

On February 20, 2015, the Secretary, the complainant, and Veris Gold entered into a confidential settlement agreement. The agreement provided in relevant part that Veris Gold would pay a civil penalty of \$1000 to MSHA and an undisclosed amount of damages to Morreale. Within the agreement, Veris Gold represented that it had received approval from a bankruptcy monitor to make the payment, as the operator had previously filed U.S. Chapter 15 bankruptcy proceedings concurrent with Canadian bankruptcy filings and was subject to the financial oversight of a bankruptcy monitor. The Judge issued a decision approving the settlement agreement, which required payment of \$1000 to MSHA within 30 days, and payment of the undisclosed amount to Morreale in accordance with the terms of the settlement agreement. Three months later, however, Morreale filed a *pro se* motion to compel claiming that she never received the payment.

On June 1, 2015, the Judge presided over a conference call with the Secretary, the complainant, and Veris Gold's counsel in order to discuss the issue of the operator's failure to make the payment. During the course of the call, it became clear that the bankruptcy monitor overseeing the bankruptcy proceedings had withheld payment to both the Secretary and Ms. Morreale pending the resolution of an asset sale of the mine by the operator to a separate entity, Jerritt Canyon Gold, LLC ("Jerritt Canyon"). Given the limited ability of the Commission to enforce its own judgments, the Judge requested an update within 30 days regarding the status of Veris Gold's ability to make the payment. The Judge also notified the parties that he was reserving judgment on Morreale's motion to compel the payment until he received the update.

On June 15, 2015, Morreale notified the Judge that she had filed a motion to stay the sale of the operator's assets with the U.S. Bankruptcy Court for the District of Nevada. The bankruptcy monitor subsequently objected to Morreale's motion to stay, stating that it never consented to making the payment to Morreale absent approval of the Canadian Bankruptcy

Any miner . . . who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint.

² The Secretary claims that Morreale was constructively discharged because she was transferred to a prior position at the mine, in which she had been previously exposed to sexual harassment from her supervisor.

Court. Based on this objection, the U.S. Bankruptcy Court denied Morreale's motion to stay and finalized Veris Gold's asset sale.

On June 24, 2015, Jerritt Canyon commenced operations at the mine site in order to ensure that there would be no disruption to operations once Veris Gold was to cease operations. The next day, Veris Gold ceased operations at the mine.

On July 8, 2015, the Judge denied Morreale's motion to compel because he believed that the Commission lacked jurisdiction. The Judge reasoned that, pursuant to section 113(d)(1) of the Act, 30 U.S.C. § 823(d)(1), his February 27, 2015 decision approving settlement had become a final order of the Commission on April 9, 2015, and that enforcement of the payment could only be sought in the federal courts by the Secretary or Morreale. The Judge stated that he was nevertheless "troubled that the [operator] specifically assured the [Judge] that payment would be made promptly when obtaining approval for the settlement motion and then failed to honor that commitment." Unpublished Order at 3 (July 8, 2015). The Judge was "especially concerned that the change in circumstances cited by the U.S. bankruptcy monitor to justify withdrawing payment to Ms. Morreale occurred in 'mid-February,' apparently *before* the parties submitted their joint settlement motion on February 20, 2015." *Id.* (emphasis added). The Judge stated that the Secretary or Morreale may petition the Commission directly to obtain relief.

On October 9, 2015, the Commission received Morreale's motion to reopen. The motion requests that the case be reopened so that the Commission could decide whether Jerritt Canyon, Eric Sprott³ and Whitebox Asset Management⁴ are successor entities that should be held liable for the actions of the predecessor entity, Veris Gold.

On January 6, 2016, the Commission also received Morreale's Motion for Expedited Consideration from the Commission, Motion to Reopen Case, and Motion to Amend. In the motion, Morreale seeks to expedite the case and add Jerritt Canyon as a successor-in-interest. On February 3, 2016, the Commission also received a Motion to Amend and Request for Expedited Consideration, which requests that the complaint be amended to add Jerritt Canyon, Eric Sprott and Whitebox Asset Management as parties.

On February 17, 2016, the Commission received from Jerritt Canyon a Special Limited Appearance on behalf of Jerritt Canyon Gold, LLC to Contest Jurisdiction in Response to Complainant's Motion to Amend. Jerritt Canyon asserts that the Commission lacks jurisdiction over the complainant's motion to reopen because the complainant is time-barred from petitioning

³ Eric Sprott is a principal asset manager of Jerritt Canyon who, according to the motion to reopen, "owned a percentage of Veris Gold before it became Jerritt Gold LLC." Mot. Reopen at 3.

