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July 27, 2017

DANIEL B. LOWE and MATTHEW A. VARADY, Complainants v. JERRITT CANYON GOLD, LLC, ET AL., Respondent	INTERFERENCE PROCEEDING Docket No. WEST 2017-0331-DM MSHA No: WE-MD 14-04, WE-MD 14-03 Jerritt Canyon Mill Mine ID: 26-01621

DECISION GRANTING MOTIONS TO DISMISS
ORDER OF DISMISSAL

Before: Judge Manning

This case[1] is before me upon a complaint of interference filed under Section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended. 30 U.S.C. § 801, *et seq.* (the "Mine Act"). Because this case is related to other cases filed by Complainants, a brief history of the previous litigation is necessary to put the present case in context.

I. BACKGROUND

Daniel B. Lowe and Matthew A. Varady were separately terminated from their employment by Veris Gold USA, LLC, in November 2013 ("Veris Gold"). The Secretary of Labor, acting through the Mine Safety and Health Administration ("MSHA") determined that Veris Gold had not violated section 105(c) of the Mine Act in either instance. As a consequence, Lowe and Varady brought separate discrimination cases before the Commission under section 105(c)(3) of the Mine Act which were assigned Docket Nos. WEST 2014-307-DM in the case of Varady and WEST 2014-614-DM in the case of Lowe. Commission Administrative Law Judge William B. Moran was assigned the cases and held separate hearings in the two cases in June 2015. On September 2, 2015, Judge Moran issued a decision finding that Veris Gold discriminated against Varady, 37 FMSHRC 2037, and on October 15, 2015, Judge Moran issued a decision finding that Veris Gold discriminated against Lowe, 37 FMSHRC 2337.

[1] When this case was docketed by the Commission, the respondent was listed as Veris Gold USA, LLC. Veris Gold no longer exists and Complainants did not include Veris Gold in the complaint. Instead, the interference complaint was in the form of a letter and listed Jerritt Canyon Gold, LLC and several other entities, as discussed below.

A. Veris Gold Bankruptcy Filing

In the meantime, on June 9, 2014, Veris Gold filed a petition in bankruptcy in Canada and with the United States Bankruptcy Court for the District of Nevada ("Bankruptcy Court").[2] An automatic stay against continuing any judicial, administrative or other actions against the debtor was entered by the Bankruptcy Court. About a year later, on June 4, 2015, the Bankruptcy Court issued an order approving the sale of the substantial assets[3] of Veris Gold to Jerritt Canyon Gold, LLC, ("JCG") pursuant to section 363 of the Bankruptcy Code. 11 U.S.C. § 363. Under the terms of the purchase, as approved by the Bankruptcy Court, JCG could not be held liable for claims based on any successor or transferee liability, or any enforcement action or enforcement history, including employment and pension claims.

Soon after the Bankruptcy Court approved this asset sale, Lowe and Varady filed a motion asking that the sale be stayed. On June 19, 2015, the Bankruptcy Court denied this motion. Lowe and Varady did not appeal the Bankruptcy Court's order. The sale of the assets of Veris Gold to JCG closed on June 14, 2015. The sale of assets generated minimal proceeds. Administrative expenses were paid but none of the secured or general unsecured creditors received any proceeds. On September 2, 2015, after notice and hearing, the Bankruptcy Court entered an order granting the motion to close the bankruptcy case.

In his October 15, 2015 decision finding that Veris Gold discriminated against Lowe, Judge Moran asked the Commission for direction "about how to proceed in this matter of first impression" given the order of the Bankruptcy Court and that the purchaser of the assets was not a party in the discrimination case. 37 FMSHRC at 2348. On January 12, 2016, the Commission issued an order finding that it lacked jurisdiction to provide direction concerning the issues raised by the judge. 38 FMSHRC 25.

