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Transcript of the Testimony of Charles Musick

Date: August 20, 2010

Case:

Printed On: August 26, 2010

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Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
CHARLES MUSICK

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 Friday, August 20, 2010, beginning at 3:50 p.m.

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DEREK J. BAXTER, ESQUIRE
U.S. Department of Labor
Office of the Regional Solicitor
1100 Wilson Boulevard
22nd Floor West
Arlington, VA 22209-2247

BARRY KOERBER, ESQUIRE
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

JOHN O'BRIEN
Safety Inspector
West Virginia Office of Miners' Health,
Safety and Training
Welch Regional Office
891 Stewart Street
Welch, WV 24801-2311

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

ERIK SHERER

Mine Safety and Health Administration

1100 Wilson Boulevard

Arlington, VA 22209-3939

CELESTE MONFORTON, MPH, DRPH

West Virginia Independent Investigation

2100 M. Street, NW

Suite 203

Washington, DC 20037

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EXHIBIT PAGE

PAGE

NUMBER

DESCRIPTION

IDENTIFIED

One

Subpoena

8*

Two

Green Card

8*

* Exhibit not attached

P R O C E E D I N G S

1
2 -----
3 ATTORNEY BAXTER:

4 My name's Derek Baxter. Today is August
5 20th, 2010. I'm with the Office of the Solicitor,
6 U.S. Department of Labor. With me is Erik Sherer, an
7 accident investigator with the Mine Safety and Health
8 Administration, MSHA, an agency of the United States
9 Department of Labor. Also present are several people
10 from the State of West Virginia. I ask that they
11 state their appearances for the record.

12 MR. O'BRIEN:

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

15 MR. KOERBER:

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

19 MS. MONFORTON:

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

22 ATTORNEY BAXTER:

23 And Mr. Sherer and Mr. O'Brien and Ms.
24 Monforton will be conducting the questioning today.
25 There are also members of the investigation team

1 present in the room today. Would you please swear the
2 witness in?

3 -----

4 CHARLES MUSICK, HAVING FIRST BEEN DULY SWORN,
5 TESTIFIED AS FOLLOWS:

6 -----

7 ATTORNEY KOERBER:

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

10 A. Charles Ryan Ray Musick, M-U-S-I-C-K.

11 ATTORNEY KOERBER:

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

14 A. [REDACTED]

15 [REDACTED] .

16 ATTORNEY KOERBER:

17 And do you have an attorney or personal
18 representative to represent you today?

19 A. No.

20 ATTORNEY KOERBER:

21 Are you appearing here today as a result
22 of receiving a subpoena?

23 A. Yes.

24 ATTORNEY KOERBER:

25 And is this a copy of that subpoena?

1 A. Yes.

2 ATTORNEY KOERBER:

3 We can mark that as Exhibit One.

4 (Exhibit C. Musick One marked for
5 identification.)

6 ATTORNEY KOERBER:

7 And here is a copy of the green card
8 signed by a Belinda ---

9 A. Alderman.

10 ATTORNEY KOERBER:

11 --- Alderman?

12 A. Yeah.

13 ATTORNEY KOERBER:

14 And it was signed for on 8/4/2010. I'd
15 like that to be Exhibit Two.

16 (Exhibit C. Musick Two marked for
17 identification.)

18 ATTORNEY KOERBER:

19 Sir, the statute that provides authority
20 for the director to issue subpoenas to witnesses
21 compelling them to attend interviews such as this also
22 requires the director to offer to those witnesses a
23 \$40 witness fee per day and mileage, roundtrip mileage
24 so long as you drove in your personal vehicle to and
25 from the mine academy at the rate of 15 cents a mile,

1 plus reimbursement for any tolls that you might pass
2 on the way here or on the way back home. In order to
3 receive that money, you must fill out two forms, one
4 of which is an IRS form 79, which is a request for
5 taxpayer Social Security number, so that the \$40
6 witness fee can be reported to the IRS as income, to
7 which you will receive a 1099 miscellaneous.

8 If you would like to fill out those
9 forms, we can do so at the end of the interview, or if
10 you choose, you can decline the receipt of the money.
11 Which is your choice?

