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SOL (MSHA) V. BIGELOW LOPTAK
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

BIGELOW LIPTAK CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No: CENT 84-24-M W 24
A/O No: 41-00010-05503

Capitol Cement Plant

DECISION

Appearances: Jack F. Ostrander, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas, for the
Petitioner Laurel D. Breitkopt, for the Respondent

Before: Judge Moore

Bigelow Liptak Corporation is a construction company and at the time of the events involved in this case, it was engaged in the construction of a large vessel for the Capitol Cement Company. Bigelow Liptak stipulated that it was covered by and subject to the Federal Mine Safety and Health Act of 1977.

The company's specific task was to lay the brick and add gunnite to the inside of the steel vessel. Respondent's exhibit 2 was a drawing of the vessel but it was neither to scale nor is it accurate in the measurements shown. The tubular vessel with a cone-shaped lower part is used in the manufacture of cement. At the time of the inspection involved herein, respondent had already laid the brick, and had completed the spraying of the gunnite, a stucco-like cement mixture, and was engaged in cleaning up the gunnite that had bounced off the walls and fallen into the lower part of the conical vessel. Inspector Lilley said he entered the vessel through the port depicted on the right hand side of respondent's exhibit 2 and that he saw workers on two levels below him. On his level there was at least one worker and the scaffolding consisted of loose boards laid

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across the pipes. The boards were overlapping in some places and did not go all the way to the outside edge of the vessel in other places. There was a hole through which the spilled gunnite was being hoisted from the lower level. Inspector Lilley, after being informed that respondent could complete its job in about an hour, nevertheless thought the situation so hazardous that a serious injury might occur before that time elapsed. He thus issued an imminent danger order and alleged therein a violation of 30 C.F.R. 56.11-27.

The dimensions of the vessel are in dispute. It was between 11 and 15 feet in diameter and I find that if a person fell from the level from where Inspector Lilley was, he would fall 16 feet before striking the bottom level where a female was loading the gunnite into buckets. I find this is a hazard to the workers at the bottom level, as well as to one who might fall from the top level as well as a hazard to the one working in the middle level. Respondent admitted that the port shown on respondent's exhibit 2 was higher than the drawing indicated.

The fact that respondent rents scaffolding, in this case from a Safeway Scaffolding Company, and that the company that rents the scaffolding guarantees its safety does not excuse respondent from this violation. The scaffolding was assembled by respondent and I find that it was assembled in a negligent manner. The respondent is a fairly large company and it did abate the violation in good faith but the negligence and gravity were high. I find the special assessment of \$600 to be reasonable and therefore assess that amount as the appropriate penalty.

Respondent is accordingly directed to pay to MSHA within 30 days, a civil penalty in the amount of \$600.

Charles C. Moore, Jr.
Administrative Law Judge

a1. The court reporter states that the exhibits were mailed with the transcript. This office has no record that they were received. I am attaching a drawing that is consistent with my recollection. If this decision is appealed, the parties will have to resubmit the exhibits for the Commission.