

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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May 16, 2016

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

CIVIL PENALTY PROCEEDING

Docket No. KENT 2014-0620  
A.C. No. 15-17497-354134

v.

BLUE DIAMOND COAL COMPANY,  
Respondent

Mine: Mine No. 68

**DECISION APPROVING SETTLEMENT**  
**ORDER TO PAY**

Before: Judge McCarthy

This case is before me upon a Petition for the Assessment of Civil Penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d).

The Respondent has filed a Notice of Withdrawal of Contest, which I will construe as a motion to approve settlement. The Respondent has agreed to pay the \$139,100.00 penalty proposed by the Secretary.

Blue Diamond Coal Company's parent company, James River Coal Company, filed for Chapter 11 Bankruptcy Protection on April 7, 2014 in the United State Bankruptcy Court for the Eastern District of Virginia, *In Re James River Coal Co. Et al.*, Case No. 31848-KRH (E.D. Va.). Section 362(a) of the Bankruptcy Code provides for an automatic stay of the commencement or continuation of any administrative or judicial proceedings against a Chapter 11 Bankruptcy petitioner. 11 U.S.C. § 362(a). An exception to this stay, however, is granted by §362(b)(4), which exempts from the automatic stay any proceeding by a governmental unit to enforce its police or regulatory power. 11 U.S.C. §362(b)(4). This exception has been applied to cases seeking equitable relief and cases concerning monetary damages or penalties. *See In re Commerce Oil Co.*, 847 F.2d 291, 297 (6th Cir. 1988); *United States v. Nicolet, Inc.*, 857 F.2d 202, 208-10 (3d Cir. 1988); *U.S. v. Oil Transport Co., Inc.*, 172 B.R. 834 (Bankr. E.D. La. 1994); *U.S. v. Energy Intern., Inc.*, 19 B.R. 1020 (Bankr. S.D. Ohio 1981)(holding that action by the United States to collect a civil penalty assessed by the Department of the Interior, Office of Surface Mining, against debtor, for numerous violations of Surface Mining Control and

Reclamation Act of 1977, was one to enforce its regulatory power and thus not stayed by the debtor's filing of a bankruptcy petition)). The Commission has held that the Secretary of Labor, Department of Labor, and MSHA are "government units" within the meaning of 362(b)(4), as the Secretary of Labor brings civil penalty proceedings in an effort to effectuate and enforce the mandatory safety standards of the Mine Act. *Big Laurel Mining Corp.*, 37 FMSHRC 1997, 1997-99 (Sept. 2015); *Hidden Splendor Res., Inc.*, 35 FMSHRC 1548, 1549-50 (June 2013); *Hoist Excavating, Inc.*, 17 FMSHRC 101, 102 (Feb. 1995); *Jim Walter Res., Inc.*, 12 FMSHRC 1521, 1530 (Aug. 1990).

Although the entry of a money judgment by a governmental unit, if related to its police or regulatory powers, is not affected by the automatic stay, actual enforcement of such judgment must take place through the bankruptcy court. *In re Weller*, 189 B.R. 467, 471 (Bankr. E.D. Wis. 1995); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 834 (9th Cir.1991); *NLRB v. P.I.E. Nationwide, Inc.*, 923 F.2d 506 (7th Cir.1991); *Eddleman v. U.S. Dept. of Labor*, 923 F.2d 782 (10th Cir.1991); *In re Tauscher*, 7 B.R. 918 (Bankr. E.D. Wis. 1981).

Pursuant to 29 C.F.R. 2700.1(b) and Federal Rule of Civil Procedure 12(f), I strike paragraph four from the Secretary's Motion as immaterial and impertinent to the issues legitimately before the Commission. This paragraph incorrectly cites and interprets the case law and misrepresents the statute, regulations, and Congressional intent regarding settlements under the Mine Act. Instead, I have evaluated the proposed settlement in accordance with sections 110(i) and 110(k) of the Act.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act. The settlement amounts are as follows:

<u>Citation No.</u>	<u>Assessment</u>	<u>Settlement</u>
8386785	\$3,700.00	\$3,700.00
8386786	\$47,200.00	\$47,200.00
8386793	\$52,500.00	\$52,500.00
8386794	\$35,700.00	\$35,700.00
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	\$139,100.00	\$139,100.00

**WHEREFORE**, the motion for approval of settlement is **GRANTED**.

It is further **ORDERED** that the operator pay a total penalty of \$139,100.00 within thirty (30) days of this order.<sup>1</sup>

*Thomas P. McCarthy*

Thomas P. McCarthy  
Administrative Law Judge

**Distribution:**

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<sup>1</sup> Payment should be sent to: Mine Safety & Health Administration, U.S. Department of Labor,  
Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390.