

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

January 29, 1997

COSTAIN COAL INC., : CONTEST PROCEEDINGS
Contestant :
v. : Docket No. KENT 96-178-R
: Order No. 4277266; 2/6/96
SECRETARY OF LABOR, :
Mine Safety and Health : Docket No. KENT 96-179-R
Administration (MSHA), : Citation No. 4277267; 2/6/96
Respondent :
: Baker Mine
: Mine ID No. 15-14492
:
:
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
Mine Safety and Health :
Administration, (MSHA), : Docket No. KENT 96-191
Petitioner : A. C. No. 15-14492-03708
v. :
: Docket No. KENT 96-213
COSTAIN COAL INC., : A. C. No. 15-14492-03709
Respondent :
: Docket No. KENT 96-234
: A. C. No. 15-14492-03710
:
: Docket No. KENT 96-235
: A. C. No. 15-14492-03712
:
: Docket No. KENT 96-275
: A. C. No. 15-14492-03713
:
: Baker Mine
:
:
: Docket No. KENT 96-311
: A. C. No. 15-16020-03514
:
: Smith Underground #1 Mine

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
Carl B. Boyd, Jr., Esq., Henderson, Kentucky,
for the Respondent.

Before: Judge Feldman

These consolidated contest and civil penalty proceedings concern petitions for assessment of civil penalties filed by the Secretary of Labor against the respondent corporation pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. ' 820(a). The petitions seek to impose total civil penalties of \$43,258 for alleged violations of mandatory safety standards in Parts 70 and 75 of the regulations, 30 C.F.R. Part 70 & 75.

These matters were called for hearing on December 3, 1996, in Owensboro, Kentucky. At the commencement of the hearing, the parties advised that they had reached a comprehensive settlement with regard to all of the citations and orders in issue. Consequently, the respondent moved to withdraw its Notices of Contest in Docket Nos. KENT 96-178-R AND KENT 96-179-R. (Tr. 16-17). The settlement terms, which were presented and approved on the record, result in a reduction in the total proposed penalty from \$43,258 to \$32,001. The \$32,001 settlement amount consists of the respondent's agreement to pay civil penalties of: \$2,360 in Docket No. KENT 96-191; \$4,606 in Docket No. KENT 96-213; \$4,350 in Docket No. KENT 96-234; \$13,250 in Docket No. KENT 96-235; \$5,235 in Docket No. KENT 96-275;¹ and \$2,200 in Docket No. KENT 96-311.

The settlement terms include vacating Citation No. 4068884 in Docket No. KENT 96-191; modifying 104(d)(1) Order No. 4068883 to a 104(a) citation in Docket No. KENT 96-235 to reflect that the cited violation was not attributable to the respondent's unwarrantable failure; and modifying 104(d)(1) Citation No. 4276772 and 104(d)(1) Order No. 4276775 in Docket No. KENT 96-311 to 104(a) citations, thus removing the unwarrantable failure charges.

I have considered the representations and documentation submitted in these cases, and 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). **WHEREFORE**, the motion for approval of settlement **IS GRANTED**.

Accordingly, the respondent's motion to withdraw its contests in these matters **IS GRANTED** and **IT IS ORDERED** that the contest proceedings in Docket NOS. KENT 99-178-R and KENT 96-179-R **ARE DISMISSED**. **IT IS FURTHER ORDERED** that the respondent pay a total civil penalty of \$32,001 in satisfaction

¹ The record was left open in order to allow the parties to finalize their settlement agreement in Docket No. KENT 96-275. The parties subsequently advised me they had agreed upon a reduction in the proposed penalty from \$8,235 to \$5,235, based on a reduction in the gravity associated with Citation No. 9898360.

of the citations in issue within 30 days of this order, and, upon receipt of timely payment, Docket Nos. KENT 96-191, KENT 96-213, KENT 96-234, KENT 96-235, KENT 96-275 and KENT 96-311 **ARE DISMISSED.**

Jerold Feldman
Administrative Law Judge

Distribution:

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² At the time of the hearing Mr. Boyd's mailing address was 120 N. Ingram St., Henderson, KY 42420. However, Mr. Boyd's current address is Box 88, Tropic, Utah 84776. (Tr. 3).