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SOL (MSHA) V. EMKO CORP.  
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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. WEST 87-42-M  
A.C. No. 42-00149-05502 P9N

v.

Kennecott Mine

EMKO CORPORATION,  
RESPONDENT

DISAPPROVAL OF SETTLEMENT ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

The parties have submitted a joint motion to withdraw their pleadings in the above-captioned case which involves four violations.

The Solicitor has moved to vacate one of the citations and the operator has agreed to pay the original assessments of \$300 each for two others. These matters appear to be in order.

The difficulty is with the fourth order. Order No. 2644520A cites a violation of 30 C.F.R. 56.9040(a) because two miners had been riding in the front bucket of a Case 580D loader and back-hoe. This penalty was originally assessed at \$300 and the proposed settlement is for \$150. The parties represent that the 50% reduction in the originally assessed amount is justified because "negligence is less than was originally assessed." No reasons are given to support this representation. I have therefore, no basis upon which to determine whether the settlement recommendation is justified.

The parties are reminded that the Commission and its Judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. One of the principal reasons for the enactment of section 110(k) was the unwarranted lowering of penalties during the settlement process under the 1969 Act. S.Rep. No. 95-181, 95th Cong., 1st Sess. 41-5 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978).

Penalty proceedings before the Commission are de novo. The appropriate amount of penalty must be determined in accordance with the six criteria set forth in section 110(i) of the Act. *Sellersburg Stone v. Federal Mine Safety and Health Review Commission*, 736 F.2d 1147 (7th Cir.1984).

The Commission most recently has reaffirmed the authority of the Judges to review and, where necessary, disapprove settlements, stating:

\* \* \* . Settlement of contested issues and Commission oversight of that process are integral parts of dispute resolution under the Mine Act. 30 U.S.C. 820(k); see *Pontiki Coal Corp.*, 8 FMSHRC 668, 674 (May 1986). The Commission has held repeatedly that if a judge disagrees with a penalty proposed in a settlement he is free to reject the settlement and direct the matter for hearing. See, e.g., *Knox County Stone Co.*, 3 FMSHRC 2478, 2480-81 (November 1981). A judge's oversight of the settlement process "is an adjudicative function that necessarily involves wide discretion." *Knox County*, 3 FMSHRC at 2479.

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*Secretary of Labor v. Wilmot Mining Company*, Docket Number LAKE 85-47, slip op. at 3, 8 FMSHRC ---- at 6D (April 30, 1987).

Most Solicitors routinely submit satisfactory settlement motions, while a few do not.

In light of the foregoing, it is ORDERED that within 15 days from the date of this order the parties submit additional information to support their settlement recommendation. Otherwise the case will be set for hearing forthwith.

Paul Merlin  
Chief Administrative Law Judge