In March 2016, Judge Moran granted Varady's and Lowe's motion to amend their respective discrimination complaints to include JCG as a party but he did not determine whether JCG could be held liable as a successor to Veris Gold. 38 FMSHRC 513, 529 (Varady); 38 FMSHRC 565, 581 (Lowe). JCG filed petitions for interlocutory review in both cases with Judge Moran on this issue, which he denied. 38 FMSHRC 900 (Apr. 2016) (Varady); 38 FMSHRC 1559 (June 2016) (Lowe). JCG then filed a petition for interlocutory review with the Commission, which was denied with respect to both cases in July 2016.

B. Hearing and Orders Entered by Bankruptcy Court in August and September 2016

Judge Moran issued an order on July 27, 2016 discussing principles of successorship and granted Lowe's request to conduct discovery against JCG with respect to successorship issues. 38 FMSHRC 1888. On August 4, 2016, JCG filed motions with the Bankruptcy Court to reopen

[2] Veris Gold Corporation filed for bankruptcy in Canada. Veris Gold USA LLC was a subsidiary of Veris Gold Corporation, a Canadian entity with headquarters in Vancouver, British Columbia. I have not discussed the Canadian proceedings in this decision. In many instances the Bankruptcy Court's orders simply followed the lead of the Canadian bankruptcy court.

[3] The vast majority of Veris Gold's assets, including the Jerritt Canyon Mill, were sold to JCG.

the subject bankruptcy case to enforce the previously approved sale order, to enjoin Complainants from pursuing claims against JCG, and for sanctions against Lowe and Varady. On August 11, 2016, the Bankruptcy Court held a hearing on the Motion to Reopen and Motion to Enforce at which Varady and Lowe were present. During the August 11, 2016, hearing on the motion, Bankruptcy Judge Gregg W. Zive reiterated that there was no successor liability when JCG purchased the assets of Veris Gold. The judge questioned the need for Complainants to conduct discovery on successorship issues in Judge Moran's cases because JCG is not a successor to Veris Gold due to the fact that the assets were sold under section 363 of the Bankruptcy Code. He advised Complainants that they could appeal his decision that JCG is not a successor to the Court of Appeals. The judge further told Complainants that, in any event, neither the secured nor unsecured creditors of Veris Gold received any payment from the estate. Finally, he enjoined Complainants from proceeding any further in their attempts to obtain relief from JCG as an alleged successor. He did not grant JCG's request for sanctions, but he "put Mr. Lowe and Mr. Varady on notice that if they violate [his] order, [he]will enforce it with monetary sanctions." (Bankruptcy Tr. 60, quoted at 38 FMSHRC 2109, 2715).

On September 2, 2016, the Bankruptcy Court entered a written order granting JCG's motions but denying that part of the motions asking for sanctions, without prejudice. The order stated that Complainants were prohibited from pursuing their claims against JCG, Whitebox, or any other persons or entities related to or associated with JCG or Whitebox in any other Court or proceeding, "including any administrative proceedings before the [Commission] ALJ or any other proceeding or tribunal." Bankruptcy Court Order dated September 2, 2016 at 26 (Copy of Court's Order was entered into the official record in the present case). The Bankruptcy Court order further stated that the "Sale Order enjoins Creditors Lowe and Varady from pursuing their claims against the Purchaser [JCG] or any persons or entities related to or associated with Purchaser for successor liability in any other court or proceeding. The Creditors actions seeking to assert successor liability on Purchaser and others, . . . are an impermissible collateral attack on the Sale Order, and are prohibited by the injunction contained therein." *Id.* at 25. Finally, in denying the motion for sanctions, the order stated that "Creditors Lowe and Varady are hereby placed on notice that if they violate the Court's Order, the Court may enforce the Order with monetary sanctions. The Bankruptcy Case will remain open to ensure that the Creditors comply with the Court's Orders." *Id.* at 26.

C. Subsequent Proceedings Before the Commission

On October 25, 2016, Judge Moran entered orders dismissing the discrimination cases brought by Lowe, 38 FMSHRC 2709, and Varady, 38 FMSHRC 2723, based on the holding of the Bankruptcy Court. Lowe and Varady appealed these dismissals to the Commission. By order dated December 16, 2016, the Commission noted that Respondents had not filed a motion to dismiss, determined that Judge Moran's dismissal orders were premature, and remanded the cases to the Commission's chief judge for reassignment to a different judge. 38 FMSHRC 2899. The cases were reassigned to Commission Judge David Simonton.

