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SOL (MSHA) V. HELEN 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

Civil Penalty Proceeding

Docket No. PITT 79-11-P
A.C. No. 36-00926-03001

v.

Homer City Mine

HELEN MINING COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

ORDER TO PAY

In accordance with the decision of the Court of Appeals for the District of Columbia Circuit the Commission remanded this matter. 4 FMSHRC 880 (1982). On August 11, 1982, the case was continued since the operator had filed a petition of certiorari with the Supreme Court. The Supreme Court now has denied the petition for certiorari. 74 L.Ed.2d 189 (1982).

In accordance with the decision of the Court of Appeals it must be held that a violation occurred. The only issue remaining for decision is the amount of penalty to be assessed. On January 27, 1983, the operator filed a motion to approve a settlement. The operator's motion sets forth the circumstances involved including the test case nature of this proceeding. A penalty of \$20 was recommended. On January 31, 1983, the Solicitor filed a letter in agreement with the operator's motion.

After a review of the matter and especially in light of the unusual nature of this case which was brought to obtain a definitive interpretation of Section 103(f) of the Act, I conclude the recommended settlement should be approved.

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ORDER

The operator is ORDERED to pay \$20 within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge