

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

January 30, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2001-528-M
Petitioner	:	A.C. No. 42-01912-05513
	:	
	:	Docket No. WEST 2001-538-M
v.	:	A.C. No. 42-01912-05514
	:	
	:	Docket No. WEST 2001-557-M
DARWIN STRATTON & SON, INC.,	:	A.C. No. 42-01912-05515
Respondent	:	
	:	Airport Pit

ORDER DENYING MOTION FOR CONTINUANCE OF HEARING

On November 14, 2001, I consolidated these cases and set them for hearing in St. George, Utah, on February 5, 2002. On January 28, 2002, I notified the parties of the specific courtroom in which the hearing will be held. On January 30, 2002, Darwin Stratton & Son, Inc. (“Darwin Stratton”) filed a motion to continue the hearing in these cases. As grounds for the motion, Darwin Stratton stated that it seeks from the Secretary documents that the Secretary listed in her prehearing report dated January 25, 2002. Darwin Stratton states that it needs time to “receive and review” these documents presumably to prepare for the hearing. In addition, Darwin Stratton asks that the hearing be postponed until after the United States District Court for the District of Utah issues its decision in the injunctive relief case brought against it and its agents by the Secretary of Labor.

The Secretary of Labor opposes the motion for continuance. First, she states that Darwin Stratton did not request these documents in a timely manner. She points to the Commission’s rules of procedure which required Darwin Stratton to file any document requests within 20 days after it filed its answers in these cases. In addition, the Secretary states that today she sent, by overnight mail, all of the requested documents over which she does not assert a privilege. Consequently, she argues that Darwin Stratton will have the requested documents prior to the hearing in these cases. The Secretary also states that the District Court case referred to by Darwin Stratton “will not adversely affect the outcome of the instant litigation.” She argues that Darwin Stratton has not presented sufficient justification to postpone the hearing.

For the reasons discussed below, Darwin Stratton’s motion to continue the hearing in these cases is denied. Darwin Stratton could have requested, well in advance of the hearing, that the Secretary provide it with any and all documents that she proposes to introduce at the hearing. A party cannot seek a continuance by filing a request for the production of documents less than a

week before the hearing. Moreover, the Secretary is sending Darwin Stratton all or most of the requested documents. The documents that Darwin Stratton requested are not complex or technical. These documents include (1) the assessed violation history; (2) field notes and citation documentation forms of the three MSHA inspectors involved in these cases; and (3) statements from miners. Once these documents are received, it will not take Darwin Stratton very long to review them. In addition, Darwin Stratton's representative can question the Secretary's witnesses about any documents that she seeks to introduce at the hearing.

The Secretary states that she is seeking an injunction in District Court to prohibit further denials of entry by Darwin Stratton and three of its agents at its mines including the Airport Pit. She states that Darwin Stratton denied entry to MSHA inspectors in May 2001. Three citations are at issue in the present cases. Citation No. 6282323, issued November 21, 2000, alleges that Darwin Stratton was not examining the crushing plant for hazardous conditions. Citation No. 7966590, issued August 2, 2000, alleges that Darwin Stratton failed to file a quarterly employment report with MSHA for the second quarter of 2000. Citation No. 7984337, issued August 8, 2000, alleges that Darwin Stratton refused to allow an MSHA inspector onto the Airport Pit on that date. As stated above, the District Court proceeding concerns a refusal of entry that occurred in May 2001. Consequently, MSHA jurisdiction is at issue in these cases and in the injunction action. Nevertheless, I am holding a hearing in these cases so that the parties can present evidence for me to consider when determining whether the citations are valid and lawful. Darwin Stratton has not presented any reason why the hearing should be delayed until after the District Court has entered its final decision in the injunction action. At the conclusion of the hearing, I will consider an oral motion from Darwin Stratton that I withhold judgment in these cases until after the District Court has ruled. If the District Court denies the injunction on the basis that MSHA lacks jurisdiction, then Darwin Stratton can argue that these cases must be dismissed.

For the reasons set forth above, the motion for continuance filed by Darwin Stratton is **DENIED**. The hearing will commence at 9:30 am, on Tuesday, February 5, 2002, at the Chamber Of Commerce, 2nd Floor Courtroom, 97 East St. George Blvd, St George, Utah. Failure to attend the hearing will result in a default decision being entered 29 C.F.R. § 2700.66(b).

Richard W. Manning
Administrative Law Judge

Distribution:

John Rainwater, Esq., Office of the Solicitor, U.S. Department of Labor, P.O. Box 46550, Denver, CO 80201-6550 (Fax and First Class Mail)

Darwin Stratton or Clayton or Todd Stratton, 720 West State Street, Suite 71-7, Hurricane, UT 84737-2084 (Fax 435-635-3187 and Federal Express)

Darwin Stratton & Son, Inc., 3120 South 1100 West, Hurricane, UT 84737-2528 (First Class Mail)

Johnpatrick Morgan, General Delivery, Fredonia, AZ 86022-9999 (First Class Mail)

RWM