Before Judge Simonton, JCG moved to dismiss the cases because the sale order approved by the Bankruptcy Court permitted it to purchase the Jerritt Canyon Mill free and clear of liens, claims, and interests, specifically including employment law claims, and because the sale order

provided that JCG would not be liable as a successor to Veris Gold. Complainants argued that the Mine Act authorizes them to pursue their discrimination claims against JCG as a successor in interest to Veris Gold and they sought to add various other entities as additional successors.[4] At the order of Judge Simonton, Complainants, JCG, alleged affiliate Whitebox 2014-1 Ltd., and the Solicitor filed briefs addressing his jurisdiction and his authority to enforce the Complainants' discrimination claims against JCG and the additional entities.

On March 20, 2017, Judge Simonton issued an order granting JCG's motion to dismiss denying Complainants' motion to add additional parties as successors to Veris Gold. 39 FMSHRC 781. He held that "allowing the Complainants to pursue successorship liability against JCG in violation of a free and clear sale would subvert the policies outlined in the Bankruptcy Code and affirmed in *Nathanson* [*v. National Labor Relations Board*, 344 U.S. 25 (1952)]." 39 FMSHRC at 787. He went on to state the there is "no support for the claim that the Commission can override or ignore the Bankruptcy Court's interpretation and enforcement of the Sale Order to allow successorship liability." *Id.* Judge Simonton's order includes a thorough analysis of issues surrounding the interplay between the orders of the Bankruptcy Court and the Commission's authority under the facts of this case. I hereby incorporate his findings and conclusions set forth in that order into this decision by reference.

Complainants filed a petition for discretionary review of Judge Simonton's order with the Commission. The Commission denied review on May 8, 2017. Complainants filed an appeal of Judge Simonton's order of dismissal, as made final by the Commission's denial of review, with the United States Court of Appeals for the 9th Circuit on or about July 12, 2017. (Lowe et al. v. FMSHRC, Case No. 17-72019).

II. INTERFERENCE COMPLAINT

On or before March 1, 2017, Lowe and Varady filed an interference complaint with the Department of Labor through MSHA's Western Metal/Nonmetal District Office. In response, Diane Watson, Supervisory Special Investigator for the Western Metal/Nonmetal District, stated that the complaint "does not meet the criteria under 105c of the Act for filing of a new discrimination complaint and none will be forthcoming from the Agency." (Email dated March 1 from Watson to Lowe). She further stated that the Complainants have "not been employed at the mine for at least two years; this matter has been in litigation since that time and MSHA has no authority to act under section 105c." *Id.* I conclude that the Secretary of Labor determined that the provisions of section 105(c) were not violated and, as a consequence, Lowe and Varady had the right to file a complaint with the Commission under section 105(c)(3) of the Mine Act.

[4] These additional entities included Whitebox Asset Management, Whitebox Advisors LLC, Eric Sprott, and Sprott Mining Inc. In this case and in the previous discrimination cases brought by Lowe and Varady, various business entities have been referred to as "Whitebox," "WBox," "WBox 2014-1" and "Whitebox Entities" (collectively "Whitebox" in this decision). According to the Bankruptcy Court, WBox 2014-1 Ltd., was the Debtor in Possession during Veris Gold's bankruptcy and registered the entity that ultimately became JCG.

On March 6, 2017, Lowe and Varady filed this interference complaint with the Commission. The complaint is in the form of a letter that names within the body of the letter the following entities that Complainants believe interfered with their Mine Act rights: JCG, Whitebox 2014-1 Ltd and any other associated entity or persons associated with Whitebox, attorneys Mark Kaster, Annette Jarvis, Cathy Reece,[5] Amy Tirre, and Brad Mantel. (Complaint at 2). JCG and WhiteBox filed answers to the complaint and this case was assigned to me by the Commission's chief judge on April 5, 2017.

The interference complaint states that Complainants "first experienced this conspiracy of interference on September 2, 2016 when Jerritt Canyon Gold USA, Whitebox 2014-1 Ltd., and Eric Sprott, dba Jerritt Canyon Gold USA . . . through its attorneys Mark Kaster, Annette Jarvis of the law firm Dorsey & Witney LLP, Cathy Reece of the law firm Fennemore Craig, PC and Amy N. Tirre of the law offices of Amy N. Tirre, participated in filing an action with the United States Bankruptcy Court whereupon they attempted to have monetary sanctions levied against Mr. Lowe and Mr. Varady for exercising their rights under the Mining Act of 1977." Complaint 1-2. Complainants maintain that their discrimination claims fall under the jurisdiction of the Commission and that the Bankruptcy Court has no jurisdiction over them as it pertains to their actions before the Commission.

Their second allegation is that on February 27, 2017, "the conspiracy continued when attorneys Kaster and Jarvis emailed a letter to Mr. Lowe and Mr. Varady, a letter we recognize as an act of interference," that was intimidating and threatening to them. *Id.* at 2. "The letter threatens Jerritt Canyon Gold USA LLC's intent to seek monetary sanctions through the Bankruptcy Court against Mr. Lowe and Mr. Varady for exercising their rights under the Mining Act." *Id.* The letters state that Complainants should take "immediate steps to dismiss our FMSHRC cases[.]" *Id.*

These letters attached to the interference complaint, written on the stationary of the law firm of Dorsey & Whitney, LLP, state that they serve as notice that JCG "preserves and intends to take actions under the rights allowed by the United States Bankruptcy Court of the District of Nevada[.]" The letters reference the Bankruptcy Court's order of September 2, 2016 and state that the order enjoins Lowe and Varady from pursuing claims against JCG and Whitebox. The letters further note that Lowe and Varady "willfully violated the Bankruptcy Court's explicit orders" when they filed a petition for discretionary review of Judge Moran's dismissal of their discrimination cases. The letters conclude by stating that "JCG provides this notice and requests that you take immediate steps to dismiss your FMSHRC case against JCG or any other persons or entities related or associated with JCG."

Complainants state they are seeking a "Cease and Desist Order" so that they may "continue to exercise [their] rights under the Act" and ask that a severe penalty be assessed against "Jerritt Canyon Gold LLC, Whitebox 2014-1 LTD and any other associated entity or person associated with 'Whitebox' as well as against attorneys Kaster, Jarvis, Reece and Tirre as well as Solicitor of Labor Brad Mantel as we believe that his actions in these matters are

[5] Complainants misspelled Ms. Reece's name throughout the complaint. I have used the correct spelling in this decision.

complicit and that he too has taken and/or supported the actions of Kaster, Jarvis, Reece and Tirre and in doing so has interfered with Mr. Lowe's and Mr. Varady's rights under the Act." *Id.*

Summary of the Parties' Arguments.

JCG argues that the interference complaint should be dismissed because it "fails to state a claim upon which relief can be granted." JCG Mot. 10. Specifically, JCG asserts that Complainants have never been employed by JCG and, while the Mine Act protects against interference affecting statutory rights of miners, representatives of miners, or applicants for employment at a mine, Complainants failed to plead facts to demonstrate that they are part of one of those protected classes. *Id.* at 13. Accordingly, Complainants do not qualify for relief under section 105(c) of the Act. *Id.* at 12.

JCG further argues that the underlying discrimination claims were against Veris Gold, not JCG, and the actions taken by JCG to defend itself and assert rights afforded under the Bankruptcy Court's orders cannot form the basis of Complainants' interference claims. *Id.* at 11. The Bankruptcy Court's final order enforcing JCG's right to be "free and clear" of claims of successor liability with respect to its purchase of certain Veris Gold assets establishes that JCG had a legitimate and substantial reason to defend itself against Complainants' successor liability claims. *Id.* at 15.

Finally, JCG argues that the complaint is procedurally defective because it was not filed within 60 days of the alleged interference and it undermines the "valid and binding final orders of the FMSHRC and the Bankruptcy Court" which were not appealed. *Id.* at 11 n. 7, 16.

