

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

March 10, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. VA 95-3-M  
  
Petitioner : A.C. No. 44-06701-05506  
v. :  
: :  
MECHANICSVILLE CONCRETE INC., :  
Respondent : Pit #1

**ORDER**

On February 10, 1995, the Secretary filed a motion to preclude Mechanicsville, Concrete, Inc. (Respondent) from relitigating the issue of whether it and its mine, Pit No. 1, are subject to the jurisdiction of the Commission. The motion is based upon the principle of collateral estoppel.<sup>1</sup>

On July 7, 1994, in Secretary v. Mechanicsville Concrete, Inc., 16 FMSHRC 1444 (July 1994), Respondent had raised the defense that it was not subject to MSHA jurisdiction. Judge Arthur Amchan ruled that the Respondent herein and its mines, Pit No. 1 and Branchville Plant, were subject to MSHA jurisdiction.

On August 16, 1994, the Commission denied the Respondent's petition for review of this ruling, but accepted the Respondent's petition for review of other issues, and directed sua sponte for review of other rulings contained in Judge Amchan's decision.

"Under the judicially developed doctrine of collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision is conclusive in a

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<sup>1</sup>In its answer filed in this matter, Respondent asserted, inter-alia, that the Commission does not have jurisdiction over the Respondent or its mine, Pit No. 1, and that the Federal Mine Safety and Health Act of 1977 ("the Act") is unconstitutional as applied to this Respondent.

subsequent suit based on a different cause of action involving a party to the prior litigation." U.S. v. Mendoza, 464 U.S. 154, 158 (1984), citing Montana v. U.S., 440 U.S. 147, 153 (1979). The rationale for this doctrine was set forth by the Supreme Court in Montana, supra, as follows: "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." Montana v. U.S., 440 U.S. at 153-154.

Respondent has already litigated before Judge Amchan the issue of the Act's jurisdiction over it and its mines. Respondent asserts that the mine at issue before Judge Amchan was close to the North Carolina border, whereas the case at bar "deals only with a mine in the geographic center of the state." However, Respondent, in the instant proceeding does not seek to litigate the issue of jurisdiction based upon a set of facts differing in essential part from those presented in the case before Judge Amchan. It is Respondent's position that "the Court can address the legal (sic.) of the continuing viability of Wickard without fact finding and testimony on the jurisdictional issues. . . . Because this case will not involve the relitigation of facts but simply the appropriateness of continuing to apply an unworkable constitutional precedent this is not the kind of case where collateral estoppel is appropriate."

Hence, since Judge Amchan made a decision regarding the jurisdiction of the Act over Respondent and its mines, Respondent is precluded from relitigating this issue before me.

The Secretary's Motion is granted .<sup>2</sup> IT IS ORDERED that Respondent be precluded from relitigating the issue of whether it is subject to the Act, and that Judge Amchan's decision in this issue is conclusive in the instant proceeding. IT IS FURTHER ORDERED that by March 23, 1995, the parties shall comply with all the terms of the Prehearing Order previously issued on January 23, 1995.

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<sup>2</sup>To the extent that Respondents' arguments are inconsistent with this decision, they are rejected for the reasons set forth above.

Avram Weisberger  
Administrative Law Judge

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