12 A. I decline it.

13 ATTORNEY KOERBER:

14 Okay. Thank you. Derek?

15 ATTORNEY BAXTER:

16 Okay. All members of the Mine Safety and
17 Health Accident Investigation Team and all members of
18 the State of West Virginia Accident Investigation Team
19 participating in the investigation of the Upper Big
20 Branch Mine explosion shall keep confidential all
21 information that is gathered from each witness who
22 voluntarily provides a statement until the witness
23 statements are officially released.

24 MSHA and the State of West Virginia shall

25 keep this information confidential so that other

1 ongoing enforcement activities are not prejudiced or
2 jeopardized by a premature release of information.
3 This confidentiality requirement shall not preclude
4 investigation team members from sharing information
5 with each other or with other law enforcement
6 officials. The team members' participation in this
7 interview constitutes their agreement to keep this
8 information confidential.

9 Government investigators and specialists

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

18 You may have your personal attorney

19 present during the taking of this statement or another
20 personal representative if MSHA has permitted it and
21 may consult with this attorney or representative at
22 any time. Your identity and the content of this
23 conversation will be made public at the conclusion of
24 the interview process and may be included in the
25 public report of the accident, unless you request that

1 your identity remain confidential or your information
2 would otherwise jeopardize a potential criminal
3 investigation. If you request us to keep your
4 identity confidential, we will do so to the extent
5 permitted by law.

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

14 A. Yes.

15 ATTORNEY BAXTER:

16 Do you have any questions?

17 A. No.

18 ATTORNEY BAXTER:

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

1 individuals, we request that you not discuss your
2 testimony with any person aside from your personal
3 representative or Counsel.

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

10 I would like to thank you in advance for
11 your appearance here. We appreciate your assistance
12 in this investigation. Your cooperation is critical
13 in making the nation's mines safer.

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

21 Any statements given by miner witnesses
22 to MSHA are considered to be an exercise of statutory
23 rights and protected activity under Section 105(c) of
24 the Mine Act. If you believe any discharge,
25 discrimination or other adverse action is taken

1 against you as a result of your cooperation with this
2 investigation, you are encouraged to immediately
3 contact MSHA and file a complaint under Section 105(c)
4 of the Act.

5 MR. O'BRIEN:

6 Mr. Musick, on behalf of the Office of
7 Miners' Health, Safety and Training I wanted to let
8 you know that you have some protection against
9 discrimination from these proceedings, for
10 participating in these proceedings. What I'd like to
11 do is give you some information with the Board of
12 Appeals address. In case you would encounter
13 discrimination, you can contact them. Also, I wanted
14 to let you know that you must file a claim within 30
15 days of the time the discrimination occurs. Also,
16 there's some numbers --- two numbers on there, one for
17 Terry Farley and the other for Bill Tucker. They are
18 our lead investigators. I will also give you a
19 business card for Terry Farley.

20 A. Okay.

21 MR. O'BRIEN:

22 Okay.

23 EXAMINATION

24 BY MR. SHERER:

25 Q. The first thing I want to do, Mr. Musick, is thank

1 you for coming down here this afternoon. This is very
2 important, because we're trying to determine the cause
3 of the explosion and the conditions and factors that
4 may have contributed to that explosion. There's two
5 reasons we need to do that. The first is that the
6 families and the friends and the coworkers of the 29
7 miners deserve some closure and they need to know what
8 happened.

9 And the second reason is the prevention of a
10 similar accident in the future is something we've got
11 to do, and the only way we can do that is to
12 understand what went on, on April the 5th. So any
13 information you give us is extremely helpful and we
14 appreciate that. Roughly, how many years of mining
15 experience do you have?

