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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 89-103  
A.C. No. 46-07310-03501 AUJ

v.

Logan County No. 1 Mine

2 K LEASING,  
RESPONDENT

ORDER DENYING MOTION TO APPROVE SETTLEMENT

On November 13, 1989, the Secretary filed a motion to approve a settlement in this case. The docket involves a single alleged violation originally assessed at \$2000. The motion proposes that it be reduced to \$1000.

The citation involved herein alleges a violation of 30 C.F.R. 77.1605(b) because a coal haulage truck was not provided with adequate brakes. The motion states that the brake defect was a partial cause of a coal haulage accident which resulted in the truck driver being fatally injured. The motion states that the reduction in the penalty is justified because Respondent's business is very small and "the penalty threatened to reduce its ability to continue in business." No factual justification for this conclusion was provided. The size of Respondent's business and its favorable history of prior violations were presumably considered in assessing the penalty originally. The effect of a penalty on its ability to continue in business, if relied upon to reduce the penalty, must be supported by factual data.

Accordingly, the motion to approve the settlement agreement is DENIED.

IT IS FURTHER ORDERED that unless additional factual support for a renewed motion is submitted, the parties shall respond by December 8, 1989, to paragraph 2 of the Prehearing Order of July 25, 1989, and advise me of any dates in January or February 1990 which would pose scheduling difficulties.

James A. Broderick  
Administrative Law Judge