Whitebox[6] raises essentially the same arguments made by JCG and also asserts that it was not a party to the discrimination proceeding and should not be a party to this proceeding since it "did not purchase and does not own the assets of Veris Gold USA, Inc. or . . . Jerritt Canyon Gold, does not operate the Jerritt Canyon mill or mine, is not an employer of miners and is not a successor to Veris Gold USA, Inc." Whitebox Mot. 1-2. Moreover, it avers that the underlying discrimination complaints which form the basis of the interference claim were dismissed by Judge Simonton against any alleged successor and the motion to include Whitebox as a party to those proceedings was denied by Judge Simonton. Because the Commission denied the petition for review in those matters, "there is nothing to be interfered with and this interference case is moot and should be dismissed." *Id.* at 2. Finally, Whitebox argues that, with respect to the alleged interference via letters sent to Complainants, neither Whitebox nor its counsel sent those letters and, instead, were only copied on the correspondence. *Id.* at 3.

Complainants argue that the letters they received dated February 27, 2017 "represented a threat to the Complainants in an attempt to stop the Complainants from exercising their rights under the Act." Response to Motions to Dismiss at 2. The attorneys listed in their interference complaint all acted in concert to prevent them from exercising these rights and "they should be held accountable for their actions as well as the actions of their respective clients. *Id.* Complainants believe that the "the law is very plain and clear on this matter and [they] request

[6] I have not joined Whitebox as a party to this case. It entered a special, limited appearance for the sole purpose of responding to the interference complaint.

that this Court find all [entities listed in the complaint] guilty of interfering with the statutory rights of the miners and assess a heavy penalty against them[.]" *Id.* at 3. Finally, Complainants maintain that WBox 2014-1 Ltd. has a controlling interest in JCG as evidenced by information at Mine Data Retrieval System at MSHA's website. Information shown for the Jerritt Canyon Mill indicates that JCG is the operator and "WBox 2014-1; Eric Sprott" is the "Current Controller." As a consequence "Whitebox does in fact have an active interest and role in operating" the mine.

III. ANALYSIS

A. Summary of Commission Case law Concerning Interference Complaints.

Section 105(c) of the Act states, in pertinent part, that "[n]o person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against *or otherwise interfere with* the exercise of the statutory rights of any miner . . . because of the exercise by such miner ... on behalf of himself or others of any statutory right afforded by this [Act]."30 U.S.C. § 815(c)(1) (emphasis added). The language of the Mine Act and its legislative history make clear that section 105(c) protects miners against "not only the common forms of discrimination, such as discharge, suspension, demotion..., but also against the more subtle forms of interference, such as promises of benefits or threats of reprisals." S. Rep. 95-191, 95th Cong., 1st Sess. 36 (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 624 (1978)

The test for what constitutes interference under the Act is "not well-settled." *Michael Wilson et al. v. Armstrong Coal Co., Inc.*, 39 FMSHRC __, (May 9, 2017) (ALJ). In *UMWA obo Franks and Hoy v. Emerald Coal Resources, LP*, 36 FMSHRC 2088 (Aug. 2014), the Commission found that a violation of section 105(c) had occurred, with two Commissioners holding that the mine operator had interfered with miner's rights under the Act. There, the minority adopted a two prong test advocated by the Secretary that interference would occur if:

(1). a person's action can be reasonably viewed, from the perspective of members of the protected class and under the totality of the circumstances, as tending to interfere with the exercise of protected rights, and

(2). the person fails to justify the action with a legitimate and substantial reason whose importance outweighs the harm caused to the exercise of protected rights.

Id. at 2108. Several other Commission judges have applied this test. *See Scott D. McGlothlin v. Dominion Coal Corp.*, 37 FMSHRC 1256 (June 2015) (ALJ); *Sec'y of Labor obo Eric Greathouse et al. v. Ohio County Coal*, 37 FMSHRC 2892 (Dec. 2015) (ALJ). Although a majority of the Commission has not formally adopted the *Franks* test as the single test for interference, it has confirmed that it may be an appropriate test. *See Sec'y of Labor obo Thomas McGary et al. v. The Marshall County Coal Co., et al.*, 38 FMSHRC 2006 (Aug. 26, 2016). *See also Michael Wilson v FMSHRC et al.*, 2017 WL 3091569 (DC Cir. 2017).

