

CCASE:  
SOL (MSHA) V. OTIS ELEVATOR  
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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

CIVIL PENALTY PROCEEDING  
  
Docket No. WEVA 85-278  
A.C. No. 46-01433-03501 B70

v.

Loveridge Mine

OTIS ELEVATOR COMPANY,  
RESPONDENT

ORDER APPROVING SETTLEMENT AGREEMENT

Appearances: Howard K. Agran, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia, Pennsylvania,  
for Petitioner; W. Scott Railton, Esq.,  
Reed, Smith, Shaw & McClay, Washington, D.C.,  
for Respondent.

Before: Judge Broderick

When the above case was called for hearing in Pittsburgh,  
Pennsylvania on March 18, 1986, Petitioner made a motion on the  
record for approval of a settlement agreement reached by the  
parties to this proceeding.

The case involves a single citation, charging a violation of  
30 C.F.R. 75.511 because an unqualified person was performing  
electrical repairs on an automatic elevator. MSHA contended that  
the violation contributed to an injury, because the repairman did  
not notify mine management that he was going to work on the  
elevator, and a miner was injured while attempting to board it.  
The violation was originally assessed at \$500.

In his motion counsel states that the repairman in question  
had not taken the West Virginia examination for the mine  
electrical work, but the government does not contend that he is  
not technically qualified to do electrical repairs. The  
government is not able to state that the violation contributed to  
the injury. The government does not allege that the work  
performed by the repairman violated any mandatory safety  
standard. Respondent is a large company, has a history of one  
prior violation, and abated the instant violation promptly, by  
giving MSHA a written statement that the mine operator would  
furnish a "qualified person" to accompany Respondent's mechanics  
when electrical work is performed on mine elevators. The parties  
agree to settle the case by payment of a penalty of \$375.

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I have considered the motion in the light of the criteria in section 110(i) of the Act, and conclude that it should be approved.

Accordingly, the settlement is APPROVED, and Respondent is ORDERED to pay the sum of \$375 within 30 days of the date of this order.

James A. Broderick  
Administrative Law Judge