FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, DC 20004-1710

AUG 02 2018

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. LAKE 2011-13
THE AMERICAN COAL COMPANY	:	
and	:	
UNITED MINE WORKERS Of AMERICA	:	
and	:	
UNITED STEEL, PAPER and FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL and SERVICE WORKERS INTERNATIONAL UNION	:	

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding, arising under the Federal Mine Safety and Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Mine Act" or "Act"), is before us for a second time on interlocutory review. At issue is whether the Commission's Administrative Law Judge erred in denying a motion to approve a settlement between The American Coal Company ("AmCoal") and the Secretary of Labor.

In our first decision on review, we affirmed in all respects the Judge's denial of the proposed settlement. *American Coal Co.*, 38 FMSHRC 1972, 1986 (Aug. 2016). We noted that the Secretary had chosen this proceeding as a "test case" for advancing his position that the Commission's authority to review settlements of contested civil penalties under section 110(k) of

the Mine Act, 30 U.S.C. § 820(k),[1] is much more limited than that described in *Black Beauty Coal Co.*, 34 FMSHRC 1856, 1860-64 (Aug. 2012).[2] We reaffirmed our settlement authority stated in *Black Beauty* and concluded that the Judge did not abuse his discretion in denying settlement approval when, contrary to the Commission's procedural rules and precedent, the Secretary refused to provide any facts to support the penalty reduction agreed to in settlement. We remanded the matter to the Judge, and the Secretary ultimately submitted an amended motion to approve settlement.

In this decision, we consider a different question: whether the Judge applied an incorrect legal standard in denying the amended settlement motion. For the reasons discussed below, we conclude that the Judge erred, vacate his denial, and remand for further proceedings consistent with this opinion.

I.

Factual and Procedural Background

This case involves 32 contested citations issued to AmCoal in 2010. In 2013, the Secretary filed a motion to approve a proposed settlement that involved a 30% across-the-board penalty reduction for each citation, while preserving all citations as written. The Judge issued a decision denying the motion because the motion had failed to provide any factual support for the penalty reduction. Rather than provide such facts, the Secretary essentially represented to the Judge that the proposed settlement was in the public interest and compatible with the enforcement goals of the Department of Labor's Mine Safety and Health Administration ("MSHA").

We granted interlocutory review of the Judge's denial. In our decision, noting the rare split-enforcement model that the Commission shares with MSHA and the unique settlement review authorized by section 110(k), we stated that "although Congress gave the Secretary most of the enforcement powers under the Act, it expressly chose to give to the Commission the authority to assess penalties and approve settlements." 38 FMSHRC at 1979. We explained that the Commission applies the standard of whether a proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest in evaluating whether a settlement should be approved. We further stated that factual information supporting the penalty agreed to

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[1] Section 110(k) provides:

> No proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated or settled except with the approval of the court.

30 U.S.C. § 820(k).

[2] *See AmCoal*, 38 FMSHRC at 1972-73 (Memorandum from Heidi Strassler, Assoc. Solicitor for Mine Safety and Health, to Regional Solicitors, May 2, 2014).

through settlement must be submitted in accordance with Commission Procedural Rule 31, 29 C.F.R. § 2700.31, and Commission precedent. Because the Secretary had not provided facts to support the proposed penalty reduction, we concluded that the Judge had not abused his discretion in denying the settlement motion. Accordingly, we affirmed the denial and remanded for further proceedings.

The Secretary then filed a petition for review of the Commission's decision with the United States Court of Appeals for the D.C. Circuit. On March 17, 2017, the Secretary filed a motion to withdraw his petition from the D.C. Circuit, and the court granted the motion.[3]

The Secretary subsequently submitted an amended motion to approve the settlement to the Judge.

