

CCASE:  
TURRIS COAL V. SOL (MSHA)  
DDATE:  
19860115  
TTEXT:

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

TURRIS COAL COMPANY,  
CONTESTANT

v.

CONTEST PROCEEDINGS

Docket No. LAKE 85-12-R  
Citation No. 2323276; 10/16/84

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

Docket No. LAKE 85-31-R  
Citation No. 2491962; 12/12/84

Docket No. LAKE 85-32-R  
Citation No. 2491965; 12/12/84

Docket No. LAKE 85-35-R  
Citation No. 2491973; 12/18/84

Elkhart Mine

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

v.

CIVIL PENALTY PROCEEDINGS

Docket No. LAKE 85-53  
A.C. No. 11-02664-03547

Docket No. LAKE 85-68  
A.C. No. 11-02664-03551

TURRIS COAL COMPANY,  
RESPONDENT

Docket No. LAKE 85-70  
A.C. No. 11-02664-03552

Elkhart Mine

ORDER DENYING MOTION TO APPROVE SETTLEMENT

On January 13, 1986, Petitioner filed a motion to dismiss these proceedings and approve a settlement reached between the parties.

Four alleged violations are involved. The first is included in Order 2323276 which charges a violation of 30 C.F.R. 75.200 because of an alleged inadequately supported roof. The violation was originally assessed at \$900, and the parties propose to settle for \$750. The motion states that the violation resulted from a high degree of negligence and that "if a roof fall would have occurred two miners could have been killed." The order indicates that the occurrence

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of the event against which the cited standard is directed was highly likely. The motion states that the proposed assessment is reduced because of an amendment to the order which presumably (this is not clear) reduces the area of unsupported roof. In my judgment this is not a sufficient reason for the proposed reduction.

The two other roof control violations contained in Docket No. LAKE 85Å70, the parties propose to settle for the amount originally assessed.

Order 2491973 (issued under section 104(d)(2)) was originally assessed at \$850. It charged a violation of 30 C.F.R.

75.503 because of a permissibility violation on a batter powered scoop. The motion states that the violation resulted from a high degree of negligence and that one miner could have been killed from operating equipment not in permissible condition. The motion further states that Petitioner has agreed to amend the citation from a 104(d)(2) order to a 104(a) citation and that Respondent "did not intentionally operate its machine in violation of the Act ..." In my judgment, the motion does not show justification for the reduction in the penalty, based on the criteria in section 110(i) of the Act.

Therefore, the motion to dismiss and approve settlement is DENIED. The matter will be rescheduled for hearing by a subsequent notice.

James A. Broderick  
Administrative Law Judge