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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. LAKE 87-76-M  
A.C. No. 11-02707-05510

v.

Elmhurst Underground No. 1

ELMHURST-CHICAGO STONE COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Broderick

The Solicitor has filed a motion to approve a settlement of the one violation involved in this case. The original assessment was \$7,000 and the proposed settlement is for \$4,500.

The Solicitor's motion discusses the violation in light of the six statutory criteria set forth in section 110(i) of the Act. The subject citation was issued for a violation of 30 C.F.R.

57.3022 because loose ground was not taken down or supported before other work was done in drift EE east. An MSHA investigation concluded that this violation caused a fatal fall-of-face accident when two miners entered the area to survey for the center line to be used by the drillers to establish a drilling pattern. A slab of rock, 12 feet by 7 feet and 30 to 36 inches thick, fell from the face and struck both miners. One miner received fatal injuries, and the other was seriously injured. The Solicitor represents that a reduction from the original assessment is warranted because the cited area had been marked off following a blast, but the scaling crew had not barred the loose material. Thus, the miners should not have entered the area, especially in light of the operator's rule against working in unscaled areas and the fact that the cited area was marked. I accept the foregoing representations and approve the recommended settlement.

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Accordingly, the motion to approve settlement is GRANTED and the operator is ORDERED TO PAY \$4,500 within 30 days from the date of this decision.

James A. Broderick  
Acting Chief Administrative Law Judge