In the motion, the Secretary provided additional information. This information did not include additional facts specifically tied to the six penalty criteria listed in section 110(i) of the Mine Act, 30 U.S.C. § 820(i),[4] for each of the 32 citations. Rather, the Secretary made general allegations, including that there was a substantial risk that the court could reduce the degree of negligence or gravity with respect to 14 of the 32 citations, and that one additional citation ran the risk of being vacated because of a legal dispute between the operator and the Secretary regarding the standard cited. The Secretary further stated that after trial, if each of the citations at risk received a worst-case outcome, the resulting penalties would reflect an approximately 50% reduction from the penalties originally proposed by the Secretary, based on the penalty tables contained in 30 C.F.R. Part 100. Given this, the Secretary asserted that an across-the-board 30% reduction reflected an appropriate compromise. The Secretary further submitted that he considered the fact that the proposed settlement preserved all of the citations as written to be a significant advantage for future enforcement purposes.

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[3] Prior to the Secretary's withdrawal of the appeal, the Commission was informed that the Department of Justice ("DOJ") had initiated a process to consider whether it was appropriate for the Department of Labor to pursue that petition and, if so, what position the United States should take in the matter. The DOJ requested the Commission to provide its views on the matter. On January 27, 2017, the Commission submitted to the DOJ its views, which were consistent with its first interlocutory decision.

[4] Section 110(i) provides in part:

> In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 U.S.C. § 820(i).

On May 2, 2017, the Judge issued an order denying the Secretary's motion. 39 FMSHRC 1173 (May 2017) (ALJ). The Judge concluded that the Secretary had again failed to provide adequate facts to support the 30% across-the-board reduction for each citation agreed to in settlement. *Id.* at 1178. The Secretary subsequently sought interlocutory review of the Judge's denial.

On May 19, 2017, the Judge issued an order denying the Secretary's motion for interlocutory review. 39 FMSHRC 1187 (May 2017) (ALJ). The Judge reiterated his finding that a "one-size-fits-all 30% reduction is not likely to be satisfactory because each violation is fact-specific." *Id.* at 1188. The Judge emphasized his view that the facts required are facts about the alleged violations. The Judge also explained that only "*legitimate* disputes of fact" are usually sufficient to support a proposed reduction. *Id.*

The Secretary again filed a petition for interlocutory review with the Commission, which AmCoal subsequently joined. The Commission granted interlocutory review and heard oral argument. As they did below, the United Mine Workers of America ("UMWA") and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union intervened in this proceeding and participated in oral argument.

On review, the Secretary and AmCoal argue that the Judge applied an erroneous legal standard in concluding that the Secretary failed to provide facts in support of the proposed settlement. They submit that such facts are not limited to facts related to the section 110(i) penalty criteria or to the alleged violations. The Secretary and operator further contend that the Commission's Procedural Rules do not preclude a settlement of multiple penalties for a uniform percentage reduction for each penalty and that the Judge's denial essentially makes such reductions impermissible. Finally, AmCoal argues that the Commission should not require a settling party to concede "legitimate" questions of fact during the settlement approval process, as the Judge required. The intervenor unions respond that the Commission should affirm the Judge's order as a proper exercise of his discretion.

II.

Disposition

Our disposition of the first interlocutory appeal of this proceeding, as law of the case, is the basis upon which this decision stands. *See Dolan v. F&E Erection Co.*, 23 FMSHRC 235, 240 (Mar. 2001). We briefly reiterate only those portions of the decision necessary for disposition of the instant review.

Section 110(k) of the Mine Act sets forth in relevant part that a proposed penalty that has been contested shall only be settled if approved by the Commission or court. *See* n.1, *supra.*

The legislative history of section 110(k) describes the Congressional intent behind this provision. The Senate Report states that the "compromising of the amounts of penalties actually paid" had reduced "the effectiveness of the civil penalty as an enforcement tool." S. Rep. No. 95-181, at 44 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of* 1977, at 632 (1978) ("*Legis. Hist.*"). The Committee noted that settlement efforts were "not on the record, and a settlement

need not be approved by the Administrative Law Judge." *Id.* In order to solve this problem, Congress emphasized the need for transparency in the penalty settlement process, so that miners, Congress, and other interested parties could "fully observe the process." *Id.* at 633. The requirements of section 110(k) were "intend[ed] to assure that the abuses involved in the unwarranted lowering of penalties as a result of off-the-record negotiations are avoided." *Id.* Thus, Congress expressed its "inten[t] that the Commission and the Courts will assure the public interest is adequately protected before any reduction in penalties."[5] *Id.*

Based on the language of section 110(k) and its legislative history, the Commission has explained that "Congress authorized the Commission to approve the settlement of contested penalties in section 110(k) '[i]n order to ensure penalties serve as an effective enforcement tool, prevent abuse, and preserve the public interest.'" *AmCoal*, 38 FMSHRC at 1976 (quoting *Black Beauty*, 34 FMSHRC at 1862). In "effectuating this Congressional mandate, the Commission and its Judges consider whether the settlement of a proposed penalty is fair, reasonable, appropriate under the facts, and protects the public interest." *Id.* at 1976.

