

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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December 23, 2014

UNITED STEELWORKERS LOCAL NO.  
5114, ON BEHALF OF MINERS,  
Applicant

v.

HECLA LIMITED,  
Respondent

COMPENSATION PROCEEDING

Docket No. WEST 2012-466-CM

Lucky Friday Mine  
Mine ID 10-00088

**ORDER GRANTING, IN PART, HECLA'S MOTION  
FOR PARTIAL SUMMARY DECISION**

Appearances: Susan J. Eckert, Esq., Santarella & Eckert, LLC, Littleton, Colorado, for  
Petitioner;  
Laura Beverage, Esq., and Karen Johnston, Esq., Jackson Kelly PLLC,  
Denver, Colorado, for Respondent

Before: Judge Manning

This Compensation Proceeding is before me pursuant to section 111 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (the "Act"), upon an application for compensation filed by the United Steel Workers, Local 5114 ("USW") on behalf of miners, against Hecla Limited. On November 14, 2014 Hecla and USW filed simultaneous motions for partial summary decision in this matter. On October 29, 2014, I issued a decision concerning the contest of the withdrawal orders related to this matter, WEST 2012-353-RM and WEST 2012-354-RM. *Hecla Limited*, 36 FMSHRC \_\_\_, slip op., 2014 WL 5811359 (Oct. 2014). With the parties' agreement, the record from that hearing is hereby incorporated by reference in this proceeding.<sup>1</sup>

**I. BACKGROUND**

On November 16, 2011, a fall of ground occurred in the Lucky Friday Mine. At 2:25 a.m. that same day, MSHA issued Order No. 8605614 pursuant to section 103(j) of the Act. The order identified the affected area as the "54 Ramp from the 5700 intersection from the spray chamber cut out to the down ramp of the old day box cut out and the 5900 main haulage from 100 feet from the intersection of the lateral on the 5900 level to 30 feet before the chevron." Ex. G-1 at 1-2. At 1:05 p.m., MSHA issued modification No. 8605614-01, modifying Order No.

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<sup>1</sup> I will reference Respondent's exhibits from the July 29-30, 2014 hearing as "Ex. R-X" and the Secretary's exhibits from that hearing as "Ex. G-X." References to that transcript shall be "Tr."

8605614 to a section 103(k)<sup>2</sup> order that allowed miners to begin repairs of the affected area, excluding the 54 ramp area.<sup>3</sup>

On November 20, 2011, MSHA issued modification No. 8605614-03 to permit the installation of three stress gauges in the 5900 main haulage drift.<sup>4</sup> The 5900 haulage drift was the primary access to the active mining area of the Mine at this time. The Lucky Friday Mine is a deep mine; the 5900 level is 5900 feet below the surface. The stress gauges were intended to monitor changes in pressure that could lead to a fall of ground. Modification No. 8605614-05<sup>5</sup> required Hecla to monitor the stress gauges on a shift to shift basis.<sup>6</sup>

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<sup>2</sup> Section 103(k) of the act states:

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

30 U.S.C. § 813(k).

<sup>3</sup> On November 17, 2011, MSHA also issued modification No. 8605614-02 to allow Hecla to scale, bolt, and repair through the fall at the 5900 haulage way and the 5700 sublevel of the 54 ramp.

<sup>4</sup> On December 2, 2011, MSHA issued modification No. 8605614-04 to allow the mine to restore utilities through the 5900 drift where the fall occurred.

<sup>5</sup> Originally, Modification No. 8605614-05 was issued as a second Modification No. 8605614-03. MSHA issued Modification No. 8605614-06 to redress this problem.

<sup>6</sup> Modification No. 8605614-05 states, in pertinent part:

This modification is to allow limited travel through the affected area of the 5900 main haulage and of the 54 ramp at the 5700 level.

This modification is based upon no movement of the affected area has occurred since monitoring began (about four days) after shotcrete and bolting following the mine's level three bolting plan were followed. Stress monitors indicate the area is d[i]stressed as compared to other active areas of the mine.

This action is to allow very limited activities utilizing the 5900 main haulage based upon the temporary repairs already conducted by the mine until the engineered culvert arrives and more permanent repairs are made.

Upon arrival of the culvert from the manufacturer, the mine will stop work to install the culvert and only those miners working on the culvert will travel in the affected area.

MSHA approved Hecla's proposal to install a steel liner (culvert) in the affected area of the 5900 haulage drift. The steel liner was intended to protect miners in that area from any fall of ground. On December 14, 2011, at approximately 7:40 p.m., a rockburst occurred in the 5900 pillar, injuring seven miners working to install the steel liner. MSHA issued Order No. 8605622,<sup>7</sup> a section 103(j) order that removed all miners working in the 5900 main haulage. Order No. 8605622 encompassed all underground areas of the mine including the area affected by Order No. 8065614. On December 15, 2011, MSHA issued modification No. 8605622-01, modifying Order No. 8605622 to a section 103(k) order that required the operator to obtain prior approval for all actions taken to recover and restore operations anywhere in the Mine.<sup>8</sup>

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This modification is based upon the mine will conduct two daily surveys at the start and end of the 1st shift to determine whether movement is occurring at the survey stations of the 5900 main haulage near the chevron.

This modification is based upon no foot travel will occur in the affected area and that each mobile equipment operator will conduct a visual inspection of the affected area before travel occurs.

This modification is based upon the mine has developed a written plan to address any cracking or closure of the main haulage, and that the mine will stop travel in the affected area should detectable movement, distortion, cracking or damage occur....

Any significant changes will be reported to MSHA to include additional stressing, closure, cracking or squeeze and deformity.

This modification allows approximately 3 trucks per shift to make 10 rounds each per shift. It allows mechanics/electricians to travel through the area if required to repair equipment. It allows only miners necessary to conduct normal mining activities to travel through the area.

Ex. G-1 at 1-2.

<sup>7</sup> Order No. 8605622 mandates:

An accident occurred at this operation on 12/14/2011 at approximately 19:40 pacific standard time. As rescue and recover work is necessary this order is being issued under 103j of the Federal Mine Safety and Health Act of 1977 to assure the safety of all persons at this operation. This order is being issued to prevent the destruction of any evidence which would assist in investigating the cause or causes of the accident. It prohibits all activity in all underground areas of the mine except to the extent necessary to rescue an individual or prevent or eliminate an imminent danger until MSHA has determined it is safe to resume normal mining operations underground. This order applies to all persons engaged in the rescue and recovery operation and any other persons on site. This order was initially issued orally to the miner operator at 21:00 pacific standard time (the local time at the mine) and has now been reduced to writing.

Ex. G-8 at 25

On December 21, 2011, MSHA issued Citation No. 8565565 alleging that Hecla worked in the face of Order No. 8605614 by failing to perform the stress gauge reading directly before the rockburst as required by Order No. 8605614-05. Hecla contested this citation, but the parties reached a settlement of Citation No. 8565565, which the court approved.

In the ensuing months, MSHA conducted several regular inspections as well as an impact inspection because the mine had previously suffered multiple groundfalls. MSHA maintained the two 103(k) orders and also issued numerous citations and orders during these inspections. MSHA did not lift the 103(k) orders until Hecla abated all the cited conditions. Many of these enforcement actions concerned ground support issues, but several were unrelated. One violation required Hecla to clean down the entire Silver Shaft to remove concrete debris from the sides of the shaft. This took over 14 months to complete and left the entire Mine with no power, no water, and no compressed air. This citation and other citations contributed to Order Nos. 8605614 and 8605622 remaining open for an uncommonly long period of time.

On April 2, 2013, MSHA issued modification No. 8605622-13 to allow the operator to construct sand walls on the North and South sides of the rockburst area in the 5900 main haulage drift and subsequently backfill the area. A barricade was moved pursuant to modification No. 8605622-13. On June 12, 2013, Stembridge issued modification Nos. 8605614-07 and 8605622-14, terminating Order Nos. 8605614 and 8605622.

On January 31, 2012, the USW filed this claim for compensation under section 111.

## II. DISCUSSION

The entire record shows that there is no genuine issue of material fact and Hecla is entitled, in part, to partial summary decision as a matter of law. For the reasons set forth below, I **GRANT**, in part, Hecla Limited's Motion for Partial Summary Decision.<sup>9</sup> I retain jurisdiction

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<sup>8</sup> MSHA issued a total of 14 modifications to Order No. 8605622. On August 9, 2012, MSHA issued modification No. 8605622-10 to allow the operator to drive a bypass around the 5900 main haulage drift.

<sup>9</sup> Commission Procedural Rule 67 sets forth the grounds for granting summary decision as follows:

A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows:

- (1) That there is no genuine issue as to any material fact; and
- (2) That the moving party is entitled to summary decision as a matter of law.

29 C.F.R. § 2700.67(b). The Commission has long recognized that "summary decision is an extraordinary procedure." *Energy West Mining Co.*, 16 FMSHRC 1414, 1419 (July 1994) (quoting *Missouri Gravel Co.*, 3 FMSHRC 2470, 2471 (Nov. 1981)). The Commission has also analogized Commission Procedural Rule 67 to Federal Rule of Civil Procedure 56. *Hanson*

of this case until the parties agree to a specific dollar amount that will be awarded as compensation to the miners.

Section 111 mandates that operators pay wages to miners idled by section 103, 104, and 107 orders issued by MSHA. The four sentences of section 111 create a “graduated scheme of increasing compensation commensurate with increasingly serious operator conduct.” *Local Union 1261, District 22 United Mine Workers of America v. Consolidation Coal Co.*, 11 FMSHRC 1609, 1613 (Sept. 1989). The fourth sentence of section 111 addresses the most culpable operator conduct, the failure to comply with a withdrawal order:

Whenever an operator violates or fails or refuses to comply with any order issued under section 103, section 104, or section 107 of this Act, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated.

30 U.S.C. § 821. Each of the four sentences in section 111 allows for greater miner compensation than the previous sentence; this escalation is based upon “what the operator has done[.]” *Local Union 1889, District 17, United Mine Workers of America v. Westmoreland Coal Co.*, 8 FMSHRC 1317, 1327 (Sept. 1986). Application of the fourth sentence of section 111 is an issue of first impression.

The compensation provided by section 111 is, first and foremost, intended to protect miner safety; it encourages miners to report withdrawal-worthy dangers without fear of losing wages as a result. *See Rushton Mining Co. v. Morton*, 520 F.2d 716, 720 (3rd Cir. 1975). Although the culpability of the operator influences the compensation available to miners, the senate did not intend for compensation to be punitive. S. Rep. No. 95-181, 95th Cong., 1st Sess. 46-47 (1977), reprinted in *Legislative History of Federal Mine Safety and Health Act of 1977*, at 634-635 (1978). The Commission has found a nexus requirement in section 111, stating that “we will examine the relationship between the underlying reasons for the withdrawal and for the order, and will give balanced consideration both to the limited and purely compensatory character of section 111 and to the overall safety purposes of the 1977 Mine Act and section 111

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*Aggregates New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007); *See Also Energy West Mining Co.*, 16 FMSHRC at 1419 (citing *Celotex Corp v. Cartrett*, 477 U.S. 317,237 (1986)).

When the Commission reviews a summary decision under Comm. P. R. 67, it looks “‘at the record on summary judgment in the light most favorable to ... the party opposing the motion,’ and that ‘the inferences to be drawn from the underlying facts contained in [the] materials [supporting the motion] must be viewed in the light most favorable to the party opposing the motion.’” *Hanson Aggregates New York Inc.*, 29 FMSHRC at 9 (quoting *Poller v. Columbia Broadcasting Sys., Inc.*, 368 U.S. 464, 473 (1962); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

itself.” *Local Union No. 781, District 17, United Mine Workers of America v. Eastern Associated coal corp.*, 3 FMSHRC 1175, 1178 (May 1981).

I find that the fourth sentence of section 111 applies to Order No. 8605614-05 because Hecla violated this order as set forth in Citation No. 8565565.<sup>10</sup> Hecla failed to monitor the stress gauges directly before the rockburst. The nexus between the underlying events and the withdrawal order that an award of section 111 compensation requires exists between Citation No. 8565565 and amendment 05 of Order No. 8605614. The issuance of Citation No. 8565565 for Hecla’s failure to check pressure gauges as mandated by Order No. 8605614-05 is the violation of a withdrawal order that fourth sentence compensation requires. Order No. 8605614, issued on 11/16/2011, withdrew miners and mandated that only people authorized by MSHA could enter the affected area. Ex. G-1 at 2. Order No. 8605614 did not include the requirement to check stress gauges because the stress gauges at issue were not installed at that time. On 12/06/2011, Order No. 8605614-05 allowed limited travel in the 5900 haulage area based upon Hecla’s agreement to “conduct two daily surveys at the start and end of the 1st shift to determine whether movement is occurring[.]” Ex. G-1 at 7. A nexus exists between the triggering event, Citation No. 8565565, and the specific amendment 05 of Order No. 8605614 because MSHA issued Citation No. 8565565 for Hecla’s failure to monitor stress gauges, which Order No. 8605614-05 required. The nexus between the triggering event and the initial issuance of Order No. 8605614 and its other amendments is weaker and extending the compensation period to those amendments would not make miners safer; the miners who were in the 5900 area at the time of the rockburst

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<sup>10</sup> Citation No. 8565565 states:

The mine operator worked in the face of 103(k) order 8605614, this order was issued by MSHA on November 16, 2011. This order was issued to insure the safety of miners at the mine after a violent rock burst occurred and was subsequently modified to insure a safe means to repair the damaged area. Subsequent action number 8605614-[05] states that the mine operator will conduct daily surveys at the start and end of the first shift to determine [whether] movement is occurring to indicate if stress levels are increasing. The operator submitted a plan that these readings would be taken twice a day at the same time. On December 14, 2011 the operator failed to take the last reading just prior to another violent rock burst that resulted in serious injuries to seven miners. The Mine Superintendent stated that the readings could not be taken because [the] steel liner was installed over the gauges and the gauges could not be read. Upon inspection it was found that the stress gauges were provided with extended wire so that they could be read during the installation of the liner. If this reading was taken it may have indicated high levels, which have removed miners from the 2<sup>nd</sup> rock burst. This condition has not been designated as “significant and substantial” because the conduct violated a provision of the Mine Act rather than a mandatory safety standard.

Ex. G-9.

were permitted in the area under amendment 05 of Order No. 8605614.<sup>11</sup> Giving balanced consideration to the limited and purely compensatory character of section 111 and the overall safety purposes of the Act, I find that the miners represented by USW are entitled to compensation under the fourth sentence of section 111 beginning on December 6, 2011 at 15:16 (3:16 p.m. local time).

I find that miner compensation should end at 21:00 (9:00 p.m. local time) on December 14, 2011 when MSHA issued Order No. 8605622 because Hecla complied with Order No. 8605614-05 for the purposes of section 111 at that time.<sup>12</sup> A section 103 order is usually issued as soon as MSHA is aware of an accident to quickly remove miners from the potentially dangerous mine and to give MSHA control of the mine to initiate an investigation. *See Miller Min. Co., Inc. v. Federal Mine Safety and Health Review Com'n*, 713 F.2d 487, 490 (9th Cir. 1983). Congress drafted sentence four of section 111 to compensate miners “who would have been withdrawn from, or prevented from entering” a mine where MSHA forbid access. Although it applies in other situations, such as the current case, sentence four of section 111 generally applies to situations where MSHA issues a withdrawal order and the operator fails to withdraw miners, or allows miners to enter the mine in violation of a withdrawal order. For most section 103 orders, the only action required of an operator in those situations is to remove miners from the mine; when a mine does so, they comply with the affirmative requirements of most

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<sup>11</sup> Although amendment 05 is a modification to Order No. 8605614, I consider it separately in this case for compensation purposes. Order No. 8605614-05 is a withdrawal order, but it did not withdraw any miners from the Mine as Order No. 8605614 initially did. Rather, Order No. 8605614-05 permits miners to enter the affected area, but imposes upon Hecla the affirmative action of monitoring the stress gauges. This distinction is critical for compensation purposes, since section 111 focuses upon operators violating a withdrawal order by failing to remove miners from an area where MSHA forbid the presence of miners, but this case focuses upon the violation of an additional affirmative requirement.

<sup>12</sup> I reject USW’s assertion that the ending date of compensation must be June 12, 2013 because MSHA terminated Order No. 8605614 on that date and I found in my October 29, 2014 decision that MSHA’s action to maintain both 103(k) orders was not arbitrary or capricious. The Commission evaluates official MSHA enforcement activity concerning withdrawal orders separately from their effect upon compensation. Compensation analysis focuses “upon the conduct of the operator and the conditions in the mine, not the sequencing of MSHA enforcement activity.” *Local Union*, 1889, 8 FMSHRC at 1327; *See Local Union 1609, District 2, United Mine Workers of America v. Greenwich Collieries, Division of Pennsylvania Mines Corp.*, 8 FMSHRC 1302, 1306 (Sept. 1986) (refers to “safety” and “compensation” considerations separately). Although the timelines of the underlying orders and the compensation period often coincide, the Commission bifurcates the analysis because it is possible, as in this case, that MSHA’s enforcement decisions do not determine the duration of compensation. I found that the 103(k) orders were not maintained in an arbitrary or capricious manner in a decision separate from the current compensation case. Although those orders directly underlie and are related to this compensation case, they do not control this compensation case; USW repeatedly argues against a “formalistic emphasis on sequencing” but chooses to place that emphasis upon the orders when convenient for its own claims.

section 103 orders.<sup>13</sup> In the situation before me, however, the operator violated a modification to a 103(k) order and not the original order or the basic withdrawal requirement.

