

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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**JUL 21 2014**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
Petitioner

v.

R7 ENTERPRISES, LLC,  
Respondent

CIVIL PENALTY PROCEEDING:

Docket No. KENT 2013-357  
A.C. No. 15-18353-309799

Mine: Frasure Creek Mining, LLC F-2

**DECISION**

Appearances: J. Malia Lawson, Esq.; Office of the Solicitor, U.S. Department of Labor,  
618 Church Street, Suite 230, Nashville, TN 37219-2440 for Petitioner;

Mark E. Heath, Esq.; Spilman, Thomas & Battle, PLLC; 300 Kanawha  
Blvd., East, Charleston, WV 25301 for Respondent

Before: Judge David Barbour

In this proceeding arising under the Federal Mine Safety and Health Act, 30 U.S.C. 801 *et seq.* (2012) (Mine Act or Act), the Secretary alleges that R7 Enterprises, LLC, (R7) violated mandatory safety standard 30 C.F.R. 77.404(a), while performing contract work at the F-2 Mine of Frasure Creek Mining, LLC.<sup>1</sup> The standard requires that [“m]obile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.” 30 C.F.R. 77.404(a). The Secretary asserts that on November 9, 2012, Mine Safety and Health Administration Inspector Brian K. Robinson found that a hydroseeding truck had excessive slack on its right steering tie rod end and on its short steering arm. In addition, the truck’s right rear tandem brake was inoperative. The truck, which was in use at the mine, was owned by R7 and was being operated by one of its employees. The inspector cited R7 for the alleged violation. He found that the violation was reasonably likely to cause a fatality, that the violation was a significant and substantial contribution to a mine safety hazard and that R7 was highly negligent in allowing the condition to exist. The Secretary petitioned for the assessment of a civil penalty of \$51,236 for the alleged violation.

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<sup>1</sup> The mine is a surface coal mine located in Floyd County, Kentucky.

After the petition was filed, the company answered essentially asserting the truck's defects were discovered by the company on November 8, 2012, that its employees were told not to operate the truck until it was repaired, and that the mechanic arrived to repair the truck on November 9, but before he could act, the inspector, who was on the scene, issued the citation. The Commission's chief judge assigned the case to the undersigned who directed the parties to engage in discussions to determine whether they could resolve their differences. When, after working with the Commission's settlement counsel, the parties reported they remained at loggerheads, the undersigned scheduled the matter for hearing.

After a continuance due to a conflict on the undersigned's part, the parties agreed to go forward on June 17, 2014, in Prestonsburg, Kentucky. Upon arriving in Prestonsburg on the evening of June 16, 2014, the undersigned found a message left at his hotel stating that the parties settled the case. By e-mail, the undersigned asked counsels to proceed to the courthouse in the morning and there to put the settlement on the record.<sup>2</sup> The hearing convened as scheduled on the morning of June 17, and counsel for the Secretary explained the settlement as follows:

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R.</u>	<u>Proposed Penalty</u>	<u>Settlement Amount</u>
8275983	11/9/12	77.4045(a)	\$51,236	\$18,000

Counsel for the Secretary stated that the parties agreed the inspector's negligence finding should be modified from high to moderate. Tr. 12. The bases for the agreement are assertions in R7's answer that on November 8 the defects were discovered by the truck operator, that the parts needed for the necessary repairs were picked up by R7's mechanic the next morning, that he brought the parts to the mine, but that the inspector cited the company before the truck could be repaired. *Id.* The parties also agreed a total penalty of \$18,000 was warranted and requested that it be paid in three installments of \$6,000 at 30 day intervals. *Id.* In addition, counsel for R7 maintained that except for proceedings brought under the Mine Act, the settlement does not represent an admission by the company that it violated section 77.404(a). Tr. 13.


### ORDER

The undersigned, who is loath to second guess counsels, finds the settlement eminently reasonable. Tr. 13. Therefore the settlement **IS APPROVED**. Within 30 days of the date of this decision, R7 **IS ORDERED** to pay a total penalty of \$18,000 for the violation in question and to do so in three installments of \$6,000, the first installment being due 30 days from the date of this

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<sup>2</sup> Due to fiscal constraints under which his client was operating, counsel for R7 requested permission to enter an appearance telephonically sparing his client time and travel expenses. There being no objection from counsel for the Secretary, the undersigned agreed. Tr. 10.

decision and the other two installments being due at 30 day intervals thereafter.<sup>3</sup> In addition, the settlement is approved with the understanding that R7 agrees it violated section 77.404(a) for Mine Act purposes only and that its admission may not be used for proceedings under any other act.

  
David F. Barbour  
Administrative Law Judge

Distribution (Certified Mail):

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Ryan Risner, Owner/Manager, R7 Enterprises, LLC, HC 88 Box 119, Gunlock, Kentucky 41632

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<sup>3</sup> Payment shall be sent to: Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, Missouri 63197-0390.