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Transcript of the Testimony of Jason Dancy

Date: September 2, 2010

Case:

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STATEMENT UNDER OATH
OF
JASON DANCY

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 2, 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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I N D E X

| | | |
|----|-----------------------------|---------|
| 1 | | |
| 2 | | |
| 3 | OPENING STATEMENT | |
| 4 | By Attorney Babington | 6 |
| 5 | DISCUSSION AMONG PARTIES | 7 - 8 |
| 6 | CONTINUED OPENING STATEMENT | |
| 7 | By Attorney Babington | 9 - 12 |
| 8 | STATEMENT | |
| 9 | By Mr. Farley | 12 - 13 |
| 10 | WITNESS: JASON DANCY | |
| 11 | EXAMINATION | |
| 12 | By Mr. Sherer | 13 - 22 |
| 13 | EXAMINATION | |
| 14 | By Mr. Farley | 22 - 24 |
| 15 | EXAMINATION | |
| 16 | By Ms. Monforton | 24 - 26 |
| 17 | CLOSING STATEMENT | |
| 18 | By Attorney Babington | 26 - 27 |
| 19 | CERTIFICATE | 28 |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT PAGE

PAGE

| NUMBER | DESCRIPTION | IDENTIFIED |
|--------|---------------------|------------|
| One | Subpoena | 7* |
| Two | Return Receipt Card | 8* |

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BABINGTON:

4 My name is Matt Babington. Today is
5 September 2nd, 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 U.S.
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearance for the record.

12 MR. FARLEY:

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

15 ATTORNEY KOERBER:

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

20 MS. MONFORTON:

21 And I'm Celeste Monforton with the
22 Governor's independent team.

23 ATTORNEY KOERBER:

24 Would you swear in the witness, please?
25 -----

1 JASON DANCY, HAVING FIRST BEEN DULY SWORN, TESTIFIED
2 AS FOLLOWS:

3 -----

4 ATTORNEY KOERBER:

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

7 A. Jason Lee Dancy. It's D-A-N-C-Y.

8 ATTORNEY KOERBER:

9 And please state your address and
10 telephone number?

11 A. [REDACTED]

12 Phone number's [REDACTED]

13 ATTORNEY KOERBER:

14 And are you expecting an attorney or
15 personal representative to appear with you here today?

16 A. No.

17 ATTORNEY KOERBER:

18 Are you appearing here today as a result
19 of receiving a subpoena?

20 A. Yes.

21 ATTORNEY KOERBER:

22 I'd like this to be marked as Exhibit

23 One. This is a copy of that subpoena. You can take a
24 look at it if you'd like to.

25 (Exhibit J. Dancy One marked for

1 identification.)

2 ATTORNEY KOERBER:

3 And I'd like this to be marked as Exhibit

4 Two, which is the return receipt card signed by --- I

5 can't read the last name, but [REDACTED] ?

6 A. Yes.

7 ATTORNEY KOERBER:

8 8/16/10. I'd like those to be put in the

9 record.

10 (Exhibit J. Dancy Two marked for

11 identification.)

12 ATTORNEY KOERBER:

13 Sir, the statute that authorizes the

14 director to issue subpoenas requires the director to

15 offer to each witness subpoenaed a \$40 per day witness

16 fee plus round mileage at the rate of 15 cents a mile,

17 so long as you drove in your personal vehicle, plus

18 reimbursement for any tolls that you may have passed.

19 To receive that money, you need to fill out two forms

20 that I showed you earlier prior to the interview.

21 Would you like to fill those forms out at the end of

22 this interview and receive that money, or ---?

23 A. I decline.

24 ATTORNEY KOERBER:

25 Decline? Okay. Thank you.

1 ATTORNEY BABINGTON:

2 There are several members of the

3 investigation team also present in the room today.

4 Erik Sherer will be conducting initial questioning.

5 All members of the Mine Safety and Health

6 Accident Investigation Team and all members of the

7 State of West Virginia Accident Investigation Team

8 participating in the investigation of the Upper Big

9 Branch Mine explosion shall keep confidential all

10 information that is gathered from each witness who

11 provides a statement until the witness statements are

12 officially released. MSHA and the State of West

13 Virginia shall keep this information confidential so

14 that other ongoing enforcement activities are not

15 prejudiced or jeopardized by a premature release of

16 information. This confidentiality requirement shall

17 not preclude investigation team members from sharing

18 information with each other or with other law

19 enforcement officials. Team members' participation in

20 this interview constitutes their agreement to keep

21 this information confidential.

