

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 17, 2026

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

v.

PEABODY SOUTHEAST MINING, LLC

Docket Nos. SE 2023-0020
SE 2023-0060

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

DECISION

BY THE COMMISSION:

These proceedings, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act” or “Act”), involve three orders issued to Peabody Southeast Mining, LLC (“Peabody”) by the Department of Labor’s Mine Safety and Health Administration (“MSHA”).¹ On appeal, Peabody challenges the orders’ unwarrantable failure designations.

Two of the orders address sections of loose rib along a conveyor belt in Peabody’s Shoal Creek Mine. Order No. 9704127 states that Peabody failed to support the rib in violation of 30 C.F.R. § 75.202(a). Order No. 9704128 states that the pre-shift examination, which failed to note the loose ribs, was inadequate, in violation of 30 C.F.R. § 75.360(b). Both orders were initially designated as significant and substantial (“S&S”) and were attributed to high negligence and an unwarrantable failure to comply with the mandatory standards.² A Commission Administrative Law Judge affirmed both orders. He retained the S&S and unwarrantable failure designations

¹ The relevant dockets originally contained eleven orders. Eight were resolved through partial settlement and have not been appealed. 47 FMSHRC 403, 403-04 (June 2025) (ALJ); Order dated July 1, 2025.

² The S&S and unwarrantable failure terminology is taken from section 104(d)(1) of the Act, which distinguishes as more serious any violation that “could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard” and establishes more severe sanctions for any violation caused by “an unwarrantable failure of [an] operator to comply with . . . mandatory health or safety standards.” 30 U.S.C. § 814(d)(1).

but reduced the negligence for both orders to the “high end” of moderate. 47 FMSHRC 403, 433 (June 2025) (ALJ).

Order No. 9704220 alleges that Peabody allowed extensive amounts of combustible material to accumulate under and around a conveyor belt, in violation of 30 C.F.R. § 75.400. The order was designated as S&S and attributed to high negligence and unwarrantable failure. The Judge affirmed the order as issued. 47 FMSHRC at 450.

In its Petition for Discretionary Review, Peabody asserted that the Judge’s unwarrantable failure findings should be reviewed for errors of law and fact. It claimed the Judge incorrectly treated negligence and unwarrantable failure as distinct, and as a result, failed to credit certain remedial measures in his unwarrantable failure analyses that he had credited in his negligence analyses. PDR at 18-19, 23.

The parties subsequently filed a joint motion to settle the proceedings.³ In light of the “legal and factual disputes in the case” and the “uncertainty for both parties” in continuing the appeal, the parties proposed removing the unwarrantable failure designations for Order Nos. 9704127 and 9704128, with corresponding reductions in the assessed penalties. *Jt. Mot.* at 3.

For the reasons below, we deny the parties’ settlement motion and affirm the Judge’s findings of unwarrantable failure. We begin our discussion with the substantive unwarrantable failure issue, as it presents a more comprehensive overview of the case.

I.

Disposition on the Merits of the Proceedings

The only merits issue before us is whether the Judge properly designated the three orders as unwarrantable failures. An unwarrantable failure is aggravated conduct constituting more than ordinary negligence, as characterized by reckless disregard, intentional misconduct, indifference or a serious lack of reasonable care. *IO Coal Co.*, 31 FMSHRC 1346, 1350 (Dec. 2009) (*citing Emery Mining Corp.*, 9 FMSHRC 1997, 2003-04 (Dec. 1987)). Judges consider a variety of case-specific factors when determining whether conduct is aggravated, including the duration, extent and obviousness of the violative condition; whether it posed a high degree of danger; and whether the operator took efforts to abate the violative condition.⁴ *Id.* at 1350-57.

The Commission reviews Judges’ factual determinations, including unwarrantable failure findings, under the substantial evidence standard. *E.g., Knight Hawk Coal, LLC*, 38 FMSHRC

³ On October 23, 2025, prior to filing the settlement motion, Peabody moved for oral argument. That motion is hereby denied.

⁴ Although they do not appear to have weighed heavily in his analysis, the Judge also properly considered Peabody’s knowledge of the conditions and whether it had been placed on notice that greater efforts were necessary for compliance, finding them to be either neutral or aggravating factors. *See* 47 FMSHRC at 426, 429, 447-48; *IO Coal*, 31 FMSHRC at 1351 (a Judge must take all factors into account but may determine that some factors are less relevant).

