

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

MICHAEL WILSON, JUSTIN GREENWELL: and BRANDON SHEMWELL	:	Docket No. KENT 2015-673-D
	:	
v.	:	
	:	
ARMSTRONG COAL COMPANY, INC.	:	
	:	
	:	
BRANDON SHEMWELL	:	Docket No. KENT 2016-96-D
	:	
v.	:	
	:	
ARMSTRONG COAL COMPANY, INC.	:	
	:	
	:	
JUSTIN GREENWELL	:	Docket No. KENT 2016-108-D
	:	
v.	:	
	:	
ARMSTRONG COAL COMPANY, INC.	:	

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

**DECISION APPROVING SETTLEMENT**

BY: Althen, Acting Chairman, and Jordan, Commissioner


These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (“Mine Act” or “Act”). They involve complaints of interference filed by Michael Wilson, Justin Greenwell, and Brandon Shemwell (“Complainants”) against Armstrong Coal Company (“Armstrong”) pursuant to section 105(c)(3) of the Act. 30 U.S.C. § 815(c)(3).


After a hearing on the merits, an Administrative Law Judge concluded that Armstrong had interfered with the Complainants’ rights as miners’ representatives with respect to the claims in Docket Nos. KENT 2016-108-D and KENT 2015-673-D, but found no unlawful interference with respect to Shemwell’s claim in Docket No. KENT 2016-96-D. 39 FMSHRC 1072, 1094-96 (May 2017) (ALJ). Armstrong and Shemwell, respectively, filed petitions seeking review of the Judge’s findings. The Commission granted review on June 15, 2017.

On November 1, 2017, Armstrong Energy and its affiliates (including the Respondent) initiated proceedings before the United States Bankruptcy Court for the Eastern District of Missouri (“Bankruptcy Court”) under Chapter 11 of the United States Bankruptcy Code. 11 U.S.C. § 101 et seq. On February 2, 2018, the Bankruptcy Court entered an order confirming Armstrong’s bankruptcy plan and authorizing Armstrong to settle certain outstanding causes of action, including the proceedings at issue.

Accordingly, the parties have filed a joint motion to approve settlement. Pursuant to the agreement, the terms of the settlement shall be confidential.

Having reviewed the terms of the proposed settlement agreement, the Commission grants the parties’ joint motion for approval of settlement.<sup>1</sup> Armstrong is hereby ordered to make monetary payments to Complainants in accordance with the terms of the Settlement Agreement. These proceedings are dismissed.

  
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William I. Althen, Acting Chairman

  
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Mary Lu Jordan, Commissioner

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<sup>1</sup> Acting Chairman Althen notes his colleagues’ suggestion in their concurrence that the standard for review of a penalty settlement under section 110(k) of the Act, 30 U.S.C. § 820(k), governs a settlement by a miner of his/her own section 105(c)(3) case. A section 105(c)(3) case is litigated by an individual miner at his/her own cost and expense and “in his own behalf.” He wonders, therefore, whether the Commission or a Judge could substitute their judgment concerning whether a settlement is fair and reasonable for the judgment of the complaining miner who wants to settle, thereby requiring him to continue his litigation. Separately, could the Commission or a Judge reject a private settlement as not in the “public interest” and compel a miner to continue his case at his cost and risk of loss? Because these questions are not at issue here, Acting Chairman Althen only expresses a concern. He would suggest full briefing and argumentation of these issues before a Judge or the Commission rejects a settlement because it was not “fair” to the miner who wants it or the settlement of the miner’s action on his own behalf fails to achieve a public interest.


Commissioners Young and Cohen, concurring:

We join our colleagues in approving the settlement, without qualification. We write separately due to the unusual posture of this case.

Typically, the Secretary is a party in cases brought before us under the Act, and settlement motions presented to the Commission by the Secretary include language excepting proceedings under the Mine Act from terms limiting the operator's liability. While the Secretary is not a party to this settlement, parties in proceedings brought under section 105(c)(3) should recognize that the Commission has held that we have a duty to review and approve settlements of discrimination cases, including provisions unrelated to penalties. *Sec'y of Labor on behalf of Maxey v. Leeco, Inc.*, 20 FMSHRC 707 (July 1998).

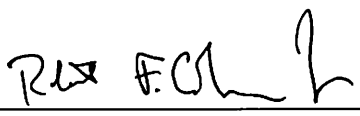
The settlement agreement contains, among other provisions, a confidentiality clause. We note that even though this agreement is not within the scope of section 110(k) of the Act, 30 U.S.C. § 820(k), and the Secretary is not a party to the agreement, the Commission should review settlements of cases brought under section 105(c)(3) under the standard we have established for approval of settlements, i.e. whether the settlement is fair, reasonable, appropriate under the facts, and protects the public interest. *American Coal Co.*, 38 FMSHRC 1972, 1982 (Aug. 2016). The Commission thus should especially review non-monetary settlement terms, including non-admission-of-liability clauses and confidentiality clauses, to determine whether they may improperly limit the operation of the Act in contravention of the public interest.

In the present case, the operator has ceased operations, closed and sealed the mine, entered bankruptcy proceedings and sold the mine's assets. There is thus not a risk of potential harm to the public interest.



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Michael G. Young, Commissioner



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Robert F. Cohen, Jr., Commissioner

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