

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

(703) 756-6210 / 11 / 12
8 AUG 1980

SECRETARY OF LABOR,	:	Civil Penalty Proceeding
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 80-59-M
Petitioner	:	A.O. No. 16-00512-05009
	:	
v.	:	Weeks Island Mine & Mill
	:	
MORTON SALT DIVISION,	:	
MORTON-NORWICH PRODUCTS,	:	
INC.,	:	
Respondent, Third-Party	:	
Petitioner	:	
	:	
v.	:	
	:	
FRONTIER-KEMPER CONSTRUCTORS,	:	
Third-Party Respondent	:	

DECISION AND ORDER

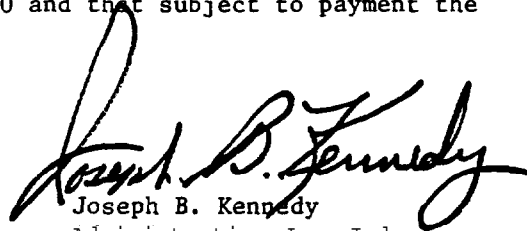
On April 14, 1980, the trial judge denied a motion to dismiss a petition to **implead** the captioned independent contractor, **Frontier-Kemper Contractors (FKC)** as a third party respondent in this penalty enforcement proceeding. **1/** Thereafter, the three parties complied with the pretrial order and filed a motion to approve settlement in the amount of \$500 which is approximately 170% of the amount initially assessed, \$295.

Based on an independent evaluation and de novo review of the parties prehearing submissions and motion, I conclude the gravity of the hazard, which was **serious, when** discounted for the probability of

1/ The Commission denied **FKC's** interlocutory appeal from this order on May 12, 1980. Because of the apparent novelty of this procedure and its potential for simplifying enforcement against independent contractors a **copy** of the trial judge's order of April 14, 1980 is attached. -Compare, Secretary v. Pittsburg & Midway Coal Mining Company, 2 **FMSHRC** ___, August 4, 1980.

injury despite compliance 2/ justifies acceptance of the settlement proposed. I further find that upon a consideration of the relative degree of culpability and responsibility of each respondent, the penalty should be apportioned as follows: Morton Salt, \$200; FKC, \$300.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is **FURTHER** ORDERED that respondents pay their allocated portions of the total settlement agreed upon, \$500, on or before Friday, August 29, 1980 and that subject to payment the captioned matter be DISMISSED.


Joseph B. Kennedy
Administrative Law Judge

Attachment

2/ The record shows that even if the men had been wearing safety belts and lines a fall through the 18 inch to 3 foot gap between the work deck on the suspended platform and the top of the concrete pour could have resulted in crushing injuries that may have proved fatal or disabling.

Distribution:

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