Okay. When you got out of the mine, did you hear
17 anybody talking about anything that seemed unusual?

18 A. No, sir.

19 Q. Do you recall what you did on the night of the
20 5th?

21 A. No, not exactly. No.

22 Q. Okay. Just general ---?

23 A. Just general maintenance on our section.

24 Q. Okay. What was the ventilation like on the
25 barrier section?

1 A. I mean what are you wanting there?

2 Q. Did you have any problems with having a sufficient
3 air quantity?

4 A. No.

5 Q. Okay. Did you ever run into any methane on the
6 barrier section?

7 A. No.

8 Q. Did you carry a spotter with you?

9 A. Uh-huh (yes), a Solaris.

10 Q. Okay. Since you've been at Upper BB, Upper Big
11 Branch, has that Solaris ever gone into alarm?

12 A. No, sir.

13 Q. Okay. Do you know what the alarm level was set at
14 for methane?

15 A. It's .5, I think.

16 Q. Okay. Were you aware of the bridging out of a
17 methane monitor on the barrier section that supposedly
18 occurred on Massey Appreciation Day, which was the
19 13th of February?

20 A. No, sir.

21 Q. Did anybody call you in regards to bridging out a
22 methane monitor?

23 A. No, sir.

24 Q. Okay. Did you ever hear anybody say there was
25 inspectors on the property or inspectors coming or

1 company coming, anything like that?

2 A. That particular day or ---?

3 Q. Just any time.

4 A. You'd hear that a lot there. There's always
5 inspectors around.

6 Q. Sure. Do you think the ventilation in this mine
7 was adequate prior to the explosion?

8 A. As far as my knowledge was, it was.

9 Q. Did you ever walk the section belt from the
10 barrier section?

11 A. Yes, sir.

12 Q. What was the rock dust on that like the last time
13 that you walked that?

14 A. Typical. I mean nothing unusual. It was always
15 usually hand dusted after your previous move.

16 Q. Okay. Do you think it was --- the incombustible
17 content was adequate?

18 A. I would say so, yes.

19 Q. Okay. You ever have any occasion to get up in the
20 northern part of the mine?

21 A. No, sir.

22 Q. During that 14 months' period, have you worked
23 that entire time on the barrier section?

24 A. It was Four section at first, and then we moved
25 down to where we were at, which they called barrier,

1 but for most of my part, yes, I was always on Four and
2 barrier, which were the same group of people.

3 Q. Okay. And that was all in the southern part of
4 the mine?

5 A. Right.

6 Q. Okay. Did you ever have any dealings with the
7 longwall?

8 A. No, sir.

9 Q. Okay. Did you ever get over to the Bandytown fan
10 location?

11 A. No, sir.

12 Q. Okay. Did you do any surface work?

13 A. No, sir.

14 MR. SHERER:

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

17 EXAMINATION

18 BY MR. FARLEY:

19 Q. Erik asked you if you were aware of an incident
20 involving the bridging of a methane monitor on the
21 barrier section on February 13th of this year. Do you
22 recall if you --- if there could've been a methane
23 monitor malfunction on the barrier section that day?

24 A. No, sir.

25 Q. Okay. Do you recall if you worked that day?

1 A. I don't know if I did or not. I'm not sure. He
2 said it was on a long weekend or something?

3 MR. SHERER:

4 That was ---. Excuse me.

5 BY MR. FARLEY:

6 Q. I think there may be a --- may have been a company
7 holiday known as Massey Appreciation Day, either on
8 the day before or the day after that tied into that
9 weekend.

10 A. I honestly --- as far as --- if we were scheduled
11 off, I was off.

12 Q. Okay. All right. Where are you working now?

13 A. Parker Peerless with Marfork Coal Company.

14 Q. Okay. When did you start at Parker Peerless?

15 A. Toward the end of April.

16 MR. FARLEY:

17 Okay. I don't think I have anything
18 else.

19 EXAMINATION

20 BY MR. MCGINLEY:

21 Q. I just have a few questions, Mr. Snow. You worked
22 the midnight shift on the 5th. You said you couldn't
23 remember anything that you did that night; is that
24 right or can you remember a little bit?

25 A. I can't honestly remember what we did. I mean,

1 it's --- you know, it's been so long ago.

2 Q. Sure. When did you find out about the explosion?

3 A. My phone started ringing at the house around 4:00
4 something in the afternoon, you know, people that I
5 worked with. That's how I found out.

