

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

July 16, 2018

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2018-113-M
v.	:	A.C. No. 31-00057-0444267 A
	:	
MARK AUGUSTINE, employed by	:	
METZGER REMOVAL, INC. <sup>1</sup>	:	

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

**ORDER**

BY THE COMMISSION:

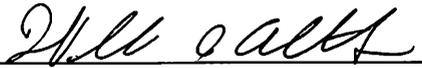
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On March 15, 2018, the Commission received a motion seeking to reopen a penalty assessment against Mark Augustine, an employee of Metzger Removal, Inc., under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that has become a final order of the Commission. Subsequently, the Secretary requested that the Commission grant the motion to reopen in order to facilitate a global settlement of all outstanding citations against Metzger Removal and Mr. Augustine.

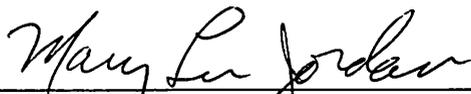
Having reviewed the movant’s request and the Secretary’s response, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

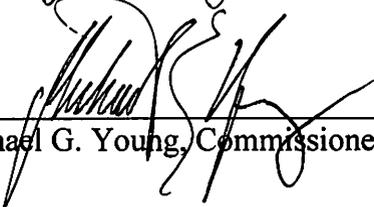
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<sup>1</sup> When initially docketed, the caption in this matter listed Metzger Removal, Inc., as the Respondent. The caption has been modified to reflect that the penalty assessment at issue was assessed against Mark Augustine, an employee of Metzger Removal, rather than the operator.

Consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28. In order to effectuate the settlement identified as the basis of the unopposed motion to reopen, the parties should promptly file a motion to approve settlement after the Secretary files the petition for assessment of penalty.<sup>2</sup>

  
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William I. Althen, Acting Chairman

  
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Mary Lu Jordan, Commissioner

  
\_\_\_\_\_  
Michael G. Young, Commissioner

  
\_\_\_\_\_  
Robert F. Cohen, Jr., Commissioner

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<sup>2</sup> We note that the motion to reopen was filed by counsel for Metzger Removal, without any indication that Mr. Augustine had been consulted or that he had been served with the motion. We caution that the other parties must ensure that Mr. Augustine is aware of any motion to approve settlement and that he concurs in that motion. A motion for settlement approval must represent a genuine agreement between all parties. *See Sec'y of Labor on behalf of Pendley v. Highland Mining Co., LLC*, 29 FMSHRC 164, 165-66 (Apr. 2007) (vacating a settlement agreement which had been jointly proposed by the Secretary and the operator, because the miner on whose behalf the Secretary had filed the discrimination complaint had not been consulted).

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