FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
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September 19, 2018

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner,	:	CIVIL PENALTY PROCEEDING Docket No. LAKE 2011-0013 A.C. No. 11-02752-232235
v.	:	
THE AMERICAN COAL COMPANY, Respondent	:	Mine: New Era Mine

DECISION UPON REMAND

This matter involves Section 110(k) under the Mine Act, 30 U.S.C. § 820(k), which is a unique provision in federal remedial legislation. In issue is the settlement motion seeking an across-the-board reduction of 30 (thirty) percent for each of the 32 citations in the docket. The Commission, per its decision in this matter, concluded that the Court erred by applying an incorrect legal standard, and it therefore vacated the Court's denial of the amended settlement motion and remanded the matter for further proceedings consistent with its decision. *Sec'y of Labor, Mine Safety & Health Admin. (MSHA) v. The American Coal Company and United Mine Workers of America and United Steel, Paper and Forestry, Rubber Mfg., Energy, Allied Industrial and Service Workers Int'l Union*, 40 FMSHRC ___, 2018 WL 3830145 (Aug. 2, 2018) (hereinafter *AmCoal*).

In relevant part, the section involved, titled "Compromise, mitigation, and settlement of penalty," provides "[n]o proposed penalty which has been contested before the Commission under section 815(a) of this title shall be compromised, mitigated, or settled except with the approval of the Commission." 30 U.S.C. § 820(k).

The provision came into being with the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. and it was left undisturbed when the Mine Act was revised in 1990 and, more recently, when revised again by the Mine Improvement and New Emergency Response Act of 2006 ("MINER Act"), 30 U.S.C. § 876(b)(2)(G), 120 Stat. 493, 495-96. As the Commission has observed, Congress explicitly explained the purpose behind Section 110(k), noting that

The Senate Report recognized, in particular, the importance of an Administrative Law Judge's review of a proposed settlement of a penalty:

> In addition to the delay in assessing and collecting penalties, another factor which reduces the effectiveness of the civil penalty as an enforcement tool under the Coal Act is the compromising of the amounts of penalties actually paid. In its

> investigation of the penalty collection system under the Coal Act, the Committee learned that to a great extent the compromising of assessed penalties does not come under public scrutiny.... Even after a Petition for Civil Penalty Assessment has been filed by the Solicitor with the Office of Hearings and Appeals, settlement efforts between the operator and the Solicitor are not on the record, and a settlement need not be approved by the Administrative Law Judge.

S. Rep. No. 95-181, at 44 (1977), reprinted in Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 632 (1978) ("Legis. Hist."). *See also Sec'y of Labor, Mine Safety & Health Admin. v. Black Beauty Coal Company*, 34 FMSHRC 1856, 1861 (Aug. 2012). (hereinafter *Black Beauty*).

Congress intended that the settlement of a penalty be open to scrutiny in order to better serve the purpose of civil penalties, that is, to encourage operators' compliance with mandatory standards. The Senate report provided:

> The Committee strongly feels that the purpose of civil penalties, convincing operators to comply with the Act's requirements, is best served when the process by which these penalties are assessed and collected is carried out in public, where miners and their representatives, as well as the Congress and other interested parties, can fully observe the process.

Id. at 633.

In order to ensure penalties serve as an effective enforcement tool, prevent abuse, and preserve the public interest, Congress authorized the Commission to approve the settlement of civil penalties. The Senate report explains:

> To remedy this situation, section 111(l) [later codified as section 110(k)] provides that a penalty once proposed and contested before the Commission may not be compromised except with the approval of the Commission.... By imposing these requirements, the Committee intends to assure that the abuses involved in the unwarranted lowering of penalties as a result of off-the-record negotiations are avoided. *It is intended that the Commission and the Courts will assure that the public interest is adequately protected before approval of any reduction in penalties.*

Id. (emphasis added).

The Commission stated in this regard that "[t]o carry out this responsibility, the Judge must have information sufficient to establish that the penalty reduction does, in fact, protect the public interest."

Black Beauty at 1862.

