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Transcript of the Testimony of Michael Richards

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Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: schedule@sargents.com

Internet: www.sargents.com

STATEMENT UNDER OATH
OF
MICHAEL RICHARDS

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, Beaver, West Virginia, on Tuesday, June 29, 2010, beginning at 10:52 a.m.

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

2

3 POLLY ANNA HAMPTON, ESQUIRE

4 U.S. Department of Labor

5 Office of the Regional Solicitor

6 1100 Wilson Boulevard

7 22nd Floor West

8 Arlington, VA 22209

9

10 JOHN O'BRIEN

11 Safety Inspector

12 West Virginia Office of Miners' Health,

13 Safety and Training

14 Welch Regional Office

15 891 Stewart Street

16 Welch, WV 24801-2311

17

18 ERIK SHERER

19 Mine Safety and Health Administration

20 1100 Wilson Boulevard

21 Arlington, VA 22209-3939

22

23

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

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J. DAVITT MCATEER, ESQUIRE
West Virginia Independent Investigation
132 West German Street
P.O. Box 1050
Shepherdstown, WV 25443

TERRY FARLEY
West Virginia Office of Miners' Health,
Safety and Training
1615 Washington Street East
Charleston, WV 25311

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P R O C E E D I N G S

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2 -----
3 ATTORNEY HAMPTON:

4 My name is Polly Hampton. Today is June
5 29th, 2010. I am 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, and I ask that they
11 state their appearance for the record now.

12 MR. FARLEY:

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

15 MR. O'BRIEN:

16 John ---.

17 ATTORNEY MCATEER:

18 I'm Davitt McAteer. I'm sorry, John.
19 You go ahead, sir. My fault.

20 MR. O'BRIEN:

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

23 ATTORNEY MCATEER:

24 I'm Davitt McAteer, with the Governor's
25 Office.

1 ATTORNEY HAMPTON:

2 There are also several members of the
3 investigation teams in the audience today. And Mr.
4 Sherer will be conducting the initial part of the
5 questioning.

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

24 Government investigators and specialists
25 have been assigned to investigate the conditions,

1 events and circumstances surrounding the fatalities
2 that occurred at the Upper Big Branch Mine-South on
3 April 5th, 2010. The investigation is being conducted
4 by MSHA under Section 103(a) of the Federal Mine
5 Safety and Health Act and the West Virginia Office of
6 Miners' Health, Safety and Training. We appreciate
7 your assistance in this investigation.

8 You may have a personal attorney present
9 with you during the taking of the statement or another
10 personal representative, if MSHA has permitted it.
11 Your statement is completely voluntary. You may
12 refuse to answer any question and you may terminate
13 your interview at any time or request a break at any
14 time. Since this is not an adversarial proceeding,
15 Cross Examination of you will not be permitted. And
16 just so that the record is clear, do you have a
17 personal representative with you here today?

18 MR. RICHARDS:

19 No.

20 ATTORNEY HAMPTON:

21 Your identity and the content of this
22 conversation will be made public at the conclusion of
23 the interview process and may be included in the
24 public report of the accident, unless you request that
25 your identity remain confidential or your information

1 would otherwise jeopardize a potential criminal
2 investigation. If you request us to keep your
3 identity confidential, we will do so to the extent
4 permitted by law. That means that if a judge orders
5 us to reveal your name or if another law requires us
6 to reveal your name or if we need to reveal your name
7 for other law enforcement purposes, we may do so.
8 Also, there may be a need to use the information you
9 provide to us or other information we may ask you to
10 provide in the future in other investigations into and
11 hearings about the explosion. Do you understand?

12 MR. RICHARDS:

13 Yes.

14 ATTORNEY HAMPTON:

15 Do you have any questions?

16 MR. RICHARDS:

17 No.

18 ATTORNEY HAMPTON:

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 other person other than a personal
3 representative or a lawyer. A court reporter will
4 record your interview, as you can see, so please speak
5 loudly and clearly. If you do not understand a
6 question, please ask the questioner to rephrase it or
7 please --- and also please answer each question as
8 fully as you can, including giving us any information
9 that you may have learned from someone else.

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

14 After we have finished taking questions,
15 you will then have an opportunity to make a statement
16 or provide us with any other information that you
17 believe is important. And if at any time after the
18 interview you recall any additional information,
19 please contact Norman Page at the telephone number or
20 the e-mail address that was provided to you in the
21 letter that was sent to your home.

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

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

6 MR. FARLEY:

7 Mr. Richards, again, I'm Terry Farley
8 with the Office of Miners' Health, Safety and
9 Training, and I want to advise that the West Virginia
10 Coal Mine Health and Safety Regulations also protect
11 miners from potential discrimination resulting from
12 participation in this type of interview. I'm
13 providing you with some contact information along with
14 my business card and the business card for Mr. Bill
15 Tucker, another lead investigator. Should you
16 experience any such problems, please contact us.

17 ATTORNEY HAMPTON:

18 Okay. Do you have any questions before
19 we get started?

20 MR. RICHARDS:

21 No.

22 ATTORNEY HAMPTON:

23 Okay. Could you please swear in the
24 witness?

25 -----

1 MICHAEL RICHARDS, HAVING FIRST BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 -----

4 EXAMINATION

5 BY MR. SHERER:

6 Q. Thank you for coming down this morning. We're
7 going to ask you some questions about your background
8 and what you did in the mine and things that we're
9 interested in related to the explosion. Could you
10 please state your full name and your --- spell your
11 last name?

