

CCASE:

MSHA & UMWA V. MONTEREY COAL

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.

November 13, 1979

SECRETARY OF LABOR,	Docket Nos. HOPE 78-469
MINE SAFETY AND HEALTH	HOPE 78-470
ADMINISTRATION (MSHA)	HOPE 78-471

HOPE 78-472

and HOPE 78-473

HOPE 78-474

UNITED MINE WORKERS OF AMERICA HOPE 78-475

(UMWA) HOPE 78-476

v.

MONTEREY COAL COMPANY

DECISION

For the reasons stated in our decision in Old Ben Coal Company, No. VINC 79-119 (October 29, 1979), the decision of the administrative law judge is reversed and the case is remanded for further proceedings consistent with the above decision.

Jerome R. Waldie, Chairman

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

Backley, Commissioner, dissenting:

I would affirm the decision of Judge Michels for the reasons set forth in his decision and in my dissent in Old Ben Coal Co., No. VINC 79-119. The judge has rejected the absolute or strict liability theory and has found, after an extensive analysis of the evidence, that Monterey "neither supervised nor controlled the shaft-sinking activity performed by Frontier-Kemper." The improper manner of the "shaft-sinking activity," particularly the operation of the winches involved,

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the lack of a loading platform and the presence of men under hoisted loads was the cause of the cited violations. The record clearly reflects that the judge's finding as to the lack of control over this activity by Monterey is supported by substantial evidence. Accordingly, I am unable to find the necessary relationship between the violations charged and Monterey which I would require as set forth in my dissent in Old Ben. I therefore must disagree with the all too brief opinion of the majority.