Thus, Congress identified the problem, the purpose behind its inclusion of the provision and what it wanted to achieve going forward.

The Commission's Decision in *AmCoal*

The Court, per the Commission's directive, takes into account the Commission's decision in *AmCoal*, remanding the matter. To begin, the Commission held that the criteria in section 110(i) of the Mine Act are not to be applied "in an overly rigid manner."[1] *AmCoal* at 6, 2018 WL at *5. Further, the Commission held that it is not true "that the facts supporting the settlement 'must be tied to the six statutory criteria in [s]ection 110(i).'" *Id.* In this regard, the Commission stated that although it "has previously explained that standards for factual support for a penalty reduction in settlement may be found in section 110(i)," it has also expressed "that 'parties may submit facts supporting a settlement that fall outside of the section 110(i) factors but that support settlement.'" *Id.* at 7, 2018 WL at *5.

The Commission has stated that "factual information, supporting the penalty agreed to through settlement[,] must be submitted."[2] *Id.* at 2-3, 2018 WL at *1. However, it has expounded that "there may be considerations beyond the six statutory criteria of section 110(i) that are relevant to whether a settlement proposal is fair, reasonable, appropriate under the facts, and protects the public interest."[3] *Id* at 8, 2018 WL at *5. citations omitted.

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[1] **Approaching a perfect approval rate.** Underscoring that the penalty criteria in section 110(i) are not to be applied in an "overly rigid manner," the Commission noted that its settlement procedures "have resulted in a near perfect approval rate for motions to approve settlement. ... [i]n fact ... from fiscal year 2015 through approximately seven months of fiscal year 2018, 99.8% of proposed settlements have been approved." *AmCoal* at 6, 2018 WL at *4. The Commission's decision therefore deals the .2% involving settlement denials, which impairs achieving the near perfect approval rate. In addition to dealing with those .2% of settlement denials, the Commission also commented that "[i]t appears that some Commission Judges have a practice of seeking additional information from parties when evaluating a proposed settlement, and that this procedure works effectively." *Id.* However, the Commission announced that even under this procedure of seeking additional information, "[i]f a party believes that a Judge has overstepped his or her authority or otherwise committed an abuse of discretion in requesting such facts, a party may appeal that matter to the Commission on an interlocutory basis." *Id.*

[2] In a footnote, one Commissioner supported the idea that the Secretary should be required "to provide some basic justification based on *substantive fact* ... [to] make sure that [the Commission] ha[sn't] reverted to the state of affairs that existed prior to enactment of the current legislation in section 110(k)." *Id.* at 8 n.10, 2018 WL at *5 n.10 (emphasis added). The footnote must be read in context: that lone Commissioner did not dissent, nor define what constitutes a substantive fact, but rather joined in the unanimous decision remanding the matter "for further submissions and consideration consistent with [its] decision." *Id.* at 11, 2018 WL at *7.

[3] The phrase invoking that a settlement proposal be "fair, reasonable, appropriate under the facts, and protects the public interest," is obviously important to the Commission, as it is repeated 7 (seven) times in its decision. See *AmCoal* at pages, 2, 5 (twice), 6, 7, 9, and 10, 2018 WL *1, *3-7, in its eleven page decision.

While the Commission noted that both it and the Commission's "Judges 'must have sufficient information to carry out [the Congressionally delegated] responsibility'" under section 110(k), it expressed that this has been happening, as measured by the fact that the settlement procedures "have resulted in a near perfect approval rate for motions to approve settlement." *Id.* at 5-6, 2018 WL at *4 and n. 1 *supra*.

In its *AmCoal* decision, the Commission identified that such other considerations include "that the operator had agreed to accept all of the citations as written," endorsing the Secretary's statement that "the fact that the proposed settlement preserves all of the citations as written could assist the Secretary in future enforcement efforts against this operator by ensuring that the paper record reflects the Secretary's views regarding gravity and negligence stated in the citations." *Id.*, 2018 WL at *5. Thus, *AmCoal* instructs that it is proper to consider the "value of accepting the citations as written on future enforcement actions." *Id.*

Further, the Commission instructed that a judge is "to accord due consideration to the entirety of the proposed settlement package, including both its monetary and nonmonetary aspects." *Id.*, citation omitted.