⁴ Whitebox Asset Management was the controlling DIP ("debtor in possession") Lender that provided ongoing funding of \$15 million for Veris Gold's operations during its insolvency. Subsequently, Whitebox acquired Veris Gold's assets. According to Morreale's subsequent February 3, 2016 Motion to Amend and Request for Expedited Consideration, Whitebox Asset Management is "comprised of Eric Sprott and others."

the Commission for discretionary review under the 30-day rule in section 113 of the Mine Act. Jerritt Canyon further asserts that, due to the effect of the Chapter 15 bankruptcy proceedings, successor liability cannot attach to Jerritt Canyon.

II.

Disposition

We reopen this case under the “catch all” or “extraordinary circumstances” provision in Rule 60(b)(6) of the Federal Rules of Civil Procedure in the interest of justice. Rule 60(b)(6) states that a court may relieve a party or its legal representative from a final judgment, order, or proceeding, even though the case does not fit into one of the other, more specific provisions of Rule 60(b), if there is “any other reason that justifies relief.”⁵ Fed. R. Civ. P. 60(b)(6).

The Commission has previously reopened a case under Rule 60(b)(6) where an operator repudiated a settlement agreement and the case had been dismissed on the basis of that agreement. Specifically, the Commission in *Johnson v. Lamar Mining Co.* reopened a case arising from a discrimination claim when an underlying settlement agreement was materially breached by the operator’s failure to pay monetary damages owed to the complainant. 10 FMSHRC 506, 508-09 (Apr. 1988). We hold that *Johnson* is directly on point here and strongly supports reopening under Rule 60(b)(6). See also *Tolbert v. Chaney Creek Coal Corp.*, 12 FMSHRC 615 (Apr. 1990) (reopening case under Rule 60(b)(6) when operator refused to comply with Judge’s order to pay penalty to complainant upon a finding of discrimination).

Federal court case law further supports reopening this case under Rule 60(b)(6). In *Fairfax Countywide Citizens Ass’n. v. Fairfax County*, 571 F.2d 1299, 1302-03 (4th Cir.), cert. denied, 439 U.S. 1047 (1978), the Fourth Circuit affirmed a district court’s authority to reopen a case where a settlement agreement had been breached. See also *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371-72 (6th Cir.), cert. denied, 429 U.S. 862 (1976). The Sixth Circuit in *Aro Corp.*, 531 F.2d at 1371, reasoned that reopening cases in such scenarios may be required in the interests of justice. Similarly, the Commission has a firm basis for reopening this case under Rule 60(b)(6). Accordingly, we conclude that this case should be reopened.

No person filed an opposition to Morreale’s motion to reopen. However, Jerritt Canyon opposed Morreale’s subsequently filed motion to amend. Because we remand the motion to amend to the Administrative Law Judge for review, we need not address all of Jerritt Canyon’s arguments here. We do find, however, that Jerritt Canyon’s argument contesting jurisdiction is unavailing. We construe Morreale’s request as a motion to reopen the case – not as a petition for

⁵ In analyzing the applicability of Rule 60(b)(6), it is important to recognize that the Commission is not strictly bound by the language of this provision nor the case law interpreting it. Specifically, under 29 C.F.R. § 2700.1(b), “the Commission and its Judges shall be guided [only] so far as *practicable* by the Federal Rules of Civil Procedure.” *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993) (emphasis added). Thus, the Commission has discretion in tailoring the rules to fit within the Mine Act framework and implementing the authority granted by Congress.

discretionary review of a final decision. The Commission has long held that it has the authority to reopen cases under appropriate circumstances. *Johnson*, 10 FMSHRC at 508-09; *Tolbert*, 12 FMSHRC at 618-19. Based upon the circumstances of this case, the case is not time barred by section 113 and warrants reopening.

We also hold that Morreale filed her motion to reopen within a “reasonable time,” as required by Rule 60(b)(6). The Judge issued his order dismissing Morreale’s case for lack of jurisdiction on July 8, 2015. Morreale filed her motion to reopen on October 9, 2015, three months later. We hold that this constitutes a “reasonable time” under the circumstances of this case. The remaining arguments in Jerritt Canyon’s opposition to the motion to amend may be considered by the Judge on remand.

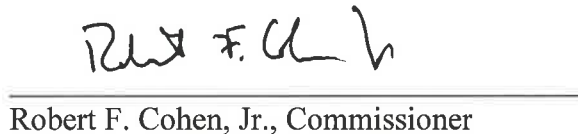
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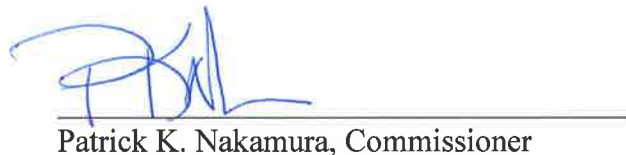
Conclusion

We grant Morreale’s motion to reopen and remand this case to the Judge for further proceedings. The Judge shall consider Morreale’s motion to amend her complaint to add Jerritt Canyon Gold, LLC; Eric Sprott; and Whitebox Asset Management as successors-in-interest.


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