The Commission and its Judges "must have information sufficient to carry out this responsibility." *Id.* at 1981. Consequently, through its procedural rules, the Commission has required parties to submit facts supporting a penalty amount agreed to in settlement. *Id.* In particular, Commission Procedural Rule 31 requires that a motion to approve penalty settlement must include for each violation "the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties." 29 C.F.R. § 2700.31(b)(1).

The Commission reviews a Judge's denial of a proposed settlement under an abuse of discretion standard. *Sec'y of Labor on behalf of Shemwell v. Armstrong Coal Co.*, 36 FMSHRC 1097, 1101 (May 2014). An abuse of discretion may be found where "there is no evidence to support the Judge's decision or if the decision is based on an improper understanding of the law." *Id.* (citation omitted).

As the Commission has repeatedly observed, a Judge's "'front line oversight of the settlement process is an adjudicative function that necessarily involves wide discretion.'" *Id.* (citations omitted). Judges must have sufficient information to fulfill their duty of determining if a settlement of a penalty is fair, reasonable, appropriate under the facts, and protects the public interest. Moreover, such information permits a Judge to fulfill the duty of articulating reasons for the approval so that the process of compromising penalty amounts is transparent, as Congress

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[5] We have recognized that the Commission has "the job of determining whether a reduced penalty in settlement serves the public interest." *AmCoal*, 38 FMSHRC at 1983. The Commission's responsibility for performing this job is not satisfied by conclusory statements in settlement motions that reduced penalties "serve the public interest." *See, e.g., Asarco, Inc.*, 18 FMSHRC 2081, 2082-84 (Dec. 1996) (denying settlement motion where the parties merely represented that the settlement was consistent with the statutory criteria and in the public interest).

intended. A Judge who properly determines that a settlement motion lacks sufficient information may permissibly request further facts from the parties.[6] *See Black Beauty*, 34 FMSHRC at 1863.

The Commission's settlement procedures have resulted in a near perfect approval rate for motions to approve settlement. In fact, as the Secretary agreed, Oral Arg. Tr. 19, from fiscal year 2015 through approximately seven months of fiscal year 2018, 99.8% of proposed settlements have been approved.[7]

Against this backdrop, we review the Judge's denial of the proposed settlement in his May 2 and May 19 orders. The Judge identified the "essential problem" with the Secretary's amended motion to approve settlement as a failure to "provide a penalty-factor related explanation to support the uniform 30% reduction for each citation." 39 FMSHRC at 1178. The Judge added that "even if plausible facts were presented and the Secretary admitted those facts presented genuine disputes," it would be unlikely for each citation to end up with a 30% reduction. 39 FMSHRC at 1188.

We conclude that the Judge made prejudicial errors in the determinations supporting his denial of the proposed settlement, which amounted to an abuse of discretion.

First, the Judge did not refer to the standard we articulated for evaluating penalty reductions in settlement in our first interlocutory decision, i.e., whether the proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest. Neither is there any indication that the Judge attempted to apply that standard.

Second, the Judge erred by applying the criteria in section 110(i) of the Mine Act in an overly rigid manner, resulting in determinations that conflict with Commission precedent. The Judge stated that the facts supporting the settlement "must be tied to the six statutory criteria in [s]ection 110(i)," and concluded that the Secretary provided "*no facts* to support the reduction sought." 39 FMSHRC at 1176, 1177.

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[6] It appears that some Commission Judges have a practice of seeking additional information from parties when evaluating a proposed settlement, and that this procedure works effectively. Oral Arg. Tr. 21-22, 31-32, 34-35, 50, 75-76. If a party believes that a Judge has overstepped his or her authority or otherwise committed an abuse of discretion in requesting such facts, a party may appeal that matter to the Commission on an interlocutory basis. *See Solar Sources, Inc.*, Unpublished Order dated May 16, 2018 (granting interlocutory review of 39 FMSHRC 2052 (Nov. 2017) (ALJ)).

[7] Indeed, during oral argument, counsel for the intervenors pointedly reiterated the description of the Secretary's and AmCoal's position in challenging the Commission's authority to require factual support of settlement as a "solution . . . in search of a problem." Oral Arg. Tr. 55.

The Judge recognized that the Commission has previously explained that standards for factual support for a penalty reduction in settlement may be found in section 110(i).[8] *AmCoal*, 38 FMSHRC at 1981; *Black Beauty*, 34 FMSHRC at 1864. However, we have also stated that "parties may submit facts supporting a settlement that fall outside of the section 110(i) factors but that support settlement." 38 FMSHRC at 1982. We explained that "section 110(k) 'contains no explicit restrictions on what a Commission Judge may consider when reviewing a settlement proposal,'" and that the lack of restrictions does not mean that the Commission's review is unbounded. *Id.* (quoting *Black Beauty*, 34 FMSHRC at 1865). "Rather, it means that there may be considerations beyond the six statutory criteria of section 110(i) that are relevant to whether a settlement proposal is fair, reasonable, appropriate under the facts, and protects the public interest." *Id.* Thus, the Judge erred in restricting the factual submissions to facts relating to only the section 110(i) criteria.

In this regard, the Judge erred in discounting that the operator had agreed to accept all of the citations as written. The Secretary makes a valid point that the fact that the proposed settlement preserves all of the citations as written could assist the Secretary in future enforcement efforts against this operator by ensuring that the paper record reflects the Secretary's views regarding gravity and negligence stated in the citations. The Judge improperly rejected the value of accepting the citations as written on future enforcement actions as "pure blather." 39 FMSHRC at 1191.

The Commission has recognized that "[t]he 'affirmative duty' that section 110(k) places on the Commission and its judges to 'oversee settlements,' . . . necessarily requires the judge to accord due consideration to the entirety of the proposed settlement package, including both its monetary and nonmonetary aspects." *Shemwell*, 36 FMSHRC 1103 (quoting *Madison Branch Mgmt*, 17 FMSHRC 859, 867-68 (June 1995)). Although the Judge appropriately determined that the submission of additional substantive facts to support the proposed penalty reductions was necessary,[9] he erred in not giving any weight to the non-monetary value of accepting the citations as written.[10]

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[8] The amended motion to approve settlement provided stipulations of fact relating to three of the section 110(i) criteria, that is, AmCoal's history of prior violations, AmCoal's size, and the effect on AmCoal's ability to stay in business. Mot. to Approve Settlement and Dismiss Proceeding at ¶ 10.

[9] We emphasize that our conclusion that the Judge appropriately determined that the submission of additional substantive facts was necessary applies only to the confines of the instant proceeding.

[10] Commissioner Cohen asserts that while facts which fall outside the section 110(i) factors may be relevant, Rule 31(b)(1) also requires the parties to identify substantive facts that support the penalty agreed to by the parties for each violation. The Secretary represented here that after a hearing a judge might reduce the level of negligence or gravity with respect to 14 of the 32 citations, and might vacate another citation because of an undisclosed legal dispute with the operator, and that in a worst case scenario, the total penalties might be reduced by approximately 50% using the Part 100 penalty tables. S. Br. at 4. These representations did not

Third, after determining that additional facts pertinent to the six statutory criteria were necessary to support the penalty reduction, the Judge erred by not permitting the operator to submit those facts. The Judge noted that the operator's counsel offered to provide facts to support the settlement motion. 39 FMSHRC at 1188.[11]

However, there is no requirement that facts supporting a proposed settlement must necessarily be submitted by the Secretary. Facts supporting a penalty reduction in a settlement motion may be provided by any party individually or by parties collectively as long as there is a certification by the filing party that any non-filing party has consented to the granting of the settlement motion. *See* 29 C.F.R. § 2700.31(b)(2).