2361, 2366 n.12, 2371-72 (Sept. 2016). Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support [the Judge’s] conclusion.” *McCoy Elkhorn Coal Corp.*, 36 FMSHRC 1987, 1991 n.9 (Aug. 2014). For the reasons below, substantial evidence supports the Judge’s unwarrantable failure findings for all three orders.

A. Rib Control and Pre-Shift Examination Violations

These two orders originate from the same conditions. The issuing inspector observed five sections of loose rib along a 150-foot stretch of the Company #3 North mains conveyor belt. One extremely large section was 30 feet long, 7 feet high and 15 inches thick.⁵ The other sections were between 7-10 feet long, 4-8 feet high and 7-15 inches thick. The sections had separated from the wall by 3-10 inches, allowing the loose rib to overhang the walkway. Order No. 9704127 alleges that Peabody failed to adequately support the rib in violation of 30 C.F.R. § 75.202(a). Order No. 9704128 alleges that Peabody failed to identify the loose sections of rib in its pre-shift examination in violation of 30 C.F.R. § 75.360(b). Exs. S-1, S-3.

The Judge conducted a shared unwarrantable failure analysis for both orders. Weighing all the *IO Coal* factors, “particularly the extent, duration, and high degree of danger posed by the violative conditions,” he concluded that both were properly designated as unwarrantable failures.⁶ 47 FMSHRC at 429. This is supported by substantial evidence.

The record supports the Judge’s finding that five sections of loose rib in the same 150-foot stretch, one of which measured 30 feet in length and all of which were between 4-8 feet high and 7-15 inches thick, were extensive and would have been obvious to an adequate examiner.⁷ *Id.* at 425-26. The Judge found the inspector’s measurements of the loose sections “credible, conclusive and determinative.” *Id.* at 418; Tr. I:28-30 (*see* n.5, *infra*). He also credited the inspector’s testimony that white rock dust made the conditions more obvious. 47 FMSHRC at 426, *citing* Tr. I:64; *also* Ex. S-1, Photo No. 11. Notably, photographs taken contemporaneously

⁵ The inspector’s testimony that this section was 30 *inches* long (Tr. I:29) was clearly a misstatement. Order No. 9704127 describes the section as 30 feet long and “extremely large” (i.e., larger than the other sections). Multiple contemporaneous photographs label the section as 30 feet long and show a section of rib that is clearly closer to 30 feet than 30 inches. Ex. S-1, Photo Nos. 1, 2, 3, 6, 7, 11, 13. The inspector’s testimony at hearing was otherwise consistent with the measurements in the order. Tr. I:28-30.

⁶ Because the Judge analyzed both orders together, the violative conditions refer to both the loose rib itself, and the failure to identify it in the pre-shift examination.

⁷ Peabody challenges the obviousness of the cited conditions, noting that the inspector failed to identify the loose ribs during his previous visits to the mine. PDR at 20. The inspector issued the orders on August 22, 2022, and his previous visits were on August 12 and 13, 2022. Tr. I:23, 54, 57. Notably, the inspector theorized that the loose ribs had existed for about two-and-a-half days (Tr. I:44-45, 73), while the Judge found they had existed for “more than one shift” (47 FMSHRC at 424). The inspector’s failure to note the violative conditions *potentially before they arose* has little bearing on whether those conditions were obvious.

with the order show loose ribs that are reasonably characterized as extensive and obvious. Ex. S-1, Photo Nos. 3-5, 8-10, 12, 14, 16.

