

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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December 29, 2016

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2015-0082
Petitioner,	:	A.C. No. 04-05275-356398
v.	:	
	:	
C.R. BRIGGS,	:	Mine: CR Briggs
Respondent.	:	

**DECISION DENYING MOTION
FOR APPROVAL OF SETTLEMENT**

Before: Judge Moran

This case is before the Court upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977 (“the Act”). The Court has considered the representations submitted in this case under Section 110(k) of the Act. For the reasons which follow, the settlement is rejected because the Court may not approve a penalty of zero dollars.

The parties have filed a joint motion to approve settlement. The originally assessed amount was \$29,691.00, and the proposed settlement is for \$0 (zero dollars.) The parties propose that the penalty amounts for the 13 citations at issue in this case be reduced to zero dollars, apparently because the Respondent is in bankruptcy proceedings.¹ The parties reason that by doing so, a record of the violations will be preserved in the mine’s violation history.

It has long been established that separate bankruptcy proceedings do not alter the Commission’s power to fix the amount of liability in Mine Act cases, barring judgments on the enforceability of those judgments in other fora.² However, Section 110(i) permits consideration

¹ The motion states in relevant part, “The basis for the agreement between the parties is the evidence provided by the Respondent, and attached hereto as Exhibits 1 through 3, that the Respondent is in dire financial circumstances, having filed for the protection of the U.S. Bankruptcy Court. Respondent has indicated that the assets of the CR Briggs mining operation are in the process of being disposed of through the Trustee. The Secretary, in an effort to preserve the record of the violations as mine violation history in case of even the remote possibility that there could be a resumption of mining, has agreed to eliminate the proposed penalties in exchange for the Respondent’s acceptance of the citations as written.”

² *Sec’y of Labor on behalf of Price v. Jim Walter Res., Inc.*, 12 FMSHRC 1521, 1530 (Aug.

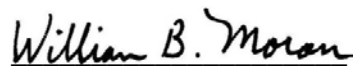
of bankruptcy as relevant evidence of an operator's "ability to continue in business;" one of the six penalty factors named in the Act.³ Therefore this Court may recognize and consider an ongoing bankruptcy when the Secretary determines that it is appropriate to reduce proposed penalties in part because of a respondent's bankruptcy status.

Yet, while the Court may authorize a reduction of penalty amounts, it does *not* have the option to authorize a settlement amount of zero dollars. As Section 110(a) of the Act states, "The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, *shall be* assessed a civil penalty..." 30 U.S.C. § 820(a)(1) (emphasis added). The imposition of civil penalties should not be conflated with the separate issue of whether such penalties are, in fact, ultimately collected.

Approving a settlement that imposes no penalty for over a dozen violations of the Act would run contrary to the purposes of the Act, and the Court has no authority to do so. Therefore, the motion for approval of settlement is **DENIED**.

The parties are **ORDERED** to provide a status update on this matter within 30 days of this order regarding whether they intend to submit a revised settlement motion.

SO ORDERED.


William B. Moran
Administrative Law Judge

1990); *see also Big Laurel Mining Co.*, 37 FMSHRC 1997 (Sept. 2015) (finding that civil penalty proceedings by the Secretary fall within the 11 U.S.C. § 362(b)(4) exemption from the bankruptcy code's automatic stay provision).

³ *Georges Colliers, Inc.*, 23 FMSHRC 822, 825 (Aug. 2001); *see also Green Coal Co.*, 18 FMSHRC 1594 (Sept. 1996) (finding that bankruptcy does not justify failure to timely contest penalty, but suggesting it may be relevant to penalty amount).

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