Fourth, in rejecting the operator's offer to submit factual support for the proposed settlement, the Judge stated that the "settlement must express from the Secretary that the Respondent's assertions present *legitimate* questions of fact which can only be resolved through the hearing process." 39 FMSHRC at 1188 (emphasis in original); *see also* 39 FMSHRC at 1188 ("even if plausible facts were presented and the Secretary admitted that those facts presented genuine disputes, it would be highly questionable if . . . each citation ended up with . . . [a] 30% reduction"); 39 FMSHRC at 1176 ("facts which are in dispute need to be identified.").

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provide the Judge with sufficient detail to permit the Judge to have an understanding of why the penalties were being reduced. The Secretary's boilerplate recitations of having evaluated the value of the compromise, the prospects of coming out better or worse after a trial, and "maximizing his prosecutorial impact" add nothing. As succinctly stated by counsel for the intervenor UMWA, "by requiring the Secretary to provide some basic justification based on substantive fact, it creates a record so that interested parties like Congress, like the mine workers, like the steel workers can observe the process and make sure that we haven't reverted to the state of affairs that existed prior to enactment of the current legislation in section 110(k)." Oral Arg. Tr. 63. By bundling 32 citations into a single proposed settlement and reducing each penalty by the same percentage, the Secretary seems to be trying to avoid the scrutiny which Congress has required of the Commission. *See* S. Rep. No. 95-181 at 45, *Legis. Hist.* at 633.

Commissioner Cohen further notes that the Commission's recognition of the importance of substantive facts in a settlement agreement (and the Secretary's ability to provide them) is illustrated by the issuance this day of a decision in another case involving the denial of a proposed settlement, *The Ohio County Coal Co.*, No. WEVA 2018-0165. In the *Ohio County Coal* settlement motion, the Secretary proposed to reduce the penalty for Citation No. 9090883, a violation of 30 C.F.R. § 75.202(b) caused by a miner working under unsupported roof, based on a reduction in the level of the operator's negligence from "moderate" to "low." The Secretary explained that the operator was contending that the violation was caused by an hourly employee and that it was unaware of the violation, an alleged fact supported by the MSHA inspector's notes that the foreman was not present when the violation occurred. Based on the Secretary's description of these disputed facts, the Commission in *Ohio County Coal* is reversing the Judge and approving the proposed settlement.

[11] Indeed, AmCoal's counsel repeated this offer that the operator was "ready" and "willing" to provide such facts, including during oral argument before us. Oral Arg. Tr. 27.

Facts alleged in a proposed settlement need not demonstrate a "legitimate" disagreement that can only be resolved by a hearing. The Commission's Procedural Rules and standing precedent do not contain such a requirement. Rather, the Commission has recognized that parties may submit facts that reflect a mutual position that the parties have agreed is acceptable to them in lieu of the hearing process. *See Amax Lead Co. of MO*, 4 FMSHRC 975, 977-78 (June 1982) ("Inherent in the concept of settlement is that the parties find and agree upon a mutually acceptable position that resolves the dispute and obviates the need for further proceedings."). Put another way, the facts required by Rule 31 may include a description of an issue on which the parties have agreed to disagree. The Commission does not require concessions from parties in settlement as long as the parties provide mutually acceptable facts that demonstrate the proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest.

The Judge's requirement for "legitimate" questions of fact or facts that present "genuine" disputes (39 FMSHRC at 1188) is further flawed in that it appears that the Judge has assigned probative value to some facts without the benefit of an evidentiary hearing. We have recognized that, in reviewing information supporting a reduced penalty in settlement, a Judge "need not make factual findings with respect to each of the section 110(i) factors as a Judge would in the assessment of a penalty after hearing." *AmCoal*, 38 FMSHRC at 1982. In a final disposition after a hearing, a Judge must make findings on each section 110(i) factor in assessing a penalty, while a Judge's decision approving settlement need only "set forth the reasons for approval and . . . be supported by the record."[12] 29 C.F.R. § 2700.31(g); *Cantera Green*, 22 FMSHRC 616, 622-26 (May 2000).

