



**SARGENT'S  
COURT  
REPORTING**

**Quality Work. Quality People.**

**Transcript of the Testimony of Jimmy Bowyer**

**Date:** August 25, 2010

**Case:**

**Printed On:** September 1, 2010

Sargent's Court Reporting Services, Inc.

Phone: 814-536-8908

Fax: 814-536-4968

Email: [schedule@sargents.com](mailto:schedule@sargents.com)

Internet: [www.sargents.com](http://www.sargents.com)

STATEMENT UNDER OATH  
OF  
JIMMY BOWYER

taken pursuant to Notice by Alicia R. Brant, 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 Wednesday, August 25, 2010, beginning at 10:50 a.m.

Any reproduction of this transcript is prohibited without authorization by the certifying agency.

A P P E A R A N C E S

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

DANA FERGUSON, 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

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

ERIK SHERER  
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, VA 22209-3939

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

2

3   CELESTE MONFORTON, MPH, DRPH

4   West Virginia Independent Investigation

5   2100 M. Street, NW

6   Suite 203

7   Washington, DC 20037

8

9   DAVID J. HARDY, ESQUIRE

10   Allen, Guthrie & Thomas, PLLC

11   500 Lee Street, East

12   Suite 800

13   Charleston, WV 25301

14           COUNSEL FOR PERFORMANCE COAL

15

16

17

18

19

20

21

22

23

24

25

I N D E X

1		
2		
3	OPENING STATEMENT	
4	By Attorney Ferguson	6 - 7
5	DISCUSSION AMONG PARTIES	7 - 13
6	OPENING STATEMENT	
7	By Attorney Ferguson	13 - 16
8	WITNESS: JIMMY BOWYER	
9	EXAMINATION	
10	By Mr. Sherer	16 - 18
11	CLOSING STATEMENT	
12	By Attorney Ferguson	18
13	DISCUSSION AMONG PARTIES	18 - 24
14	CERTIFICATE	25
15		
16		
17		
18		
19		
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	10*
Two	Return Receipt Card	10*
Three	Fire Boss Book	22*
Two	Fire Boss Book	22*
Three	Fire Boss Book	22*

\* Exhibit not attached

P R O C E E D I N G S

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

-----

MS. FERGUSON:

Mr. Bowyer, my name is Dana Ferguson.

Today is August 25th, 2010. I'm an attorney with the Office of the Solicitor, U.S. Department of Labor.

With me is Erik Sherer, an accident investigator with the Mine Safety and Health Administration, MSHA, an agency of the U.S. Department of Labor. Also present are several people from the State of West Virginia. I would ask that they state their appearance for the record at this time.

MR. FARLEY:

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

MR. KOERBER:

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

MS. MONFORTON:

Mr. Bowyer, I'm Celeste Monforton. I'm with the Governor's independent team.

MR. BOWYER:

Okay.

MS. FERGUSON:

1 If you'll swear the witness, please?

2 -----

3 JIMMY BOWYER, HAVING FIRST BEEN DULY SWORN, TESTIFIED

4 AS FOLLOWS:

5 -----

6 ATTORNEY KOERBER:

7 Sir, would you please state your full

8 name for the record and spell your last name?

9 A. Jimmy Lee Bowyer, B-O-W-Y-E-R.

10 ATTORNEY KOERBER:

11 And would you please state your address

12 and your telephone number?

13 A. (b) (7)(C)

14 (b) (7)(C).

15 ATTORNEY KOERBER:

16 And your telephone number?

17 A. (b) (7)(C)

18 ATTORNEY KOERBER:

19 Sir, do you have your own personal

20 attorney or a personal representative appearing with

21 you here today?

22 A. Dave is not my personal attorney, but he

23 represents Massey, and then I act as an agent for the

24 company when I fire boss, so that's the reason that

25 he's here.



1 ATTORNEY KOERBER:

2 And I agree with your logic, but do you  
3 have somebody that's ---

4 A. No.

5 ATTORNEY KOERBER:

6 --- representing you?

