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SOL (MSHA) v. GRUNDY MINING
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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

v.

GRUNDY MINING COMPANY,
INC.,
RESPONDENT

Civil Penalty Proceeding
Docket No. BARB 78-168-P
A.C. No. 40-00524-02016 F
No. 21 Mine

ORDER APPROVING SETTLEMENT AND
DIRECTING PAYMENT

On March 20, 1981, the Secretary of Labor filed a motion for approval of a settlement reached by the parties in this case. The violations were originally assessed at \$10,000 and the parties propose to settle for \$1,500.

The case arises out of an accident in which a foreman at Respondent's mine was fatally injured when his head was pinned between an overhanging rib and a tractor he was operating. Respondent is a medium-sized operator with an average history of prior violations. Prompt corrective action was taken to abate the cited condition.

The parties seem to concede that 30 C.F.R. 75.202 was violated, since there was an overhanging rib involved in the accident. They both urge, however, that any causal connection between the violation and the accident is tenuous at best. The record shows that the overhanging rib in question was neither loose nor in danger of falling. The Secretary, in fact, claims that even if the overhanging rib was properly scaled, the accident probably would have occurred anyway.

Any assessment of negligence must take into account the foreseeability of harm. Based on this, the negligence involved in this case was slight, since the accident which occurred was not an easily foreseeable consequence of the violation.

Finally, the history of the case cannot be overlooked. In remanding it, the Sixth Circuit Court of Appeals characterized the violation as "technical." The Secretary apparently does not dispute this and therefore feels that prosecution should not continue. In this posture, the difficulties of re-trying the case before a new administrative law judge surely outweigh the benefits it might provide. I find that the negotiated settlement is fully supported by the record and thus will approve it.

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Accordingly, the settlement is APPROVED and Respondent is ORDERED TO PAY the sum of \$1,500 within 30 days of the date of this order.

James A. Broderick
Chief Administrative Law Judge