6 Q. Did you go --- were you asked to go back to the
7 mine at all during the rescue and recovery?

8 A. Yes. I worked outside, preparing the mantrips and
9 the four-wheelers and things like that for the rescue
10 teams.

11 Q. Did you go back the day of the explosion?

12 A. I went down that night and the police officer
13 wouldn't let me go through, so ---.

14 Q. Was it ever your responsibility to take air
15 readings or --- to take air readings?

16 A. Other than monitoring for, you know, CH4 in our
17 work area as far as cutting, torching and stuff like
18 that, no.

19 Q. Did you ever hear of --- oh, strike that.

20 Did you know when you came to work at UBB that
21 there had been methane outbursts at the mine in 2003
22 and 2004 that caused the evacuation of the mine?

23 A. I'd only heard rumors of a small pop-off, is what
24 I was told, but ---.

25 Q. Nobody told you the mine was shut down for a

1 couple of days ---

2 A. No.

3 Q. --- because the mine had been inundated with gas?

4 A. No.

5 Q. Would you like to have known that?

6 A. I guess. No. I don't know. As far as --- I mean
7 what do you want to know?

8 Q. Well, if you work in a mine where there's some
9 significant --- been a significant gas problem in the
10 past, would you like to know that?

11 A. Oh, yes.

12 Q. You were asked about rock dusting. You said it
13 looked okay, essentially; is that right?

14 A. Uh-huh (yes).

15 Q. You have to say yes or no.

16 A. Yes.

17 Q. And you were asked whether you thought the
18 combustible content of the rock dust was adequate, and
19 you said, I would say so. What's the basis for your
20 determination whether you thought the combustible
21 content of rock dust was adequate?

22 A. Well, generally you can tell by the amount of ---
23 you know, the color, white or black, and whether or
24 not it needs more dust or not.

25 Q. Do you have any training about rock dusting?

1 A. No training, no.

2 Q. So sort of from experience or word of mouth, you
3 look at the color of the ribs, for example, and you
4 make a determination of whether they need rock dust?

5 A. Basically, yes.

6 Q. Now, were you aware there were ventilation
7 problems at Upper Big Branch in the last year before
8 the explosion?

9 A. No.

10 Q. You never heard about ventilation changes being
11 made?

12 A. I'd heard that they were working on some
13 ventilation on the longwall area. That's the only
14 thing I've heard.

15 Q. Did you know that MSHA had issued closure orders
16 because of inadequate ventilation?

17 A. No.

18 Q. Would you have liked to have known that?

19 A. Yes.

20 Q. Were there any water problems that you were aware
21 of that you had to deal with?

22 A. We had some --- a little water on our section that
23 we had some pumps set.

24 Q. Now, now, what was your section, again?

25 A. Barrier section.

1 Q. Barrier. Did you hear about serious problems back
2 behind the longwall ---

3 A. Yes.

4 Q. --- as far as water was concerned?

5 A. Uh-huh (yes).

6 Q. Did you ever go back there?

7 A. No, sir.

8 Q. What did you hear about it?

9 A. Basically it was just --- I don't know exactly
10 what it was. I just know that they had a team of
11 people that worked on a daily basis back there,
12 pumping the water out.

13 Q. You carried a Solaris spotter; is that right?

14 A. Yes, sir.

15 Q. And what kind of readout does that have, methane
16 and what else?

17 A. Methane, oxygen and ---

18 Q. CO?

19 A. --- CO.

20 Q. What range of oxygen would you find over --- in a
21 period of time?

22 A. Usually mine stayed at 20.

23 Q. Twenty (20)?

24 A. Uh-huh (yes).

25 Q. But it had decimals, too, didn't it ---?

1 A. .20.

2 Q. So was it always 20?

3 A. Yeah.

4 MR. MCGINLEY:

5 I don't have any other questions.

6 MR. SHERER:

7 I don't have any.

8 ATTORNEY BAXTER:

9 Okay. On behalf of MSHA and the Office

10 of Miners' Health, Safety and Training I want to thank
11 you for appearing and answering questions today. Your
12 cooperation is very important to the investigation as
13 we work to determine the cause of the accident. We
14 request that you not discuss your testimony with any
15 person aside from your personal representative. After
16 questioning other witnesses, we may call you if we
17 have any follow-up questions. If at any time you have
18 additional information regarding the accident that you
19 would like to provide to us, please contact us at the
20 contact information that was previously provided to
21 you.

22 If you wish, you may now go back over any
23 answer you've given during this interview. You may
24 also make any statement that you'd like to make at
25 this time.

1 A. I have none.

2 ATTORNEY BAXTER:

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

5 * * * * *

6 STATEMENT UNDER OATH CONCLUDED AT 9:24 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