Order No. 8605614-05 included the affirmative requirement that Hecla must monitor stress gauges to continue work in the affected area; once Order No. 8605622 forbade work in the 5900 haulage area, however, that requirement was complied with for the purposes of sentence four, section 111 compensation.<sup>14</sup> The order required the monitoring of gauges due to the presence of miners in the area; once the miners were withdrawn and work in the area was forbidden, that requirement fell away. For this reason, both Inspectors Brad Breland, a supervisory mine inspector, and Kevin Hirsch, the assistant district manager at the time of the accident, testified that Order No. 8605622 superseded Hecla's requirement to monitor the stress gauges. Not only was the monitoring no longer required after the issuance of Order No. 8605622,<sup>15</sup> but Inspector Breland testified that to believe so was "silly[.]" (Tr. 108).

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<sup>13</sup> After withdrawal, a 103 order remains in effect and the operator can still violate such an order by entering the mine against the prohibition of the 103(j) or 103(k) order, which could trigger sentence four compensation. In that situation, the operator would comply with the 103 order when it removed the miners from the mine. The operator would compensate miners beginning with the issuance of the 103 order until their removal from the mine because at that time the operator would once again be in compliance with the order. In this situation, compensation runs from the time of the initial order to monitor stress gauges until stress gauges no longer needed to be monitored. In either situation, the compensation would not extend into the future for as long as the 103 order remained in effect.

<sup>14</sup> Within days of the December 14, 2011 rockburst, Hecla notified MSHA that it would abandon the 5900 haulage drift and drive a bypass around that area.

<sup>15</sup> The Commission has ruled that 103(k) orders should not preclude compensation under section 111. This ruling, however, primarily dealt with the interplay between section 103 withdrawal orders, which are usually issued immediately when an accident occurs, and other types of withdrawal orders. *Local Union 1889*, 8 FMSHRC at 1323. It does not address interactions between multiple 103 orders. When MSHA issues a 103 order, it has control of the affected area and any entrance into that area, which precludes the necessity to issue an additional, overlapping 103 order. In this instance, MSHA took the unusual action of issuing two 103 orders that were in effect at the same time and governed overlapping areas. I found that this action was not arbitrary or capricious. That finding was based upon the chaotic situation at the mine, which caused MSHA to maintain Order No. 8605614 as a "spotlight" on the dangerous 5900 area. *Hecla Limited*, 36 FMSHRC \_\_, slip op. at 6. MSHA retained both 103(k) orders for an administrative or managerial purpose; Order No. 8605614 was not modified or used to control the mine after the issuance of Order No. 8605622. Instead, Order No. 8605614 simply served as a "spotlight" to prevent the most dangerous area in the mine from being overlooked. Although Order No. 8605622 could be terminated before Order No. 8605614, it was not necessary to keep Order No. 8605614 active; MSHA could have modified Order No. 8605622 to continue control over the 5900 area. Order No. 8605614 was a placeholder. It had no affirmative requirements or power once MSHA issued Order No. 8605622. Under Section 111, "the limited nature of compensation...represents a careful and deliberate balancing by Congress of the competing interests of miners and mine operators[.]" but it does not consider the administrative or



The fourth sentence of section 111 applies in this case because Hecla violated Order No. 8605614-05 by failing to monitor pressure gauges. Hecla's culpability in this compensation case relates to that action and requirement, a requirement that MSHA admits Order No. 8605622 superseded. The extended closure of the mine after the issuance of Order No. 8605622 focused upon myriad issues, most of which were unrelated to the 5900 area and none of which addressed monitoring the stress gauges at issue.<sup>16</sup> Section 111 focuses upon the culpability of mine operators relating to specific actions concerning withdrawal orders. *Local Union 1889*, 8 FMSHRC at 1327. Although Hecla was responsible for all the violations that MSHA required Hecla to abate before the termination of Order No. 8605622, the remediation of those violations did not address Citation No. 8565565, which is the action that sentence four of section 111 compensation hinges upon. When MSHA issued Order No. 8605622 it "superseded" the requirement of Order No. 8605614-05 to monitor the stress gauges, which meant Hecla was then in compliance with Order No. 8605614-05 and sentence four, section 111 compensation ceased.<sup>17</sup>

The fourth sentence of section 111 contemplates a situation where an operator fails to withdraw miners. The case before me involves the violation of a 103(k) order, but not due to a failure to withdraw miners. The compensation period therefore does not begin at the time of the initial order of withdrawal, but rather when MSHA required Hecla to begin monitoring the stress gauges. After the violation of the withdrawal order, the unusual sequence of events obscures the end of the compensation period; the limited nature of section 111 warrants the compensation period to end when the operator could no longer comply with the specific requirement of the withdrawal order at issue.

