

CCASE:  
SOL V. KENTUCKY MOUNTAIN RESERVE  
DDATE:  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
FALLS CHURCH, VA  
January 12, 1989

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	CIVIL PENALTY PROCEEDING  Docket No. KENT 88-157 A.C. No. 15-16154-03505  Mine No. 1
v.	
KENTUCKY MOUNTAIN RESERVE, INC.,  Respondent	

ORDER DENYING PROPOSED SETTLEMENT  
NOTICE OF HEARING

On July 25, 1988, the Secretary of Labor filed a petition for assessment of a civil penalty before this Commission. On January 3, 1989, the Secretary submitted a proposed settlement in which Respondent agreed to pay the proposed penalties of \$10,000 in full. Included as part of that proposal however was the following stipulation:

Nothing contained herein shall be deemed an admission by Respondent of a violation of the Federal Mine Safety and Health Act or any regulation or standard issued pursuant thereto in any action (other than an action or proceeding under the Federal Mine Safety and Health Act where the official record of the operator under MSHA enforcement may be relevant).

No party other than the parties to this agreement may use this settlement agreement for any purpose. Without restricting the generality of the foregoing, it is specifically understood that respondent enters into this stipulation in reliance on its sole and exclusive purpose being to expeditiously and inexpensively resolve a single item of administrative litigation without affecting in any way any other cause, claim or litigation, of either a private or governmental nature, that may now be pending or that may be initiated in the future. Moreover, it is not intended that this stipulation or the settlement resulting

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therefrom establish a standard of care or adjudge compliance therewith. By this settlement, the parties do not intend to be collaterally estopped from raising any issue or defense in any civil proceeding.

I find this disclaimer to be so contradictory and ambiguous as to be in violation of the principles set forth by this Commission in Amax Lead Company of Missouri, 4 FMSHRC 975 (1982).

Accordingly the Motion to Approve Settlement is denied and this case is rescheduled for hearings to commence at 8:30 a.m., on February 1, 1989 in Huntington, West Virginia.

Gary Melick  
Administrative Law Judge

Distribution:

G. Elaine Smith, Esq., U.S. Department of Labor, Office of the Solicitor,  
2002 Richard Jones Road, Suite B-201, Nashville, TN 37215 (Certified Mail)

Michael T. Heenan, Esq., 1110 Vermont Ave., N.W., Suite 400, Washington,  
D.C. 20005-3593 (Certified Mail)