

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

December 4, 2025

ROBERT THOMAS

v.

CALPORTLAND COMPANY

Docket No. WEST 2018-0402-DM
WEST 2019-0205

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: THE COMMISSION

This discrimination proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act” or “Act”), is on remand to the Commission for the second time pursuant to a decision of the United States Court of Appeals for the Ninth Circuit. During its first review, the Court rejected the Commission’s application of the *Pasula-Robinette* causation standard¹ to section 105(c) cases.² *Thomas v. CalPortland Co.*, 993 F.3d 1204 (9th Cir. 2021), *rev’g Thomas v. CalPortland*, 42 FMSHRC 43 (Jan. 2020) (“*CalPortland I*”). The Ninth Circuit then remanded the case to the Commission to apply a “but-for” causation standard.

¹ See *Sec’y of Labor on behalf of Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786 (Oct. 1980), *rev’d on other grounds*, 663 F.2d 1211 (3d.Cir. 1981); *Sec’y of Labor on behalf of Robinette v. United Castle Coal Co.*, 3 FMSHRC 803 (Apr. 1981).

² Section 105(c) of the Mine Act states in pertinent part that:

No person shall discharge or in any manner discriminate against . . . any miner . . . because such miner . . . filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator’s agent . . . of an alleged danger or safety or health violation in a coal or other mine, . . . or because such miner . . . has instituted or caused to be instituted any proceeding under or related to this Act

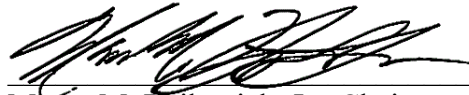
30 U.S.C. § 815(c)(1).

The Commission subsequently remanded the case to the Administrative Law Judge to reexamine the facts of this case consistent with the Ninth Circuit's instructions. 43 FMSHRC 314 (June 2021). On remand, the Judge concluded, as she had prior to the remand, that CalPortland had discriminated against miner Robert Thomas in violation of the Mine Act. She again awarded Thomas back pay, lost benefits, interest, attorney's fees, and any additional fees incurred during the appeals process. *Thomas v. CalPortland*, 43 FMSHRC 531, 550 (Dec. 2021) (ALJ). CalPortland filed a petition for discretionary review with the Commission challenging the Judge's decision, which the Commission granted.

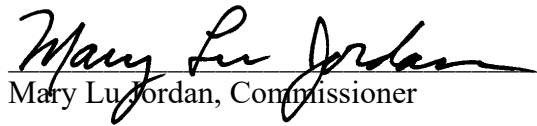
On review, the Commission reversed the Judge's remand decision and concluded that Thomas had failed to show that, but for his protected activity, he would not have been suspended or terminated. 46 FMSHRC 119, 133 (Mar. 2024). Thomas again appealed the Commission's decision to the Ninth Circuit.

In an unpublished decision, the Ninth Circuit concluded that the Commission misapplied the substantial evidence standard and that, based on the Judge's findings, the miner had succeeded in his claim. *Thomas v. FMSHRC and CalPortland Co.*, No. 24-1442, 2025 WL 2651299, at 1 (9th Cir. Sep. 16, 2025) ("*CalPortland II*"). The Court vacated the Commission's decision and remanded it stating that "[t]he matter of the ALJ's supplemental order regarding the amount of damages remains to be conclusively resolved." *Id.* at 3. On October 3, 2025, the court issued its mandate returning the case to the Commission's jurisdiction.

Accordingly, we remand this matter to the Chief Administrative Law Judge for a calculation of any damages and interest owed to the complainant Robert Thomas consistent with the Ninth Circuit's decision.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Distribution:

Brian P. Lundgren, Esq.
Jackson Lewis P.C.
520 Pike Street, Suite 2300
Seattle, WA 98101
Brian.Lundgren@jacksonlewis.com

Jessica M. Cox, Esq.
Jackson Lewis P.C.
520 Pike Street, Suite 2300
Seattle, WA 98101
Jessica.Cox@jacksonlewis.com

M. Christopher Moon, Esq.
Jackson Lewis P.C.
215 South State Street, Suite 760
Salt Lake City, UT 84111
Christopher.Moon@jacksonlewis.com

Dylan B. Carp, Esq.
Jackson Lewis P.C.
50 California Street, 9th Floor
San Francisco, CA 94111-4615
Dylan.Carp@jacksonlewis.com

Colin F. McHugh, Esq.
McHugh Law, PLLC
1207 Washington Street, Suite 225
Vancouver, WA 98660
colin@colinmchughlaw.com

Trevor J. Cartales, Esq.
Navigate Law Group
1310 Main Street
Vancouver, WA 98660
tcartales@navigatelawgroup.com

Alexander Higgins, Esq.
Law Offices of Alex J. Higgins
2200 Sixth Avenue, Suite 500
Seattle, WA 98121
alex@alexjhiggins.com

Thomas A. Paige, Esq.
Deputy Associate Solicitor
US Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Paige.Thomas@dol.gov

Jennifer A. Ledig
US Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Ledig.jennifer.a@dol.gov

Susannah M. Maltz, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Maltz.Susannah.M@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Office of the Chief Administrative Law Judge
Federal Mine Safety & Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov