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Description of document: Federal Mine Safety and Health Review Commission (FMSHRC) Pipeline Reports (PR) and Monthly Case Management Reports (SCR), 2016-2018

Requested date: 19-February-2018

Released date: 28-March-2018

Update Posted date: 09-April-2018

Source of document: Federal Mine Safety and Health Review Commission  
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[PDF FOIA Request Form](#)

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From: Stacey Demps-Barrett <sdemps-barrett@fmshrc.gov>  
Cc: Foia <foia@fmshrc.gov>; FOIA Public Liaison <FOIA-Liaison@fmshrc.gov>  
Sent: Wed, Mar 28, 2018 1:46 pm  
Subject: FOIA Request - Pipeline Reports & Case Management Reports since January 2016 - OGC & OCC

This email is in response to your FOIA request received in our office on February 19, 2018, in which you requested “a copy of each Pipeline Report” (“PR”) and “each Monthly Case Management Report” [(“SCR”)] since January 2016.” After full consideration of the foreseeable harm test and our policy of processing all FOIA request with a presumption of openness, we have determined that the reports will be released, but that certain information will be redacted under the Deliberative Process Privilege of FOIA Exemption 5. The redacted information clearly outlines the predecisional posture and/or individual deliberations of our appellate body concerning cases previously and currently on review before the Commission. It also explains FMSHRC’s internal case review process and the detailed progression and internal posture of specific cases, which have moved through or are currently moving through the Commission’s internal decisional process. These redactions are consistent with the redactions made to the same reports requested in your FOIA request of August 20, 2017.

Therefore, attached here for your records are copies of the requested documents in partially redacted form, which you will receive in four separate emails. Please note that all PRs have the same redactions, just as all SCRs have the same redactions. Also attached for your convenience is a list explaining the specific redactions on each of the reports. If a specific monthly report is not included, that means that a report was not created for that month. If a page is missing, then it was not included in the report for that month. Lastly, we have omitted the July 2017 PR and the September 2017 SCR as you were previously provided copies of those documents.

There is no charge to you for this request.

If you are unsatisfied with any part of this determination, you may seek the mediation and dispute resolution services of FMSHRC’s FOIA Public Liaison at FOIA-Liaison@fmshrc.gov or the Office of Government Information Services at <https://ogis.archives.gov/>. You also have the right to appeal the decision to the Chairman of the Commission at FOIA-Appeals@FMSHRC.gov within 90 days of this response. For additional instructions on filing an appeal, please refer to our FOIA Rules at 29 C.F.R. § 2702.

In the meantime, kindly acknowledge receipt of this email with attachments.

Sincerely,

Stacey Demps Barrett  
Attorney-Advisor/Chief FOIA Officer  
Federal Mine Safety and Health Review Commission  
Office of the General Counsel  
1331 Pennsylvania Avenue, NW, Suite 520N  
Washington, DC 20004-1710

## **Pipeline Meeting**

**Wednesday, January 20, 10:00 am**

### Meeting Agenda

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

Next Pipeline Meeting: Wednesday, February 17, 10:00 am

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Actual	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	12	19
Dispositions	31	30	39	4	19
Ending balance	57	39	19	47	19
Average pendency of dispositions (months)	27	30	21	17	12
Average age of cases on hand at year end (months)	18	16	6	16	6

As of January 20, 2016

Dispositions through

New through

Oak Grove SE 2009-0261

CalPortland WEST 2016-0156



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**FY 2016 Dispositions**

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Case			Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
<b>Average pendency</b>				<b>17</b>

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Cases on hand as of January 20, 2016						
	Case			DFR	Age (Mos)	
1	Black Beauty Coal Co.	LAKE 2009-570		7/29/11	53	
2	Hopkins County Coal	KENT 2009-820-R, et al.		5/10/12	44	
3	Premier Elkhorn Coal Co.	KENT 2011-827		2/27/13	34	
4	Oak Grove	SE 2010-1236		5/15/13	32	
5	Drilling & Blasting Systems	SE 2012-510-M		7/10/13	30	
6	Trivette Trucking	KENT 2011-1223		8/2/13	29	
7	Lewis-Goetz and Co.	WEVA 2012-1821		8/29/13	28	
8	Nally & Hamilton Enterprises	KENT 2011-434		8/29/13	28	
9	The American Coal Co.	LAKE 2009-35		9/4/13	28	
10	Newtown Energy	WEVA 2011-283		9/5/13	28	
11	Rex Coal Co.	KENT 2010-956 et al.		9/9/13	28	
12	Hibbing Taconite Co.	LAKE 2013-231-RM		9/20/13	28	
13	Warrior Coal	KENT 2011-1259 et al.		10/10/13	27	
14	The American Coal Co.	LAKE 2011-701, et al.		10/29/13	26	
15	Sunbelt Rentals, et al.	VA 2013-275, et al.		10/31/13	26	
16	Maxxim Rebuild Co.	KENT 2013-566		11/22/13	26	
17	Kentucky Fuel Corp.	KENT 2011-1557, et al.		2/25/14	23	
18	Black Beauty Coal Co.	LAKE 2009-410		4/16/14	21	
19	Big Ridge, Inc.	LAKE 2013-66		5/23/14	20	
20	Pocahontas Coal Co.	WEVA 2014-202		6/25/14	19	
21	The American Coal Co.	LAKE 2008-666		6/27/14	19	
22	The American Coal Co.	LAKE 2011-0013		7/11/14	18	
23	Pocahontas Coal Co.	WEVA 2014-0642		7/16/14	18	
24	Leeco, Inc.	KENT 2012-0166		8/22/14	17	
25	Knife River Construction	WEST 2013-827		9/12/14	16	
26	CAM Mining	KENT 2013-0196		9/24/14	16	
27	ICG Illinois	LAKE 2013-0160		2/19/15	11	
28	United Steelworkers	WEST 2012-0466		3/12/15	10	
29	Knight Hawk Coal	LAKE 2014-0120		4/22/15	9	
30	BHP Navajo Coal Co.	CENT 2013-0541		6/3/15	7	
31	Hecla Ltd. And Bayer	WEST 2012-0760		6/4/15	7	
32	Portable	EAJA 2015-0001		8/11/15	5	
33	Knox Creek Coal Corp	VA 2014-0343		8/18/15	5	
34	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	4	
35	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	4	
36	KenAmerican Resources	KENT 2013-0211		10/1/15	4	
37	John Richards Construction	WEST 2014-0440		10/2/15	4	
38	Franks & Hoy	PENN 2012-0250		10/21/15	3	
39	Sherwin Alumina	CENT 2015-0151		10/31/15	3	
40	Alcoa World Alumina	CENT 2015-0279		11/5/15	2	
41	Northshore Mining	LAKE 2014-0219		11/25/15	2	
42	Consolidation Coal	VA 2012-0042		11/30/15	2	
43	John Richards Construction	WEST 2015-0101		12/2/15	2	
44	Marshall County Coal Co.	WEVA 2015-0583		12/22/15	1	
45	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	0	
46	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	0	
47	CalPortland	WEST 2016-0156		1/18/16	0	
Average age					16	

**Substantive Case Status**

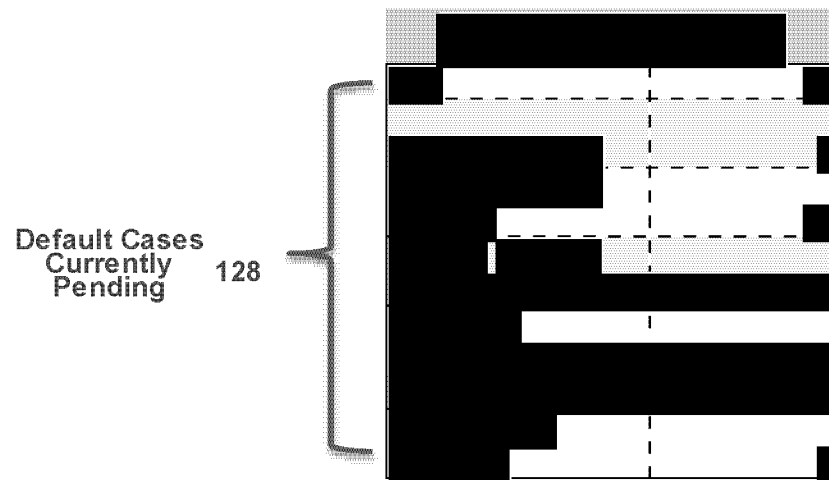
As of January 20, 2016

Case	Description	Meeting							
1 Pocahontas Coal WEVA 2014-0202 [REDACTED]	POV notice review	Mtg. Mar. 17	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Pocahontas Coal WEVA 2014-0642 [REDACTED]	Safeguard review	Mtg. Mar.17	[REDACTED]						[REDACTED]
3 Black Beauty LAKE 2009-0570 [REDACTED]	Safeguards	Oral arg. May 21 Mtg. May 26		[REDACTED]					
4 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24	[REDACTED]		[REDACTED]		[REDACTED]	[REDACTED]	
6 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7 Drilling and Blasting SE 2012-0510 [REDACTED]	Interpretation of standard	Mtg. Aug. 4	[REDACTED]				[REDACTED]		
8 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]	[REDACTED]					
9 Warrior Coal KENT 2011-1259 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]		
10 United Steelworkers WEST 2012-0466 [REDACTED]	Miner compensation	Oral arg. Nov. 18 Mtg. Nov. 19	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]		

Case	Description	Meeting							
11 Rex Coal KENT 2010-0956 [REDACTED]	Accident notification	Mtg. Dec. 3	[REDACTED]						
12 Franks & Hoy PENN 2012-0250 [REDACTED]	Discrimination		[REDACTED]		[REDACTED]			[REDACTED]	
13 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]						
14 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]						
15 Maxxim Rebuild Co. KENT 2013-0566 [REDACTED]	MSHA jurisdiction	Mtg. Jan. 7	[REDACTED]						
16 Hibbing Taconite LAKE 2013-0231 [REDACTED]	Abatement times	Oral arg. Jan 13 Mtg. Jan. 14	[REDACTED]						
17 Knife River Const WEST 2013-0827 [REDACTED]	Imminent danger order	Mtg. Jan. 28	[REDACTED]	[REDACTED]					
18 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11	[REDACTED]	[REDACTED]					
19 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11	[REDACTED]	[REDACTED]					
20 Oak Grove SE 2010-1236 [REDACTED]		Mtg. Feb. 25	[REDACTED]	[REDACTED]					
21 Leeco, Inc. KENT 2012-0166 [REDACTED]		Mtg. Feb. 25	[REDACTED]	[REDACTED]					

Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	46	173	45	128	417.69 Days	11.50
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Current Pendency		
< 6 months	55%	45%
> 6 months, < 1 year	22%	
> 1 year	23%	

As of: 1/19/2016

## **Pipeline Meeting**

**Wednesday, February 17, 10:00 am**

### Meeting Agenda

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

Next Pipeline Meeting: Wednesday, March 16, 10:00 am

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Actual	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	13	19
Dispositions	31	30	39	9	19
Ending balance	57	39	19	43	19
Average pendency of dispositions (months)	27	30	21	18	12
Average age of cases on hand at year end (months)	18	16	6	17	6

As of February 17, 2016

Dispositions through

Pocahontas Coal WEVA 2014-0202

New through

Bussen Quarries CENT 2015-0385

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**FY 2016 Dispositions**

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Case			Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
<b>Average pendency</b>				<b>18</b>

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**Cases on Hand as of February 17, 2016**

Case			DFR	Age (Mos)
1	Hopkins County Coal	KENT 2009-820-R, et al.	5/10/12	45
2	Premier Elkhorn Coal Co.	KENT 2011-827	2/27/13	35
3	Oak Grove	SE 2010-1236	5/15/13	33
4	Drilling & Blasting Systems	SE 2012-510-M	7/10/13	31
5	Trivette Trucking	KENT 2011-1223	8/2/13	30
6	Lewis-Goetz and Co.	WEVA 2012-1821	8/29/13	29
7	Nally & Hamilton Enterprises	KENT 2011-434	8/29/13	29
8	The American Coal Co.	LAKE 2009-35	9/4/13	29
9	Newtown Energy	WEVA 2011-283	9/5/13	29
10	Rex Coal Co.	KENT 2010-956 et al.	9/9/13	29
11	Hibbing Taconite Co.	LAKE 2013-231-RM	9/20/13	29
12	Warrior Coal	KENT 2011-1259 et al.	10/10/13	28
13	The American Coal Co.	LAKE 2011-701, et al.	10/29/13	27
14	Sunbelt Rentals, et al.	VA 2013-275, et al.	10/31/13	27
15	Maxxim Rebuild Co.	KENT 2013-566	11/22/13	26
16	Kentucky Fuel Corp.	KENT 2011-1557, et al.	2/25/14	23
17	Black Beauty Coal Co.	LAKE 2009-410	4/16/14	22
18	Big Ridge, Inc.	LAKE 2013-66	5/23/14	21
19	The American Coal Co.	LAKE 2008-666	6/27/14	19
20	The American Coal Co.	LAKE 2011-0013	7/11/14	19
21	Leeco, Inc.	KENT 2012-0166	8/22/14	18
22	Knife River Construction	WEST 2013-827	9/12/14	17
23	CAM Mining	KENT 2013-0196	9/24/14	17
24	ICG Illinois	LAKE 2013-0160	2/19/15	12
25	United Steelworkers	WEST 2012-0466	3/12/15	11
26	Knight Hawk Coal	LAKE 2014-0120	4/22/15	10
27	BHP Navajo Coal Co.	CENT 2013-0541	6/3/15	8
28	Hecla Ltd. And Bayer	WEST 2012-0760	6/4/15	8
29	Portable	EAJA 2015-0001	8/11/15	6
30	Knox Creek Coal Corp	VA 2014-0343	8/18/15	6
31	Consol Pennsylvania Coal	PENN 2013-0385	9/8/15	5
32	Nally & Hamilton Enterprises	KENT 2012-0749	9/28/15	5
33	KenAmerican Resources	KENT 2013-0211	10/1/15	4
34	John Richards Construction	WEST 2014-0440	10/2/15	4
35	Sherwin Alumina	CENT 2015-0151	10/31/15	4
36	Alcoa World Alumina	CENT 2015-0279	11/5/15	3
37	Northshore Mining	LAKE 2014-0219	11/25/15	3
38	Consolidation Coal	VA 2012-0042	11/30/15	3
39	John Richards Construction	WEST 2015-0101	12/2/15	2
40	Marshall County Coal Co.	WEVA 2015-0583	12/22/15	2
41	Pocahontas Coal Co.	WEVA 2014-0395	1/6/16	1
42	Peabody Twentymile Mining	WEST 2014-0930	1/8/16	1
43	Bussen Quarries	CENT 2015-0385	1/21/16	1
<b>Average age</b>				<b>17</b>