I find that only miners who worked in the area controlled by Order No. 8605614-05 from the time the stress reading was not taken until the time that miners were withdrawn as a result of the rock burst in the pillar are entitled to compensation. Sentence four of Section 111 only mandates compensation for miners "who would have been withdrawn from, or prevented from entering" the mine. 30 U.S.C. § 821. Section 111 uses the phrase "who would have been" because it addresses only those miners who worked in the face of a withdrawal order. The issuance of Order No. 8605614 on November 16, 2011 idled many miners, but they would not have been withdrawn from the area restricted by Order No. 8605614-05 on December 15 because they were not there to be withdrawn. The plain language of section 111 dictates that

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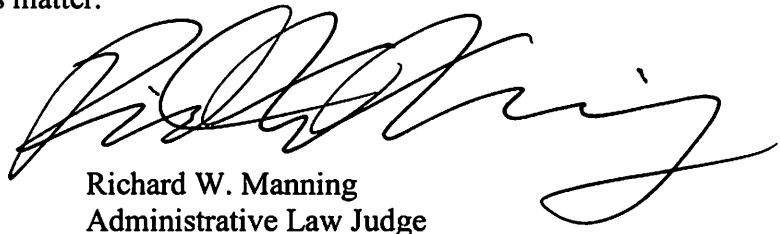
managerial motives of MSHA when it controls a mine under a 103(k) order. *Local Union 1261*, 11 FMSHRC at 1613. In this case, Order No. 8605622 does not preclude compensation, but it does affect the length of the compensation period. It is possible that a situation would arise that two 103(k) orders would interact differently with regard to section 111. My ruling is limited to the facts before me today.

<sup>16</sup> Order No. 8605622 closed the Silver Shaft, a decision that had no relation to the November 16, 2011 or December 14, 2011 rockbursts in the 5900 area, Order No. 8605614, or Citation No. 8565565. The remediation MSHA required in the Silver Shaft caused Order No. 8605622 to stay in place for over a year and did not address the 5900 area, rockbursts, or pressure gauges.

<sup>17</sup> My analysis determining the end date of compensation is similar to the nexus analysis to determine the relation of a withdrawal order to the idling of miners.

only miners who worked in the face of Order No. 8605614-05 are entitled to compensation; miners who worked in the 5900 haulage drift, the 54 ramp, or the 5700 level after Hecla failed to monitor the stress gauges are therefore entitled to compensation.

The entire record shows that there is no genuine issue of material fact and Hecla is entitled, in part, to partial summary decision as a matter of law as set forth above. Miners who worked in the 5900 haulage area, the 54 ramp, or the 5700 level during the time between Hecla's failure to check the stress gauges and the December 14, 2011 rockburst are entitled to compensation under sentence four of section 111. The compensation period begins on December 6, 2011 at 15:16 and ends on December 14, 2011 at 21:00.<sup>18</sup> I **GRANT**, in part, Hecla's Motion for Partial Summary Decision. Although I hold that select miners are entitled to compensation under the fourth sentence of section 111 of the Mine Act, I **DENY** the USW's motion for Motion for Partial Summary Decision as set forth in this order. I **ORDER** the parties to agree to the specific miners due compensation and the amount of that compensation; until I approve that submission, I retain jurisdiction of this matter.



Richard W. Manning  
Administrative Law Judge

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<sup>18</sup> The Commission has held that interest should be included in the payment of compensation to miners:

To make the miners whole for the time value of their compensable pay, therefore, we hold in affirmance of the judge that interest is appropriate on sums of compensation due from the date that the compensable pay would have been paid but for the idlement until the date that the compensation due is tendered. This result comports with the interest approach followed in discrimination cases under Arkansas-Carbona. 5 FMSHRC at 2051-53 & n. 15.

*Local Union 2274, District 28, United Mine Workers of America v. Clinchfield Coal Co.*, 10 FMSHRC 1493, 1503 (Nov. 1988).