Fifth and finally, the Judge erred in requiring the Secretary to provide an explanation for the specific numerical percentage reduction of each penalty.[13] The Judge determined that facts were lacking that would explain "the uniform 30% reduction for each citation," and observed that "it would be highly questionable if, through some magic, each citation ended up with an odds-defying 30% reduction." 39 FMSHRC at 1178; 39 FMSHRC at 1188. He reasoned that "a one-size-fits-all 30% reduction is not likely to be satisfactory because each violation is fact-specific." 39 FMSHRC at 1188; *see also* 39 FMSHRC at 1177 ("the Secretary sets forth this

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[12] Indeed, in 1980, the Commission amended Rule 31 to delete a requirement that decisions approving settlement must include a discussion of the section 110(i) criteria in order "to enhance the flexibility of the judges to approve settlements." 45 Fed. Reg. 44301, 44302 (1980); *see also Black Beauty*, 34 FMSHRC at 1866.

[13] The Judge found that the uniform percentage reduction for all 32 citations was additionally problematic because "at least 5 (five) of the citations were specially assessed." 39 FMSHRC at 1188. Contrary to the Judge's finding, the subject proposed settlement involves no penalties that were specially assessed. The five specially assessed penalties referred to by the Judge were the subject of a separate docket, Docket No. LAKE 2011-12. A decision approving settlement in LAKE 2011-12 was issued by this Judge on September 13, 2013, and became a final order of the Commission 40 days after its issuance. 30 U.S.C. § 823(d)(1).

new justification and again, against all odds, miraculously arrives at . . . a 30% across-the-board reduction").

As the Judge acknowledged (39 FMSHRC at 1188), we have stated that uniform penalty reductions are not improper *per se*. *AmCoal*, 38 FMSHRC at 1985. Although monetary considerations that relate to section 110(i) factors may be amenable to explanation about why a particular numerical reduction is appropriate for a violation, there may be non-monetary considerations that also support settlement that are not amenable to such precision.

Indeed, when the Commission considers monetary and non-monetary aspects of a settlement together, across-the-board penalty reductions may be useful, and consistent with the Commission's settlement review standard. *Id.* at 1982. The Judge's requirements for precise individual adjustments for each citation or order would effectively make across-the-board percentage reductions impermissible *de facto* in large settlements involving multiple citations or in global settlements involving multiple operations or inspections and a voluminous number of citations. *See, e.g., Aracoma Coal Co.*, 30 FMSHRC 1160 (Dec. 2008) (ALJ), *aff'd*, 32 FMSHRC 1639 (Dec. 2010) (approving global settlement); *Alex Energy, Inc.*, 39 FMSHRC 1458 (July 2017) (ALJ) (approving global settlement); *Magma Copper Co. N/K/A BHP Copper, Inc.*, 1998 WL 433234 (July 1998) (ALJ) (approving an approximately 50% reduction of 46 penalties).

Given these errors, we vacate the Judge's denial and remand for further proceedings. The Judge shall provide the parties with 30 days to submit facts supporting the proposed penalty reductions, which may be submitted individually or collectively pursuant to Commission Procedural Rule 31. Consistent with this decision, the Judge shall consider the proposed settlement, including monetary and non-monetary aspects, in determining whether the proposed settlement is fair, reasonable, appropriate under the facts, and protects the public interest.

III.

Conclusion

For the reasons set forth above, we vacate the Judge's denial of the amended proposed settlement. We remand to the Judge for further submissions and consideration consistent with this decision.

William I. Althen, Acting Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

Laura P. Karr
Arthur Traynor
United Mine Workers of America
18354 Quantico Gateway Drive, Suite 200
Triangle, VA 22172

Daniel Kovalik
United Steelworkers
5 Gateway Center
Pittsburgh, PA 15222

Jason Hardin, Esq.
Artemis D. Vamianakis
FABIAN VANCOTT
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323

Suzanne F. Dunne, Esq.
U.S. Department of Labor
230 S. Dearborn Street, Room 844
Chicago, IL 60604

Edward Waldman, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450

April Nelson, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450

Ali Beydoun, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South-Suite 401
Arlington, VA 22202-5450

Melanie Garris
Office of Civil Penalty Compliance, MSHA
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5450

Administrative Law William B. Moran
Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
1331 Pennsylvania Avenue, N. W., Suite 520N
Washington, D.C. 20001