# Substantive Case Status

As of February 17, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
2 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24	[REDACTED]				[REDACTED]		
3 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9	[REDACTED]			[REDACTED]	s		
4 Drilling and Blasting SE 2012-0510 [REDACTED]	Interpretation of standard	Mtg. Aug. 4	[REDACTED]				[REDACTED]		
5 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]						
6 Warrior Coal KENT 2011-1259 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]			[REDACTED]			
7 United Steelworkers WEST 2012-0466 [REDACTED]	Miner compensation	Oral arg. Nov. 18 Mtg. Nov. 19	[REDACTED]	[REDACTED]					
8 Rex Coal KENT 2010-0956 [REDACTED]	Accident notification	Mtg. Dec. 3	[REDACTED]				[REDACTED]		
9 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]						
10 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]						

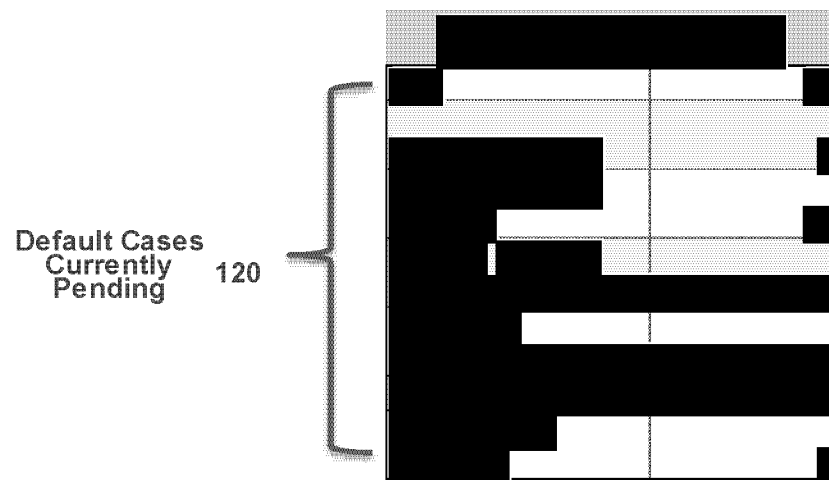
## Substantive Case Status

As of February 17, 2016

Case	Description	Meeting							
11 Maxxim Rebuild Co. KENT 2013-0566 [REDACTED]	MSHA jurisdiction	Mtg. Jan. 7	[REDACTED]	[REDACTED]					
12 Hibbing Taconite LAKE 2013-0231 [REDACTED]	Abatement times	Oral arg. Jan 13 Mtg. Jan. 14	[REDACTED]						
13 Knife River Const WEST 2013-0827 [REDACTED]	Imminent danger order	Mtg. Jan. 28	[REDACTED]						
14 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11	[REDACTED]						
15 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11	[REDACTED]						
16 Oak Grove SE 2010-1236 [REDACTED]	Safeguard	Oral arg. Feb. 24 Mtg. Feb. 25	[REDACTED]						
17 Leeco, Inc. KENT 2012-0166 [REDACTED]	Negligence	Mtg. Feb. 25	[REDACTED]						
18 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Mtg. Mar. 10		[REDACTED]					
19 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Mtg. Mar 10		[REDACTED]					
20 TBD		Mtg. Mar 23							
21 TBD		Mtg. Mar 23							

Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
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FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	86	126	415.87 Days	7.50
FY2016	126	45	171	51	120	416.84 Days	9.00
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Age of Pending Cases	
< 6 months	50%
> 6 months, < 1 year	27%
> 1 year	23%

50%

As of: 2/16/2016

## **Pipeline Meeting**

**Thursday, March 24, 2016, 2:00 pm**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, April 20, 2016, 2:00 pm**

## Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016	FY 2017
	Actual	Actual	Goal	Goal
			Year to Date*	
Beginning balance	69	57	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	19
Dispositions	31	30	39	19
Ending balance	57	39	19	19
Average pendency of dispositions (months)	27	30	21	12
Average age of cases on hand at year end (months)	18	16	6	6

\* Year to Date as of March 24, 2016

New through McGlothlin v. Dominion Coal VA 2014-0233  
 Dispositions through Hibbing Taconite LAKE 2013-0231

**FY 2016 Dispositions**

Case			Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	John Richards Construction	KENT 2015-0101	2/25/16	3
13	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
<b>Average pendency</b>				<b>19</b>

**Cases on Hand as of March 24, 2016**

Case			DFR	Age (Mos)
1	Hopkins County Coal	KENT 2009-820-R, et al.	5/10/12	46
2	Premier Elkhorn Coal Co.	KENT 2011-827	2/27/13	36
3	Oak Grove	SE 2010-1236	5/15/13	34
4	Trivette Trucking	KENT 2011-1223	8/2/13	31
5	Nally & Hamilton Enterprises	KENT 2011-434	8/29/13	30
6	Lewis-Goetz and Co.	WEVA 2012-1821	8/29/13	30
7	The American Coal Co.	LAKE 2009-35	9/4/13	30
8	Newtown Energy	WEVA 2011-283	9/5/13	30
9	Warrior Coal	KENT 2011-1259 et al.	10/10/13	29
10	The American Coal Co.	LAKE 2011-701, et al.	10/29/13	28
11	Sunbelt Rentals, et al.	VA 2013-275, et al.	10/31/13	28
12	Maxxim Rebuild Co.	KENT 2013-566	11/22/13	28
13	Kentucky Fuel Corp.	KENT 2011-1557, et al.	2/25/14	25
14	Black Beauty Coal Co.	LAKE 2009-410	4/16/14	23
15	Big Ridge, Inc.	LAKE 2013-66	5/23/14	22
16	The American Coal Co.	LAKE 2008-666	6/27/14	21
17	The American Coal Co.	LAKE 2011-0013	7/11/14	20
18	Leeco, Inc.	KENT 2012-0166	8/22/14	19
19	Knife River Construction	WEST 2013-827	9/12/14	18
20	CAM Mining	KENT 2013-0196	9/24/14	18
21	ICG Illinois	LAKE 2013-0160	2/19/15	13
22	Knight Hawk Coal	LAKE 2014-0120	4/22/15	11
23	BHP Navajo Coal Co.	CENT 2013-0541	6/3/15	10
24	Hecla and Bayer	WEST 2012-0760	6/4/15	10
25	Portable	EAJA 2015-0001	8/11/15	7
26	Knox Creek Coal Corp	VA 2014-0343	8/18/15	7
27	Consol Pennsylvania Coal	PENN 2013-0385	9/8/15	6
28	Nally & Hamilton Enterprises	KENT 2012-0749	9/28/15	6
29	KenAmerican Resources	KENT 2013-0211	10/1/15	6
30	John Richards Construction	WEST 2014-0440	10/2/15	6
31	Sherwin Alumina	CENT 2015-0151	10/31/15	5
32	Alcoa World Alumina	CENT 2015-0279	11/5/15	5
33	Northshore Mining	LAKE 2014-0219	11/25/15	4
34	Consolidation Coal	VA 2012-0042	11/30/15	4
35	Marshall County Coal Co.	WEVA 2015-0583	12/22/15	3
36	Pocahontas Coal Co.	WEVA 2014-0395	1/6/16	3
37	Peabody Twentymile Mining	WEST 2014-0930	1/8/16	2
38	Bussen Quarries	CENT 2015-0385	1/21/16	2
39	McGlothlin v. Dominion Coal	VA 2014-0233	3/21/16	0
<b>Average age</b>				<b>17</b>



# Substantive Case Status

As of March 24, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
2 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24	[REDACTED]				[REDACTED]		
3 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9	[REDACTED]		[REDACTED]				
4 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]			[REDACTED]			[REDACTED]
5 Warrior Coal KENT 2011-1259 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]		[REDACTED]		[REDACTED]	[REDACTED]	
6 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]		[REDACTED]	[REDACTED]			
7 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]			[REDACTED]			
8 Maxxim Rebuild Co. KENT 2013-0566 [REDACTED]	MSHA jurisdiction	Mtg. Jan. 7	[REDACTED]				[REDACTED]		
9 Knife River Const WEST 2013-0827 [REDACTED]	Imminent danger order	Mtg. Jan. 28	[REDACTED]		[REDACTED]				[REDACTED]
10 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11		[REDACTED]					

**Substantive Case Status**

As of March 24, 2016

Case	Description	Meeting							
11 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11		[REDACTED]					
12 Oak Grove SE 2010-1236 [REDACTED]	Safeguard	Oral arg. Feb. 24 Mtg. Feb. 25		[REDACTED]					
13 Leeco, Inc. KENT 2012-0166 [REDACTED]	Negligence	Mtg. Feb. 25		[REDACTED]					
14 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10		[REDACTED]					
15 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Oral arg. Mar 23 Mtg. Mar 24	[REDACTED]						
16 CAM Mining KENT 2013-0196 [REDACTED]	Prehft exam	Mtg. Mar 24	[REDACTED]						
17 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr. 5		[REDACTED]					
18 Kentucky Fuel Corp. KENT 2011-1557 [REDACTED]	Alleged duplicative citations	Mtg. Apr. 5		[REDACTED]					
19 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Oral arg. Apr. 20 Mtg. Apr. 21		[REDACTED]					
20 Hecla and Bayer WEST 2012-0760 [REDACTED]	Ground conditions	Mtg. Apr. 21		[REDACTED]					

### Motions to Reopen - Caseload Data

	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	50	177	61	116	425.98 Days	8.33
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.

Default Cases  
Currently  
Pending 116

### Age of Pending Cases

< 6 months	47%
> 6 months, < 1 year	32%
> 1 year	21%

53%

As of: 3/22/2016

## **Pipeline Meeting**

**Wednesday, April 20, 2016, 2:00 pm**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, May 18, 2016, 2:00 pm**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Year to Date*	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	14	19
Dispositions	31	30	39	16	19
Ending balance	57	39	19	37	19
Average pendency of dispositions (months)	27	30	21	17	12
Average age of cases on hand at year end (months)	18	16	6	18	6

\* Year to Date as of April 20, 2016

New through                      McGlothlin v. Dominion Coal VA 2014-0233  
Dispositions through           McGlothlin v. Dominion Coal VA 2014-0233

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**FY 2016 Dispositions**


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	Case		Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
13	John Richards Construction	KENT 2015-0101	2/25/16	3
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
15	BHP Navajo Coal Co.	CENT 2013-0541	3/29/16	10
16	McGlothlin v. Dominion Coal	VA 2014-0233	3/30/16	0
<b>Average pendency</b>				<b>17</b>

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**Cases on Hand as of April 20, 2016**

Case			DFR	Age (Mos)
1	Hopkins County Coal	KENT 2009-820-R, et al.	5/10/12	47
2	Premier Elkhorn Coal Co.	KENT 2011-827	2/27/13	37
3	Oak Grove	SE 2010-1236	5/15/13	35
4	Trivette Trucking	KENT 2011-1223	8/2/13	32
5	Lewis-Goetz and Co.	WEVA 2012-1821	8/29/13	31
6	Nally & Hamilton Enterprises	KENT 2011-434	8/29/13	31
7	The American Coal Co.	LAKE 2009-35	9/4/13	31
8	Newtown Energy	WEVA 2011-283	9/5/13	31
9	Warrior Coal	KENT 2011-1259 et al.	10/10/13	30
10	The American Coal Co.	LAKE 2011-701, et al.	10/29/13	29
11	Sunbelt Rentals, et al.	VA 2013-275, et al.	10/31/13	29
12	Maxxim Rebuild Co.	KENT 2013-566	11/22/13	29
13	Kentucky Fuel Corp.	KENT 2011-1557, et al.	2/25/14	25
14	Black Beauty Coal Co.	LAKE 2009-410	4/16/14	24
15	Big Ridge, Inc.	LAKE 2013-66	5/23/14	23
16	The American Coal Co.	LAKE 2008-666	6/27/14	21
17	The American Coal Co.	LAKE 2011-0013	7/11/14	21
18	Leeco, Inc.	KENT 2012-0166	8/22/14	20
19	Knife River Construction	WEST 2013-827	9/12/14	19
20	CAM Mining	KENT 2013-0196	9/24/14	19
21	ICG Illinois	LAKE 2013-0160	2/19/15	14
22	Knight Hawk Coal	LAKE 2014-0120	4/22/15	12
23	Hecla and Bayer	WEST 2012-0760	6/4/15	10
24	Portable	EAJA 2015-0001	8/11/15	8
25	Knox Creek Coal Corp	VA 2014-0343	8/18/15	8
26	Consol Pennsylvania Coal	PENN 2013-0385	9/8/15	7
27	Nally & Hamilton Enterprises	KENT 2012-0749	9/28/15	7
28	KenAmerican Resources	KENT 2013-0211	10/1/15	7
29	John Richards Construction	WEST 2014-0440	10/2/15	7
30	Sherwin Alumina	CENT 2015-0151	10/31/15	6
31	Alcoa World Alumina	CENT 2015-0279	11/5/15	5
32	Northshore Mining	LAKE 2014-0219	11/25/15	5
33	Consolidation Coal	VA 2012-0042	11/30/15	5
34	Marshall County Coal Co.	WEVA 2015-0583	12/22/15	4
35	Pocahontas Coal Co.	WEVA 2014-0395	1/6/16	3
36	Peabody Twentymile Mining	WEST 2014-0930	1/8/16	3
37	Bussen Quarries	CENT 2015-0385	1/21/16	3
<b>Average age</b>				<b>18</b>

## Substantive Case Status

As of April 20, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3, 2015	[REDACTED]			[REDACTED]	[REDACTED]		[REDACTED]
2 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24, 2015	[REDACTED]				[REDACTED]		
3 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9	[REDACTED]		[REDACTED]			[REDACTED]	
4 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]		[REDACTED]	[REDACTED]			[REDACTED]
5 Warrior Coal KENT 2011-1259 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]	
6 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]				[REDACTED]		
7 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]				[REDACTED]		
8 Maxxim Rebuild Co. KENT 2013-0566 [REDACTED]	MSHA jurisdiction	Mtg. Jan. 7	[REDACTED]				[REDACTED]		
9 Knife River Const WEST 2013-0827 [REDACTED]	Imminent danger order	Mtg. Jan. 28	[REDACTED]			[REDACTED]			[REDACTED]
10 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11		[REDACTED]					
11 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11		[REDACTED]					
12 Oak Grove SE 2010-1236 [REDACTED]	Safeguard	Oral arg. Feb. 24 Mtg. Feb. 25	[REDACTED]				[REDACTED]		
13 Leeco, Inc. KENT 2012-0166 [REDACTED]	Negligence	Mtg. Feb. 25		[REDACTED]					
14 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10		[REDACTED]					