The record also supports the Judge's finding that the violative conditions existed for more than one shift. *Id.* at 424. The Judge relied on the inspector's testimony that the area had not been freshly rock dusted (as demonstrated by photographs showing dark mud and foot traffic), therefore the white rock dust visible between the loose ribs and the wall must have settled there during a previous shift. *Id.*; Tr. I:31-37, 43; *see* Ex. S-1, Photo No. 11. As for the inadequate pre-shift examination, the loose ribs had not been identified in the examination records for the two preceding shifts. 47 FMSHRC at 425. As the Judge noted, duration of more than one shift weighs in favor of unwarrantable failure. *Id.* at 424, *citing Windsor Coal Co.*, 21 FMSHRC 997, 1001-04 (Sept. 1999). The Judge found this factor "particularly important," as "[t]he longer the underlying roof control violation went unaddressed without an adequate examination, the more likely that a roof fall would occur." *Id.*

In addressing the degree of danger, the Judge again emphasized the basic facts: these were extensive sections of loose rib, weighing up to several thousand pounds, which would have covered the entire walkway if they had fallen. *Id.* at 427, *citing* Tr. I:28-30. A witness for Peabody conceded that the smallest section, alone, would have weighed 100 pounds. Tr. I:113, 123. The record supports the Judge's finding that the loose ribs would result in fatal injury if they were to separate, and that the inadequate pre-shift examination allowed the dangerous condition to persist. He concluded that the degree of danger "strongly weighs in favor of finding unwarrantable failures." 47 FMSHRC at 427.

The Judge did not find any mitigating factors to outweigh the extent, duration and degree of danger posed by the violative conditions. *Id.* at 428-39. He found no evidence that Peabody had attempted to abate the inadequate pre-shift examination. With respect to the loose ribs, he did recognize "efforts to address some roof control issues that may weigh slightly against finding an unwarrantable failure." *Id.* at 428. He noted that timber supports and rib bolts had been put in place eighteen years before, consistent with the mine's MSHA-approved roof control plan. However, he found those efforts inadequate, noting testimony of a recent rib roll in the area. *Id.*; Tr. I:189-90. The Judge concluded that abatement efforts were a neutral factor. *Id.*

On appeal, Peabody claims the unwarrantable failure determinations are not supported by substantial evidence because the Judge overlooked a mitigating factor. Specifically, it argues that the Judge failed to consider Peabody's efforts in identifying and correcting various roof and rib conditions in the week preceding the violations. PDR at 20, 22. We reject this argument. While Peabody did take remedial efforts in the week preceding the violations, this is insufficient to overcome the substantial evidence in support of unwarrantable failure.

As an initial matter, Peabody is correct that such efforts occurred and were not addressed in the Judge's unwarrantable failure analysis. Examination records show that Peabody identified and corrected roof and rib conditions in the #3 North mains in the week preceding the violations. Dislodged timbers were reset on August 15, 16, 17, 18, 19 and 22, and dislodged rib pins were supported with timbers on August 16, 19 and 20. Tr. I:154-74; 47 FMSHRC at 410. Peabody's witnesses testified that the timbers were likely knocked loose by equipment used to clean the

beltlines. Tr. I:172-73. The Judge acknowledged these efforts in his *negligence* analysis—finding that they weighed in favor of “some mitigation” and justified reducing the negligence to the “high end” of moderate—but did not explicitly address them in his unwarrantable failure analysis. 47 FMSHRC at 428-29, 433.

However, this fact is insufficient to overcome the substantial evidence in support of unwarrantable failure. First, we emphasize the Judge’s finding that these efforts only *slightly* mitigated the operator’s negligence. As the Judge noted, these corrective actions also indicate that conditions *consistently required correction*. *Id.* at 433. Within the span of a week, numerous timbers and rib bolts in the same area had to be reset (occasionally the *same* timbers had to be reset more than once) and a rib roll had to be remediated. Tr. I:154-74. Peabody’s short-term efforts are counterbalanced by an apparent lack of long-term care in maintaining proper roof and rib support. In his unwarrantable failure analysis, the Judge found that Peabody’s longer-term remedial efforts were inadequate and therefore insufficient to outweigh the aggravating factors. 47 FMSHRC at 428. The record similarly indicates that Peabody’s short-term remedial efforts were inadequate. The evidence which Peabody claims the Judge failed to consider substantially supports the Judge’s unwarrantable failure finding.