7 A. No.

8 ATTORNEY KOERBER:

9 Okay. Mr. Hardy, would you state your  
10 name for the record ---

11 ATTORNEY HARDY:

12 Yeah, yeah.

13 ATTORNEY KOERBER:

14 --- and identify who you're with and who  
15 you represent?

16 ATTORNEY HARDY:

17 Yes, sir. I'm David J. Hardy from Allen  
18 Guthrie & Thomas, and I'm here on behalf of  
19 Performance Coal, and I helped Mr. Bowyer this morning  
20 gather his documents for the subpoena and made sure he  
21 understood the subpoena.

22 ATTORNEY KOERBER:

23 Mr. Bowyer, would you state for the  
24 record what your job title was as of April 5th, 2010?

25 A. Belt man fire boss.

1 ATTORNEY KOERBER:

2 Sir, are you appearing here today as the  
3 result of receiving a subpoena and subpoena duces  
4 tecum?

5 A. Yes.

6 ATTORNEY KOERBER:

7 Okay. And would that be a copy of that  
8 document?

9 A. That looks to be a copy of it, yes, sir.

10 ATTORNEY KOERBER:

11 Okay. And sir, this is a return receipt  
12 card that a (b)(7)(C) has signed, evidencing receipt on,  
13 I think August 17, 2010.

14 A. Yes, sir. That's my wife ---

15 ATTORNEY KOERBER:

16 Okay.

17 A. --- and she signed it for me.

18 ATTORNEY KOERBER:

19 Okay. I'd like these to be Exhibit One  
20 and Two, but I'd like to hold the subpoena here for a  
21 minute ---

22 ATTORNEY FERGUSON:

23 Okay.

24 ATTORNEY KOERBER:

25 --- so that Mr. Bowyer can refer to that

1 during my next, my soon to be line of questions.

2 (Exhibits J. Bowyer One and Two marked  
3 for identification.)

4 ATTORNEY KOERBER:

5 Sir, under the statute that allows the  
6 director to subpoena witnesses to interviews such as  
7 this, the director is required to offer to each  
8 witness subpoenaed a \$40 a day witness fee, together  
9 with the roundtrip mileage, so long as you drove in  
10 your personal vehicle from your home to here and back,  
11 at the rate of 15 cents a mile plus reimbursement for  
12 any tolls that you may have passed on your way here or  
13 back. In order to get that money, I have two forms  
14 that must be filled out, one of which is a IRS form  
15 W-9.

16 That is a request for your Social  
17 Security number, and the need for your Social Security  
18 number is because the \$40 witness fee is considered  
19 income, that you would receive a IRS form 1099  
20 miscellaneous at some later date. We can fill this,  
21 these documents out at the end of this interview, and  
22 you can get the payment if you so desire, or you can  
23 decline. And it's up to you, but you have to make  
24 your decision on the record now.

25 A. I decline.

1 ATTORNEY KOERBER:

2 Okay. Sir, if you would, please, take a

3 look at the subpoena and subpoena duces tecum and you

4 will see in the bottom of that document things that

5 you were supposed to bring with you. Do you see that?

6 A. Yes, sir, I do.

7 ATTORNEY KOERBER:

8 You brought a stack of stuff with you,

9 some of which are copies, some of which are originals.

10 Would you please explain and describe what you

11 brought?

12 A. I brought all my fire boss notes and my daily

13 activities that I did from November the 2nd to April

14 the 5th.

15 ATTORNEY KOERBER:

16 Okay. And why do you say November 2nd

17 when the subpoena calls for November 1st?

18 A. I don't have any notes for that. The last notes I

19 had was October the 30th, so I would say that I was

20 off ---

21 ATTORNEY KOERBER:

22 Okay.

23 A. --- those days.

24 ATTORNEY KOERBER:

25 Okay. And would the stuff that you have

1 brought with you be on notebooks, notes, papers,  
2 documents and other written documentation that  
3 pertains to any fire boss duties you performed at the  
4 Upper Big Branch Mine between November 1, 2009 through  
5 April 5th, 2010?

