

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

December 15, 2022

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2022-0249
	:	Docket No. WEST 2022-0250
v.	:	A.C. No. 42-02078-554812
	:	
	:	
RULON HARPER CONSTRUCTION, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018). On December 12, 2022, a Commission Administrative Law Judge issued an order certifying for interlocutory review her denial of the Secretary of Labor’s amended motions to approve settlement in the captioned proceedings. The Judge denied the settlement motions concluding that the submitted facts could not support a finding that the settlement terms were fair, reasonable, appropriate under the facts, or protective of the public interest. *See Am. Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016).

Commission Procedural Rule 76(a) provides that interlocutory review is a matter of sound discretion of the Commission, and that the Commission may grant interlocutory review upon a determination that the Judge’s interlocutory ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a).


Upon consideration by the Commission, the Judge’s December 12, 2022, certification for interlocutory review is accepted. The Commission hereby grants interlocutory review on the issue of whether the Judge abused her discretion in denying the motions to approve settlement.¹ The Secretary shall file an opening brief with the Commission within 30 days of this order. If

¹ These proceedings also involve the same question currently on review before the Commission in *Knight Hawk Coal, LLC*, Docket No. LAKE 2021-0160, which we include in our review of these proceedings.

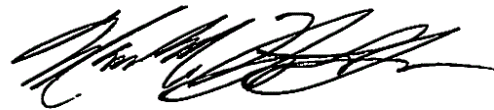
the operator wishes to file a brief, it shall file that brief 30 days after the filing of the Secretary's brief.



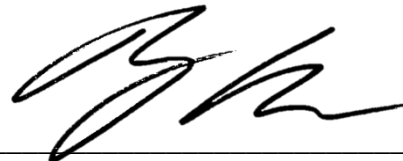
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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