Second, we emphasize that abatement efforts are only one factor in the unwarrantable failure analysis, and Judges have discretion to find some factors more relevant than others. *IO Coal*, 31 FMSHRC at 1350-51. Here, the Judge gave particular weight to the extent, duration and degree of danger posed by the violative conditions, and found Peabody’s inadequate abatement efforts insufficient to outweigh those aggravating factors. 47 FMSHRC at 429. As discussed above, substantial evidence supports the Judge’s factual findings that the violative conditions were extensive, lasted at least one shift, and posed a high degree of danger, as well as his finding that Peabody’s remedial efforts were inadequate. Accordingly, the record supports the Judge’s unwarrantable failure determinations. Insofar as Peabody asks us to *reweigh* the factors and give greater weight to Peabody’s abatement efforts, we decline to do so. *See Island Creek Coal Co.*, 15 FMSHRC 339, 347 (Mar. 1993) (finding it inappropriate for the Commission to reweigh evidence when conducting a substantial evidence review).

As a final matter, we reject Peabody’s claim that the Judge improperly treated negligence and unwarrantable failure as wholly distinct analyses. PDR at 18-20. Peabody refers to the Judge’s statement that the two analyses are “wholly distinct and may result in different conclusions.” 47 FMSHRC at 433. The Judge made this statement while explaining his decision to attribute the unwarrantable failures to moderate rather than high negligence. *Id.*, citing *Excel Mining, LLC v. Dep’t of Labor*, 497 Fed.App. 78, 80 (D.C. Cir. 2013) (noting that moderate negligence does not foreclose unwarrantable failure). While the Judge may have overstated the matter in calling them *wholly* distinct, his underlying reasoning is sound. We have long recognized that negligence and unwarrantable failure are not identical and require separate analyses. *E.g., Eastern Assoc. Coal Corp.*, 13 FMSHRC 178, 186 (Feb. 1991) (“Although the same . . . circumstances may be included in the Commission’s consideration of unwarrantable failure and negligence, the concepts are distinct.”). The Judge properly relied on similar facts to conduct separate analyses. We find no legal error in the Judge’s analyses.

In attributing these orders to unwarrantable failure, the Judge gave great weight to the extent, duration and degree of danger posed by the violative conditions and found the operator's remedial efforts insufficient to outweigh those factors. Substantial evidence (including the facts that Peabody claims the Judge failed to consider) supports both the aggravating factors *and* the insufficient mitigation. The Judge would clearly have reached the same conclusion even if he had explicitly considered Peabody's more recent abatement efforts, therefore remand is unnecessary. *E.g.*, *Walker Stone Co. v. Secretary of Labor*, 156 F.3d 1076, 1085 n.6 (10th Cir. 1998) (finding remand unnecessary where the record admits of only one conclusion). We affirm the unwarrantable failure designations for Order Nos. 9704127 and 9704128.

B. Accumulation Violation

Order No. 9704220 cites Peabody for "obvious and extensive" coal accumulations under and around the Mother Belt conveyor, in violation of 30 C.F.R. § 75.400. It describes accumulations of up to 24 inches in depth along the entire 500-foot length of the conveyor, and notes that the belt was running in coal accumulations at three different points. 47 FMSHRC at 437; Ex. S-5; Tr. II:19. The accumulations were apparently the result of an airline failure during the previous evening shift.⁸ Miners repaired the airline within hours and began addressing the accumulations. By the end of the evening shift, the accumulations had been reduced to the point that they no longer touched the belt. The next shift (owl or night shift) focused on cleaning the drip pan under the belt. When the inspector arrived during the next morning shift, cleaning was still in progress. 47 FMSHRC at 435-36.

The Judge found that "[a]ll the factors weigh in favor of finding an unwarrantable failure." *Id.* at 448. While he may have misconstrued certain facts regarding abatement, we ultimately find substantial evidence to support the Judge's finding of unwarrantable failure, particularly in light of the extent and obviousness of the violative conditions.

The accumulations—measuring up to 24 inches in height and running the entire 500-foot length of the belt—were clearly extensive and obvious. As the Judge noted, this characterization is supported by both the inspector's testimony *and* photographic evidence. *Id.* at 445. The inspector testified that coal was "everywhere you could see" and had piled high enough in one area to lift the belt off the rollers. Tr. I:202. Photographs clearly show multiple areas along the belt, including rollers, covered in coal. Exs. S-10 (roller running in coal), S-12 (accumulations on roller near drive area), S-16 (pile of coal worn flat from friction with roller), S-25 (coal under

