

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

**JUN 15 2018**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 : Docket No. LAKE 2009-35  
v. :  
 :  
THE AMERICAN COAL COMPANY :

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

**ORDER**

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”), and is presently before the Commission a second time on review. After briefing had begun, the Secretary of Labor filed a motion to settle the case pursuant to a proposed settlement agreement he had reached with the operator, The American Coal Company (“AmCoal”). In an order dated March 5, 2018, two Commissioners voted to grant the motion and two voted to deny, which thereby denied the motion in effect. 40 FMSHRC \_\_\_ (Mar. 2018).

AmCoal petitioned the Commission for reconsideration and requested that the motion for settlement be granted. In an order dated March 27, 2018, two Commissioners voted to grant the petition and two voted to deny, again thereby denying the motion for settlement in effect. AmCoal thereupon petitioned the United States Court of Appeals for the District of Columbia Circuit to review the Commission’s two split decisions. *American Coal Co. v. FMSHRC*, No. 18-1090 (docketed Apr. 2, 2018).

AmCoal subsequently requested that the court hold that proceeding in abeyance while the parties further pursued settlement before the Commission. By order dated May 15, 2018, the court held the case in abeyance. On May 18, 2018, the Secretary and AmCoal filed an Amended Joint Motion to Approve Settlement Agreement with the Commission.

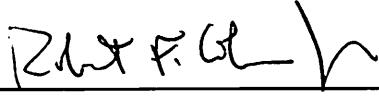
Upon consideration of the amended motion, the settlement agreement is approved. The basis for Acting Chairman Althen’s and Commissioner Young’s approval is set forth in their

opinion in favor of approving the original settlement motion. Slip op. at 3-7. Commissioners Jordan and Cohen now join in granting the motion for settlement.<sup>1</sup>

  
William I. Althen, Acting Chairman

  
Mary Lu Jordan, Commissioner

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

---

<sup>1</sup> The Amended Joint Motion to Approve Settlement Agreement provides substantive explanations supporting the Secretary’s decision to compromise the issues of one violation at issue in this matter by deleting the flagrant designation, reducing the level of gravity, and substantially reducing the assessed penalty. In addition, the Secretary has set forth reasons why it would not be in the public interest to litigate certain legal issues in the context of this case. Moreover, the amended motion explains that the operator’s mines have closed since the citations issued, reducing the deterrent value of a penalty. Commissioners Jordan and Cohen note that these justifications were absent in the initial settlement motion. Upon review of the amended motion, Commissioners Jordan and Cohen agree to grant the motion and approve the settlement.

Distribution

Jason W. Hardin, Esq.  
Artemis D. Vamianakis  
Fabian Vancott  
215 South State Street, Suite 1200  
Salt Lake City, Utah 84111-2323  
[jhardin@fabianvancott.com](mailto:jhardin@fabianvancott.com)  
[avamianakis@fabianvancott.com](mailto:avamianakis@fabianvancott.com)

Edward Waldman  
U.S. Department of Labor  
Office of the Solicitor  
201 12<sup>th</sup> Street South, Suite 401  
Arlington, VA 22202-5450  
[Waldman.edward@dol.gov](mailto:Waldman.edward@dol.gov)

Ali A. Beydoun, Esq.  
Office of the Solicitor  
US Department of Labor  
201 12th St. South-Suite 401  
Arlington, VA 22202-5450

Melanie Garris  
Office of Civil Penalty Compliance, MSHA  
U.S. Department of Labor  
201 12th Street South, Suite 401  
Arlington, VA 22202-5450

Administrative Law Judge Thomas McCarthy  
Federal Mine Safety Health Review Commission  
1331 Pennsylvania Avenue, NW Suite 520N  
Washington, DC 20004-1710