

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

SEP 15 2015

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

BIG LAUREL MINING CORPORATION

Docket Nos. VA 2012-56
VA 2012-337

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On September 1, 2015, a Commission Administrative Law Judge issued a decision, disposing of issues and assessing civil penalties in the sum of \$252,304 relating to citations and orders issued to Big Laurel Mining Corporation by an inspector with the Department of Labor’s Mine Safety and Health Administration (“MSHA”). 37 FMSHRC ___, slip op. at 36, Nos. VA 2012-337, et al. (Sept. 1, 2015) (ALJ).

On September 9, counsel for Big Laurel filed a Notice of Suggestion of Pendency of Bankruptcy and Automatic Stay of Proceedings. In the notice, counsel states that on August 3, 2015, Alpha Natural Resources, Inc. and certain of its direct and indirect subsidiaries filed Chapter 11 petitions in the United States Bankruptcy Court for the Eastern District of Virginia. Counsel further states in part that, in accordance with the automatic stay imposed by 11 U.S.C. § 362(a), no party may commence or prosecute any cause of action outside of the Bankruptcy Court either against Big Laurel or its successor, Mill Branch Coal Corporation, without first obtaining an order lifting the stay from the Bankruptcy Court. In addition, Counsel states that actions taken in violation of the automatic stay, and judgments entered or enforced against the debtors, including Big Laurel or Mill Branch, while the stay is in effect, are void.

Section 362(a) of the Bankruptcy Code provides that the filing of a Chapter 11 bankruptcy petition operates as an automatic stay of the continuation of administrative proceedings against the bankruptcy petitioner. 11 U.S.C. § 362. However, section 362(b)(4) exempts from the automatic stay provisions the continuation of a proceeding by a “governmental unit” to enforce the governmental unit’s police or regulatory power.¹ As the Commission has previously recognized, the Secretary of Labor, the Department of Labor, and MSHA are all “governmental units” within the meaning of the Bankruptcy Code.² *Jim Walter Res., Inc.*, 12 FMSHRC 1521, 1530 (Aug. 1990) (“*JWR*”).

The present case was brought by the United States, through the Secretary, to effectuate and enforce mandatory safety standards that implement the Mine Act. Thus, it is the kind of regulatory action covered by the police or regulatory power exception to the automatic stay. See *Hidden Splendor Res., Inc.*, 35 FMSHRC 1548, 1549-50 (June 2013); *Holst Excavating, Inc.*, 17 FMSHRC 101, 102 (Feb. 1995); *JWR*, 12 FMSHRC at 1530.

¹ Section 362(b)(4) provides in part:

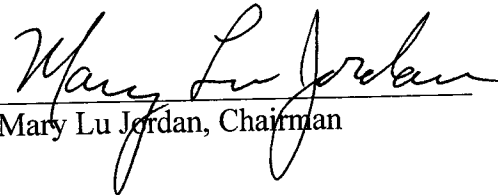
(b) The filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay—

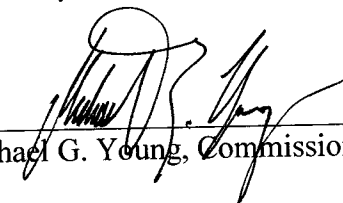
(4) under paragraph (1) . . . of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s . . . police or regulatory power.

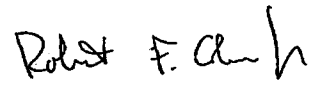
11 U.S.C. § 362(b)(4).


² 11 U.S.C. § 101(27) defines “governmental unit” as the “United States; . . . department, agency, or instrumentality of the United States.”

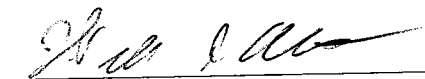
We construe Big Laurel's notice as a petition for discretionary review and motion to stay. We hereby deny the petition because it fails to set forth grounds for review as required by the Mine Act and the Commission's procedural rules. See 30 U.S.C. § 823(d)(2)(A); 29 C.F.R. § 2700.70. In accordance with those provisions, Big Laurel must file any amended petition for discretionary review by October 1, 2015.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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