

capitalization structure of closely held corporations is intended to limit liability. Consequently, although the corporations small size, and the financial information and documentation submitted by Tow Brothers, were appropriate considerations, the corporation's purported inability to pay, alone, did not relieve Tow Brothers of its liability under the Mine Act.

The parties' settlement terms were set forth and approved on the record. The settlement terms included Tow Brothers' agreement to pay a reduced civil penalty from \$52,500 to \$22,500. Pursuant to my direction at trial, the Secretary has filed a written summary of the parties' settlement agreement. As part of their settlement, the parties have stipulated:

- (a) The Federal Mine Safety and Health Review Commission has jurisdiction over these proceedings.
- (b) Tow Brothers is a corporation.
- (c) Tow Brothers' operations affect interstate commerce.
- (d) At all times relevant to the instant proceedings, Tow Brothers operated the Cedar Rapids Crusher #F25918.
- (e) The Cedar Rapids Crusher #F25918 extracted sand and gravel.
- (f) The Cedar Rapids Crusher #F25918 worked less than 10,000 hours in the period November 12, 1995, through November 11, 1996.
- (h) Tow Brothers committed one (1) violation of a health and safety regulation in the 24 month period ending on December 31, 1996.
- (i) Tow Brothers has agreed to pay the reduced civil penalty according to the payment plan detailed below.

The settlement terms as they apply to Docket Number LAKE 98-80-M are:

<u>Citation</u>	<u>Date Issued</u>	<u>30 C.F.R.</u>	<u>Assessment</u>	<u>Settlement</u>
4421526	11/13/96	56.14107(a)	\$18,000	\$ 7,700
4421527	11/13/96	56.14203	\$20,000	\$ 8,500
4421528	11/13/96	56.11001	<u>\$10,000</u>	<u>\$ 4,500</u>
TOTAL			\$48,000	\$20,700

- (1) The serious gravity associated with these citations remains unchanged.

compliance after notification of a violation.

- (2) The degree of negligence specified in the citations is unchanged.
- (3) Tow Brothers demonstrated its good faith by abating the citations within the time allowed by the MSHA inspector.
- (4) The reduced penalty assessment is appropriate based on Tow Brothers' small size and financial limitations.

The settlement terms as they apply to Docket Number LAKE 98-99-M are:

<u>Citation</u>	<u>Date Issued</u>	<u>30 C.F.R.</u>	<u>Assessment</u>	<u>Settlement</u>
4421529	11/13/96	56.14107(a)	\$1,500	\$ 600
4421530	11/13/96	56.14107(a)	\$1,500	\$ 600
4421531	11/13/96	56.14107(a)	<u>\$1,500</u>	<u>\$ 600</u>
TOTAL			\$4,500	\$1,800

- (1) The gravity of the cited violations is unchanged.
- (2) The degree of negligence specified in the citations is unchanged.
- (3) Tow Brothers demonstrated its good faith by abating the citations within the time allowed by the MSHA inspector.
- (4) The reduced penalty assessment is appropriate based on Tow Brothers' small size and financial limitations.

The parties have agreed to the following schedule of payments: Tow Brothers will pay \$6,500 on March 15, 2000.² The remainder of the installments will be paid in eight (8) quarterly payments of \$2,000 each, payable on or before the following dates: June 15, 2000, September 15, 2000, December 15, 2000, March 15, 2001, June 15, 2001, September 15, 2001, December 15, 2001, with the last payment made on or before March 15, 2002. If payments are not made in accordance with this payment schedule, the remaining balance of the \$22,500 civil penalty shall due and payable immediately.

Payments shall be made to the Mine Safety and Health Administration, ATTN: Dorothy Johnson, 4015 Wilson Blvd., Room 926, Arlington, VA 22203.

² As of March 24, 2000, the first installment of \$6,500 had not yet been received by MSHA's Office of Assessments. I assume payment has been delayed pending the issuance of this decision formalizing the parties' agreement. **If payment of the first \$6,500 installment is not received within 21 days of the date of this decision, the Secretary may file a motion for a default judgment that seeks to impose the \$52,500 civil penalty initially proposed in these matters.**

ORDER

As noted on the record at trial, I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the parties' motion for approval of settlement **IS GRANTED**, and, **IT IS ORDERED** that Tow Brothers Construction, Inc., pay a \$22,500 civil penalty in accordance with the above payment schedule and, upon receipt of timely payment of the entire \$22,500 penalty, these cases **ARE DISMISSED**.

Jerold Feldman
Administrative Law Judge

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