⁸ An airline provides pressurized air to the wiper system. Wipers are placed on the bottom belt (i.e., the belt's underside) at the discharge point. When the system is working, the wipers catch wet coal fines that have stuck to the belt and scrape them into a pan. If the wipers lose pressure due to a broken airline, then material is carried back along the belt instead of being caught at the discharge point and eventually falls into the drip pan or onto the floor. Tr. II:54-57, 61-62, 94. The evening before Order No. 9704220 was issued, a problem arose with an airline that provided air to one pressurized wiper on the mother belt, as well as three wipers on the north main #1 belt. Tr. II:54-55, 61-62. The north main #1 belt runs directly above the mother belt, so an issue with the wipers on that belt will result in material falling onto the mother belt. Tr. II:130-31.

and around tail piece), S-26 (accumulation under roller); *see* Tr. I:204-14 (explanation of photos). Pre-shift examiners identified hazardous conditions for almost the entire length of the belt. Tr. II:152-54. The fact that three shifts of remedial efforts were insufficient to address the accumulations also speaks to their extensiveness. Substantial evidence supports the Judge's finding that the violative conditions were both obvious and extensive.

Substantial evidence also supports the Judge's findings with respect to the duration and degree of danger posed by the violative conditions. Peabody asserts that the accumulations resulted from an airline failure *three shifts* prior to the issuance of the order, and as previously noted, duration of a single shift can weigh in favor of unwarrantable failure. *E.g., Windsor Coal*, 21 FMSHRC at 1002. As for the degree of danger, the Judge noted that although the area was generally wet, one of the rollers running in the accumulation had produced enough heat to dry the surrounding area and allow a small flame. 47 FMSHRC at 446; Tr. I:18, 202, 211. A witness for Peabody conceded that a photo of the roller showed "something" like a small flame and that he would not have left the roller in that condition if he had seen it. Tr. II:164-65; Ex. S-24. Wet accumulations can dry out through frictional contact with belts or rollers (as appears to have begun here) and cause a fire or explosion. *Mach Mining, LLC*, 40 FMSHRC 1, 3-6 (Jan. 2018). The record supports the Judge's finding that the violative conditions posed at least a moderate degree of danger. Substantial evidence supports the Judge's findings with respect to aggravating factors.

On appeal, Peabody primarily challenges the Judge's findings with respect to abatement.⁹ For the reasons below, the record supports the Judge's conclusion that Peabody's efforts to abate the accumulations are not a mitigating factor.

We first provide a summary of Peabody's efforts to abate the accumulations. Peabody's witnesses testified that material accumulates during normal mining operations, so one miner per shift is always tasked with keeping the area clean. However, more are assigned in the event of a spillage. Tr. II:96-98, 118. On the evening of August 7, 2022, a malfunctioning airline resulted in a spillage. Four of the five miners on shift went to repair the airline, while the remaining miner began cleaning the belt. Once the airline was repaired, all five miners spent the rest of the 8-hour shift cleaning. The relevant supervisor stated that by the end of the evening shift no accumulations were touching the belt, though there was still work to be done. Tr. II:132-36.

During the succeeding owl shift, cleanup efforts focused on the drip pan under the belt. Two miners worked on the accumulations for three hours, then one miner continued for the rest of the shift. The owl shift supervisor testified that by the end of shift "accumulations were out of the drip pan." Tr. II:152-55. The next morning (the day of the inspection), the day shift supervisor was notified that hazards on the mother belt required additional cleaning and assigned a single miner to the task. Tr. II:107, 108-09, 118-19. He testified that by 10:00 - 11:00 am the area had been washed down to "bare concrete" up to the halfway point, and that he assumed cleaning work would have continued for the entire shift. Tr. II:112-14.

⁹ Peabody also challenges the Judge's finding that Peabody had knowledge of the violative condition, but even that argument focuses on abatement. *See* Br. at 31 (asserting that the Judge failed to consider Peabody's "corrective measures" in addressing operator knowledge).

