

CCASE:
SOL (MSHA) V. CLAY COAL
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

CLAY KITTANNING COAL CO.,
RESPONDENT

Civil Penalty Proceedings

Docket No. WEVA 81-397
A/O No. 46-05653-03009

Docket No. WEVA 81-433
A/O No. 46-05653-03010V

Gail Mine

DECISION AND ORDER

These matters came on for an evidentiary hearing that, with the consent of the parties, was converted to a settlement conference in Beckley, West Virginia on April 21, 1982.

The operator, who appeared pro se, initially took the position that he was not responsible for the violations charged because he was the lessee of the mineral rights and had contracted with a third party to extract the coal. There was no dispute about the fact that the contract miner, who had never been identified as the operator, had committed the violations. Nor was there any dispute about the fact that Mr. Ray, the lessee-operator, had worked closely with his contract miner. Mr. Ray was understandably chagrined over his claim that he was being held monetarily responsible for violations committed by a contract miner and that the contractor had never paid the royalty due under the contract. On the other hand, Mr. Ray conceded he was responsible for employing the contractor and that the contractor was not a safe operator.

I told Mr. Ray that under the statute as both originally written and amended a lessee-operator is vicariously liable for violations committed by his contractors. Mitigating circumstances may be shown by such operators but under the circumstances presented I could see no basis for diminishing Mr. Ray's responsibility. (FOOTNOTE 1)