16 A. Two.

17 Q. Two. Did you start with Massey?

18 A. No, David Stanley, contractor.

19 Q. And how long did you work for the contractor?

20 A. I think it was two months.

21 Q. Two months. And then you got hired on?

22 A. Yes.

23 Q. Did you get hired on here at Upper Big Branch?

24 A. Yes.

25 Q. Have you worked in any other mine prior to the

1 April 5th explosion?

2 A. No.

3 Q. Okay. Where'd you work in the mine?

4 A. What is it, now?

5 Q. Where did you work in the mine?

6 A. Oh, Two section.

7 Q. And that's MMU-040, or some people refer to as the
8 22 Tailgate. Had you always worked on the Two
9 section?

10 A. No.

11 Q. Where did you work prior to that?

12 A. Four section and before that, One section.

13 Q. Okay. When did you start with the Two section,
14 roughly?

15 A. About two months before it happened.

16 Q. Okay. So it would've been right about the first
17 of February or so?

18 A. Yeah, right when they started that new section.

19 Q. Okay. So you were on this pretty much from when
20 they turned it out?

21 A. Yeah.

22 Q. Okay. What'd you do on Two section?

23 A. Move crew.

24 Q. Move curtain; okay.

25 OFF RECORD DISCUSSION

1 A. Move crew.

2 BY MR. SHERER:

3 Q. Oh, okay, excuse me. What did that entail?

4 A. Advancing the belt line forward and the power
5 center, all the power forward.

6 Q. Okay. How often would you move the section up?

7 A. Every other night.

8 Q. That's a lot of moving.

9 A. Yes.

10 Q. Okay. Which shift did you work?

11 A. Hoot owl.

12 Q. Hoot owl.

13 A. Third.

14 Q. Okay. What was the last shift you worked prior to
15 the explosion?

16 A. The day before vacation.

17 Q. And that would've been what, Friday?

18 A. I think Thursday night.

19 Q. Thursday night, okay. And you didn't work Sunday
20 night?

21 A. No, I took a P day.

22 Q. Okay. Did you notice anything unusual that last
23 Thursday night?

24 A. No.

25 Q. Okay. Did you have any conversation with anybody

1 anytime during that shift or after that shift and did
2 they mention anything unusual?

3 A. No.

4 Q. Okay. What did you think about the ventilation on
5 the Two section? Was it adequate?

6 A. Yeah, it was good.

7 Q. It was good. Who was the boss on that shift?

8 A. Jason Thomas.

9 Q. Do you know what sort of air he was getting that
10 Thursday night?

11 A. No.

12 Q. Did he mention anything about the air?

13 A. No.

14 Q. Okay. Did you ever have any problem with the lack
15 of air on the Two section?

16 A. Not that I'm aware of.

17 Q. Okay. Do you think that the air was always moving
18 in the right direction on the Two section?

19 A. Yeah.

20 Q. Okay. Do you recall if the air was going inby or
21 outby on the belt line?

22 A. It was going outby ---

23 Q. Okay.

24 A. --- I believe.

25 Q. Did you carry a methane detector?

1 A. No.

2 Q. Did you work with anybody that did?

3 A. The boss.

4 Q. Did you ever hear his go of while you were on the
5 section?

6 A. No.

7 Q. Okay. How many miners were on this section,
8 continuous miner?

9 A. Two.

10 Q. Two. Did you ever see anybody working on the
11 methane monitor on either one of those miners?

12 A. No.

13 Q. Okay. Was there any problem with floor heave on
14 this section?

15 A. What is it now?

16 Q. Floor heave where the floor would bust up and buck
17 up?

18 A. Oh, no.

19 Q. Okay. Did you ever notice any water puddles where
20 bubbles were coming up out of?

21 A. No.

22 Q. We understand there was a lot of doors on the
23 track coming into this mine. Do you recall if those
24 doors were in good shape?

25 A. Yeah, they were good.

1 Q. Okay. Did you ever come up to them and find them
2 open?

3 A. Yeah, were they, like, knocked them down, like,
4 with the motor.

5 Q. Okay.

6 A. They was fixing them.

7 Q. Did they knock them down relatively often or was
8 that a rare thing?

9 A. I think it was rare.

10 Q. Okay. Was there any particular place that they'd
11 knock them down?

12 A. They used to be a set of doors towards One section
13 towards the longwall. They hit those at one time.

14 Q. Oh, okay. That last shift that you worked on
15 Thursday night, do you recall if the doors were in
16 good shape that night?

17 A. Yeah.

18 Q. Okay.

19 A. Pretty good.

20 Q. Who was the guy on your mantrip that had to get
21 out and open the doors?

22 A. The red hats.

23 Q. That's universal.

24 A. Yes.

25 Q. Did you ever smell anything on the section that

1 smelled like kerosene or something like that?