## Substantive Case Status

As of April 20, 2016

Case	Description	Meeting							
15 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Oral arg. Mar 23 Mtg. Mar 24		[REDACTED]					
16 CAM Mining KENT 2013-0196 [REDACTED]	Preshift exam	Mtg. Mar 24		[REDACTED]					
17 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr. 5		[REDACTED]					
18 Kentucky Fuel Corp. KENT 2011-1557 [REDACTED]	Alleged duplicative citations	Mtg. Apr. 5		[REDACTED]					
19 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Oral arg. Apr. 20 Mtg. Apr. 21	[REDACTED]						
20 Riordan vs. Knox Creek VA 2014-0343 [REDACTED]	Discrimination	Mtg. May 5		[REDACTED]					
21 Black Beauty LAKE 2009-0410 [REDACTED]	Safety measures and safeguard	Mtg. May 5 (T)		[REDACTED]					
22 Big Ridge LAKE 2013-0066 [REDACTED]	Unwarrantable failure	Oral arg. May 18 (T) Mtg. May 19		[REDACTED]					
23 KenAmerican KENT 2013-0211 [REDACTED]	Inspection notice	Mtg. May 19		[REDACTED]					
24 Hecla and Bayer WEST 2012-0760 [REDACTED]	Ground conditions	Oral arg. May 25 Mtg. May 26		[REDACTED]					
25 American Coal LAKE 2011-0013 [REDACTED]	Settlements	Mtg. Jun. 8		[REDACTED]					
26 Marshall County WEVA 2015-0583 [REDACTED]	Interference	Oral arg. Jun. 14 Mtg. Jun. 15		[REDACTED]					

Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	110	237	71	166	401.65 Days	15.71
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Age of Pending Cases	
< 6 months	50%
> 6 months, < 1 year	34%
> 1 year	16%
50%	
Average Age of Pending Cases	
193 days	

As of: 4/19/2016

## **Pipeline Meeting**

**Wednesday, May 25, 2016, 2:00 pm**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, June 15, 2016, 10:00 am**

## Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Year to Date*	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	16	19
Dispositions	31	30	39	19	19
Ending balance	57	39	19	36	19
Average pendency of dispositions (months)	27	30	21	17	12
Average age of cases on hand at year end (months)	18	16	6	18	6

\* Year to Date as of May 25, 2016

New through                      Oak Grove SE 2009-0261  
 Dispositions through        Franks and Hoy PENN 2012-0250

## FY 2016 Dispositions

	Case		Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
13	John Richards Construction	KENT 2015-0101	2/25/16	3
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
15	BHP Navajo Coal Co.	CENT 2013-0541	3/29/16	10
16	McGlothlin v. Dominion Coal	VA 2014-0233	3/30/16	0
17	Maxxim Rebuild Co.	KENT 2013-566	4/27/16	29
18	Franks and Hoy	PENN 2012-0250	5/17/16	0
19	Warrior Coal	KENT 2011-1259	5/17/16	31
<b>Average pendency</b>				<b>17</b>

Cases on Hand as of May 25, 2016						
	Case			DFR	Age (Mos)	
1	Hopkins County Coal	KENT 2009-820-R, et al.		5/10/12	48	
2	Premier Elkhorn Coal Co.	KENT 2011-827		2/27/13	38	
3	Oak Grove	SE 2010-1236		5/15/13	36	
4	Trivette Trucking	KENT 2011-1223		8/2/13	33	
5	Lewis-Goetz and Co.	WEVA 2012-1821		8/29/13	32	
6	Nally & Hamilton Enterprises	KENT 2011-434		8/29/13	32	
7	The American Coal Co.	LAKE 2009-35		9/4/13	32	
8	Newtown Energy	WEVA 2011-283		9/5/13	32	
9	The American Coal Co.	LAKE 2011-701, et al.		10/29/13	30	
10	Sunbelt Rentals, et al.	VA 2013-275, et al.		10/31/13	30	
11	Kentucky Fuel Corp.	KENT 2011-1557, et al.		2/25/14	27	
12	Black Beauty Coal Co.	LAKE 2009-410		4/16/14	25	
13	Big Ridge, Inc.	LAKE 2013-66		5/23/14	24	
14	The American Coal Co.	LAKE 2008-666		6/27/14	23	
15	The American Coal Co.	LAKE 2011-0013		7/11/14	22	
16	Leeco, Inc.	KENT 2012-0166		8/22/14	21	
17	Knife River Construction	WEST 2013-827		9/12/14	20	
18	CAM Mining	KENT 2013-0196		9/24/14	20	
19	ICG Illinois	LAKE 2013-0160		2/19/15	15	
20	Knight Hawk Coal	LAKE 2014-0120		4/22/15	13	
21	Hecla and Bayer	WEST 2012-0760		6/4/15	12	
22	Portable	EAJA 2015-0001		8/11/15	9	
23	Knox Creek Coal Corp	VA 2014-0343		8/18/15	9	
24	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	8	
25	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	8	
26	KenAmerican Resources	KENT 2013-0211		10/1/15	8	
27	John Richards Construction	WEST 2014-0440		10/2/15	8	
28	Sherwin Alumina	CENT 2015-0151		10/31/15	7	
29	Alcoa World Alumina	CENT 2015-0279		11/5/15	7	
30	Northshore Mining	LAKE 2014-0219		11/25/15	6	
31	Consolidation Coal	VA 2012-0042		11/30/15	6	
32	Marshall County Coal Co.	WEVA 2015-0583		12/22/15	5	
33	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	5	
34	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	5	
35	Bussen Quarries	CENT 2015-0385		1/21/16	4	
36	Oak Grove	SE 2009-0261		5/24/16	0	
Average age					18	

**Substantive Case Status**

As of May 25, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3, 2015	[REDACTED]			[REDACTED]	[REDACTED]		
2 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24, 2015	[REDACTED]				[REDACTED]		
3 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9, 2015 May 18, 2016 May 26, 2016	[REDACTED]						
4 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8	[REDACTED]		[REDACTED]		[REDACTED]		
5 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]				[REDACTED]		
6 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17	[REDACTED]				[REDACTED]		
7 Knife River Const WEST 2013-0827 [REDACTED]	Imminent danger order	Mtg. Jan. 28	[REDACTED]			[REDACTED]			[REDACTED]
8 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11	[REDACTED]				[REDACTED]		
9 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11	[REDACTED]				[REDACTED]		
10 Oak Grove SE 2010-1236 [REDACTED]	Safeguard	Oral arg. Feb. 24 Mtg. Feb. 25	[REDACTED]		[REDACTED]				
11 Leeco, Inc. KENT 2012-0166 [REDACTED]	Negligence	Mtg. Feb. 25	[REDACTED]				[REDACTED]		
12 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10		[REDACTED]					

**Substantive Case Status**

As of May 25, 2016

Case	Description	Meeting							
13 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Oral arg. Mar 23 Mtg. Mar 24		[REDACTED]					
14 CAM Mining KENT 2013-0196 [REDACTED]	Preshift exam	Mtg. Mar 24		[REDACTED]					
15 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr. 5		[REDACTED]					
16 Kentucky Fuel Corp. KENT 2011-1557 [REDACTED]	Alleged duplicative citations	Mtg. Apr. 5	[REDACTED]				[REDACTED]		
17 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Oral arg. Apr. 20 Mtg. Apr. 21		[REDACTED]					
18 Riordan vs. Knox Creek VA 2014-0343 [REDACTED]	Discrimination	Mtg. May 5		[REDACTED]					
19 Black Beauty LAKE 2009-0410 [REDACTED]	Safety measures and safeguard		[REDACTED]				[REDACTED]		
20 Big Ridge LAKE 2013-0066 [REDACTED]	Unwarrantable failure	Mtg. Jun. 8							
21 KenAmerican KENT 2013-0211 [REDACTED]	Inspection notice	Mtg. May 19		[REDACTED]					
22 Hecla and Bayer WEST 2012-0760 [REDACTED]	Ground conditions	Oral arg. May 25 Mtg. May 26							
23 American Coal LAKE 2011-0013 [REDACTED]	Settlements	Mtg. Jun. 8							
24 Marshall County WEVA 2015-0583 [REDACTED]	Interference	Oral arg. Jun. 13 Mtg. Jun. 14		[REDACTED]					



Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	143	270	95	175	374.54 Days	17.88
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Age of Pending Cases	
< 6 months	59%
> 6 months, < 1 year	27%
> 1 year	14%

41%

Average Age of Pending Cases	180 days
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As of: 5/24/2016

## **Pipeline Meeting**

**Wednesday, June 15, 2016 10:00 am**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, July 20, 2016 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Year to Date*	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	18	19
Dispositions	31	30	39	22	19
Ending balance	57	39	19	35	19
Average pendency of dispositions (months)	27	30	21	16	12
Average age of cases on hand at year end (months)	18	16	6	18	6

\* Year to Date as of June 15, 2016

New through                      Secy UMWA v. Monongalia WEVA 2015-0904  
Dispositions through            Oak Grove Se 2009-0261

## FY 2016 Dispositions

	Case		Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
13	John Richards Construction	KENT 2015-0101	2/25/16	3
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
15	BHP Navajo Coal Co.	CENT 2013-0541	3/29/16	10
16	McGlothlin v. Dominion Coal	VA 2014-0233	3/30/16	0
17	Maxxim Rebuild Co.	KENT 2013-566	4/27/16	29
18	Franks and Hoy	PENN 2012-0250	5/17/16	0
19	Warrior Coal	KENT 2011-1259	5/17/16	31
20	Oak Grove	SE 2010-1236	6/3/16	0
21	Knife River Construction	WEST 2013-827	6/8/16	21
22	Oak Grove	SE 2009-0261	6/7/16	0
<b>Average pendency</b>				<b>16</b>

**Cases on Hand as of June 15, 2016**

	Case		DFR	Age (Mos)
1	Hopkins County Coal	KENT 2009-820-R, et al.	5/10/12	48
2	Premier Elkhorn Coal Co.	KENT 2011-827	2/27/13	39
3	Trivette Trucking	KENT 2011-1223	8/2/13	34
4	Lewis-Goetz and Co.	WEVA 2012-1821	8/29/13	33
5	Nally & Hamilton Enterprises	KENT 2011-434	8/29/13	33
6	The American Coal Co.	LAKE 2009-35	9/4/13	33
7	Newtown Energy	WEVA 2011-283	9/5/13	33
8	The American Coal Co.	LAKE 2011-701, et al.	10/29/13	31
9	Sunbelt Rentals, et al.	VA 2013-275, et al.	10/31/13	31
10	Kentucky Fuel Corp.	KENT 2011-1557, et al.	2/25/14	27
11	Black Beauty Coal Co.	LAKE 2009-410	4/16/14	26
12	Big Ridge, Inc.	LAKE 2013-66	5/23/14	24
13	The American Coal Co.	LAKE 2008-666	6/27/14	23
14	The American Coal Co.	LAKE 2011-0013	7/11/14	23
15	Leeco, Inc.	KENT 2012-0166	8/22/14	21
16	CAM Mining	KENT 2013-0196	9/24/14	20
17	ICG Illinois	LAKE 2013-0160	2/19/15	16
18	Knight Hawk Coal	LAKE 2014-0120	4/22/15	14
19	Hecla and Bayer	WEST 2012-0760	6/4/15	12
20	Portable	EAJA 2015-0001	8/11/15	10
21	Knox Creek Coal Corp	VA 2014-0343	8/18/15	10
22	Consol Pennsylvania Coal	PENN 2013-0385	9/8/15	9
23	Nally & Hamilton Enterprises	KENT 2012-0749	9/28/15	8
24	KenAmerican Resources	KENT 2013-0211	10/1/15	8
25	John Richards Construction	WEST 2014-0440	10/2/15	8
26	Sherwin Alumina	CENT 2015-0151	10/31/15	7
27	Alcoa World Alumina	CENT 2015-0279	11/5/15	7
28	Northshore Mining	LAKE 2014-0219	11/25/15	7
29	Consolidation Coal	VA 2012-0042	11/30/15	6
30	Marshall County Coal	WEVA 2015-0583	12/22/15	6
31	Pocahontas Coal Co.	WEVA 2014-0395	1/6/16	5
32	Peabody Twentymile Mining	WEST 2014-0930	1/8/16	5
33	Bussen Quarries	CENT 2015-0385	1/21/16	5
34	Sims Crane	SE 2015-0315	6/1/16	0
35	Secy UMWA v. Monongalia	WEVA 2015-0904	6/9/16	0
<b>Average age</b>				<b>18</b>

**Substantive Case Status**

As of June 15, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3, 2015							
2 Sunbelt Rentals VA 2013-0275 [REDACTED]	Adequacy of examination	Oral arg. Jun. 23 Mtg. Jun. 24, 2015							
3 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9, 2015 May 18, 2016 May 26, 2016							
4 Hopkins County Coal KENT 2009-0820 [REDACTED]	Access to operator's records	Oral arg. and mtg. Oct. 8							
5 Lewis-Goetz WEVA 2012-1821 [REDACTED]	Seatbelts	Mtg. Dec. 17							
6 Nally & Hamilton KENT 2011-0434 [REDACTED]	Seatbelts	Mtg. Dec. 17							
7 Premier Elkhorn Coal KENT 2011-0827 [REDACTED]	Control of truck	Mtg. Feb 11							
8 Trivette Trucking KENT 2011-1223 [REDACTED]	Unwarrantable failure	Mtg. Feb 11							
9 Leeco, Inc. KENT 2012-0166 [REDACTED]	Negligence	Mtg. Feb. 25							
10 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10							
11 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Oral arg. Mar 23 Mtg. Mar 24							

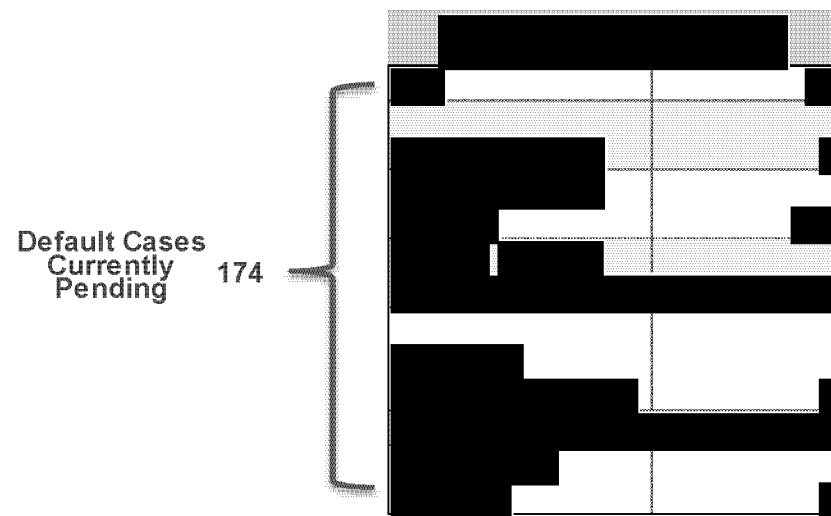
**Substantive Case Status**

As of June 15, 2016

Case	Description	Meeting							
12 CAM Mining KENT 2013-0196 [REDACTED]	Preshift exam	Mtg. Mar 24		[REDACTED]					
13 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr. 5		[REDACTED]					
14 Kentucky Fuel Corp. KENT 2011-1557 [REDACTED]	Alleged duplicative citations	Mtg. Apr. 5	[REDACTED]				[REDACTED]		
15 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Oral arg. Apr. 20 Mtg. Apr. 21		[REDACTED]					
16 Riordan vs. Knox Creek VA 2014-0343 [REDACTED]	Discrimination	Mtg. May 5	[REDACTED]			[REDACTED]			[REDACTED]
17 Black Beauty LAKE 2009-0410 [REDACTED]	Safety measures and safeguard		[REDACTED]	[REDACTED]					
18 Big Ridge LAKE 2013-0066 [REDACTED]	Unwarrantable failure (settled)	Mtg. Jun. 8	[REDACTED]			[REDACTED]			
19 KenAmerican KENT 2013-0211 [REDACTED]	Inspection notice	Mtg. May 19		[REDACTED]					
20 Hecla and Bayer WEST 2012-0760 [REDACTED]	Ground conditions	Oral arg. May 25 Mtg. May 26		[REDACTED]					
21 American Coal LAKE 2011-0013 [REDACTED]	Settlements	Oral arg. Jul. 12 Mtg. Jul. 14							
22 Marshall County WEVA 2015-0583 [REDACTED]	Interference	Oral arg. Jun. 13 Mtg. Jun. 14		[REDACTED]					

Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	143	270	96	174	378.43 Days	15.89
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Age of Pending Cases		
< 6 months	58%	} 42%
> 6 months, < 1 year	28%	
> 1 year	14%	
Average Age of Pending Cases		198 days

As of: 6/14/2016



## **Pipeline Meeting**

**Wednesday, July 20, 2016 10:00 am**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, August 17, 2016 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017
	Actual	Actual	Goal	Year to Date*	Goal
Beginning balance	69	57	39	39	19
New (PDRs & PIRs granted/PTR)	19	12	19	19	19
Dispositions	31	30	39	32	19
Ending balance	57	39	19	26	19
Average pendency of dispositions (months)	27	30	21	22	12
Average age of cases on hand at year end (months)	18	16	6	13	6

\* Year to Date as of July 20, 2016

New through	Mach Mining LAKE 2014-0077
Dispositions through	Nally & Hamilton KENT 2011-0434

**FY 2016 Dispositions**

	Case		Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
13	John Richards Construction	KENT 2015-0101	2/25/16	3
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
15	BHP Navajo Coal Co.	CENT 2013-0541	3/29/16	10
16	McGlothlin v. Dominion Coal	VA 2014-0233	3/30/16	0
17	Maxxim Rebuild Co.	KENT 2013-566	4/27/16	29
18	Franks and Hoy	PENN 2012-0250	5/17/16	0
19	Warrior Coal	KENT 2011-1259	5/17/16	31
20	Oak Grove	SE 2010-1236	6/3/16	36
21	Oak Grove	SE 2009-0261	6/7/16	0
22	Knife River Construction	WEST 2013-827	6/8/16	21
23	Black Beauty	LAKE 2009-410	6/16/16	26
24	Hopkins County Coal	KENT 2009-820-R, et al.	6/24/16	49
25	Big Ridge, Inc.	LAKE 2013-66	6/30/16	25
26	Premier Elkhorn Coal Co.	KENT 2011-827	7/8/16	40
27	Trivette Trucking	KENT 2011-1223	7/8/16	35
28	Kentucky Fuel Corp.	KENT 2011-1557, et al.	7/8/16	28
29	Sunbelt Rentals, et al.	VA 2013-275, et al.	7/12/16	32
30	Leeco, Inc.	KENT 2012-0166	7/18/16	23
31	Lewis-Goetz and Co.	WEVA 2012-1821	7/19/16	34
32	Nally & Hamilton Enterprises	KENT 2011-434	7/19/16	34
<b>Average pendency</b>				<b>22</b>

Cases on Hand as of July 20, 2016					
	Case			DFR	Age (Mos)
1	The American Coal Co.	LAKE 2009-35		9/4/13	34
2	Newtown Energy	WEVA 2011-283		9/5/13	34
3	The American Coal Co.	LAKE 2011-701, et al.		10/29/13	32
4	The American Coal Co.	LAKE 2008-666		6/27/14	24
5	The American Coal Co.	LAKE 2011-0013		7/11/14	24
6	CAM Mining	KENT 2013-0196		9/24/14	22
7	ICG Illinois	LAKE 2013-0160		2/19/15	17
8	Knight Hawk Coal	LAKE 2014-0120		4/22/15	15
9	Hecla and Bayer	WEST 2012-0760		6/4/15	13
10	Portable	EAJA 2015-0001		8/11/15	11
11	Knox Creek Coal Corp	VA 2014-0343		8/18/15	11
12	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	10
13	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	10
14	KenAmerican Resources	KENT 2013-0211		10/1/15	10
15	John Richards Construction	WEST 2014-0440		10/2/15	9
16	Sherwin Alumina	CENT 2015-0151		10/31/15	9
17	Alcoa World Alumina	CENT 2015-0279		11/5/15	8
18	Northshore Mining	LAKE 2014-0219		11/25/15	8
19	Consolidation Coal	VA 2012-0042		11/30/15	8
20	Marshall County Coal	WEVA 2015-0583		12/22/15	7
21	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	6
22	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	6
23	Bussen Quarries	CENT 2015-0385		1/21/16	6
24	Sims Crane	SE 2015-0315		6/1/16	2
25	Secy UMWA v. Monongalia	WEVA 2015-0904		6/9/16	1
26	Mach Mining	LAKE 2014-0077		7/1/16	1
Average age					13

# Substantive Case Status

As of July 20, 2016

Case	Description	Meeting							
1 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties	Mtg. Jun. 3, 2015	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Newtown Energy WEVA 2011-0283 [REDACTED]	Unwarrantable failure	Mtg. Jul. 9, 2015 May 18, 2016 May 26, 2016	[REDACTED]	[REDACTED]					
3 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4 Knight Hawk Coal LAKE 2014-0120 [REDACTED]	Unwarrantable failure	Oral arg. Mar 23 Mtg. Mar 24	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 CAM Mining KENT 2013-0196 [REDACTED]	Preshift exam	Mtg. Mar 24	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]		
6 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr. 5	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
7 American Coal LAKE 2011-0701 [REDACTED]	Special assessments	Oral arg. Apr. 20 Mtg. Apr. 21		[REDACTED]					
8 Riordan vs. Knox Creek VA 2014-0343 [REDACTED]	Discrimination	Mtg. May 5	[REDACTED]	[REDACTED]			[REDACTED]		
9 KenAmerican KENT 2013-0211 [REDACTED]	Inspection notice	Mtg. May 18	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	
10 Hecla and Bayer WEST 2012-0760 [REDACTED]	Ground conditions	Oral arg. May 25 Mtg. May 26		[REDACTED]					
11 American Coal LAKE 2011-0013 [REDACTED]	Settlements	Oral arg. Jul. 12 Mtg. Jul. 14	[REDACTED]	[REDACTED]					
12 Marshall County WEVA 2015-0583 [REDACTED]	Interference	Oral arg. Jun. 13 Mtg. Jun. 14	[REDACTED]	[REDACTED]					

Motions to Reopen - Caseload Data							
	Cases Pending Beginning	# of Motions to Reopen Filed	Total Workload	Disposed	Year End Balance	Average Pendency	Average # of Cases Filed Per Month
FY2011*	0	125	125	45	80	127.84 Days	10.42
FY2012	80	192	272	146	126	198.20 Days	16.00
FY2013	126	129	255	190	65	245.49 Days	10.75
FY2014	65	110	175	53	122	246.70 Days	9.17
FY2015	122	90	212	85	127	416.82 Days	7.50
FY2016	127	144	271	164	107	277.63 Days	14.40
FY2017		0		0			
FY2018		0		0			
FY2019		0		0			
FY2020		0		0			
FY2021		0		0			

\* Note: records not complete for FY2011.



Age of Pending Cases	
< 6 months	39%
> 6 months, < 1 year	33%
> 1 year	28%
61%	

Average Age of Pending Cases	279 days
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As of: 7/19/2016

## **Pipeline Meeting**

**Wednesday, October 5, 2016 10:00 am**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2016 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, November 16, 2016 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014 Actual	FY 2015 Actual	FY 2016 Goal	FY 2016 Actual	FY 2017 Goal	FY 2017 YTD*
Beginning balance	69	57	39	39	18	18
New (PDRs & PIRs granted/PTR)	19	12	19	22	20	1
Dispositions	31	30	39	43	20	0
Ending balance	57	39	19	18	19	19
Average pendency of dispositions (months)	27	30	21	22	12	
Average age of cases on hand at year end (months)	18	16	6	9	6	9

\* As of October 4, 2016

New through	Hirt v. Gary Servaes Ent. CENT 2015-0598
Dispositions through	Knight Hawk Coal LAKE 2014-0120



## FY 2016 Dispositions

	Case		Issue Date	Pendency (Months)
1	TMK Enterprise	WEVA 2014-0387	10/23/15	7
2	Resolution Copper	WEST 2013-0319	10/28/15	29
3	Kingston Mining	WEVA 2015-1007	11/9/15	1
4	Oak Grove	SE 2009-261	12/9/15	30
5	Black Beauty	LAKE 2009-0570	1/28/16	53
6	CalPortland	WEST 2016-0156	2/8/16	1
7	Franks & Hoy	PENN 2012-0250	2/10/16	4
8	Pocahontas Coal	WEVA 2014-0642	2/12/16	19
9	Pocahontas Coal	WEVA 2014-0202	2/16/16	19
10	Drilling & Blasting	SE 2012-0510	2/22/16	31
11	United Steelworkers	WEST 2012-0466	2/24/16	11
12	Rex Coal Co.	KENT 2010-956 et al.	2/25/16	29
13	John Richards Construction	KENT 2015-0101	2/25/16 *	3
14	Hibbing Taconite	LAKE 2013-0231	3/3/16	29
15	BHP Navajo Coal Co.	CENT 2013-0541	3/29/16	10
16	McGlothlin v. Dominion Coal	VA 2014-0233	3/30/16	0
17	Maxxim Rebuild Co.	KENT 2013-566	4/27/16	29
18	Franks and Hoy	PENN 2012-0250	5/17/16	0
19	Warrior Coal	KENT 2011-1259	5/17/16	31
20	Oak Grove	SE 2010-1236	6/3/16	36
21	Oak Grove	SE 2009-0261	6/7/16	0
22	Knife River Construction	WEST 2013-827	6/8/16	21

\* Consolidated with WEST 2014-0440

## FY 2016 Dispositions

	Case		Issue Date	Pendency (Months)
23	Black Beauty	LAKE 2009-410	6/16/16	26
24	Hopkins County Coal	KENT 2009-820-R, et al.	6/24/16	49
25	Big Ridge, Inc.	LAKE 2013-66	6/30/16	25
26	Premier Elkhorn Coal Co.	KENT 2011-827	7/8/16	40
27	Trivette Trucking	KENT 2011-1223	7/8/16	35
28	Kentucky Fuel Corp.	KENT 2011-1557, et al.	7/8/16	28
29	Sunbelt Rentals, et al.	VA 2013-275, et al.	7/12/16	32
30	Leeco, Inc.	KENT 2012-0166	7/18/16	23
31	Lewis-Goetz and Co.	WEVA 2012-1821	7/19/16	34
32	Nally & Hamilton Enterprises	KENT 2011-434	7/19/16	34
33	CAM Mining	KENT 2013-0196	8/12/16	22
34	Sherwin Alumina	CENT 2015-0151	8/17/16	9
35	Knox Creek Coal Corp	VA 2014-0343	8/23/16	12
36	American Coal	LAKE 2011-0013	8/25/16	25
37	KenAmerican Resources	KENT 2013-0211	8/25/16	11
38	Marshall County Coal	WEVA 2015-0583	8/26/16	8
39	American Coal	LAKE 2011-0701	8/26/16	33
40	Newtown	WEVA 2011-0283	8/29/16	35
41	Hecla and Bayer	WEST 2012-0760	8/30/16	15
42	American Coal	LAKE 2009-0035	8/30/16	35
43	Knight Hawk Coal	LAKE 2014-0120	9/29/16	17
<b>Average pendency</b>				<b>22</b>

Cases on Hand as of October 5, 2016						
	Case			DFR	Age (Mos)	
1	The American Coal Co.	LAKE 2008-666		6/27/14	27	
2	ICG Illinois	LAKE 2013-0160		2/19/15	19	
3	Portable	EAJA 2015-0001		8/11/15	14	
4	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	13	
5	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	12	
6	John Richards Construction	WEST 2014-0440		10/2/15	12	
7	McNary v. Alcoa	CENT 2015-0279		11/5/15	11	
8	Northshore Mining	LAKE 2014-0219		11/25/15	10	
9	Consolidation Coal	VA 2012-0042		11/30/15	10	
10	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	9	
11	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	9	
12	Bussen Quarries	CENT 2015-0385		1/21/16	8	
13	Sims Crane	SE 2015-0315		6/1/16	4	
14	Secy UMWA v. Monongalia	WEVA 2015-0904		6/9/16	4	
15	Mach Mining	LAKE 2014-0077		7/1/16	3	
16	Arnold Stone	CENT 2016-0895		8/26/16	1	
17	Canyon Fuel	WEST 2015-0676		9/26/16	0	
18	Mach Mining	LAKE 2014-0746		9/29/16	0	
19	Hirt v. Gary Servaes Ent.	CENT 2015-0598		10/3/16	0	
Average age					9	

## Substantive Case Status

As of October 4, 2016

Case	Description	Meeting						
1 ICG Illinois LAKE 2013-0160 [REDACTED]	Refuge	Mtg. Mar 10	[REDACTED]					[REDACTED]
2 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr 5	[REDACTED]					[REDACTED]
3 Northshore Mining LAKE 2014-0219 [REDACTED]	Reporting of injury	Oral arg. Oct. 20 Mtg. Oct 21	[REDACTED]					
4 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9		[REDACTED]				
5 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]					
6 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

