

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
**1730 K STREET NW, 6TH FLOOR**  
**Washington, D.C. 20006-3868**

January 7, 1997

SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) : Docket No. SE 96-355-M  
Petitioner : A. C. No. 54-00333-05510  
v. :  
ARENAS MATILDE INCORPORATED, : Arenas Matilde  
Respondent :

**ORDER DENYING MOTION TO WITHDRAW**  
**DECISION APPROVING SETTLEMENT**  
**ORDER TO PAY**

**Before: Judge Merlin**

This case is a petition for the assessment of a civil penalty filed by the Secretary of Labor against Arenas Matilde Incorporated under section 105(d) of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. ' 815(d).

One violation is involved in this case. The originally assessed penalty was \$119. On October 25, 1996, the Solicitor and the operator's attorney filed a joint motion seeking approval of a settlement in the amount of \$70. To support their request they advised that the operator was small in size and the violation was promptly abated. The motion was signed by both the Solicitor and the operator's attorney.

The motion is well taken. Section 110(i) of the Act, 30 U.S.C. ' 820(i), sets forth six factors that must be taken into account in determining the appropriate amount of penalty. The motion identifies two of the relevant factors in explaining why a reduction from the original assessment is warranted. The motion also provides the basis for me to determine that the recommended settlement is a proper amount under all the criteria specified in section 110(i). The motion is therefore, entitled to approval.

However, on December 16, 1996, the Commission received a copy of a letter dated December 13, 1996, from operator's counsel to the Solicitor. Operator's counsel requested that all settlement proceedings be stopped unless it was understood that the Mine Safety and Health Administration had no jurisdiction in the future. On December 26, 1996, the operator filed a motion to

clarify or withdraw the settlement. By letter dated December 31, 1996, the Solicitor opposed the operator's request to withdraw the settlement and stated that the settlement represented a binding agreement of the parties.

It is well established that settlements are favored as a way of avoiding protracted and expensive litigation. Core-Vent Corp. v. Implant Innovations, Inc., 53 F.3d 1252, 1259 (Fed Cir. 1995). In this case there is no question that the terms of the settlement were understood and accepted by both parties. Also, it is undisputed that counsel for both sides were authorized to enter into the settlement on behalf of their clients. In Re Artha Management, Inc., 91 F.3d 326, 328-329 (2<sup>nd</sup> Cir. 1996); U.S. v. International Broth. Of Teamsters, 986 F.2d 15, 19-20 (2<sup>nd</sup> Cir. 1993). All that appears is that some time after entering into the settlement, the operator decided to challenge the jurisdiction of the Mine Safety and Health Administration.<sup>1</sup> However, the settlement into which the operator freely and knowingly entered is binding. Wilson v. Wilson, 46 F.3d 660, 667 (7th Cir. 1995). The Commission has recognized that settlement is an integral part of dispute resolution under the Mine Act. Kathleen I. Tarmann v. International Salt Company, 12 FMSHRC 1, 2 (January 1990). A settlement agreement may be reopened only on the grounds of mutual mistake or fraud. A unilateral mistake is not sufficient to allow the mistaken party to avoid the effect of an otherwise valid settlement agreement. UMWA v. Utah Power and Light Company, 12 FMSHRC 1548, 1555 (August 1990).

The operator is free to raise jurisdictional questions with respect to future citations.

Accordingly, it is **ORDERED** that the request to withdraw settlement be **DENIED**.

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<sup>1</sup> A previous jurisdictional challenge by this operator was rejected and no appeal was taken. Arenas Matilde Incorporated, 15 FMSHRC 2304, 2309-2311 (November 1993).

It is further **ORDERED** that the settlement motion be **APPROVED** and that the operator **PAY** \$70 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge

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