In discussing what constitute "facts" for a settlement, the Commission stated "there is no requirement that facts supporting a proposed settlement must necessarily be submitted by the Secretary. *Facts* supporting a penalty reduction in a settlement motion may be provided by any party individually or by parties collectively." *Id.* at 8, 2018 WL at *6 (emphasis added). The only associated requirement with such "facts" is that "there is a certification by the filing party that any non-filing party has consented to the granting of the settlement motion."[4] *Id.*

Accordingly, the Commission rejected the view that a respondent's assertions of fact need to "present *legitimate* questions of fact," and further that the Secretary need not comment yea or nay to the facts asserted by a respondent. Instead, the Commission announced that "[f]acts alleged in a proposed settlement need not demonstrate a 'legitimate' disagreement that can only be resolved by a hearing. The Commission's Procedural Rules and standing precedent do not contain such a requirement." *Id.* at 9, 2018 WL at *6. Instead, the Commission will allow that the "parties may submit facts that reflect a mutual position *that the parties have agreed is acceptable to them*...." *Id.* (emphasis added).

As the Commission did not expressly set forth how one discerns that the submitted facts "reflect a mutual position that the parties have agreed is acceptable," the Court infers that the act of submitting the settlement reflects such a mutually acceptable position from the parties, else the submission could not be denominated a "settlement." That this is the case is reflected by the Commission's statement that it is "'[*i*]*nherent in the concept of settlement* [ ] that the parties find and agree upon a mutually acceptable position that resolves the dispute and obviates the need for further proceedings.'" *Id.*, citation omitted.

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[4] It would difficult to imagine a "settlement" motion where one party does not consent to the granting of the motion.

To meet Rule 31, it is enough, the Commission has stated, to "include a description of an issue on which the parties have agreed to disagree. The Commission does not require concessions from parties in settlement as long as the parties provide mutually acceptable facts that demonstrate the proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest." *Id.*

In evaluating the propriety of settlements, the Commission also eschewed the idea that the Secretary is required "to provide an explanation for the specific numerical percentage reduction of each penalty." *Id.* In this regard the Commission stated that there may be non-monetary considerations that also support settlement that are not amenable to "explanation about why a particular numerical reduction is appropriate for a violation." *Id.* at 10, 2018 WL at *7.

The Commission has "recognized that, in reviewing information supporting a reduced penalty in settlement, a Judge 'need not make factual findings with respect to each of the section 110(i) factors as a Judge would in the assessment of a penalty after hearing.'" *Id.* at 9, 2018 WL at *6 (citation omitted).

Issued the same day as *AmCoal* was the Commission's decision in *Sec'y of Labor, Mine Safety & Health Admin. (MSHA), v. Rockwell Mining, LLC*, 40 FMSHRC ___, slip op., 2018 WL 3830146 (Aug. 2, 2018) (hereinafter *Rockwell*). There can be no doubt that the Commission required the two decisions to be read together, *in pari materia*, if you will,[5] as it stated in its remand in *Rockwell*, that the Court's reconsideration was to be considered together with its *AmCoal* decision as it directed the Court to conduct "reconsideration consistent with this opinion and [the Commission's] decision in *AmCoal* issued on this date."[6] *Rockwell*, slip op. at 4, 2018 WL at *3. Therefore the *Rockwell* decision must also be discussed to fully employ and adhere to the Commission's directives for review of settlement motions.

In its August 2, 2018 decision in *Rockwell*, remanding this matter for further proceedings, the Commission instructed the Court to conduct "reconsideration consistent with this opinion and [its] decision in *AmCoal* issued on this date." *Rockwell*, slip op. at 4, 2018 WL at *3. Therefore, as stated, it is necessary to discuss the Commission's decisions in both matters. The Commission noted that in "evaluat[ing] settlement motions, [it] consider[s] 'whether the settlement of a proposed penalty is fair, reasonable, appropriate under the facts, and protects the public interest. *The American Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016)." *Rockwell*, slip op, at 3, 2018 WL at *2. It then acknowledged that to make that evaluation both the "Commission and its Judges 'must have information sufficient to carry out this responsibility.'" *Id.*, citation omitted.

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[5] While the term in *pari materia*, literally, "upon the same subject," is usually employed in the context of statutory interpretation, its use can be more liberally applied where apt, as here.

[6] In its four page decision in *Rockwell*, the Commission invoked its *AmCoal* decision at pages 1, 3, 2018 WL at *1-2.

To accomplish this, the Commission, citing Commission Procedural Rule 31, 29 C.F.R. §2700.31,[7] stated that "for each violation" a motion to approve penalty settlement must include three things:

1. the penalty proposed by the Secretary
2. the amount of the penalty agreed to in settlement
3. *facts* in support of the penalty agreed to by the parties

Rockwell, slip op. at 3, 2018 WL at *2.

The Commission determined that the Court erred in denying the settlement motion in two particulars. First, it noted as error that the Court "did not refer to or apply the [Rule 31] standard ... that [the Commission] use[s] for evaluating penalty reductions in settlement[s].[8] *Id.*

Second, the Commission determined that the Court "erred in concluding that a motion to approve settlement must include an acknowledgement by the Secretary that the Respondent's assertions present legitimate questions of fact which are in dispute and can only be resolved through the hearing process. ... facts alleged in a proposed settlement need not demonstrate a 'legitimate' disagreement that can only be resolved by a hearing." *Id.*, and citing its *AmCoal* decision issued the same day as *Rockwell*.

The Commission uses the term "facts" in a sense that the Court had not previously applied that term.[9] For the Commission, in settlements, "facts" may "reflect a mutual position

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[7] In relevant part, 29 C.F.R. §2700.31 provides: "(b) Content of motion - (1)Factual support. A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. Rather than setting forth such information in detail, the motion may incorporate by reference the information which has been included in the accompanying proposed order as required by paragraph (c)(1) of this section. (2) Certification. The party filing a motion must certify that the opposing party has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement. (c) Content of proposed order - (1) Factual support. A proposed order approving a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

[8] In this decision upon remand, the Court hereby expressly refers to Commission Rule 31.

[9] The Court was applying what it heretofore thought was meant by "facts," that is, "[a] thing that is known or proved to be true." Fact, *Oxford English Dictionary* (online ed.); something that has actual existence; a piece of information presented as having objective reality; the quality of being actual. Fact, *Merriam-Webster* (online ed.); "[a] fact is a statement that is consistent with reality or can be proven with evidence. The usual test for a statement of fact is verifiability." Fact, *Wikipedia*, Wikipedia (Sept. 17, 2018), https://en.wikipedia.org/wiki/Fact. Of course the Court understood that the parties may, in the context of a settlement motion, have a different view of

that the parties have agreed is acceptable to them in lieu of the hearing process." *Id.* citation omitted. This occurs where "the parties find and agree upon a mutually agreeable position that resolves the dispute and obviates the need for further proceedings." *Id.*, citation omitted. Expressed differently, the Commission has stated the Rule 31 facts "may include a description of an issue on which the parties have agreed to disagree." *Id.* Facts of this nature do "not require concessions from parties in settlement as long as the parties provide mutually acceptable facts that demonstrate the proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest." *Id.* (emphasis added).

Accordingly, by virtue of the submission of a settlement motion, in all instances the parties have implicitly provided "mutually acceptable facts." And those "facts" may be composed entirely upon "a description of an issue on which the parties have agreed to disagree." *Id.* at 3, 2018 WL at *3.

The parties' submissions, per the Commission's decision remanding the matter.

The Commission directed the Court to "provide the parties with 30 days to submit facts supporting the proposed penalty reductions, which may be submitted individually or collectively pursuant to Commission Procedural Rule 31." *AmCoal*, slip op. at 10, 2018 WL at *7.