10/4/2016

Default Cases Currently Pending	
↑	132

Average Age of Pending Cases	
↑	300 Days

Cases Issued This Fiscal Year
0

Average Pendancy This Fiscal Year
N/A



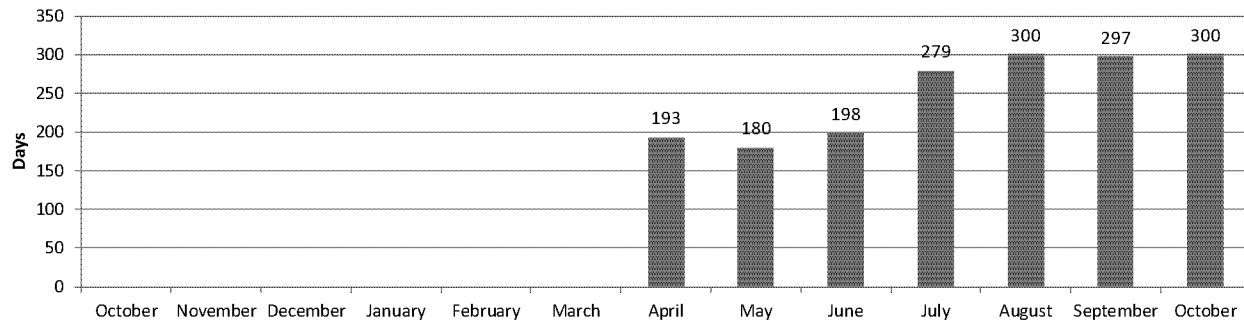
56%

Age of Pending Cases
44% < 6 Months
27% > 6 Months, < 1 Year
30% > 1 year

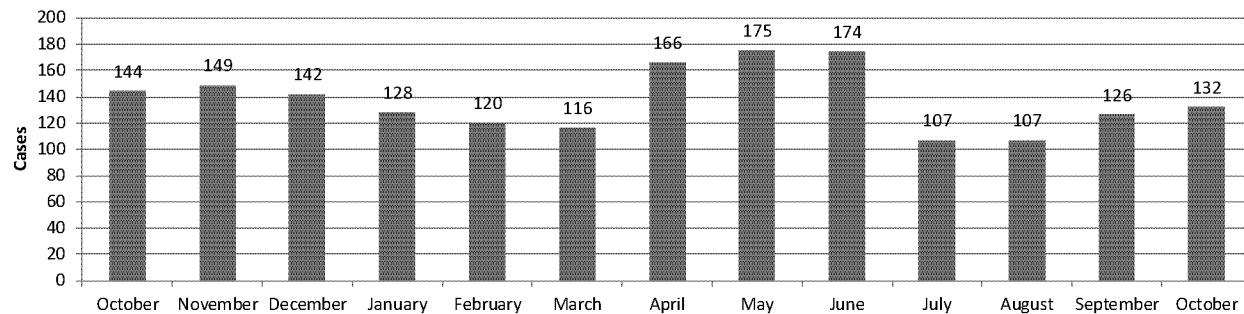
Average # of Cases Filed per Month This Fiscal Year
1

## Historical Trends

Average Age of Pending Default Cases



Number of Pending Default Cases



## **Pipeline Meeting**

**Wednesday, November 16, 2016 10:00 am (Meeting cancelled)**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: Wednesday, December 21, 2016 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014 Actual	FY 2015 Actual	FY 2016		FY 2017	
			Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>19</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>0</b>
Dispositions	31	30	39	<b>43</b>	20	<b>1</b>
Ending balance	57	39	19	<b>18</b>	19	<b>18</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>20</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of November 16, 2016

New through	Mach Mining LAKE 2014-0746
Dispositions through	ICG Illinois LAKE 2013-0160

<b>FY 2017 Dispositions</b>				
	<b>Case</b>		<b>Issue Date</b>	<b>Pendency (Months)</b>
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
<b>Average pendency</b>				<b>20</b>



Cases on Hand as of November 16, 2016					
	Case			DFR	Age (Mos)
1	The American Coal Co.	LAKE 2008-666		6/27/14	28
3	Portable	EAJA 2015-0001		8/11/15	15
4	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	14
5	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	13
6	John Richards Construction	WEST 2014-0440		10/2/15	13
7	McNary v. Alcoa	CENT 2015-0279		11/5/15	12
8	Northshore Mining	LAKE 2014-0219		11/25/15	12
9	Consolidation Coal	VA 2012-0042		11/30/15	11
10	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	10
11	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	10
12	Bussen Quarries	CENT 2015-0385		1/21/16	10
13	Sims Crane	SE 2015-0315		6/1/16	5
14	Secy UMWA v. Monongalia	WEVA 2015-0904		6/9/16	5
15	Mach Mining	LAKE 2014-0077		7/1/16	4
16	Arnold Stone	CENT 2016-0895		8/26/16	3
17	Canyon Fuel	WEST 2015-0676		9/26/16	2
18	Mach Mining	LAKE 2014-0746		9/29/16	2
Average age					10

## Substantive Case Status

As of November 16, 2016

Case	Description	Meeting						
1 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr 5 [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Northshore Mining LAKE 2014-0219 [REDACTED]	Reporting of injury	Oral arg. Oct. 20 Mtg. Oct 21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

11/15/2016

Default Cases Currently Pending	
↓	114

Average Age of Pending Cases	
↑	298 Days

Cases Issued This Fiscal Year
19

Average Pendancy This Fiscal Year
554 Days

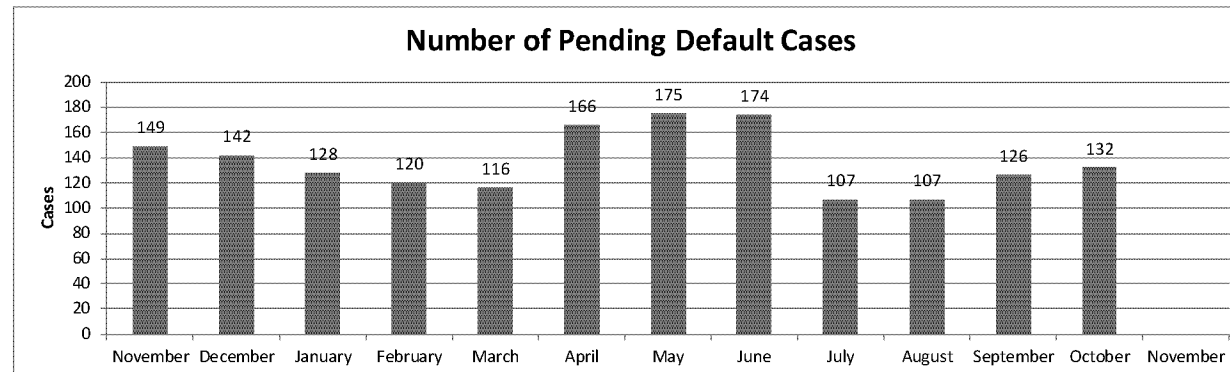
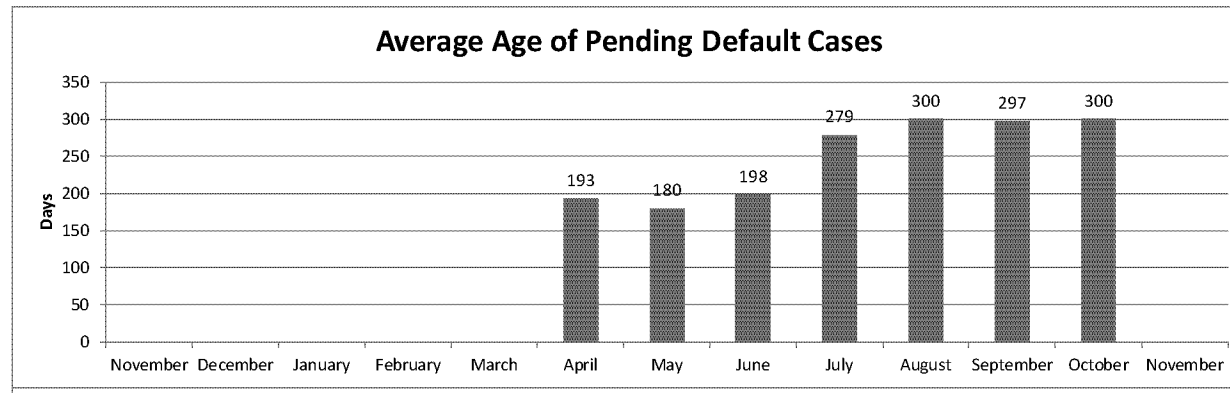


78%

Age of Pending Cases
22% < 6 Months
44% > 6 Months, < 1 Year
34% >1 year

Average # of Cases Filed per Month This Fiscal Year
1

## Historical Trends



## **Pipeline Meeting**

**December 21, 2016 (Meeting cancelled)**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: To be determined**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>19</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>2</b>
Dispositions	31	30	39	<b>43</b>	20	<b>2</b>
Ending balance	57	39	19	<b>18</b>	19	<b>19</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>10</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of December 20, 2016

New through	Lowe and Varady WEST 2014-0614
Dispositions through	Marshall County Coal WEVA 2015-0583

<b>FY 2017 Dispositions</b>				
<b>Case</b>			<b>Issue Date</b>	<b>Pendency (Months)</b>
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
<b>Average pendency</b>				<b>10</b>

Cases on Hand as of December 20, 2016					
	Case			DFR	Age (Mos)
1	The American Coal Co.	LAKE 2008-0666		6/27/14	29
2	Portable	EAJA 2015-0001		8/11/15	16
3	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	15
4	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	15
5	John Richards Construction	WEST 2014-0440		10/2/15	14
6	McNary v. Alcoa	CENT 2015-0279		11/5/15	13
7	Northshore Mining	LAKE 2014-0219		11/25/15	13
8	Consolidation Coal	VA 2012-0042		11/30/15	12
9	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	11
10	Peabody Twentymile Mining	WEST 2014-0930		1/8/16	11
11	Bussen Quarries	CENT 2015-0385		1/21/16	11
12	Sims Crane	SE 2015-0315		6/1/16	7
13	Monongalia County Coal	WEVA 2015-0904		6/9/16	6
14	Mach Mining	LAKE 2014-0077		7/1/16	6
15	Arnold Stone	CENT 2016-0895		8/26/16	4
16	Canyon Fuel	WEST 2015-0676		9/26/16	3
17	Mach Mining	LAKE 2014-0746		9/29/16	3
18	American Coal	LAKE 2011-0701		11/28/16	1
19	Marshall County Coal	WEVA 2015-0583		12/6/16	0
Average age					10

## Substantive Case Status

As of December 20, 2016

Case	Description	Meeting						
1 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr 5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Northshore Mining LAKE 2014-0219 [REDACTED]	Reporting of injury	Oral arg. Oct. 20 Mtg. Oct 21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6 Portable EAJA 2015-0001 [REDACTED]	EAJA case	Mtg. Dec 8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Jan 19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Bonus plans	Oral arg. Feb 2 Mtg. Feb 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

12/20/2016

Default Cases Currently Pending	
↑	133

Average Age of Pending Cases	
↑	299 Days

Cases Issued This Fiscal Year
166

Average Pendancy This Fiscal Year
N/A

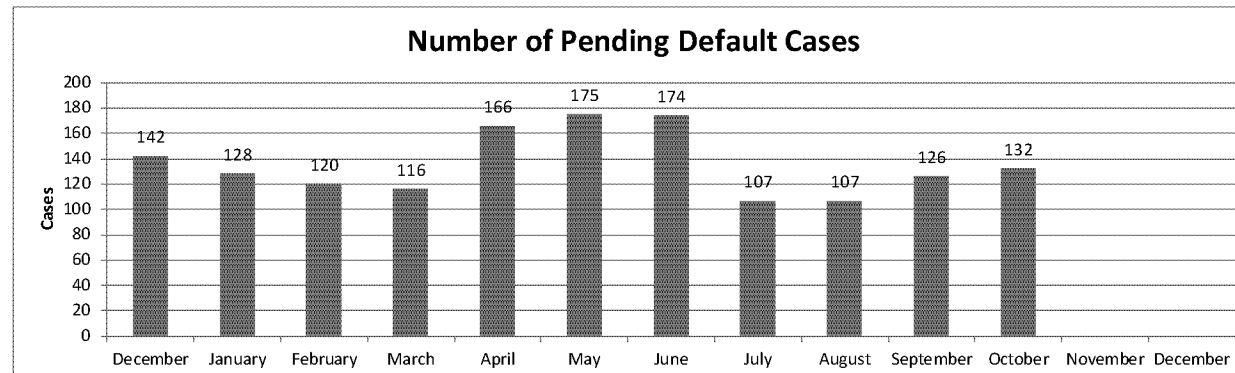
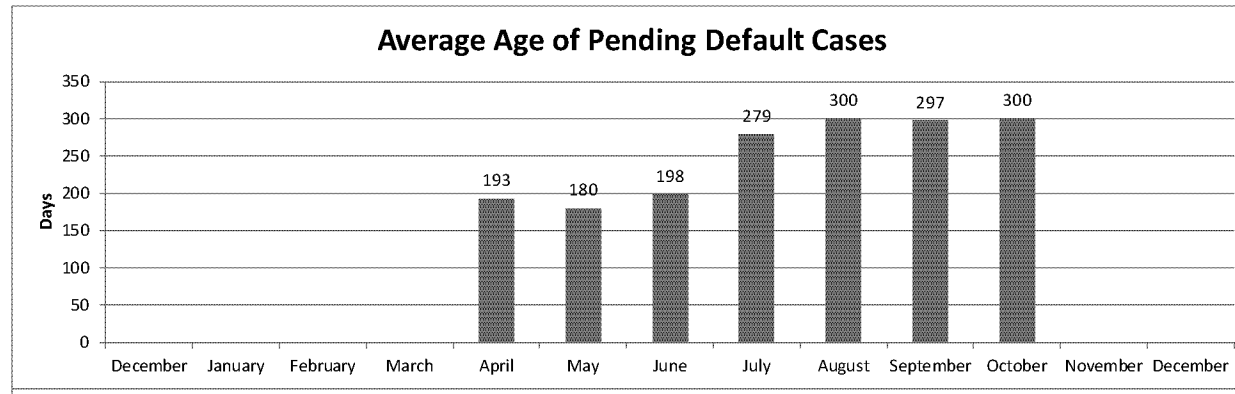


71%

Age of Pending Cases
29% < 6 Months
41% > 6 Months, < 1 Year
29% > 1 year

Average # of Cases Filed per Month This Fiscal Year
2

## Historical Trends



**Pipeline Meeting: January 18, 2017, 10:00 am**

**Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: February 15, 2:00 pm**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>5</b>
Dispositions	31	30	39	<b>43</b>	20	<b>3</b>
Ending balance	57	39	19	<b>18</b>	19	<b>20</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>11</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of January 17, 2017

New through	Kentucky Fuel Corp. KENT 2015-0383
Dispositions through	Northshore Mining LAKE 2014-0219

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
<b>Average pendency</b>				<b>11</b>

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Cases on Hand as of January 18, 2017						
	Case			DFR	Age (Mos)	
1	The American Coal Co.	LAKE 2008-0666		6/27/14	30	
2	Portable	EAJA 2015-0001		8/11/15	17	
3	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	16	
4	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	15	
5	John Richards Construction	WEST 2014-0440		10/2/15	15	
6	McNary v. Alcoa	CENT 2015-0279		11/5/15	14	
7	Consolidation Coal	VA 2012-0042		11/30/15	13	
8	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	12	
9	Peabody	WEST 2014-0930		1/8/16	12	
10	Bussen Quarries	CENT 2015-0385		1/21/16	12	
11	Sims Crane	SE 2015-0315		6/1/16	7	
12	Monongalia County Coal	WEVA 2015-0904		6/9/16	7	
13	Mach Mining	LAKE 2014-0077		7/1/16	6	
14	Arnold Stone	CENT 2016-0895		8/26/16	5	
15	Canyon Fuel	WEST 2015-0676		9/26/16	4	
16	Mach Mining	LAKE 2014-0746		9/29/16	4	
17	American Coal	LAKE 2011-0701		11/28/16	2	
18	Marshall County Coal	WEVA 2015-0583		12/6/16	1	
19	Lehigh Anthracite	PENN 2014-0108		1/3/17	0	
20	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	0	
Average age					10	