2 A. No.

3 Q. Okay. When you finished your shift, did you feel
4 very fatigued or tired?

5 A. A little bit, because I think we moved belt that
6 night, so ---.

7 Q. Okay. That's pretty hard work. Did anybody you
8 worked with complain about being excessively fatigued
9 or tired?

10 A. Not that I can remember.

11 Q. Okay. How long was that third shift?

12 A. How long is it?

13 Q. Uh-huh (yes).

14 A. Nine hours.

15 Q. Nine hours. Did you ever hear somebody call in
16 the mine or somebody tell you that there were
17 inspectors on the property?

18 A. No. I never seen them 'til they rolled up.

19 Q. Okay. When was the last time there were
20 inspectors on that section when you were working?

21 A. On hoot owl?

22 Q. Uh-huh (yes).

23 A. Never.

24 Q. That's probably why you didn't hear about them.

25 A. Yeah.

1 Q. Do you think the ventilation in this mine was
2 adequate?

3 A. Yeah.

4 Q. Okay. Did you ever hear of anybody bridging out
5 or meddling with a methane monitor?

6 A. What does that mean?

7 Q. Either putting a bag over the sniffer or ---

8 A. Oh, no.

9 Q. --- anything like that, jumping the monitor out?

10 A. No.

11 Q. Okay. Who all was on the crew that you worked
12 with?

13 A. The boss was Jason Thomas, Eric Martin, John
14 Clemens.

15 Q. Just you four guys?

16 A. Yeah.

17 Q. What else did you have to do besides moving the
18 belt up?

19 A. Well, off right, getting the belt move ready.

20 Q. You guys do any rock dusting?

21 A. Yeah, we had to use the flinger duster.

22 Q. Okay. That was what, scoop mounted?

23 A. Yeah.

24 Q. What was the rock dust like that last shift you
25 worked?

1 A. It was pretty good, because they were getting onto
2 us about keeping the dust up.

3 Q. Do you recall who was getting onto you?

4 A. My boss.

5 Q. Okay. Do you think somebody was getting onto him
6 about it?

7 A. Probably.

8 Q. Okay. Did he mention who might've got onto him
9 about it?

10 A. No.

11 Q. Okay. Did you ever have any occasion to go down
12 your section belt?

13 A. Uh-huh (yes).

14 Q. When was the last time you walked down through
15 there?

16 A. It'd been a while.

17 Q. Okay.

18 A. Pretty much stayed up on our section.

19 Q. Okay, yeah. When is the last time you did an
20 escape drill?

21 A. I think it was, like, a month before that.

22 Q. Which way did you go out?

23 A. The neutral. Not the neutral; the track, the
24 secondary.

25 Q. Okay. Did you ride out or walk out?

1 A. He made us walk.

2 MR. SHERER:

3 Okay. That's all the questions I've got,

4 John.

5 MR. O'BRIEN:

6 Okay.

7 EXAMINATION

8 BY MR. O'BRIEN:

9 Q. Did you move the belt and the power the same night
10 or did you ---

11 A. Yes.

12 Q. --- alternate ---

13 A. The same night.

14 Q. --- belt and power center?

15 A. Yes.

16 Q. Okay. What were the other ---? Did you ever run
17 a scoop or ---

18 A. Yes.

19 Q. --- roof bolter or anything?

20 A. Just scoop.

21 Q. Just scoop? Did you guys have an in loader or
22 forklift or whatever they call them, forklift?

23 A. There's a forklift outby.

24 Q. Outby? Would you use the forklift ---? What kind
25 of jobs did you use the forklift for?

1 A. Just unload the flatcar.

2 Q. Did you ever take it in the return?

3 A. No.

4 Q. Speaking of supplies, where did your supplies come
5 in on it? Did it come in from the --- which side did
6 the supplies come in on?

7 A. From the longwall side.

8 Q. Longwall side. And how did you get to the wall to
9 get those supplies?

10 A. There was a set of doors up here (indicating),
11 going up through here. That's the track, went over
12 through the doors.

13 Q. These doors at 28 ---

14 A. Yeah.

15 Q. --- Break on the longwall side?

16 A. Yeah.

17 Q. Do you know if those doors were in that last night
18 or the last few days?

19 A. Yeah, they were in.

20 Q. The last night you worked?

21 A. Yeah.

22 Q. Okay. You talked about rock dusting. Now, with
23 the flinger duster where did you exactly rock dust?
24 What places?