Respondent's, American Coal, Supplement in support of joint motion to approve settlement and dismiss proceeding ("R's Supplement" or "Supplement").

The Respondent submitted its supplement pursuant to the Commission's decision and the Court's Order in compliance with that decision. Respondent states that its Supplement "contains citation-specific facts ... in further support of the proposed settlement." Supplement at 1 (emphasis added). Citing to the Commission's decision in *AmCoal,* the Respondent notes that the Secretary has consented "to the proposed settlement as set forth in the Joint Motion and does not oppose the filing of [its] settlement." *Id.* at 2.

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what the facts are and that they need not necessarily agree on what they actually are. It was on the basis of that understanding that the Court sought a representation from the Secretary that the Respondent's assertions present legitimate questions of fact which are in dispute and can only be resolved through the hearing process. *The Commission has stated this is not required in settlements.* Instead, it has instructed that it is sufficient for *the parties to submit facts that reflect a mutual position that the parties have agreed is acceptable to them in lieu of the hearing process.* But that *mutual* position and the parties providing "mutually acceptable facts" does not require agreement as to the facts involving the alleged violation. Instead, submitted facts are sufficient where they "reflect a mutual position that the parties have agreed is acceptable to them." Obviously, the Court plays no role in that *mutual position of the parties.* Now the Court realizes that, in the context of a settlement, facts may be different from the findings of facts resulting from a hearing. Still, it seems to be a misnomer, in the context of a citation, to call one side's, or the other's, statements to be facts. Rather, they are assertions about the parties' view of the allegations and or conditions surrounding a citation or order.

Certainly it would have to be said that in the Respondent's 18 page Supplement, it provides a host of "facts" for each of the 32 citations involved.[10] Indeed, in reading the *facts* asserted by the Respondent, among many other claims,[11] it asserted that 13 of the citations involved no or low negligence, with 8 others involving low negligence and at least 5 that should be vacated and 5 that were not significant and substantial. What is truly amazing about all these *facts*[12] is that the Respondent agreed to settle all of the citations for a mere 30% off and to accept each as written.

Given the lengthy defenses asserted for each and every citation, the Court was quite surprised to read that those presented *facts* "are not exhaustive of the facts that AmCoal could or would have presented at the evidentiary hearing of this matter." *Id.* In fact, despite the passing of more than five years, AmCoal informed that it "has not prepared for trial and likely would have presented *different and additional* facts, dependent in large part upon the facts necessary for rebuttal." *Id.* (emphasis added).

The Parties Joint Motion to Approve Settlement and Dismiss Proceeding

The Joint Motion represents the Secretary's submission post the Commission's Remand to the Court in this matter.[13] ("Secretary's Submission"). Given the Commission's directive to provide the parties with 30 days to submit *facts* supporting the proposed penalty reductions, the Court, endeavoring to comply with the Commission's Remand Decision, asked the parties to underscore all *new* facts in their submission. The Respondent replied that its submission contains "important facts not previously mentioned in prior motions seeking approval of the parties' settlement, in addition to the new citation-specific facts set forth in AmCoal's separately

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[10] Nevertheless, Respondent states that while providing citation specific *facts*, "it is in no way endorsing or proposing a citation-specific settlement. Instead, AmCoal strongly believes that the 30% uniform penalty reduction negotiated and agreed upon by the parties to globally settle all of the disparate violations in this docket is 'is fair, reasonable, appropriate under the *facts*, and protects the public interest.'" Supplement at 2, quoting the phrase invoked by the Commission seven times in its *AmCoal* decision. (emphasis added). It is noted that the Commission did not adopt the claim that this docket amounted to a "global settlement." Indeed, it was only *after* this Court noted that there had been no claim that this docket constituted a global settlement that the Respondent then asserted that it was.

[11] Among other claims in its defense to these citations, the Respondent's supplement also contends that, for some of the citations, the number of persons affected and the characterization of the extent of the injury should be reduced.