## Substantive Case Status

As of January 17, 2016

Case	Description	Meeting						
1 American Coal LAKE 2008-0666 [REDACTED]	Unwarrantable failure	Mtg. Apr 5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9		[REDACTED]				
3 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15					[REDACTED]	
4 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18		[REDACTED]				
5 Portable EAJA 2015-0001 [REDACTED]	EAJA case	Mtg. Dec 8	[REDACTED]				[REDACTED]	
6 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]					
7 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Feb 16		[REDACTED]				
8 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Oral arg. Feb 2 Mtg. Feb 3		[REDACTED]				
9 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Oral arg. Feb 15 Mtg. Feb 16		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

1/17/2017

Default Cases Currently Pending	
↓	109

Average Age of Pending Cases	
↑	307 Days

Cases Issued This Fiscal Year
30

Average Pendancy This Fiscal Year
595 Days



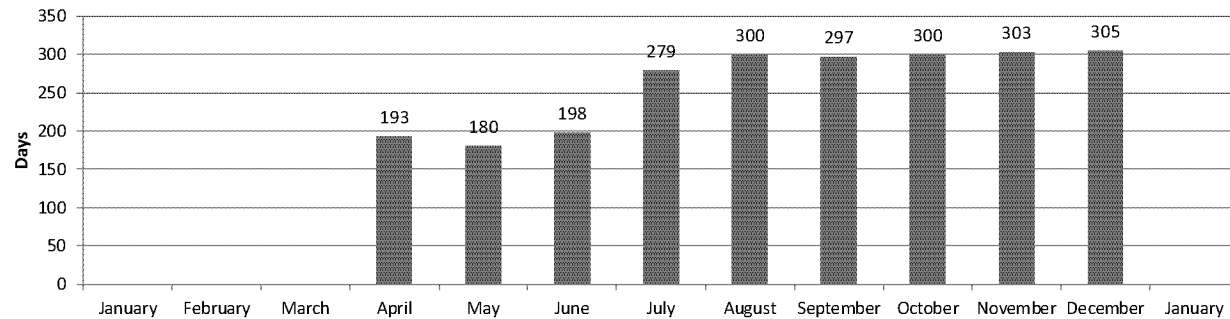
77%

Age of Pending Cases
23% < 6 Months
45% > 6 Months, < 1 Year
32% > 1 year

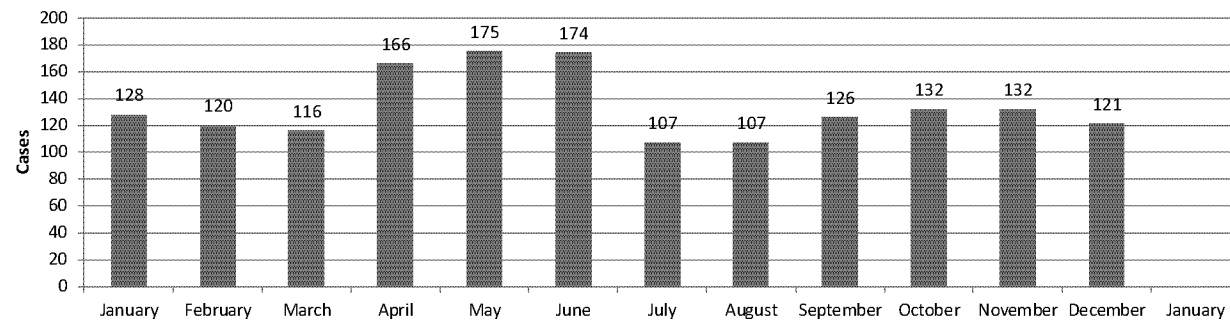
Average # of Cases Filed per Month This Fiscal Year
2

## Historical Trends

Average Age of Pending Default Cases



Number of Pending Default Cases



**Pipeline Meeting: February 15, 2017, 2:00 pm**

**Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Default Case Status

**Next Pipeline Meeting: March 15, 10:00 am**



### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>6</b>
Dispositions	31	30	39	<b>43</b>	20	<b>5</b>
Ending balance	57	39	19	<b>18</b>	19	<b>19</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>13</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of February 15, 2017

New through	Anderson v. A&G Coal VA 2017-0069
Dispositions through	Anderson v. A&G Coal VA 2017-0069

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
<b>Average pendency</b>				<b>13</b>

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Cases on Hand as of February 15, 2017						
	Case			DFR	Age (Mos)	
1	Portable	EAJA 2015-0001		8/11/15	18	
2	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	17	
3	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	16	
4	John Richards Construction	WEST 2014-0440		10/2/15	16	
5	McNary v. Alcoa	CENT 2015-0279		11/5/15	15	
6	Consolidation Coal	VA 2012-0042		11/30/15	14	
7	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	13	
8	Peabody	WEST 2014-0930		1/8/16	13	
9	Bussen Quarries	CENT 2015-0385		1/21/16	13	
10	Sims Crane	SE 2015-0315		6/1/16	8	
11	Monongalia County Coal	WEVA 2015-0904		6/9/16	8	
12	Mach Mining	LAKE 2014-0077		7/1/16	7	
13	Arnold Stone	CENT 2016-0895		8/26/16	6	
14	Canyon Fuel	WEST 2015-0676		9/26/16	5	
15	Mach Mining	LAKE 2014-0746		9/29/16	4	
16	American Coal	LAKE 2011-0701		11/28/16	3	
17	Marshall County Coal	WEVA 2015-0583		12/6/16	2	
18	Lehigh Anthracite	PENN 2014-0108		1/3/17	1	
19	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	1	
Average age					10	

## Substantive Case Status

As of February 14, 2016

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15		[REDACTED]				
3 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18	[REDACTED]		[REDACTED]			
4 Portable EAJA 2015-0001 [REDACTED]	EAJA case	Mtg. Dec 8	[REDACTED]					
5 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Oral arg. Feb 2 Mtg. Feb 3		[REDACTED]				
7 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Oral arg. Feb 15 Mtg. Feb 16	[REDACTED]					
8 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Feb 16	[REDACTED]					
9 Bussen Quarries CENT 2015-0385 [REDACTED]	Fall protection	Mtg. Mar 16		[REDACTED]				
10 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30		[REDACTED]				
11 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Apr 13		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

2/14/2017

Default Cases Currently Pending	
↑	118

Average Age of Pending Cases	
↓	292 Days

Cases Issued This Fiscal Year
35

Average Pendancy This Fiscal Year
599 Days

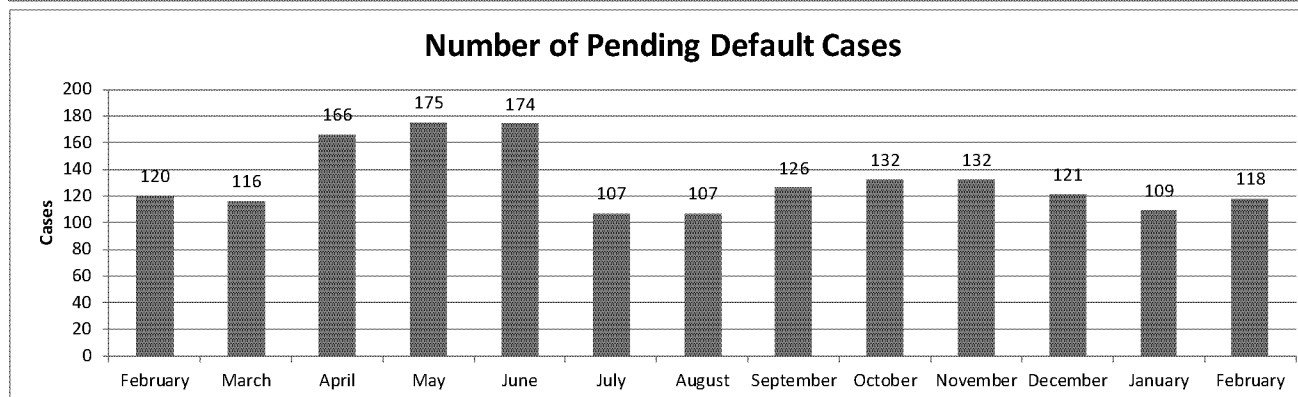
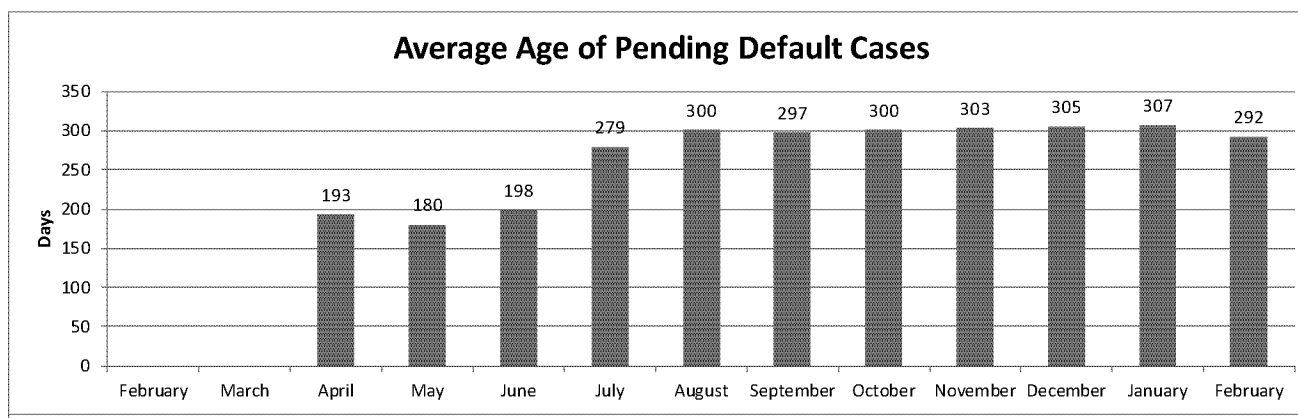


71%

Age of Pending Cases	
29%	< 6 Months
43%	> 6 Months, < 1 Year
28%	> 1 year

Average # of Cases Filed per Month This Fiscal Year
4

## Historical Trends



**Pipeline Meeting: March 15, 2017 10:00 am**

**Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**Next Pipeline Meeting: April 19, 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>8</b>
Dispositions	31	30	39	<b>43</b>	20	<b>6</b>
Ending balance	57	39	19	<b>18</b>	19	<b>20</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>14</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>9</b>

\* As of March 14, 2017

New through                      Sims Crane SE 2016-0081  
Dispositions through              Portable EAJA 2015-0001

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
<b>Average pendency</b>				<b>14</b>

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Cases on Hand as of March 15, 2017						
	Case			DFR	Age (Mos)	
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	18	
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	17	
3	John Richards Construction	WEST 2014-0440		10/2/15	17	
4	McNary v. Alcoa	CENT 2015-0279		11/5/15	16	
5	Consolidation Coal	VA 2012-0042		11/30/15	15	
6	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	14	
7	Peabody	WEST 2014-0930		1/8/16	14	
8	Bussen Quarries	CENT 2015-0385		1/21/16	14	
9	Sims Crane	SE 2015-0315		6/1/16	9	
10	Monongalia County Coal	WEVA 2015-0904		6/9/16	9	
11	Mach Mining	LAKE 2014-0077		7/1/16	8	
12	Arnold Stone	CENT 2016-0895		8/26/16	7	
13	Canyon Fuel	WEST 2015-0676		9/26/16	6	
14	Mach Mining	LAKE 2014-0746		9/29/16	5	
15	American Coal	LAKE 2011-0701		11/28/16	4	
16	Marshall County Coal	WEVA 2015-0583		12/6/16	3	
17	Lehigh Anthracite	PENN 2014-0108		1/3/17	2	
18	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	2	
19	Alcoa World Alumina	CENT 2015-0128		2/17/17	1	
20	Sims Crane	SE 2016-0081		2/22/17	1	
Average age					9	

## Substantive Case Status

As of March 14, 2016

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 McNary v. Alcoa CENT 2015-0279 [REDACTED]	Interference with statutory rights	Oral arg. Nov 17 Mtg. Nov 18	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Oral arg. Feb 2 Mtg. Feb 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Oral arg. Feb 15 Mtg. Feb 16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	s
7 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Feb 16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8 Bussen Quarries CENT 2015-0385 [REDACTED]	Fall protection	Mtg. Mar 16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Apr 13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

3/14/2017

Default Cases Currently Pending	
↓	114

Average Age of Pending Cases	
↓	291 Days

Cases Issued This Fiscal Year
44

Average Pendancy This Fiscal Year
580 Days

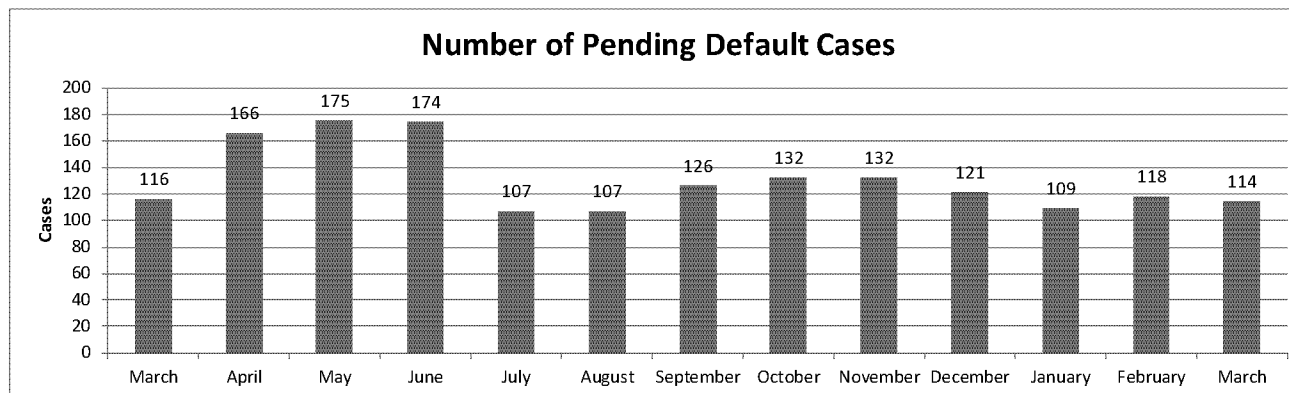
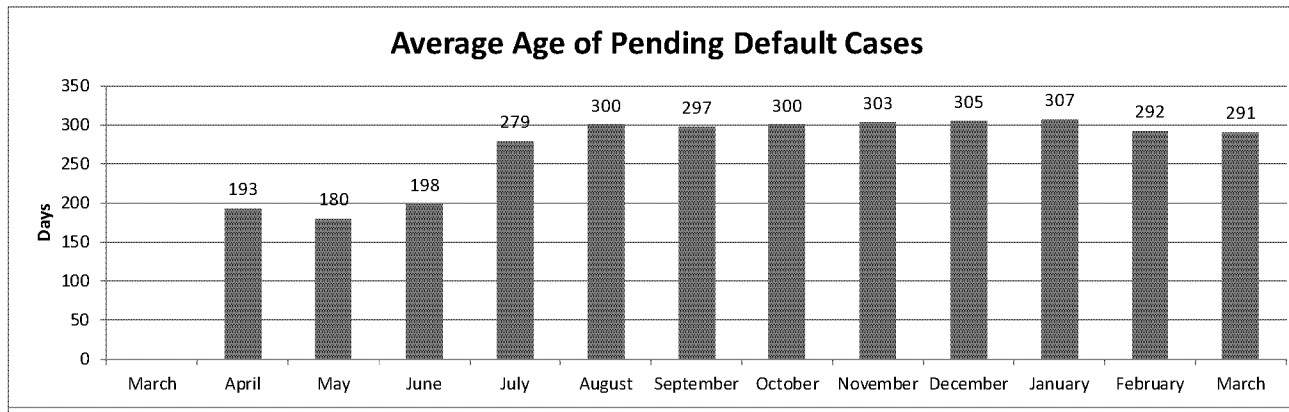