6 A. Yes, sir, they are.

7 ATTORNEY KOERBER:

8 Okay. And I know you have brought at  
9 least two of your books in copy form.

10 A. Yes, sir.

11 ATTORNEY KOERBER:

12 Okay. And one of your books, although  
13 you were trying to get a copy, you ran out of time;  
14 correct?

15 A. Correct.

16 ATTORNEY KOERBER:

17 Can we go off the record just a second,  
18 please?

19 OFF RECORD DISCUSSION

20 ATTORNEY KOERBER:

21 Sir, in one of the books that we --- one  
22 of the original books that we were looking at prior to  
23 going on the record here today, there was one page  
24 torn out. There was a piece of a page torn out and  
25 about a one-inch remainder of that page. Do you

1 recall seeing that page?

2 A. Yes, sir, I do.

3 ATTORNEY KOERBER:

4 Can you explain what you believe is the  
5 reason that page is missing?

6 A. I'm not for sure why that page is torn out, but I  
7 would suppose I had torn it out to give someone a note  
8 to do something or I needed something, like that.

9 ATTORNEY KOERBER:

10 I have no other questions and pass it  
11 over to you.

12 ATTORNEY FERGUSON:

13 And Mr. Bowyer, if I could clarify for  
14 the record, you have appeared before this group  
15 before ---

16 A. Yes, ma'am, I have.

17 ATTORNEY FERGUSON:

18 --- and provided an interview ---

19 A. Yeah.

20 ATTORNEY FERGUSON:

21 --- to MSHA and the State of West  
22 Virginia and the Governor's team?

23 A. Yes, I did.

24 ATTORNEY FERGUSON:

25 Okay. All members of the Mine Safety and

1 Health Accident Investigation Team and all members of  
2 the State of West Virginia Accident Investigation Team  
3 participating in the investigation of the Upper Big  
4 Branch Mine explosion shall keep confidential all  
5 information that is gathered from each witness who  
6 provides a statement until the witness statements are  
7 officially released.

8 MSHA and the State of West Virginia shall

9 keep this information confidential so that other  
10 ongoing enforcement activities are not prejudiced or  
11 jeopardized by a premature release of information.

12 This confidentiality requirement shall not preclude  
13 investigation team members from sharing information  
14 with each other or with other law enforcement  
15 officials.

16 Government investigators and specialists

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

25 Your identity and the content of this

1 conversation will be made public at the conclusion of  
2 the interview process and may be included in the  
3 public report of the accident, unless you request your  
4 identity remain confidential or your information would  
5 otherwise jeopardize a potential criminal  
6 investigation. If you request us to keep your  
7 identity confidential, we will do so to the extent  
8 permitted by law.

9 That means if a judge orders us to reveal

10 your name or if another law requires us to reveal your  
11 name or if we need to reveal your name for other law  
12 enforcement purposes, we may do so. Also, there may  
13 be a need to use the information you provide to us or  
14 other information we may ask you to provide in the  
15 future in other investigations into and hearings about  
16 the explosion. Do you understand or have any  
17 questions?

18 A. Yes, ma'am, I understand. I have any --- don't  
19 have any question.

20 ATTORNEY FERGUSON:

21 Thank you. After the investigation is

22 complete, MSHA will issue a public report detailing  
23 the nature and cause of the fatalities in the hopes  
24 that greater awareness about the causes of accidents  
25 can reduce their occurrence in the future.



1 Information obtained through witness interviews is  
2 frequently included in these reports. Since we will  
3 be interviewing other individuals, we request that you  
4 not discuss your testimony with any person aside from  
5 your personal representative or Counsel.

6 A court reporter will record your  
7 interview. Please speak loudly and clearly. If you  
8 do not understand a question, please ask that it be  
9 repeated. Please answer each questions as fully as  
10 you can, including any information you have learned  
11 from someone else. Thank you in advance for your  
12 appearance here. We appreciate your assistance in  
13 this investigation. Your cooperation is critical in  
14 making the nation's mines safer.

