

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W. Suite 9500
Washington, DC 20001-2021

August 21, 2007

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. CENT 2004-212-M
Petitioner : A. C. No. 29-02170-32227
v. :
:
SAN JUAN COAL COMPANY, : San Juan South
:
Respondent :

CORRECTED DECISION APPROVING SETTLEMENT
ON REMAND

Before: Judge Hodgdon

In accordance with Commission Rule 69(c), 29 C.F.R. § 2700.69(c), the following corrected decision, with the corrected language in italics, is substituted for the Decision Approving Settlement on Remand issued on August 15, 2007:

This case is before me on remand from the Commission. San Juan Coal Co., 29 FMSHRC 125 (Mar. 2007). It was remanded for further analysis of Citation No. 4768527, consistent with the Commission’s decision, and “[i]f the judge concludes that San Juan’s violation of section 75.400 was caused by unwarrantable failure, he should reassess the penalty and modify Citation No. 4768527 from a section 104(a) citation to a 104(d)(1) citation and modify Citation No. 4768528 from a 104(d)(1) citation to a section 104(d)(1) order.” Id. at 137. The parties, by counsel, have filed a motion to approve a settlement agreement. Acceptance by the Respondent of Citation No. 4768527 as originally written and a reduction in penalty from \$6,300.00 to \$3,500.00 are proposed.

Having considered the evidence presented at trial, the Commission’s decision, and the representations and documentation submitted, I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(i). Accordingly, the motion for approval of settlement is GRANTED, Citation No. 4768527 is MODIFIED from a 104(a) citation, 30 U.S.C. § 814(a), to a 104(d)(1) citation, 30 U.S.C. § 814(d)(1), Citation No. 4768528 is MODIFIED from a 104(d)(1) citation to a 104(d)(1) order and the

Respondent is **ORDERED TO PAY** a penalty of **\$3,500.00** within 30 days of the date of this order.

T. Todd Hodgdon  
Administrative Law Judge

Distribution:

Michael D. Schoen, Esq., Office of the Solicitor, 525 S. Griffin Street, Suite 501, Dallas, TX 75202

Mr. Daniel C. Wolff, Esq., Crowell & Moring, LLP, 1001 Pennsylvania Ave., N.W., Washington, DC 20004

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