B. Conclusions of Law

The issues to be resolved in this case are purely of a legal nature. There are no disputes of fact that would affect the deposition of the case. I recognize that dismissal of a case brought under section 105(c)(3) of the Mine Act for failure to a state claim is not favored. *Ribble v. T&M Development*, 22 FMSHRC 593 (May 2000); *Perry v. Phelps Dodge Morenci, Inc.*, 18 FMSHRC 1918, 1920 (Nov. 1996). I hold, however, that under the rather unusual circumstances presented in this case, dismissal is warranted. Holding a hearing on the issues raised by Complainants would not change the result and would potentially subject Complainants to sanctions by the Bankruptcy Court. It should be noted that after the Commission denied Complainants' petition for discretionary review of Judge Simonton's order of dismissal, I issued an order, dated May 15, 2017, urging the parties to settle the case and suggesting a framework for doing so. Mark Kaster, counsel for JCG, reported that he attempted to contact Lowe and Varady to discuss settlement but neither Complainant responded. Email dated 6/6/2017.

Based upon the record described above and established law, I find that this case should be dismissed for the following reasons.

(1). The listed attorneys must be dismissed from this case because an attorney cannot be held liable to third parties for acts committed within an attorney-client relationship absent a showing that the attorney exceeded his scope of representation. *See Hansaworld USA, Inc. v. Carpenter*, 662 Fed.Appx. 259 (5th Cir. 2016); *Brinkman v. Bank of America, N.A.*, 914 F. Supp. 2d 984 (D. Minn. 2012); *Iqbal v. Bank of America, N.A.*, 559 Fed. Appx. 363, 364 (5th Cir. 2014). There has been no showing that any of the named counsel exceeded the scope of his or her representation in this case. In addition, attorney Brad Mantel of the Office of the Solicitor cannot be held to have interfered with Complainant's Mine Act rights. The Secretary declined to prosecute the underlying discrimination cases that Complainants brought against Veris Gold and declined to bring the present case on Complainants' behalf.

(2). Lowe and Varady were not members of the protected class at the time of the alleged interference. Section 105(c) of Mine Act provides that no person shall discriminate against or interfere with the statutory rights of three specific groups of people. To be protected by this provision the individual must be: (1) a miner, (2) a representative of miners, or (3) an applicant for employment at a mine. The complaint alleges that the Respondents interfered with Complainants' statutory rights in various ways during the period between September 2, 2016 and February 27, 2017.[7] Complainants were not miners, representatives of miners or applicants for

[7] As stated above, Respondents maintain that the interference complaint was filed more than 60 days after Respondents filed motions in Bankruptcy Court on August 4, 2016 to reopen the case which cumulated in the August 11 hearing and September 2, 2016 order. They assert that, because section 105(c)(2) of the Mine Act requires complaints to be filed within 60 days after the alleged violation occurs, these events cannot form the basis of the interference complaint. Commission case law is clear, however, that the filing period is not jurisdictional. *Morgan v. Arch of Illinois*, 21 FMSHRC 1381 (Dec. 1999). Whether a complaint is untimely requires an evaluation of the particular facts involved. In this instance, I find that the two letters of February 27, 2017 relate back to the Bankruptcy Court's hearing and order in August-September 2016.

employment at the time that the alleged interference occurred. Indeed they never worked as miners for JCG and had not worked as miners for Veris Gold since November 2013. Although Judge Moran determined that Veris Gold discriminated against Varady and Lowe, as discussed above, Veris Gold is not a party to this proceeding and no longer existed at the time of the alleged interference. I find that neither Lowe nor Varady were members of the protected class at the time of the alleged interference.