15 After we have finished you will have an  
16 opportunity to make a statement and provide us with  
17 any information you believe to be important. If at  
18 any time after the interview you recall any  
19 information you believe might be useful, please  
20 contact Norman Page at the telephone number and  
21 address provided to you earlier. Go ahead.

22 EXAMINATION

23 BY MR. SHERER:

24 Q. First of all, I want to thank you for coming back  
25 down here, Mr. Bowyer.

1 A. You're welcome.

2 Q. We are going to look through your notes just to  
3 try to understand what was going on with the fire  
4 bossing, and we certainly appreciate you bringing  
5 those notes with you. I've got one question that's  
6 unrelated to these notes, and that is who kept up with  
7 the fire suppression on the belts at UBB?

8 A. I would say the electricians. They're supposed to  
9 check it.

10 Q. Okay.

11 A. Now, if I went through --- and I have, I've seen  
12 it torn down by rocks or something like that --- I'd  
13 report that and would get it fixed or ---.

14 Q. Okay. But you didn't check it yourself?

15 A. I would just visually look at, you know, as far as  
16 fire bossing.

17 Q. Just a visual examination. Who would those  
18 electricians be?

19 A. Probably Virgil Bowman. The ones I would call was  
20 probably Virgil Bowman, Tom Sheets.

21 Q. Okay.

22 A. Or Doughnut.

23 Q. Uh-huh (yes). Mr. Taraczkozy?

24 A. Yeah.

25 Q. Okay.

1 A. Doughnut's a whole lot easier to say.

2 MR. SHERER:

3 Okay. Thank you. That's all the  
4 questions I've got.

5 ATTORNEY FERGUSON:

6 Mr. Bowyer, on behalf of MSHA and the  
7 Office of Miners' Health, Safety and Training, thank  
8 you very much for appearing and answering questions  
9 and bringing the documents you were requested to bring  
10 today. Your cooperation is very important as we work  
11 to determine the cause of the accident. If you wish,  
12 you may now give any statement you would like to make.

13 A. Okay. If you go through these and you can't  
14 understand my abbreviations or something like that,  
15 just call me. I'll tell you what it means instead of  
16 all of this ---

17 MR. SHERER:

18 Okay.

19 A. --- rigmarole.

20 MR. SHERER:

21 We appreciate that.

22 ATTORNEY HARDY:

23 There's something that --- there's  
24 something that could be clarified. It's important.

25 MR. SHERER:

1 Uh-huh (yes).

2 ATTORNEY HARDY:

3 Let's see.

4 A. I told you about these extra pages that ---.

5 ATTORNEY HARDY:

6 Yeah. Okay. Did you explain, for

7 example, in the original notebook ---?

8 A. Okay. For which one?

9 ATTORNEY HARDY:

10 The most recent one.

11 A. Okay. That'd be this one.

12 ATTORNEY HARDY:

13 Okay. Show the panel how you kept those

14 pages.

15 A. Well, okay. I did. I told them that I would run  
16 a copy off, whatever the third shift fire boss report  
17 was, and take it with me that day, and then I'd let  
18 them build up, as you can see, and then I would just  
19 throe them away because they really were of no value.

20 ATTORNEY HARDY:

21 When we copies those, Erik, we just took

22 out the 8 and a half by 11 ---

23 MR. SHERER:

24 Sure.

25 ATTORNEY HARDY:

1 --- and copied it and inserted it in the  
2 copies.

3 MR. SHERER:

4 Okay.

5 ATTORNEY HARDY:

6 So if you look through there ---.

7 MR. SHERER:

8 Yeah, uh-huh (yes).

9 ATTORNEY HARDY:

10 There you go. There would be a good  
11 example.

12 MR. SHERER:

13 Okay. Yeah, okay. That's great. I  
14 appreciate you guys doing that. Tell you what. If we  
15 have any problem with the abbreviations or anything  
16 like that, we'll give you a call. If there's anything  
17 you think you need to consult with Mr. Hardy about,  
18 I'll leave that to you.

