

CCASE:
SOL (MSHA) V. LITTLE BILL COAL
DDATE:
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

Civil Penalty Proceedings

Docket No. KENT 80-203
A.O. No. 15-11645-03008

v.

Docket No. KENT 80-194
A.O. No. 15-11645-03007 T

LITTLE BILL COAL CO., INC.,
RESPONDENT

Docket No. KENT 80-261
A.O. No. 15-11645-03009

Mine No. 4

Docket No. KENT 80-262
A.O. No. 15-11838-03001

Docket No. KENT 80-263
A.O. No. 11-11838-03002

Mine No. 5

Docket No. KENT 80-193
A.O. No. 15-10394-03012

Mine No. 6

ORDER ASSESSING DEFAULT PENALTY

The pretrial order of September 2, 1980, in the captioned matters, required compliance by both parties with Part A thereof on or before October 17, 1980, and compliance with Part B on or before November 17, 1980. The pretrial order required inter alia that "it is expected that respondent will cooperate in furnishing [specified information] to counsel for the Secretary," and further stated that "except for good cause shown in advance thereof, any failure to comply in full and on time with the provisions of this order shall be deemed cause for the issuance of an order of dismissal or default."

On September 5, 1980, counsel for the Secretary sent a letter to counsel for respondent in which he requested the information required by the order. No response has ever been made to this letter. When respondent failed to comply with the requirements of Part A of the pretrial order, an order issued on October 22, 1980, directing respondent to show cause why it should not be held in default. In response to the show cause

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order, respondent stated that it had not yet been able to prepare its defenses, and that "efforts are now being made to comply." Over a month has elapsed since then, and respondent has failed to cure its delinquency with respect to Part A of the pretrial order, or to comply with the requirements of Part B. I should further note that this respondent has a history of failure to comply with the orders of the trial judge. See Little Bill Coal Co., KENT 79-261 (June 30, 1980) review denied (August 26, 1980). Such course of conduct cannot be condoned.

Accordingly, respondent having (1) failed to cooperate with counsel for the Secretary as required by the pretrial order, (2) failed to cure its delinquency with regard to Part A of the order, (3) failed to make any response to Part B of the order, and (4) failed to request a reasonable amount of time in which to effect compliance; it is ORDERED that respondent be, and hereby is, declared in DEFAULT.

It is FURTHER ORDERED that pursuant to Rule 63 of the Commission's rules the proposed penalty of \$1,774 be, and hereby is, ASSESSED as a FINAL ORDER of the Commission. Finally, it is ORDERED that respondent pay the amount finally assessed, \$1,774, on or before Monday, December 15, 1980.

Joseph B. Kennedy
Administrative Law Judge