22 Government investigators and specialists

23 have been assigned to investigate the conditions,

24 events and circumstances surrounding the fatalities

25 that occurred at the Upper Big Branch Mine-South on

1 April 5th, 2010. The investigation is being conducted
2 by MSHA under Section 103(a) of the Federal Mine
3 Safety and Health Act and the West Virginia Office of
4 Miners' Health, Safety and Training. We appreciate
5 your assistance in this investigation.

6 You may have your personal attorney
7 present during the taking of this statement or another
8 personal representative if MSHA has permitted it, and
9 you may consult with your attorney or representative
10 at any time. Your identity and the content of this
11 conversation will be made public at the conclusion of
12 the interview process and may be included in the
13 public report of the accident, unless you request that
14 your identity remain confidential or your information
15 would otherwise jeopardize a potential criminal
16 investigation. If you request us to keep your
17 identity confidential, we will do so to the extent
18 permitted by law.

19 That means that if a judge orders us to
20 reveal your name or if another law requires us to
21 reveal your name or if we need to reveal your name for
22 other law enforcement purposes, we may do so. Also,
23 there may be a need to use the information you provide
24 to us or other information we may ask to provide in
25 the future in other investigations into and hearings

1 about the explosion. Do you understand?

2 A. Yes.

3 ATTORNEY BABINGTON:

4 Do you have any questions?

5 A. No.

6 ATTORNEY BABINGTON:

7 After the investigation is complete, MSHA

8 will issue a public report detailing the nature and

9 cause of the fatalities in the hope that greater

10 awareness about the causes of accidents can reduce

11 their occurrence in the future. Information obtained

12 through witness interviews is frequently included in

13 these reports. Since we will be interviewing other

14 individuals, we request that you not discuss your

15 testimony with any person aside from a personal

16 representative or counsel.

17 A court reporter will record your

18 interview. Please speak loudly and clearly. If you

19 do not understand a question asked, please ask the

20 interviewer to rephrase it. Please answer each

21 question as fully as you can, including any

22 information you've learned from someone else.

23 I'd like to thank you in advance for your

24 appearance here. We appreciate your assistance in

25 this investigation. Your cooperation is critical in

1 making the nation's mines safer.
2 After we've finished asking questions,
3 you'll have an opportunity to make a statement and
4 provide us with any other information that you believe
5 to be important. If at any time after the interview
6 you recall any additional information that you believe
7 might be useful, please contact any of us or Norman
8 Page at the contact information provided to you.
9 Finally, any statements given by miner
10 witnesses to MSHA are considered to be an exercise of
11 statutory rights and protected activity under Section
12 105(c) of the Mine Act. If you believe any discharge,
13 discrimination or other adverse action is taken
14 against you as a result of your cooperation with this
15 investigation, you're encouraged to immediately
16 contact MSHA and file a complaint under Section 105(c)
17 of the Act. Terry?

18 MR. FARLEY:

19 Mr. Dancy, on behalf of the Office of
20 Miners' Health, Safety and Training, I want to inform
21 you that the West Virginia Mine Safety Regulations,
22 specifically West Virginia Code, Chapter 22A, Article
23 1, Section 22, also provides protection against
24 discrimination for miners who participate in these
25 interviews. Pass along some contact information for

1 the West Virginia Board of Appeals, which hears
2 complaints regarding discrimination.
3 Should you experience any problems, you
4 should contact the board immediately. And we'd
5 caution you that should have a problem, you need to
6 file a claim within 30 days.

7 EXAMINATION

8 BY MR. SHERER:

9 Q. First thing I want to do is thank you for coming
10 down here this morning. We're still investigating the
11 explosion that happened on April the 5th. We're
12 looking at the conditions and things that went on in
13 the mine prior to the explosion, and any information
14 you can share with us will be greatly appreciated.
15 And we're doing that for two reasons. The first is
16 the families and the friends and the coworkers of
17 those 29 miners deserve to know what happened. Second
18 reason is we want to prevent this from ever happening
19 again. Roughly, how many years of mining experience
20 do you have?