The Judge “commend[ed] Peabody’s attempts at clearing the Mother Belt.” 47 FMSHRC at 447. However, he found that Peabody’s cleaning efforts were too narrowly focused on the drip pan while neglecting other affected areas. He concluded that Peabody’s inadequate abatement efforts weighed *in favor* of unwarrantable failure. *Id.*

We agree with Peabody that the Judge has slightly mischaracterized the *geographical scope* of the abatement. Br. at 32-33. The Judge implied that Peabody’s remedial efforts were limited to a single small area, but the record indicates that efforts to clean the drip pan spanned approximately 400 feet: the drip pan extends along the entire 500-foot length of the belt except for 50 feet near the tail, and cleanup efforts extended from Tag 12 (48 feet from the top of the belt) to the bottom of the drip pan. Tr. II:19, 159-60.

However, we note that the accumulations were not limited to the drip pan. A witness for Peabody conceded that material had also accumulated near the tail (where the drip pan does not extend). Tr. II:163. Thus, while Peabody’s efforts were not as geographically limited as the Judge implied, the Judge correctly noted that some affected areas had not been addressed.

The record also shows that Peabody’s efforts were not as *comprehensive* as the operator suggests. Peabody claims that nothing was touching the belt by the end of the evening shift and that the drip pan was clear by the end of the owl shift. However, photographs taken during the following day shift show a roller running in accumulations in the drip pan (Ex. S-10), a pile of coal high enough to have been worn flat by rollers¹⁰ (Ex. S-16), and a roller subjected to enough friction to cause a small flame (Ex. S-24). A witness for Peabody testified that the accumulations in Photograph S-16 and the hot roller in Photograph S-24 should not have been left unaddressed. Tr. II:164-65. The inspector also testified that runoff from the belt had cut some of the hangers for the drip pan, allowing the pan to sag and material to spill out onto the floor. Tr. I:260.

Finally, the record indicates that Peabody prematurely scaled back its remediation efforts. The day shift supervisor testified that he knew of the earlier wiper malfunction and saw rollers running in muck but only assigned a single miner to clean the area, consistent with everyday practice. Tr. II:118-19. Additionally, the belt was running when the inspector arrived, allowing additional material to accumulate before the spillage had been fully resolved. *See* Tr. II:97-98, 119. Obvious and extensive accumulations from a spillage event remained, and yet Peabody had already reinstituted normal routines. Peabody argues that abatement efforts were still ongoing when the inspection occurred and that all affected areas would eventually have been cleaned. Br. at 32; Tr. II:113-15. However, as noted, those ongoing efforts consisted of tasking a single miner to cleanup duty. No extra effort was being taken to abate the violative conditions. The record may not support the Judge’s finding that Peabody’s abatement efforts were too narrowly

¹⁰ In addition to the pile of coal that has been worn flat by rollers, Photograph S-16 shows a significant amount of coal covering the area under the belt. It is unclear whether this coal is in the drip pan or on the floor, but either would contradict testimony from Peabody’s witnesses, who claimed that the drip pan (Tr. II:155) *and* the floor (Tr. II:112-14) had been cleared.

focused on the drip pan, but substantial evidence does support his more general finding that Peabody neglected to take adequate care in remedying the accumulations.

Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support [the Judge's] conclusion.” *McCoy Elkhorn*, 36 FMSHRC at 1991 n.9. As with the roof and rib control violations, a reasonable mind could (and would) view the record and conclude that Peabody failed to make adequate efforts to abate these extensive, obvious and dangerous accumulations. We therefore affirm the unwarrantable failure finding for Order No. 9704220.

II.

Denial of Settlement Motion

We turn next to the parties Joint Motion to Approve Settlement and Dismiss Appeal of these proceedings. At the outset, we note the unusual procedural posture of the settlement motion at issue here. The vast majority of cases filed with the Commission settle. In nearly all of those cases, the settlement motion is filed prior to the Judge’s decision on the merits. Only in very rare instances do parties decide to settle after a decision has been rendered by a Judge and while the case is pending on appeal before the Commission. *See, e.g., Emerald Coal Res., LP*, 36 FMSHRC 2409 (Sep. 2014) (approving a settlement at the statutory maximum penalty after the Judge increased the penalty above that threshold); *Sec’y of Labor on behalf of Barnes & Hall v. Warrior Met Coal Mining, LLC*, 47 FMSHRC 788, 789 (Sept. 2025) (discussing the settlement of discrimination cases on appeal before the Commission).

