

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**JUN 25 1981**

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 80-614  
Petitioner : A.O. No. **46-01283-03043F**  
 :  
v. : Hampton No. 3 Mine  
 :  
**WESTMORELAND COAL COMPANY,** :  
Respondent :

DECISION AND ORDER

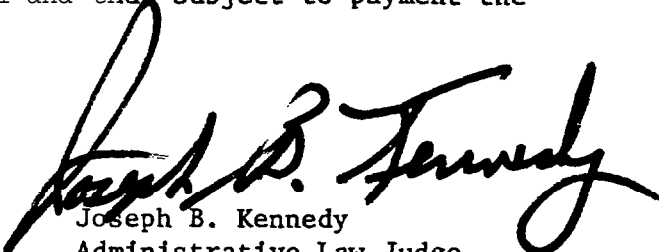
On June 24, 1981, this matter came on for a hearing on the parties' motion to approve settlement of charges that the operator's faulty pillaring practices in the No. 9 Right Section of the Hampton No. 3 Mine resulted in the deaths of a section foreman and an assistant mine foreman. The settlement proposed is a reduction in the amount initially assessed from \$13,000 to \$4,000.

The parties' prehearing submissions and the information adduced at the settlement hearing showed that:

- A. The charge that the operator had engaged in partial pillaring practices in violation of 30 C.F.R. 75.201-2(d) was of doubtful validity because (1) the adverse roof conditions and falls of roof in the 4th and 5th **pillars** in the third pillar line may have justified leaving substantial portions of the **outby** wings (30 C.F.R. 75.201-2(e)), and because of (2) the inconclusive nature of the testimony as to the size of the partial pillars, if any, left **in** the challenged pillar line.
- B. The charge that the operator violated its approved roof control plan by failing to set trisets or cribs before pulling the **pushout stump** in the No. 5 pillar in the fourth pillar line (the scene of the accident) was clearly established as the proximate cause of the roof fall that killed the two foremen and endangered the lives of three other miners. In mitigation, the operator showed (1) a disturbing lack of clarity (now corrected) in the roof control plan, a deficiency for which MSHA shares responsibility, and (2) the institution of management controls that will effectively preclude the exercise of bad judgment that led the foremen to risk their lives and those of the contract miners.

In the light of the foregoing, the parties proposed to amend their motion so as to allocate \$1,000 to the first violation and \$3,000 to the second violation. Based on an independent evaluation and de novo review of the circumstances the trial judge concurred and directed that the motion to approve settlement be granted.

Accordingly, it is ORDERED that the motion to approve settlement, as amended, be and hereby is GRANTED. It is FURTHER ORDERED that the operator pay the amount of the settlement agreed upon, \$4,000, on or before Wednesday, July 15, 1981 and that **subject to payment the** captioned matter be DISMISSED.

  
Joseph B. Kennedy  
Administrative Law Judge

Distribution:

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