72%

Age of Pending Cases
28% < 6 Months
47% > 6 Months, < 1 Year
25% > 1 year

Average # of Cases Filed per Month This Fiscal Year
4

## Historical Trends



**Pipeline Meeting: April 2017 (Meeting cancelled)**

**Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**Next Pipeline Meeting: May 17, 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>8</b>
Dispositions	31	30	39	<b>43</b>	20	<b>7</b>
Ending balance	57	39	19	<b>18</b>	18	<b>19</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>14</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of April 12, 2017

New through

Sims Crane SE 2016-0081

Dispositions through

McNary v. Alcoa World Alumina CXENT 2015-0279

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
<b>Average pendency</b>				<b>14</b>

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Cases on Hand as of April 12, 2017					
	Case			DFR	Age (Mos)
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	19
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	18
3	John Richards Construction	WEST 2014-0440		10/2/15	18
4	Consolidation Coal	VA 2012-0042		11/30/15	16
5	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	15
6	Peabody	WEST 2014-0930		1/8/16	15
7	Bussen Quarries	CENT 2015-0385		1/21/16	14
8	Sims Crane	SE 2015-0315		6/1/16	10
9	Monongalia County Coal	WEVA 2015-0904		6/9/16	10
10	Mach Mining	LAKE 2014-0077		7/1/16	9
11	Arnold Stone	CENT 2016-0895		8/26/16	7
12	Canyon Fuel	WEST 2015-0676		9/26/16	6
13	Mach Mining	LAKE 2014-0746		9/29/16	6
14	American Coal	LAKE 2011-0701		11/28/16	4
15	Marshall County Coal	WEVA 2015-0583		12/6/16	4
16	Lehigh Anthracite	PENN 2014-0108		1/3/17	3
17	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	3
18	Alcoa World Alumina	CENT 2015-0128		2/17/17	2
19	Sims Crane	SE 2016-0081		2/22/17	2
Average age					10

## Substantive Case Status

As of April 12, 2017

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]					
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]					
3 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]					
4 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Oral arg. Feb 2 Mtg. Feb 3	[REDACTED]					
5 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Oral arg. Feb 15 Mtg. Feb 16	[REDACTED]					
6 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Feb 16	[REDACTED]					
7 Bussen Quarries CENT 2015-0385 [REDACTED]	Fall protection	Mtg. Mar 16	[REDACTED]					
8 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30						
9 Arnold Stone CENT 2016-0095 [REDACTED]	Safety lockout	Mtg. Apr 13	[REDACTED]					
10 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11						
11 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Mtg. May 18						
12 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jun 15						
13 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Oral arg. Jun 29 Mtg. Jun 30						



# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

4/12/2017

Default Cases Currently Pending	
↓	101

Average Age of Pending Cases	
↑	313 Days

Cases Issued This Fiscal Year
59

Average Pendancy This Fiscal Year
534 Days

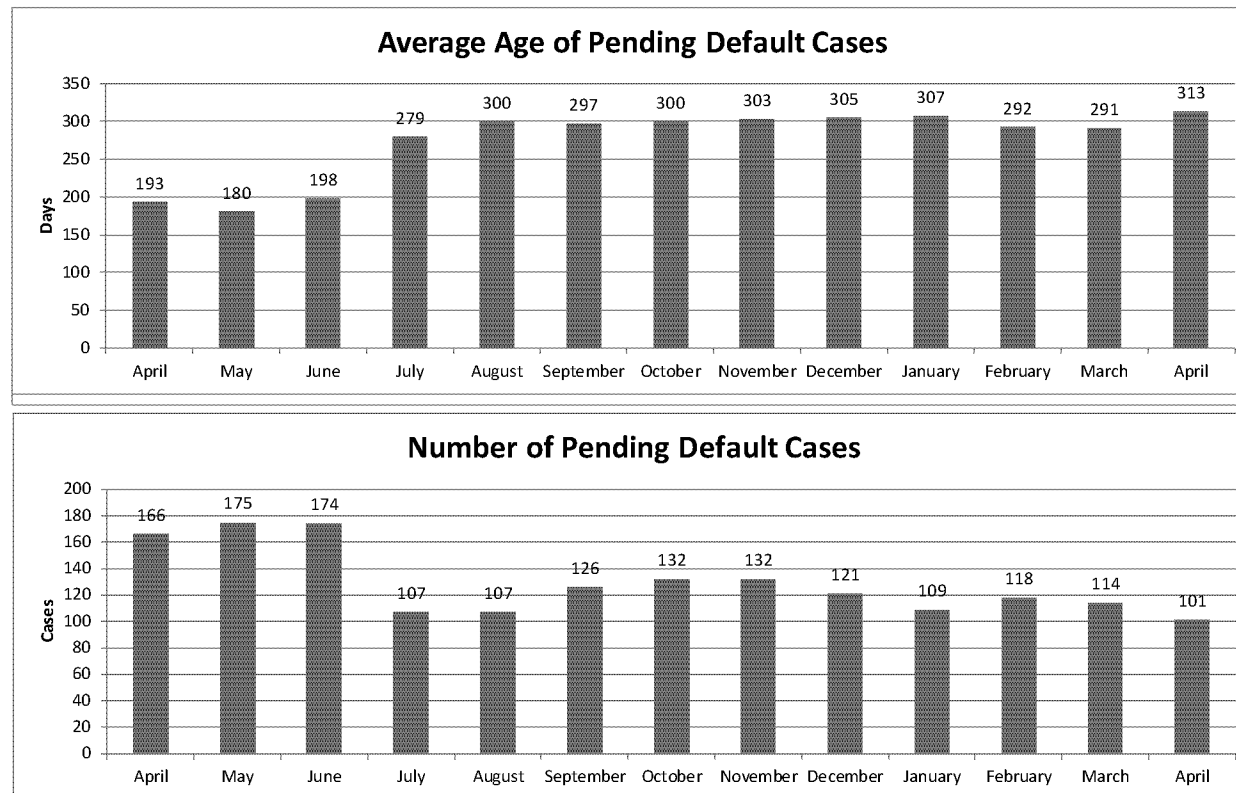


77%

Age of Pending Cases
23% < 6 Months
34% > 6 Months, < 1 Year
44% > 1 year

Average # of Cases Filed per Month This Fiscal Year
4

## Historical Trends



## **Pipeline Meeting: May 2017**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**Next Pipeline Meeting: June 21, 10:00 am**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>10</b>
Dispositions	31	30	39	<b>43</b>	20	<b>7</b>
Ending balance	57	39	19	<b>18</b>	18	<b>21</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>14</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of May 10, 2017

New through

Pappas v. CalPortland WEST 2016-0264

Dispositions through

McNary v. Alcoa World Alumina CENT 2015-0279

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
<b>Average pendency</b>				<b>14</b>

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Cases on Hand as of May 10, 2017						
	Case			DFR	Age (Mos)	
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	20	
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	19	
3	John Richards Construction	WEST 2014-0440		10/2/15	19	
4	Consolidation Coal	VA 2012-0042		11/30/15	17	
5	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	16	
6	Peabody	WEST 2014-0930		1/8/16	16	
7	Bussen Quarries	CENT 2015-0385		1/21/16	15	
8	Sims Crane	SE 2015-0315		6/1/16	11	
9	Monongalia County Coal	WEVA 2015-0904		6/9/16	11	
10	Mach Mining	LAKE 2014-0077		7/1/16	10	
11	Arnold Stone	CENT 2016-0895		8/26/16	8	
12	Canyon Fuel	WEST 2015-0676		9/26/16	7	
13	Mach Mining	LAKE 2014-0746		9/29/16	7	
14	American Coal	LAKE 2011-0701		11/28/16	5	
15	Marshall County Coal	WEVA 2015-0583		12/6/16	5	
16	Lehigh Anthracite	PENN 2014-0108		1/3/17	4	
17	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	4	
18	Alcoa World Alumina	CENT 2015-0128		2/17/17	3	
19	Sims Crane	SE 2016-0081		2/22/17	3	
20	Signal Peak	WEST 2016-0624		4/17/17	1	
21	Pappas v. CalPortland	WEST 2016-0264		5/9/17	0	
Average age					10	

## Substantive Case Status

As of May 9, 2017

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Oral arg. Nov 8 Mtg. Nov 9	[REDACTED]					
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Oral arg. Nov 10 Mtg. Nov 15	[REDACTED]					
3 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]					
4 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Oral arg. Feb 2 Mtg. Feb 3	[REDACTED]					
5 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Oral arg. Feb 15 Mtg. Feb 16	[REDACTED]		[REDACTED]		[REDACTED]	
6 John Richards Constr. WEST 2014-0440 [REDACTED]	Right of entry - fire extinguisher inspections	Mtg. Feb 16	[REDACTED]	[REDACTED]				
7 Bussen Quarries CENT 2015-0385 [REDACTED]	Fall protection	Mtg. Mar 16	[REDACTED]					[REDACTED]
8 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30	[REDACTED]					
9 Arnold Stone CENT 2016-0095 [REDACTED]	Safety lockout	Mtg. Apr 13	[REDACTED]	[REDACTED]				
10 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11	[REDACTED]					
11 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	TBD	[REDACTED]					
12 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jun 15		[REDACTED]				
13 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Oral arg. Jun 29 Mtg. Jun 30		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

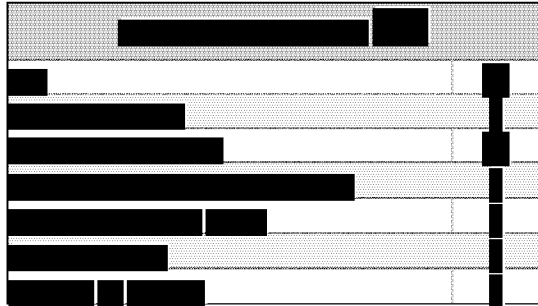
5/9/2017

Default Cases Currently Pending	
↓	76

Average Age of Pending Cases	
↑	303 Days

Cases Issued This Fiscal Year
85

Average Pendancy This Fiscal Year
497 Days



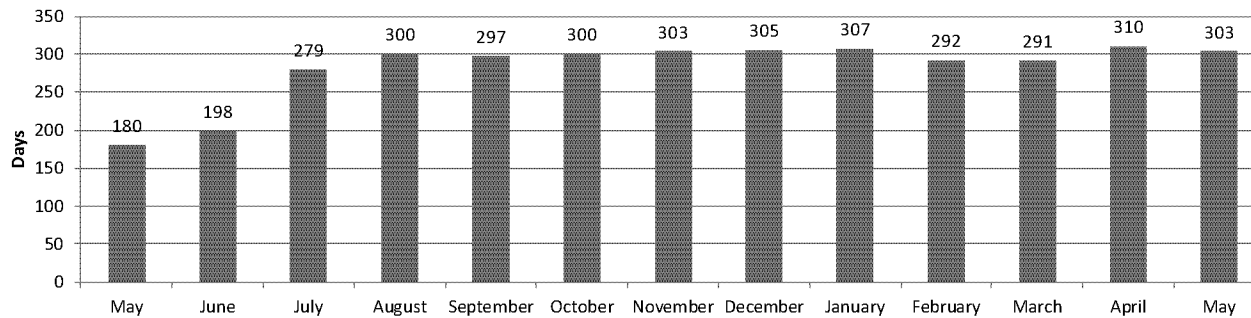
72%

Age of Pending Cases	
28%	< 6 Months
38%	> 6 Months, < 1 Year
34%	> 1 year

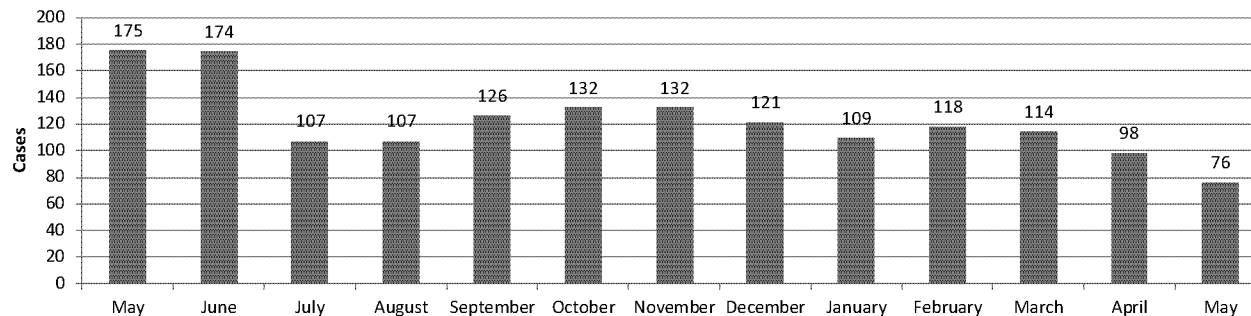
Average # of Cases Filed per Month This Fiscal Year
4

## Historical Trends

Average Age of Pending Default Cases



Number of Pending Default Cases



## **Pipeline Meeting: June 2017**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**July Pipeline Meeting: TBD**



### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016		FY 2017	
	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>11</b>
Dispositions	31	30	39	<b>43</b>	20	<b>9</b>
Ending balance	57	39	19	<b>18</b>	18	<b>20</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>15</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>9</b>

\* As of June 13, 2017

New through	M-Class Mining LAKE 2016-0519
Dispositions through	Bussen Quarries CENT 2015-0385

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
8	John Richards	WEST 2014-0440	5/11/17	19
9	Bussen Quarries	CENT 2015-0385	5/31/17	16
<b>Average pendency</b>				<b>15</b>