[12] An appreciation of *facts* in the settlement context may be analogous to one who cries fire in a crowded theatre. If, in truth, there was no fire, it would be still be *a fact* that the claim of a fire was uttered.

[13] It is, in the Court's estimation, the Secretary's submission, although the Respondent consented to the granting of it. See Certificate of Consent.

filed Supplement." Respondent's email to the Court dated September 16, 2018.

For the Secretary's part, he "relies on the averments in the parties' Joint Motion to Approve Settlement, filed on September 7, 2018, and not on any motion filed previously. The Secretary respectfully declines to file, through the Commission's e-CMS, an underscored settlement motion as requested by the judge." Secretary's email to the Court dated September 14, 2018.

The Court can appreciate the Secretary's declination. The Secretary's Submission notes that the parties have agreed to an across-the-board 30% penalty reduction, from the proposed penalty amounts.[14] The Secretary also notes that AmCoal accepts all citations as written. Neither of these are *new* facts of any stripe. In an assertion the Court does not fully understand, the Secretary then advises that "in explaining his reasons for settlement,[the Secretary] is mindful that, should the Secretary make concessions, he risks vacatur, or other downward adjustments, to the enforcement actions and weakens his case in the event the settlement is denied and the case goes to hearing."[15] *Id.* at 2.

Of note, and new, the Secretary informs that the mine ceased production as of September 2016, and that the Respondent's other mine has also ceased production. *Id.* Thus, the Secretary states that "the mine operator's current status further support[s] the penalty reductions because there is less reason to employ the penalty process as a way to deter its alleged noncompliance with the Act." *Id.* However, the Secretary admits that when it reached this settlement agreement the mine was still operating and the Secretary was not aware of any plans to close to mine and therefore the Secretary's position then is the same as now – it would support the settlement even if the mine were operating at full tilt.

Like a ship rolling at sea, the Secretary's position sways from port to starboard, asserting that the "[t]he facts regarding the mine operator's current [shuttered] status further support the penalty reductions because there is less reason to employ the penalty process as a way to deter its alleged noncompliance with the Act," while simultaneously declaring that "the fact that the proposed settlement preserved all of the citations as written to be a significant advantage of the compromise. This fact would have assisted the Secretary in future enforcement efforts against this operator. " *Id.* at 3-4.[16] That is, of course, if the mine ever reopens and as the same entity.

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[14] As noted, the proposed penalty already included a 10% reduction for good faith.

[15] In this regard, the Secretary cites to *Co-op Mining*, 2 FMSHRC 3475 (Dec. 1980). However the cited case appears entirely inapposite. That case involved a settlement where the parties' *own stipulation* showed no violation occurred, and thus is hardly the case here. Thus, *Co-op* stands merely for the proposition that "[c]ompliance with the Act and its standards is not fostered by payment of a civil penalty *where the stipulated facts establish that no violation occurred.*" *Id.* (emphasis added). Further, it is clear that offers of settlements and settlements themselves, if rejected, cannot be used at hearing against concessions made for the purpose of settlement. If that were otherwise, settlement offers would not occur.

[16] If the mine ever does reopen, and as AmCoal, the Secretary solemnly remarks that the

Utilizing its predictive skills, the Secretary's submission informs that he has also considered "a worst-case outcome," while also asserting that he "does not believe [that it] would occur," but that the if it did occur, there would be an approximate 50% reduction from the proposed penalty amounts. Further, with a brightened outlook about the settlement terms reached, the Secretary declares that "[e]ven if [he] were to substantially prevail at trial, and to obtain a monetary recovery *similar to or even exceeding* the amount of the settlement, it would not necessarily be a better outcome from the enforcement perspective than the settlement, in which all the citations are admitted and can constitute *a basis for future enforcement actions.*[17] A resolution of this matter in which all violations are admitted is of significant value to the Secretary." *Id.* at 4. Again, the "significant value" would be activated only if operations resume for that entity.