21 A. About ten.

22 Q. Okay. When did you first start working for the
23 Massey organization?

24 A. It wasn't long. It was December ---

25 Q. Okay.

1 A. --- of 2009.

2 Q. 2009? Okay.

3 A. I don't remember. I think it was four months.

4 Q. Oh, okay. Did you just work at the Upper Big
5 Branch Mine?

6 A. Yes, that's the one I got hired on for.

7 Q. Okay. What was your job description prior to the
8 explosion?

9 A. Roof bolter.

10 Q. Roof bolter. Which section?

11 A. Headgate 22, section One.

12 Q. Okay. Which shift did you work?

13 A. I was evening shift.

14 Q. Evening shift. Who was your boss?

15 A. Rick Hutchens when I first started, and then he
16 left and Patrick Hilbert ---.

17 Q. Okay. And Rick was called Smurf, wasn't he?

18 A. Yeah, Smurf.

19 Q. Okay. What was the last shift you worked prior to
20 the explosion?

21 A. I believe it was their first day back when it
22 happened. We worked six on, three off. And well, I
23 can't remember the shift before.

24 Q. It was also the Easter --- Good Friday weekend, so
25 there might've got an extra day in there, too. The

1 mine was shut down for --- well, I think on Sunday.

2 A. Well, I don't know. Well ---.

3 Q. So it might've been Thursday or something like
4 that?

5 A. Uh-huh (yes).

6 Q. Okay. Do you recall anything unusual that last
7 day you were in the mine?

8 A. Not at the mine.

9 Q. Okay. Did you notice anything different about the
10 way the section was thumping or bumping?

11 A. No.

12 Q. Okay.

13 A. The bottom did --- it was busting up ---

14 Q. Okay.

15 A. --- quite a bit and scooped ---.

16 Q. Now, was it busting up more than normal, more than
17 it usually did?

18 A. I wasn't there really long enough to ---.

19 Q. Okay. But had you noticed the bottom busting up
20 like that at any other place on the section?

21 A. The further we got, the worse it got.

22 Q. Oh, okay. What was the roof like?

23 A. It was decent.

24 Q. About how high were you guys cutting?

25 A. Well, if you took all the draw rock, it was 11, 12

1 feet.

2 Q. That's pretty high.

3 A. And if you got it bolted up before it fell, eight
4 feet.

5 Q. I notice the court reporter's having a little
6 trouble hearing you.

7 OFF RECORD DISCUSSION

8 ATTORNEY BABINGTON:

9 Go ahead.

10 BY MR. SHERER:

11 Q. What was the ribs like on that section?

12 A. The ribs wasn't very good. They rolled out quite
13 a bit.

14 Q. Did you guys have to bolt?

15 A. Yeah, we bolted, and every other row we'd put a
16 four-foot bolt in it, six-foot if it needs it.

17 Q. Okay. What size bolts were you normally using?

18 A. Six-foot torque tension.

19 Q. Did you do any supplemental support like mesh
20 or ---?

21 A. Yeah, we put in mesh and cable bolts, eight and
22 ten foot.

23 Q. Did you just cable bolt the intersections or did
24 you cable bolt the entire entry?

25 A. Number One we cable bolted and screened, because

1 it was the ---.

2 Q. It was the belt ---.

3 A. It looked rough.

4 Q. Yeah, the beltline.

5 A. And Number Three we cable bolted every other row.

6 Q. Okay. What was the ventilation like on that
7 section?

8 A. Minimal, not much air whatsoever.

9 Q. Did you have trouble getting enough air to the
10 bolt?

11 A. Yeah, we had to sit down a lot, wait until I found
12 air.

13 Q. Do you recall what the minimum quantity you were
14 required to have when you bolted?

15 A. I'm not quite sure. 3,500, maybe.

16 Q. Okay. Did you have a methane spotter?

17 A. Yeah, we kept one.

18 Q. Do you recall what sort of methane levels you'd
19 get on the bolter?

20 A. Minimal. It was .3 or ---.

21 Q. What's the highest methane reading you ever saw on
22 that spotter?

23 A. I mean that's about the highest, but on the miner
24 one time I seen it get 3.5.

25 Q. Is that when you were having problems getting any

1 air on the section?

