

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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September 13, 2017

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 2016-0455
Petitioner,	:	A.C. No. 15-18869-415097
v.	:	
	:	
REX COAL COMPANY INC,	:	Mine: CVB No. 1
Respondent.	:	

**DECISION APPROVING SETTLEMENT MOTION
WHICH COMPLIES WITH SECTION 110(k) OF THE MINE ACT**

Before: Judge Moran

This case is before the Court upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement¹ which motion provides sufficient information to support the proposed penalty reduction; the originally assessed amount was \$285.00, and the proposed settlement is for \$228.00.

The parties presented the following basis for the proposed reduction of the single citation at issue:²

Basis of compromise: A reduction in the amount of the proposed penalty by the Office of Assessments. There are factual disputes regarding the level of negligence on behalf of the operator and/or an agent of the operator. The Respondent contends that the operator was unaware of the cited condition. The Pre-shift examinations were being conducted as required by law. According [to] the foreman who conducted the preshift for the OU 10 MMU, the ribs were not showing any signs of taking weight in any areas from the feeder inby to the face of each working place. The cited condition was that the coal ribs were not being adequately controlled at crosscut # 33 in the No. 3 Entry loose ribs were present.

¹ It is **DETERMINED** that the Conference and Litigation Representative (CLR) is accepted to represent the Secretary in accordance with the notice of unlimited appearance she has filed with the penalty petition. *Cyprus Emerald Res. Corp.*, 16 FMSHRC 2359 (Nov. 1994).

² Citation No. 8413818 alleged a violation of 30 C.F.R. § 75.202(a), and stated that loose ribs presented the risk of a rib fall. Citation No. 8413818.

On the outby corner of the crosscut between No. 3 and No. 4 Entries the rib was 12 feet in length and 8 inches in thickness. On the inby corner of the crosscut a loose rib was present that measured after the rib was pulled down 18 inches thick, 3 feet in length and 2 ½ feet in height. Additionally, the Petitioner stated in the daily inspection notes for this citation that the mining height ranged from 8 foot to 12 foot and consisted of rock and coal partings, as well as, 1700 to 1900 foot of cover with sandstone roof rolling in and out across the section and that the coal ribs are constantly taking pressure due to the amount of cover over the coal seam. However, the Petitioner was unable to determine how long the cited condition had existed and stated that it was undetermined. Furthermore, the Petitioner stated that the rest of the ribs on the 0010 MMU appeared ok. Therefore, based on the facts presented, The Secretary is requesting a revised penalty based on a justification that the condition cited was an isolated incidence/hazard which occurred just as likely as not after the foreman had pre-shifted the area. Especially, with the amount of cover and including the sandstone rolling in and out across the 0010 MMU, it is probable that the ribs took on more pressure and weight after the examination of this specific area was completed. Also, the Petitioner issued the cited condition at 10:55am which was long after the pre-shift examination was conducted. Consequently not only the operator but the Section Foreman would not have been aware. For the purpose of settlement, the Petitioner proposes and the Respondent accepts a reduction in the proposed penalty by the Office of Assessments. Based on the facts presented, the ALJ may find merit with the Respondent's contention that the negligence of the violation should have been less than was originally evaluated. A reduction in the proposed penalty assessed is reflected by the compromised penalty amount.

Joint Motion at 3-4.

The Court has considered the representations submitted in this case, and takes note that this motion is an example of the Secretary providing genuine facts in dispute, and an acknowledgment that the Respondent presented plausible contentions, which weighed upon and supported a reconsideration of the proposed penalty. The motion also demonstrates that it is not burdensome for the Secretary to present the kind of information the Commission needs in order to carry out its responsibility under section 110(k) of the Mine Act. With the information provided in the motion, the Court is able to 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 Amount</u>
8413818	\$285.00	\$228.00
TOTAL:	\$285.00	\$228.00

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

It is **ORDERED** that Respondent pay a penalty of \$228.00 within 30 days of this order.³ Upon receipt of payment, this case is **DISMISSED**.

William B. Moran
William B. Moran
Administrative Law Judge

Distribution:

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Barbourville, KY 40906

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³ Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P.O. BOX 790390, ST. LOUIS, MO 63179-0390