

CCASE:  
MADISON BRANCH V. SOL (MSHA)  
DDATE:  
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

MADISON BRANCH MANAGEMENT	:	Contest Proceedings
	:	
v.	:	Docket Nos.WEVA 93-218-R
	:	
	:	WEVA 93-219-R
	:	
SECRETARY OF LABOR,	:	WEVA 93-220-R
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
SECRETARY OF LABOR,	:	Civil Penalty Proceedings
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos.WEVA 93-373
	:	WEVA 93-412
v.	:	
	:	
MADISON BRANCH MANAGEMENT	:	
	:	
	:	
SECRETARY OF LABOR,	:	Civil Penalty Proceeding
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 93-415
	:	
v.	:	
	:	
PROTECTIVE SECURITY SERVICES AND	:	
INVESTIGATIONS, INC.	:	

O R D E R

Before us is a Petition for Interlocutory Review and Order Suspending Hearing filed by Madison Branch Management ("Madison"). The Secretary of Labor ("Secretary") supports Madison's petition. By orders dated September 8 and 16, 1994, Administrative Law Judge Jerold Feldman denied motions for certification to the Commission of his interlocutory rulings. See Commission Procedural Rule 76(a)(1)(ii), 29 C.F.R. 2700.76(a)(1)(ii). A hearing in these proceedings is currently scheduled for September 22, 1994, before Judge Feldman.

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The judge has issued a number of interlocutory orders, the thrust of which has been to deny motions by the Secretary to dispose of the above-captioned cases pursuant to a settlement agreement reached among the parties.(FOOTNOTE 1) The judge based his determinations on concerns that additional abatement measures beyond those required by the Secretary may be necessary in order to remove the risk to safety posed by the violations at issue. (FOOTNOTE 2) We view the instant petition as one seeking review of these interlocutory orders taken as a whole.(FOOTNOTE 3)

The Commission concludes that the judge's interlocutory rulings involve a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. See 29 C.F.R. 2700.76(a). The Commission therefore grants Madison's petition, suspends briefing before the Commission, and stays the hearing set for September 22, 1994, and all other proceedings before Judge Feldman.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

FOOTNOTE 1

These orders include an Order Denying Motions for Approval of Settlements, dated June 8, 1994, an Order Denying Joint Motion for Summary Decision, dated July 22, 1994, and an Order Denying the Secretary's Motion for Summary Judgment, dated August 29, 1994.

FOOTNOTE 2

See, e.g., Order Denying The Secretary's Motion for Summary Judgment at 2.

FOOTNOTE 3

Rule 76(b) states that "[a] copy of the Judge's interlocutory ruling sought to be reviewed and of the Judge's order denying the petitioner's motion for certification shall be attached to the petition." 29 C.F.R. 2700.76(b). Here, the petitioner omitted a copy of the challenged interlocutory rulings from its petition. However, Madison's request for "immediate review of Judge Feldman's rulings" concerning "the respondents' good faith efforts to achieve rapid compliance in abating the citations involved in these proceedings," together with the underlying motions for certification, sufficiently identify the interlocutory rulings sought to be reviewed.