2 A. That was when we took the miner into the cut and
3 --- the first cut and when those people pushed up gob.

4 Q. Just an idle face?

5 A. Yeah.

6 Q. Okay.

7 A. That cleared right out.

8 Q. Okay. What was the rock dust like on that
9 section?

10 A. They kept their rock dust pretty good.

11 Q. Did you ever have any occasion to walk down the
12 belt entry?

13 A. If we had, like, a splice or something.

14 Q. Okay. What condition was the belt in? Was it
15 clean or did it need shoveling?

16 A. No, it was clean.

17 Q. Now, we understand that sometimes the ventilation
18 would come and go on this section. Do you recall
19 anything like that?

20 A. Yeah. One minute you'd have it, and then you
21 wouldn't. I guess it was ventilated off doors and
22 when somebody would open one, knock the curtain down
23 or something ---.

24 Q. So were there curtains outby that controlled the
25 ventilation? This is the mouth of the section.

1 A. Uh-huh (yes). Where was the tailgate going in,
2 right here?

3 Q. This is the tailgate, yeah, the new tailgate.
4 This is that connector. This is where they put in
5 that mother drive for the ---.

6 A. Yeah, they built some overcasts in some of them.

7 Q. There's a couple overcasts here. There's one here
8 and here, those little Xs.

9 A. I don't know, but seemed like we'd put doors up
10 one day and the next day, take them down, put them up,
11 take them down.

12 Q. Oh, jeez. Who was in charge of telling you to put
13 the doors up or in charge of the ventilation?

14 A. Everett Hager, far as I know.

15 Q. Okay.

16 A. Superintendent.

17 Q. Would Mr. Hager come up to where you were working
18 and tell you what to do, or did he pass it down
19 through the section foreman?

20 A. He was always there. He worked over there.

21 ATTORNEY BABINGTON:

22 And just to clarify real quick, these
23 doors you're referring to, it's right there at the
24 mouth of the Headgate 22?

25 A. Yeah, there was a lot of construction. They was

1 setting up the tailgate. We'd just set a new mother
2 drive belt. But once it got --- all this was set up,
3 it was decent, but it was still minimum.

4 BY MR. SHERER:

5 Q. Yes. Now, we've heard that the ventilation
6 actually got better couple weeks prior to the
7 explosion. Do you recall anything like that?

8 A. Not really.

9 Q. Okay.

10 A. It was very hot.

11 Q. Yeah, we've heard that, too. What about that last
12 shift you worked or the last few shifts you worked?

13 Do you think the ventilation was a little better than
14 normal, a little worse than normal?

15 A. I can't really say.

16 Q. It was just hot all the time?

17 A. Yeah.

18 Q. Okay. Let's talk about doors a bit more. You
19 mentioned that occasionally the door would be open and
20 you'd have problems getting air on the section. What
21 about the track doors coming into the mine? We
22 understand that you guys had to go through a lot of
23 different track doors.

24 A. Oh, yes. Most I'd ever seen.

25 OFF RECORD DISCUSSION

1 MR. SHERER:

2 A lot of different track doors.

3 A. Track doors.

4 BY MR. SHERER:

5 Q. What'd you think about that? Have you ever run
6 into anything like that before?

7 A. No. This is the biggest mines I've ever been
8 into.

9 Q. Okay. Did you ever come upon those doors and find
10 any of them open?

11 A. No, they was usually shut.

12 Q. Okay. What shape were the doors in? Were they
13 well-maintained?

14 A. Yeah, it was pretty good. Some of them mechanize.

15 Q. Uh-huh (yes).

16 A. They'd usually break and we'd have to get off and
17 open them.

18 Q. People tend to try to push those doors open with
19 the mantrips or motors?

20 A. Nobody on my crew ever did.

21 Q. Okay.

22 ATTORNEY BABINGTON:

23 Sorry, Mr. Dancy. Could you just speak a

24 little bit louder in your answers, please?

25 A. I'll try.

1 ATTORNEY BABINGTON:

2 I understand. Do you want some water or
3 anything?

4 A. No, I got water. It's just my lungs.

5 BY MR. SHERER:

6 Q. Oh, jeez. When you were up on the section, did
7 you ever --- anybody ever tell you that inspectors
8 were on the property or inspectors were coming?

9 A. Yeah, they would call in and tell you an
10 inspector's on the property, but it's not really a big
11 deal, because they was always there.

12 Q. Yeah. Do you think the ventilation in the
13 northern part of the mine was adequate?

14 A. It was minimal. On our section it was. I don't
15 know about the rest of it.

16 Q. Okay. Did you ever hear of anybody bridging out a
17 methane monitor or putting a bag over the sniffer or
18 anything like that?