12 A. Michael Richards, R-I-C-H-A-R-D-S.

13 Q. Please tell us your address and telephone number.

14 A. (b) (7)(C) .

15 Telephone, (b) (7)(C) .

16 Q. Are you appearing here today voluntarily?

17 A. Yes.

18 Q. Have you been interviewed or have you reviewed the
19 accident with anyone?

20 A. No.

21 Q. Have you been contacted by attorneys from the
22 company?

23 A. Not from the company.

24 Q. Have you been contacted by any other attorneys?

25 A. Some attorneys have called, wanting to talk to ---

1 mainly it's been like a lot of investigators. And
2 that's just been here last week.

3 Q. Oh, okay.

4 A. Until then, really ain't heard from nobody.

5 Q. Do you know who these attorneys were associated
6 with?

7 A. No. One of the guys, he said he used to be over
8 the Mine Academy, Jack --- I can't remember his last
9 name.

10 Q. Spadaro?

11 A. Yeah.

12 Q. Interesting. Okay. How many years of mining
13 experience do you have, Mr. Richards?

14 A. Going on five years.

15 Q. Could you give me a brief outline of what that
16 experience entails?

17 A. I'm pretty much running everything. Started out
18 as a red hat, move crew for I think two months. With
19 Massey is where I started out, Shumate, and went to
20 scoop. Run the scoop for a little while, shuttle car,
21 bolting machine, and now I'm running the miner.

22 Q. So you're a jack of all trades?

23 A. Yeah.

24 Q. You mentioned you started with Shumate. Have you
25 worked for any other mines except for Shumate and UBB?

1 A. Speed mining.

2 Q. Speed mining?

3 A. Yes.

4 Q. Did you work up there when Pete Hendricks was
5 running?

6 A. No. No. It was right after. I think Charlie ---
7 I can't remember Charlie's last name, and Bob
8 Bakers, ---

9 Q. Oh, okay.

10 A. --- were there when I was there.

11 Q. Sure. Are you currently working in a mining
12 company?

13 A. Yeah.

14 Q. Where is that, please?

15 A. I'm still employed through UBB. They have me at
16 Ellis Eagle.

17 Q. Oh, okay.

18 A. Well, as of last Thursday they put me out of work
19 because I hurt my back. They didn't want to follow
20 with the doctor's orders of doing light duty, ---

21 Q. Oh, Geez.

22 A. --- so the lady at Wells Fargo said, well, they
23 can't do it, then I'm putting you out until the doctor
24 says you're able to go back.

25 Q. Okay. I'm sorry to hear that. And you were

1 employed at Upper Big Branch prior to the explosion,
2 were you not?

3 A. Yeah.

4 Q. Where were you employed at at Upper Big Branch,
5 what production section?

6 A. Barrier section.

7 Q. The barrier section. What were you doing at that
8 time?

9 A. At the time of the explosion, running the miner.

10 Q. Okay. How long have you been a continuous miner
11 operator, roughly?

12 A. I'm going to say beginning last August, the 1st of
13 August of last year.

14 Q. Okay. Has that all been at Upper Big Branch?

15 A. No. Parker Peerless.

16 Q. Okay. They've been moving you around quite a bit.

17 A. Yeah.

18 Q. When did you come to Upper Big Branch?

19 A. I'm thinking it's the 1st or the middle of January
20 of this year.

21 Q. So you were just there a few months prior to the
22 explosion?

23 A. Yeah.

24 Q. Was all your experience at Upper Big Branch at the
25 barrier section?

1 A. Yeah.

2 Q. Did you travel to any of the other sections?

3 A. No.

4 Q. Have you been on the longwall?

5 A. No.

6 Q. Do you have any Federal or State mining
7 certifications?

8 A. I just --- the only thing I got is an EMT card,
9 that's it.

10 Q. Are you certified or qualified to take methane
11 readings?

12 A. Uh-uh (no).

13 Q. You're not?

14 A. I mean, well, just for the company, whatever,
15 taking them before I went in cuts and stuff like that,
16 but don't have no certification to take it or nothing.
17 I mean, ---.

18 Q. Okay. Are you trained in the use of a methane
19 detector?

20 A. Yeah.

21 Q. What type of methane detector did you use?

22 A. Well, at retraining they showed us the Solaris and
23 then just the regular one that I had for the miner to
24 put in the probe.

25 Q. Do you remember what make or brand that was?

1 A. That I can't remember.

2 Q. Was it a silver detector?

3 A. Yeah, silver with two big screens on it, readouts.

4 Q. Okay.

5 ATTORNEY HAMPTON:

6 Can we take a break real quick?

7 MR. SHERER:

8 Sure.

9 ATTORNEY HAMPTON:

10 Let's go off the record.

11 SHORT BREAK TAKEN

12 ATTORNEY HAMPTON:

13 Back on the record. This is Polly Anna

14 Hampton. We have just taken a quick break. And we

15 are, at this time, going to be terminating the

16 interview of Mr. Michael Richards for the day.

17

18 * * * * *

19 STATEMENT UNDER OATH CONCLUDED AT 11:12 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