19 A. Okay. I can't think ---.

20 MR. SHERER:

21 Okay.

22 ATTORNEY FERGUSON:

23 Thank you very much.

24 MR. SHERER:

25 Thank you.

1 ATTORNEY FERGUSON:

2 Off the record.

3 OFF RECORD DISCUSSION

4 ATTORNEY FERGUSON:

5 Okay. Let's go back on the record. Mr.

6 Bowyer, while we have been on break, the third of the  
7 three books that you brought with you this morning  
8 pursuant to the subpoena duces tecum has been copied,  
9 and you've had an opportunity to review the original  
10 book alongside the copy that was made by MSHA; is that  
11 correct?

12 A. That's correct.

13 ATTORNEY FERGUSON:

14 And did you find any problems or  
15 discrepancies between the original and the copy?

16 A. No, I did not.

17 ATTORNEY FERGUSON:

18 Okay. And the record should reflect, as  
19 well, that Erik Sherer and Celeste Monforton reviewed  
20 the originals and the copies of the other two books  
21 and, likewise, did not find any discrepancies between  
22 the original and the copies; is that correct, Mr.  
23 Sherer?

24 MR. SHERER:

25 That's correct.

1 ATTORNEY FERGUSON:

2 Is that correct, Ms. Monforton?

3 MS. MONFORTON:

4 That is correct.

5 ATTORNEY FERGUSON:

6 Okay. And for the record, we will be

7 marking the three books as Exhibit --- Exhibits Three,

8 Four and Five.

9 (Exhibits J. Bowyer Three, Four and Five

10 marked for identification.)

11 ATTORNEY HARDY:

12 And may I get a copy of that one, the one

13 that --- the one that Mr. Page has made us?

14 MR. SHERER:

15 Sure.

16 ATTORNEY FERGUSON:

17 Yeah.

18 ATTORNEY HARDY:

19 Yeah, I don't have a copy of that one. I

20 have a copy of the other two, the two that I gave you

21 this morning. I don't have a copy of the third one.

22 ATTORNEY FERGUSON:

23 Okay, okay.

24 MR. HARDY:

25 The one that's ---

1 ATTORNEY FERGUSON:

2 Let's do that.

3 MR. HARDY:

4 --- Exhibit Five?

5 ATTORNEY FERGUSON:

6 That's Exhibit Three.

7 MR. HARDY:

8 Exhibit Three.

9 ATTORNEY FERGUSON:

10 They're marked in chronological order

11 from November 1, 2009 to April 5th, 2010 ---

12 MR. HARDY:

13 Okay.

14 ATTORNEY FERGUSON:

15 --- with Exhibit Three ---.

16 ATTORNEY HARDY:

17 Is there somebody at the Mine Academy

18 that could make me a copy of it? Okay, okay. Thank

19 you.

20 ATTORNEY FERGUSON:

21 Is there anything else we need to put on

22 the record?

23 ATTORNEY HARDY:

24 Barry, is he released from his subpoena?

25 Did he comply with the subpoena?



1 ATTORNEY KOERBER:

2 He is released from the subpoena and like

3 I think Mr. Sherer told you earlier, potentially there  
4 may be a need to ask you a question about the notes.

5 If that can be done without brining you in here, we'll  
6 do so, but I want to let you know, potentially you  
7 could get another subpoena; okay?

8 A. All right.

9 ATTORNEY FERGUSON:

10 That's all. Off the record. Thank you.

11 \* \* \* \* \*

12 STATEMENT UNDER OATH CONCLUDED AT 11:59 A.M.

13 \* \* \* \* \*

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF WEST VIRGINIA )

2 )

3

4 CERTIFICATE

5 I, Alicia R. Brant, 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  
22 *Alicia R. Brant*  
23  
24  
25