25 A. Toward the face and around the section.

1 Q. Did you go to the face and ---

2 A. Yeah.

3 Q. --- rock dust the faces?

4 A. Yeah, just up through here and back to Ellis.

5 Q. Okay. Did you do that every night or ---?

6 A. Usually on off nights.

7 Q. Was there any rock dust in those places before you
8 went in there?

9 A. From the evening shift scoop man dusting.

10 Q. The evening shift or the other shifts, did they
11 flinger dust it or hand dust or do you know?

12 A. Well, when they would flinger dust, we wouldn't do
13 it ---

14 Q. Okay.

15 A. --- because usually they had a scoop man stay back
16 and do it.

17 Q. Just one other question. What kind of
18 certifications do you have?

19 A. None.

20 Q. Do you have a West Virginia miner's certificate?

21 A. Yes. Black hat, yeah.

22 Q. Okay.

23 MR. O'BRIEN:

24 Okay.

25 EXAMINATION

1 BY MS. MONFORTON:

2 Q. Where did you do your 80 hours of training?

3 A. What's that guy's name, Danny Banks down ---?

4 Q. Yeah, I've heard his name come up before. And
5 when you did your training, what did you learn in your
6 training about the role of MSHA and the State in terms
7 of inspections?

8 A. You know, just you all were there to keep us safe
9 and stuff.

10 Q. My last question about rock dusting, if you were
11 working with a red hat, showing him how to rock ---
12 how do you know how much rock dust to put down? How
13 would you describe it to a new miner?

14 A. Until it wasn't black.

15 Q. Until it wasn't black; okay. Thank you.

16 RE-EXAMINATION

17 BY MR. SHERER:

18 Q. I got a couple more questions. Did you ever hear
19 anybody else in the mine complain about ventilation?

20 A. No.

21 Q. Okay. Where do you guys portal at?

22 A. That side, not Ellis; the other side.

23 Q. At UBB?

24 A. Yeah.

25 Q. Okay. One last question. What do you think

1 caused this explosion?

2 A. I don't really know.

3 Q. Okay. Thank you.

4 RE-EXAMINATION

5 BY MR. O'BRIEN:

6 Q. Just a couple more. How did you hear about the
7 explosion?

8 A. From my Four section boss. He called me, because
9 I was out of state.

10 Q. Called you at home?

11 A. Huh?

12 Q. Where did he call you?

13 A. He called me on me cell phone. I was out of
14 state.

15 Q. Oh, okay. So you didn't go to the mine that night
16 you were out of state or ---?

17 A. Yeah, I was out of state. I didn't go that night.

18 Q. You didn't?

19 A. Uh-huh (yes).

20 Q. Okay.

21 ATTORNEY BAXTER:

22 Okay. On behalf of MSHA and the Office
23 of Miners' Health, Safety and Training, I want to
24 thank you for appearing and answering questions today.
25 Your cooperation is very important to the

1 investigation as we work to determine the cause of the
2 accident. We request that you not discuss your
3 testimony with any person aside from your personal
4 representative. After questioning other witnesses, we
5 may call you if we have any follow-up questions.

6 If at any time you have additional
7 information regarding the accident that you'd like to
8 provide to us, please contact us at the contact
9 information that was previously provided to you. If
10 you wish, you may now go back over any answer you've
11 given during this interview. You may also make any
12 statement that you'd like to make at this time. Again
13 I want to thank you for your cooperation in this
14 matter.

15 * * * * *

16 STATEMENT UNDER OATH CONCLUDED AT 4:16 P.M.

17 * * * * *

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1 STATE OF WEST VIRGINIA)

2

3

4

CERTIFICATE

5

I, Alison Salyards, a Notary Public in and

6

for the State of West Virginia, do hereby certify:

7

That the witness whose testimony appears in

8

the foregoing deposition, was duly sworn by me on said

9

date and that the transcribed deposition of said

10

witness is a true record of the testimony given by

11

said witness;

12

That the proceeding is herein recorded fully

13

and accurately;

14

That I am neither attorney nor counsel for,

15

nor related to any of the parties to the action in

16

which these depositions were taken, and further that I

17

am not a relative of any attorney or counsel employed

18

by the parties hereto, or financially interested in

19

this action.

20



21

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Alison Salyards

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