No matter. That the Secretary's submission does not get into any particulars about any of the individual citations, leaving it solely to the mine operator, through its counsel, to make declarations about the gravity and negligence, is not problematic because, under the Commission's decisions in *AmCoal* and *Rockwell Mining*, there is no need to do so.[18]

Application of the Commission's decisions in *Rockwell Mining* and *AmCoal*

Although the Commission decision in *AmCoal* concludes with the directive that the Court shall "determin[e] whether the proposed settlement is fair, reasonable, appropriate under the facts, and protects the public interest," it does not directly express how this is to be applied. That general phrase, no matter how many times it is repeated, is not self-defining. Instead, the Court must look to the factors which the Commission expressed are to be applied.

Accordingly, all per the Commission's decisions in *AmCoal* and *Rockwell Mining*, the Court has not applied the criteria in section 110(i) in an overly rigid manner; notes that the facts supporting the settlement need not be tied to the six statutory criteria in section 110(i); notes that, in this instance, the operator has agreed to accept all of the citations as written; that it has given due consideration to the entirety of the proposed settlement package, including both its monetary and nonmonetary aspects; that the facts may be submitted by only one side with the only limit on that being a certification by the filing party that any non-filing party has consented to the granting of the settlement motion; that there is no requirement that a respondent's assertions of

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settlement by "ensuring that the paper record reflects the Secretary's views regarding the gravity and negligence of the operator's conduct ... can affect the proposed or assessed penalty in future proceedings, can affect whether future citations are classified as unwarrantable failures within the meaning of section 104(d) of the Act, and can bear on how the citations are counted for purposes of determining whether the operator has demonstrated a pattern of violations within the meaning of section 104(e) of the Act." *Id.* at 4.

[17] Again, assuming that AmCoal ever reopens as AmCoal.

[18] Though no longer required, the Secretary has, in *numerous* past settlement motions, stated that a respondent's averments presented legitimate questions of fact which could only be resolved by going to hearing, and each of those settlements motions was approved by the Court.

fact need to "present legitimate questions of fact; only that the *facts* reflect a mutual position *that the parties have agreed is acceptable to them.*

Therefore, pursuant to the *entirety* of the Commission's decisions in *Rockwell Mining* and *AmCoal*, and in obeisance to those decisions, the Court finds that the settlement motion contains:

1. the penalty proposed by the Secretary
2. the amount of the penalty agreed to in settlement
3. "facts," as the Commission has employed that term, in support of the penalty agreed to by the parties

On those grounds, the Court finds that the settlement motion meets the Commission's expressed requirements for settlement approval, as expressed in *Rockwell Mining* and *AmCoal*, and on that basis it is approved.

The settlement amounts are as follows:

Citation	Assessment	Settlement
8418392	$2,282	$1,597
8418393	$243	$170
8418394	$334	$234
8424959	$540	$378
8418397	$540	$378
8418399	$585	$410
8418400	$5,503	$3,852
8423999	$1,304	$913
8424965	$460	$322
8424967	$2,678	$1,875
8424502	$1,944	$1,361
8424503	$425	$298
8424970	$2,678	$1,875
8424508	$263	$184
8424509	$946	$662
8424002	$1,944	$1,361
8424000	$1,995	$1,397
8424001	$1,795	$1,257
7579858	$1,944	$1,361
7579878	$3,405	$2,384
8424511	$425	$298
8159274	$1,203	$842
8159277	$100	$70
8424512	$425	$298
8424012	$1,203	$842
8424013	$585	$410

7579993	$150	$100
8424982	$807	$565
7579995	$585	$410
8427401	$2,282	$1,597
8424983	$807	$565
8427403	$3,996	$2,797
TOTAL:	**$44,376**	**$31,063**

Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date.

Payment shall be made to:

U.S. Department of Labor/MSHA
P.O. Box 790390
St. Louis, MO 63179-0390.

WHEREFORE, the motion to approve settlement is **GRANTED.**

It is **ORDERED** that the respondent pay a civil penalty of $31,063.00. Upon receipt of timely payment, the captioned case is **DISMISSED**.

SO ORDERED.

William B. Moran
William B. Moran
Administrative Law Judge

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