In light of the rarity of these circumstances, we emphasize that the same standard of review that applies to settlement motions before Commission Administrative Law Judges applies when review is conducted by the Commission itself. That is, the Commission reviews proposed settlements to determine if they are “fair, reasonable, appropriate under the facts, and protective of the public interest.” *The American Coal Co.*, 38 FMSHRC 1972, 1982 (Aug. 2016) (*AmCoal I*). However, we note that unlike in settlement agreements prior to hearing, when we consider a settlement on appeal the judge has already made certain findings of law and fact, and those findings which have not been appealed are the law of the case.

Turning to the case at hand, the Judge issued a decision on June 26, 2025. In that decision, the Judge found in favor of the Secretary on every contested issue (except for the “high” negligence designations on two of the Orders, which he modified to the “high end” of moderate negligence). 47 FMSHRC at 404. As noted above, the Judge assessed a total penalty of \$45,300.00.

On January 22, 2026, the parties filed a Joint Motion to Approve Settlement and Dismiss Appeal of these proceedings. They propose removing the unwarrantable failure designations for Order Nos. 9704127 and 9704128 with corresponding penalty reductions (\$28,000 to \$2,790 and \$8,500 to \$1,725, respectively). Order No. 9704220 would be accepted without modification. In short, there would be a reduction in the penalty amount from \$45,300.00 to \$13,315, or a roughly 70% reduction in the total penalty assessed. The parties assert that this compromise “fairly

reflects the legal and factual disputes in the case,” namely, the parties’ disagreement as to whether the Judge’s moderate negligence findings for Order Nos. 9704127 and 9704128 also required removing the unwarrantable failure designation.¹¹ Jt. Mot. at 3. The motion does not provide any further detail.

We find that this proposed settlement is not reasonable and appropriate under the facts. The “legal and factual disputes” referenced in the motion presumably refer to Peabody’s claims on appeal that the Judge (1) legally erred when he considered negligence and unwarrantable failure to be distinct analyses, and (2) factually erred by failing to consider certain remedial measures. PDR at 1, 19-22. However, as explained in the merits section above, (1) it is well recognized that negligence and unwarrantable failure *are* distinct analyses, and (2) the Judge found any mitigation arising from Peabody’s remedial measures to be strongly outweighed by multiple aggravating factors which the settlement motion fails to address. *See* pp. 5-6, *supra*. The motion does not describe a dispute that would make the outcome of litigation uncertain. The parties have not adequately supported their justification for settlement.

The Secretary also more broadly claims that the proposed settlement would preserve crucial enforcement-related designations. Specifically, he asserts that it would preserve the unwarrantable failure for one order *and* the S&S designations for all three orders. Jt. Mot. at 4. When reviewing a proposed settlement, we may consider the potential future enforcement value of preserving orders as written. *The American Coal Co.*, 40 FMSHRC 983, 989 (Aug. 2018) (*AmCoal II*). However, the unusual procedural posture here should be taken into account. The parties seek to settle these proceedings on appeal. The Judge has already issued a decision on the merits and his S&S findings *were not appealed*. Accordingly, the enforcement value of the S&S designations will be preserved regardless of the outcome of the current litigation. The proposed settlement’s only future enforcement value is in maintaining a single unwarrantable failure.

Finally, the Secretary claims the proposed settlement would serve the public by avoiding further delay in the payment of the civil penalties. Jt. Mot. at 5. We acknowledge the public’s general interest in the prompt resolution of disputes. *E.g.*, *McDermott v. Palo Verde Unified School Dist.*, 638 F.App’x 636, 638 (9th Cir. 2016). In this instance, however, the issue is moot. The Judge’s decision ordering Peabody to pay the penalties assessed by the Judge is hereby affirmed, without further delay.

The parties’ primary justification of litigation uncertainty is not appropriate under the facts, and the minor enforcement value suggested by the Secretary is insufficient on its own to justify the proposed settlement terms.

Accordingly, the parties’ motion to approve settlement is denied.

¹¹ The underlying facts of the case are set forth in the Judge’s decision (*see* 47 FMSHRC at 407-19, 434-41) and discussed above (*see* pp. 2-8, *supra*).

III.

Conclusion

For the reasons above, we deny the parties' settlement motion and affirm the Judge's findings of unwarrantable failure for Order Nos. 9704127, 9704128 and 9704220.



Marco M. Rajkovich, Jr., Chair



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