

CCASE:  
SOL (MSHA) V. BUCK MOUNTAIN COAL  
DDATE:  
19941128  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 94-104
Petitioner	:	A.C. No. 36 02053 03548
v.	:	
	:	Docket No. PENN 94-63
BUCK MOUNTAIN COAL COMPANY,	:	A.C. No. 36-02053-03544
and RICHARD KOCHER, SR.,	:	
OSCAR BLOUGH, JR., DAVID	:	Docket No. PENN 94-64
ZIMMERMAN, PAUL ZIMMERMAN,	:	A.C. No. 36-02053-03545
and HAROLD SCHNOKE, as	:	
PARTNERS,	:	Docket No. PENN 94-65
Respondents	:	A.C. NO. 36-02053-03546
	:	
	:	Docket No. PENN 94-66
	:	A.C. No. 36-02053-03547
	:	
	:	Buck Mountain Slope

PARTIAL DECISION  
AND  
NOTICE OF HEARING

Appearances: Gayle Green, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania, for the Petitioner;  
David Zimmerman, Paul Zimmerman, Harold Schnoke,  
Richard D. Kocher, Sr., and Oscar Blough, Jr.,  
pro se, partners Buck Mountain Coal Company,  
Pine Grove, Pennsylvania, for the Respondent.

Before: Judge Feldman

These proceedings concern numerous citations issued to Buck Mountain Coal Company (Buck Mountain) during the period September 1992 through July 1993. Buck Mountain Coal Company is a partnership.

Pursuant to a Notice of Hearing issued on October 17, 1994, a preliminary hearing in these matters was conducted on October 25, 1994, in Harrisburg, Pennsylvania. The Notice of Hearing limited the issues to be addressed at the preliminary hearing to whether the named partners in this proceeding are jointly or severally liable for any/or all of the citations in issue, and, if so, the financial ability of each partner to pay the proposed penalties. The Notice of Hearing also noted that the court would entertain any jurisdictional objections raised by any party.

At the preliminary hearing, Richard Kocher moved to dismiss for lack of jurisdiction based on his assertion that his partnership's mining activities did not affect interstate commerce. At the hearing, the Secretary called an owner of the Pine Creek Coal Company (Pine Creek) who purchases the coal extracted by Buck Mountain Coal Company. Pine Creek mixes the coal obtained from Buck Creek with coal from other suppliers. Pine Creek sells the coal to numerous customers including power utility companies and customers located in Maryland and New Hampshire. The coal is shipped over interstate highways. Kocher's motion to dismiss was denied on the record as it is evident that Buck Mountain's coal extraction affects interstate commerce as contemplated by section 4 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 803. See Jerry Ike Harless Towing, Inc., 16 FMSHRC 683, 686-687 (April 1994).

With respect to the liability question, the evidence reflects that David Zimmerman, Paul Zimmerman and Harold Schnoke were general partners of Buck Mountain Coal Company since April 1986. On April 10, 1986, partners D. Zimmerman, P. Zimmerman and Schnoke leased the right to extract anthracite coal from the Buck Mountain Slope from the G.M.P. Land Company, Inc., in return for a payment of \$7.00 per net ton of coal removed. (P. Ex. 3). A Legal Identity Report completed May 5, 1986, by Paul Zimmerman lists the partners of Buck Mountain Coal Company as David Zimmerman, Harold Schnook (sic) and Paul Zimmerman.

On April 14, 1993, the Zimmermans and Schnoke assigned their mineral rights under the lease with the successor of the G.M.P. Land Company to Richard Kocher and Oscar Blough, Jr. (P. Ex. 4). Consequently, the Legal Identity Report for Buck Mountain Coal  
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1. Kocher was advised that the period for appealing the denial of his jurisdictional objection would not begin until a final decision is issued in this matter.

2. David Zimmerman appeared on behalf of his father Paul Zimmerman.

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Company was amended on April 14, 1993, to reflect the partners as Oscar Blough, Jr., and Richard Kocher, Sr.

In view of the above, it is apparent that D. Zimmerman, P. Zimmerman and Schnoke are jointly and severally liable for all citations issued to Buck Mountain on or before April 13, 1993. Similarly, Kocher and Blough are jointly and severally liable for all citations issued to Buck Mountain after April 13, 1993. I am reserving a decision on whether the Zimmermans and Schnoke are also jointly and severally liable for citations issued to Buck Mountain after April 13, 1993. This determination will be based on whether these individuals remained substantially involved with mining operational decisions and whether they retained any control over the extraction process. See, e.g., W-P Coal Company, 16 FMSHRC 1407, 1410-1411 (July 1994).

Finally, the parties requested that I defer a decision on their financial ability to pay the proposed civil penalties in order to enable them to obtain and submit additional pertinent documentation.

The Notice of Hearing scheduling the preliminary hearing noted that a hearing on the merits of the citations in issue would be held within 60 days. Accordingly, further proceedings in these matters are scheduled for 9:00 a.m. on Tuesday, January 24, 1995, in Harrisburg, Pennsylvania. The hearing location will be specified in a subsequent order. The parties are advised that any motions to approve settlement by any partner of any/or all of these matters must be filed on or before Tuesday, January 10, 1995. Any motions filed after that date will not be considered and the parties will be required to proceed to trial. The parties are further advised that any party who fails to appear at the hearing may subject himself to the entry of a default judgment for the entire civil penalty proposed by the Secretary.

Jerold Feldman  
Administrative Law Judge

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