

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

January 30, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. CENT 96-84
	:	CENT 96-103
H M I a.k.a. HEATHERLY MINING, INC.	:	CENT 96-104
	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 95-201
	:	
P & K CO., LTD.	:	

BEFORE: Jordan, Chairman; Marks and Riley, Commissioners¹

ORDER

BY THE COMMISSION:

In each of the above-captioned cases, Chief Administrative Law Judge Paul Merlin issued an Order of Default to H M I a.k.a. Heatherly Mining, Inc. (AHMI®) or P & K Co., Ltd. (AP&K®), and assessed civil penalties, for failure to answer the Secretary of Labor's petition for assessment

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

of civil penalty or the judge's Order to Respondent to Show Cause.²

In November 1996, the Commission received an Application to File Answer Out of Time, Answer to Petition for Assessment of Penalty, and Motion to Dismiss in each case from HMI or P&K.³ In their motions, HMI and P&K assert that they understood that they had settled all

² In No. CENT 96-84, Chief Judge Merlin issued a Default Order on August 14, 1996, after HMI failed to respond to his Order to Show Cause dated June 7, 1996. In Nos. CENT 96-103 and CENT 96-104, Chief Judge Merlin issued Default Orders on October 11, 1996, after HMI failed to respond to show cause orders issued in each case on August 13, 1996. In No. CENT 95-201, Chief Judge Merlin issued a Default Order on October 27, 1995, after P&K failed to respond to his show cause order dated August 14, 1995.

³ The Commission received an application, answer, and motion to dismiss filed by HMI in No. CENT 96-84 on November 8, 1996, and in Nos. CENT 96-103 and 96-104 on November 13, 1996. The Commission received an application, answer, and motion to dismiss filed by P&K in No. CENT 95-201 on November 12, 1996.

The Commission received an amended motion to dismiss filed by HMI in No. CENT 96-104 on November 18, 1996. The Commission received amended versions of the application, answer and motion to dismiss filed by P&K in No. CENT 95-201 on November 25, 1996. These

outstanding citations issued by the Department of Labor's Mine Safety and Health Administration (MSHA) against them on or before June 30, 1996, pursuant to a settlement agreement dated July 23, 1996.⁴

In late November of 1996, the Commission was advised by counsel for the Secretary that MSHA had decided to write off the penalties covered by these default orders as uncollectible. In a subsequent letter dated December 27, 1996, the Secretary's counsel confirmed that MSHA had agreed to deem all civil penalties assessed against HMI and P&K before August 1, 1996, to be uncollectible, and recommended that these cases be withdrawn from consideration by the Commission.

amended pleadings do not differ in material respects from the original versions of the documents filed previously.

⁴ This settlement agreement, which is attached to each motion to dismiss, contains an express agreement by MSHA that upon the wire transfer of funds [in the amount of \$75,000]. . . on the 19th day of July, 1996, or thereafter, MSHA shall be deemed paid in full for all MSHA violations assessed through June 30, 1996,@ HMI and P&K assert that they paid this sum to MSHA by wire transfer on or about July 31, 1996.

In light of the Secretary's response, we deem there to be no live controversy regarding the penalty. Accordingly, this case is dismissed as moot.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner