

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES

601 New Jersey Avenue, N.W. Suite 9500

Washington, DC 20001-2021

October 18, 2006

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 2002-111
Petitioner	:	A.C. No. 01-01247-03501 VAD
	:	
v.	:	Docket No. SE 2003-69
	:	A.C. No. 01-01247-03502
	:	
SEDGMAN and DAVID GILL, employed	:	Docket No. SE 2003-189
by SEDGMAN	:	A.C. No. 01-01247-06606
Respondent.	:	
	:	Mine No. 4 Mine

**DECISION ON REMAND**

On June 30, 2006, the Commission issued a decision, Secretary v. Sedgman, 28 FMSHRC 322, which, *inter alia* affirmed the initial decision in this matter, 26 FMSHRC 873 (November, 2004), regarding the violations at issue, but vacated the decision regarding the penalty to be assessed for the violation of 30 C.F.R. § 77.200, and remanded the case for reassessment of the penalty.

Subsequent to telephone conference calls, the parties were ordered to file briefs relating to the issues raised by the Commission's decision and remand, 28 FMSHRC, *supra*. The Secretary filed her brief on September 1, 2006.

Thereafter, the parties filed a Joint Motion to Approve Settlement and to Dismiss the civil penalty proceeding. The Secretary had initially proposed a penalty of \$35,000 for the violation of Section 77.200, *supra*. The parties seek approval of a proposed settlement of \$19,000. Based on the assertions set forth in the motion, and the record in this case, including the testimony and documentary evidence adduced at the initial hearing, I find that the settlement is appropriate, and in compliance with the terms of the Federal Mine Safety and Health Act of 1977. Accordingly, the settlement is approved.

It is **Ordered** that, within 30 days of this decision, Respondent shall pay a civil penalty of \$19,000 for the violation cited in Citation No. 7676881, and that these cases be **Dismissed**.

Avram Weisberger  
Administrative Law Judge

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