

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

MAY 02 2019

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

v.

RAIN FOR RENT

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Docket No. WEST 2016-730-M

BEFORE: Rajkovich, Chairman; Jordan, Young, Althen, and Traynor, Commissioners

ORDER

BY THE COMMISSION:

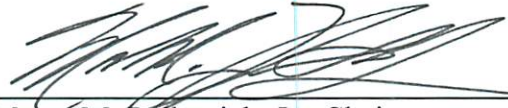
On July 31, 2018, the Commission issued a decision in the captioned civil penalty proceeding in which it affirmed the decision of the Administrative Law Judge and the citations at issue. 40 FMSHRC 976 (Jul. 2018). Rain For Rent thereafter filed a petition for reconsideration with the Commission, stating that the matter should be reconsidered because the Judge had not been properly appointed to his position in accordance with the Appointments Clause of the U.S. Constitution, U.S. Const. Art. II § 2, cl. 2.¹ On August 30, 2018, the Commission issued an order denying reconsideration. Rain For Rent then appealed both of the Commission’s decisions to the United States Court of Appeals for the D.C. Circuit.

Before the D.C. Circuit, Rain For Rent represented that it intended to argue to the Court that the Commission Judge had not been appointed in accordance with the requirements of the U.S. Constitution as explained in *Lucia v. SEC*, 138 S. Ct. 2044 (2018). The Secretary joined Rain For Rent in filing a joint motion to remand the case to the Commission for a new hearing.

On March 22, 2019, the D.C. Circuit granted the parties’ motion for remand, setting aside the Commission’s July 31 and August 30 decision and order and “remanded [the case] to the [Commission] for a new hearing, in accordance with *Lucia v. SEC*, 138 S. Ct. 2044 (2018).” *Western Oilfields Supply Co., d/b/a Rain For Rent v. FMSHRC*, No. 18-1269, slip op. at 1 (D.C. Cir. Mar. 22, 2019).

¹ On July 31, 2018, the same day that the Commission issued its decision on this matter, the United States Court of Appeals for the Sixth Circuit vacated and remanded a separate matter for a new hearing before a constitutionally appointed Administrative Law Judge. *Jones Bros., Inc., v. Sec’y of Labor*, 898 F.3d 669 (6th Cir. 2018).

Accordingly, the Commission hereby remands this matter to the Acting Chief Administrative Law Judge so that it may be reassigned to a different Judge for a hearing consistent with the D.C. Circuit's instructions.



Marco M. Rajkovich, Jr., Chairman



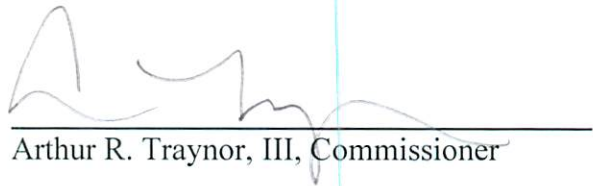
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