19 A. No.

20 MR. SHERER:

21 Okay. Thank you. That's all the
22 questions I got for right now.

23 EXAMINATION

24 BY MR. FARLEY:

25 Q. When you were talking about doors at the mouth of

1 the section, installing doors and taking them out,
2 when did you do that? Any idea?

3 A. It was a couple weeks before all this happened,
4 because we was setting up for, I guess that's Two
5 section to get them ready to run.

6 Q. Okay. So before the other section started?

7 A. Yeah.

8 Q. Okay. Now, you had been around the time they were
9 changing the direction of the intake air coming to
10 Headgate 22?

11 A. I don't know. I remember it changing one time.
12 Seemed like it came from ---.

13 Q. On February the 10th --- that was Superbowl Sunday
14 --- they changed the intake and return coming to 22
15 Headgate. Now, up until that time, the return of 22
16 Headgate went out Number One entry, Seven North. Now,
17 after that change, you know, you had the intake coming
18 that way and the return off Headgate 22 going out the
19 crossover and down Four and Five in the headgate
20 entries and wrapping around the mouth of the longwall.
21 Does that ring a bell?

22 A. I don't really know.

23 Q. Okay.

24 A. I don't know where it exhausted out of.

25 Q. Okay. All right. So you worked for Mr. Hilbert?

1 A. Yes.

2 Q. Did you have confidence in Mr. Hilbert?

3 A. Yes, I did.

4 Q. Okay. Do you feel like he made a strong effort to
5 comply with health and safety regulations?

6 A. Yes.

7 MR. FARLEY:

8 Okay.

9 EXAMINATION

10 BY MS. MONFORTON:

11 Q. Mr. Dancy, I just have a couple of questions. Are
12 you working now?

13 A. Yes.

14 Q. Still for Massey?

15 A. Yes.

16 Q. Okay. And you started with Massey in December
17 2009. Prior to that were you a roof bolter somewhere
18 else ---

19 A. Yeah.

20 Q. --- at another ---? How long have you been a roof
21 bolter?

22 A. Around ten years.

23 Q. About ten years. So you have a lot of experience.

24 We've heard from other miners that worked on that
25 section who also described it as very hot down there.

1 And was that different from your experience at other
2 mines?

3 A. Yes, it was extremely hot.

4 Q. Extremely hot. And what did you attribute that
5 to?

6 A. Just low air.

7 Q. Just low air. Some of the other miners that
8 worked on that section said that when the crew would
9 complain to Mr. Hilbert about low air, he would take
10 an anemometer and, you know, kind of show you that
11 there was ---?

12 A. Yeah.

13 Q. Is that your recollection?

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

15 Q. Yes? And so how did that --- what was your
16 reaction to that?

17 A. Well, he tried to do everything --- about the air
18 reading?

19 Q. Right, the air reading.

20 A. Just wanted more air.

21 Q. So when you say there was minimal air, does that
22 mean it was minimal in terms of what the plan allowed
23 for, ---

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

25 Q. --- but in terms that you as a roof bolter --- you

1 didn't feel it was sufficient to ---

2 A. That's correct.

3 Q. --- to keep it cool enough, comfortable ---

4 A. Yeah.

5 Q. --- for you to do your job?

6 MS. MONFORTON:

7 Okay. All right. That's the only

8 question.

9 MR. SHERER:

10 I don't have any more questions.

11 ATTORNEY BABINGTON:

12 Okay. There were two documents marked at

13 the beginning, J. Dancy One. It's marked the copy of

14 the subpoena; J. Dancy Two, a copy of the return

15 receipt.

16 On behalf of MSHA and the Office of

17 Miners' Health, Safety and Training I want to thank

18 you for appearing and answering questions today. Your

19 cooperation is very important in the investigation as

20 we work to determine the cause of the accident. We

21 request that you not discuss your testimony with any

22 person aside from a personal representative. After

23 questioning other witnesses, we may call you if we

24 have any follow-up questions. If at any time you have

25 additional information regarding the accident that

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

6 A. I'm fine.

7 ATTORNEY BABINGTON:

8 Okay. Thank you. And again, I want to
9 thank you for your cooperation in this matter.

10 A. Thank you.

11 ATTORNEY BABINGTON:

12 Off the record.

13 * * * * *

14 STATEMENT UNDER OATH CONCLUDED AT 9:23 A.M.

15 * * * * *

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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