(3). Assuming that Lowe and Varady are part of the protected class, I find that they failed to establish a case of interference. The first part of the interference test requires Complainants to show that respondents' actions, when viewed from the prospective of Complainants, tended to "interfere with the exercise of protected rights." I will assume that the letters sent to Lowe and Varady in March 2017 tended to interfere with their protected rights, when viewed from their prospective. Nevertheless, the Respondents justified their actions with "a legitimate and substantial reason whose importance outweighs" the alleged harm caused by their actions. JCG and its attorneys had a legal duty to abide by the rulings of the Bankruptcy Court. That court authorized the sale of assets of Veris Gold unencumbered by any of its legal and financial obligations. Complainants had two opportunities to appeal the rulings of the Bankruptcy Court on this issue, once when Judge Zive denied their request to stay the sale of Veris Gold's assets in June 2015 and again after Judge Zive's order of September 2, 2016 reaffirming the nature of the sale order. They did not file any appeals. JCG agreed to purchase assets of Veris Gold with the understanding that it was taking the property free and clear of all encumbrances, which were substantial, pursuant to section 363 of the Bankruptcy Code. Respondents, including their counsel, had the right and a legal obligation to defend the terms of the asset sale against collateral attack. This free and clear sale was ordered by the Bankruptcy Court. Although the letters threatened to take action, the letters also reminded Lowe and Varady that the Bankruptcy Court specifically enjoined them from continuing to pursue Mine Act remedies against JCG and the other entities. Complainants are, in reality, arguing against the provisions of the Bankruptcy Code that provide for this type of "free and clear of any interest" sale upon approval of the Bankruptcy Judge. 11 U.S.C. 363(f).

(4). Complainants' attempt to relate this interference complaint back to the discrimination cases they brought against Veris Gold cannot stand. Neither JCG nor Whitebox can be held liable for the previous discriminatory acts of Veris Gold because they are not successors to Veris Gold. The Bankruptcy Court authorized the asset sale free and clear of all liens, claims, and other interests. As stated above, Complainants did not seek to appeal the court's authorization of the "free and clear" sale. Judge Simonton correctly determined that the "interpretation and efficacy of the [Bankruptcy Court's] Sale Order is governed by the Bankruptcy Code and not the Mine Act." 39 FMSHRC at 787. In addition, Complainants' contention that Veris Gold filed for bankruptcy to avoid its obligations under the Mine Act is without merit. The record before the Bankruptcy Court shows that Veris Gold was facing insurmountable financial difficulties.[8] As a

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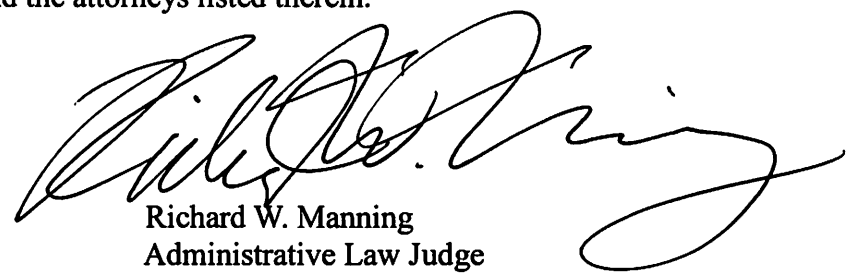
The delay was not serious and it did not prevent Respondents from defending their actions. I conclude that I have jurisdiction over all the events raised in the complaint of interference.

[8] As the Bankruptcy Court noted, none of the secured or unsecured creditors were paid. For example, Deutsche Bank was not paid any of its $90 million dollar claim for loans it had made

consequence, it is simply inconceivable that Veris Gold's bankruptcy filing and JCG's purchase of the assets "free and clear of any interest" were motivated in any part to avoid responsibility for Lowe's, Varady's or any other miner's discrimination claims under the Mine Act.

IV. ORDER

The motions to dismiss filed by Jerritt Canyon Gold, LLC and WBox 2014-1-Ltd. are **GRANTED** and this case is **DISMISSED** against all entities listed by Daniel B, Lowe and Matthew A. Varady in their complaint of interference including but not limited to Jerritt Canyon Gold, LLC, WBox 2014-1-Ltd, and the attorneys listed therein.



Richard W. Manning
Administrative Law Judge

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and mechanic's lien claims in the amount of $40 million dollars were unpaid. Bankruptcy Court Order dated September 2, 2016 at 7, 24.