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Cases on Hand as of June 13, 2017						
	Case			DFR	Age (Mos)	
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	21	
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	20	
3	Consolidation Coal	VA 2012-0042		11/30/15	18	
4	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	17	
5	Peabody Twentymile	WEST 2014-0930		1/8/16	17	
6	Sims Crane	SE 2015-0315		6/1/16	12	
7	Monongalia County Coal	WEVA 2015-0904		6/9/16	12	
8	Mach Mining	LAKE 2014-0077		7/1/16	11	
9	Arnold Stone	CENT 2016-0095		8/26/16	9	
10	Canyon Fuel	WEST 2015-0635		9/26/16	8	
11	Mach Mining	LAKE 2014-0746		9/29/16	8	
12	American Coal	LAKE 2011-0701		11/28/16	6	
13	Marshall County Coal	WEVA 2015-0583		12/6/16	6	
14	Lehigh Anthracite	PENN 2014-0108		1/3/17	5	
15	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	5	
16	Alcoa World Alumina	CENT 2015-0128		2/17/17	4	
17	Sims Crane	SE 2016-0081		2/22/17	4	
18	Signal Peak	WEST 2016-0624		4/17/17	2	
19	Pappas v. CalPortland	WEST 2016-0264		5/9/17	1	
20	M-Class Mining	LAKE 2016-0519		5/12/17	1	
Average age					9	

## Substantive Case Status

As of June 13, 2017

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Arg. Nov 8 Mtg. Nov 9	[REDACTED]				[REDACTED]	[REDACTED]
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Arg. Nov 10 Mtg. Nov 15	[REDACTED]		[REDACTED]		[REDACTED]	
3 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]			[REDACTED]		[REDACTED]
4 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3	[REDACTED]			[REDACTED]		
5 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Arg. Feb 15 Mtg. Feb 16	[REDACTED]		[REDACTED]		[REDACTED]	
6 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30	[REDACTED]			[REDACTED]		[REDACTED]
7 Arnold Stone CENT 2016-0095 [REDACTED]	Safety lockout	Mtg. Apr 13	[REDACTED]			[REDACTED]		
8 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11		[REDACTED]				
9 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15						
10 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Arg. Jun 29 Mtg. Jun 30		[REDACTED]				
11 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jul 13		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year 2017

Report Date 6/13/2017

Default Cases Currently Pending	
↓	71

Average Age of Pending Cases	
↑	338 Days

Cases Issued This Fiscal Year
92

Average Pendancy This Fiscal Year
482 Days

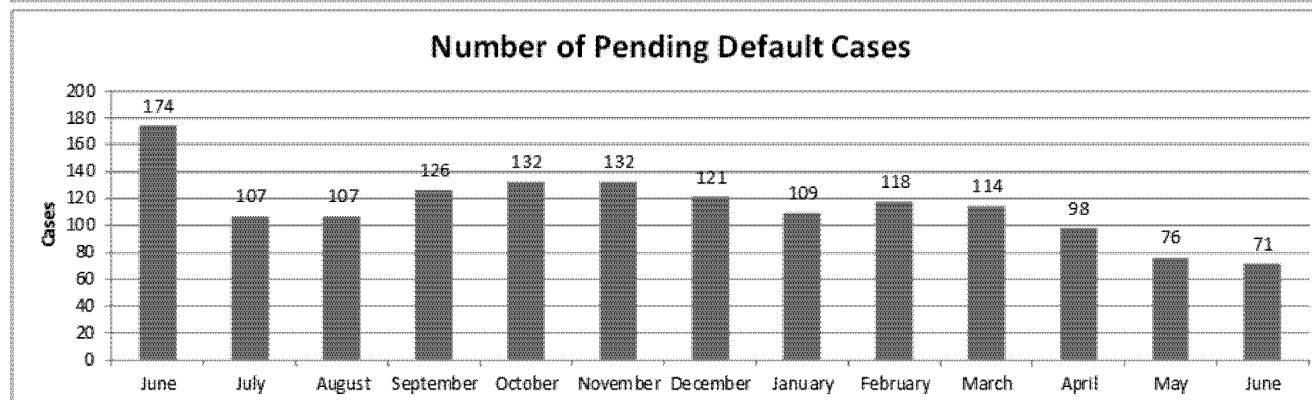
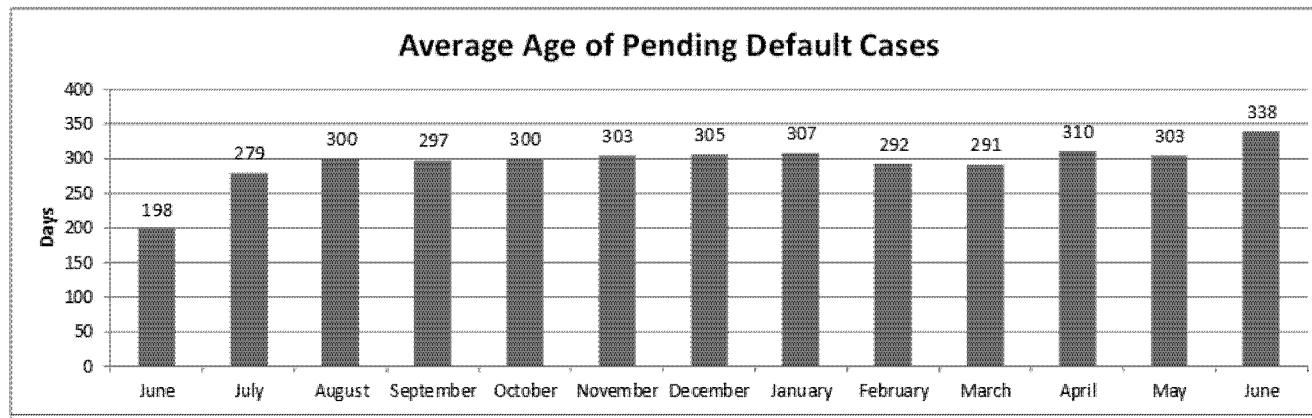


77% {

Age of Pending Cases	
23%	< 6 Months
38%	> 6 Months, < 1 Year
39%	> 1 year

Average # of Cases Filed per Month This Fiscal Year
3

## Historical Trends



## **Pipeline Meeting: July 19, 2017**

### **Meeting Agenda**

Workload – FY 2014 – 2017

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**August Pipeline Meeting: TBD**

## Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014 Actual	FY 2015 Actual	FY 2016		FY 2017	
			Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	<b>39</b>	18	<b>18</b>
New (PDRs & PIRs granted/PTR)	19	12	19	<b>22</b>	20	<b>13</b>
Dispositions	31	30	39	<b>43</b>	20	<b>9</b>
Ending balance	57	39	19	<b>18</b>	18	<b>22</b>
Average pendency of dispositions (months)	27	30	21	<b>22</b>	12	<b>15</b>
Average age of cases on hand at year end (months)	18	16	6	<b>9</b>	6	<b>10</b>

\* As of July 19, 2017

New through  
Dispositions through

Wilson, et al v. Armstrong Coal KENT 2015-0673  
Bussen Quarries CENT 2015-0385

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**FY 2017 Dispositions**

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Case			Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
8	John Richards	WEST 2014-0440	5/11/17	19
9	Bussen Quarries	CENT 2015-0385	5/31/17	16
<b>Average pendency</b>				<b>15</b>

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Cases on Hand as of July 19, 2017					
	Case			DFR	Age (Mos)
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	22
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	21
3	Consolidation Coal	VA 2012-0042		11/30/15	19
4	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	18
5	Peabody Twentymile	WEST 2014-0930		1/8/16	18
6	Sims Crane	SE 2015-0315		6/1/16	13
7	Monongalia County Coal	WEVA 2015-0904		6/9/16	13
8	Mach Mining	LAKE 2014-0077		7/1/16	12
9	Arnold Stone	CENT 2016-0095		8/26/16	11
10	Canyon Fuel	WEST 2015-0635		9/26/16	10
11	Mach Mining	LAKE 2014-0746		9/29/16	10
12	American Coal	LAKE 2011-0701		11/28/16	8
13	Marshall County Coal	WEVA 2015-0583		12/6/16	7
14	Lehigh Anthracite	PENN 2014-0108		1/3/17	6
15	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	6
16	Alcoa World Alumina	CENT 2015-0128		2/17/17	5
17	Sims Crane	SE 2016-0081		2/22/17	5
18	Signal Peak	WEST 2016-0624		4/17/17	3
19	Pappas v. CalPortland	WEST 2016-0264		5/9/17	2
20	M-Class Mining	LAKE 2012-0519		5/12/17	2
21	American Coal (PIR)	LAKE 20114-0013		5/25/17	2
22	Wilson, et al v. Armstrong Coal	KENT 2015-0673		6/15/17	1
Average age					10

## Substantive Case Status

As of July 18, 2017

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Arg. Nov 8 Mtg. Nov 9	[REDACTED]					[REDACTED]
2 Peabody Twentymile WEST 2014-0930 [REDACTED]	Ventilation stoppings	Arg. Nov 10 Mtg. Nov 15	[REDACTED]					
3 Consolidation Coal VA 2012-0042 [REDACTED]	Roof control plan	Mtg. Jan 19	[REDACTED]					[REDACTED]
4 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3	[REDACTED]			[REDACTED]		
5 Canyon Fuel Company WEST 2015-0635 [REDACTED]	Alternate escapeways	Arg. Feb 15 Mtg. Feb 16	[REDACTED]			[REDACTED]		
6 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30	[REDACTED]			[REDACTED]		[REDACTED]
7 Arnold Stone CENT 2016-0095 [REDACTED]	Safety lockout	Mtg. Apr 13	[REDACTED]					[REDACTED]
8 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11	[REDACTED]		[REDACTED]			
9 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15		[REDACTED]				
10 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Arg. Jun 29 Mtg. Jun 30		[REDACTED]				
11 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jul 13		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2017

Report Date

7/18/2017

Default Cases Currently Pending	
↓	66

Average Age of Pending Cases	
↑	347 Days

Cases Issued This Fiscal Year
97

Average Pendancy This Fiscal Year
489 Days



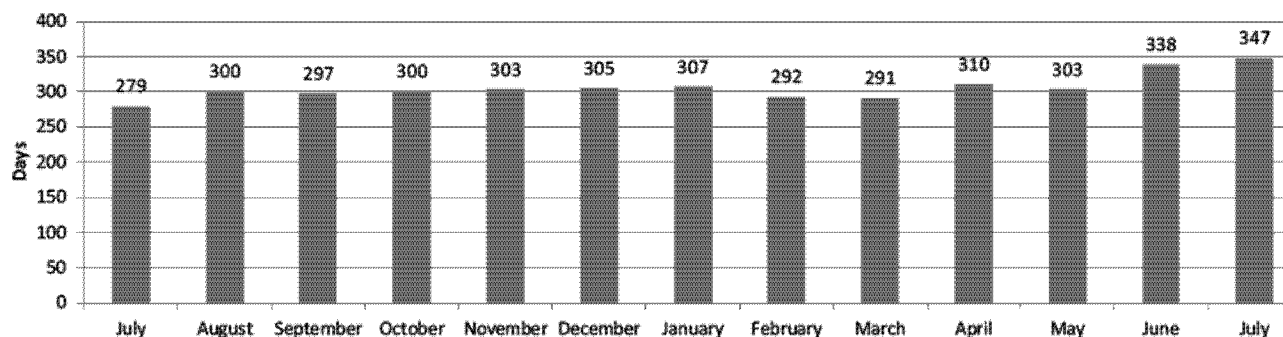
77%

Age of Pending Cases
23% < 6 Months
39% > 6 Months, < 1 Year
38% > 1 year

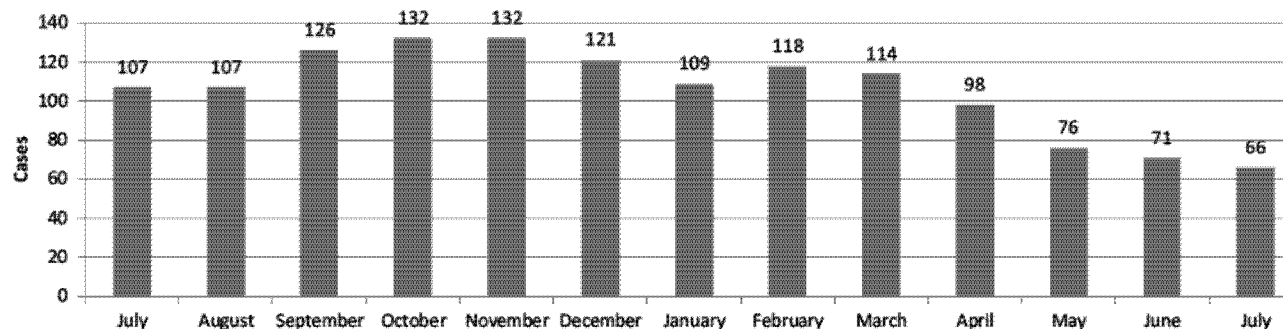
Average # of Cases Filed per Month This Fiscal Year
3

## Historical Trends

Average Age of Pending Default Cases



Number of Pending Default Cases



**Pipeline Meeting: September 20, 2017**

**Meeting Agenda**

Workload – FY 2014 – 2018

FY 2017 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**Next Pipeline Meeting: October 18, 2017**

## Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016	FY 2017		FY 2018
	Actual	Actual	Actual	Goal	Actual*	Goal
Beginning balance	69	57	39	18	18	18
New (PDRs & PIRs granted/PTR)	19	12	22	20	16	16
Dispositions	31	30	43	20	13	16
Ending balance	57	39	18	18	21	18
Average pendency of dispositions (months)	27	30	22	12	15	12
Average age of cases on hand at year end (months)	18	16	9	6	9	6

\* As of September 19, 2017

New through

Dispositions through

Rain for Rent

Consolidation Coal

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**FY 2017 Dispositions**


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	Case		Issue Date	Pendency (Months)
1	ICG Illinois	LAKE 2013-0160	10/21/16	20
2	Lowe and Varady	WEST 2014-0614	12/16/16	0
3	Northshore Mining	LAKE 2014-0219	1/11/17	13
4	American Coal	LAKE 2008-0666	1/24/17	30
5	Anderson v. A&G Coal	VA 2017-0069	2/10/17	1
6	Portable	EAJA 2015-0001	2/21/17	18
7	McNary v. Alcoa World Alumina	CENT 2015-0279	3/28/17	17
8	John Richards	WEST 2014-0440	5/11/17	19
9	Bussen Quarries	CENT 2015-0385	5/31/17	16
10	Peabody Twentymile	WEST 2014-0930	7/31/17	19
11	Canyon Fuel	WEST 2015-0635	8/16/17	11
12	Arnold Stone	CENT 2016-0095	9/12/17	12
13	Consolidation Coal	VA 2012-0042	9/14/17	21
<b>Average pendency</b>				<b>15</b>

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Cases on Hand as of September 19, 2017						
	Case			DFR	Age (Mos)	
1	Consol Pennsylvania Coal	PENN 2013-0385		9/8/15	24	
2	Nally & Hamilton Enterprises	KENT 2012-0749		9/28/15	23	
3	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	20	
4	Sims Crane	SE 2015-0315		6/1/16	15	
5	Monongalia County Coal	WEVA 2015-0904		6/9/16	15	
6	Mach Mining	LAKE 2014-0077		7/1/16	14	
7	Mach Mining	LAKE 2014-0746		9/29/16	12	
8	American Coal	LAKE 2011-0701		11/28/16	10	
9	Marshall County Coal	WEVA 2015-0583		12/6/16	9	
10	Lehigh Anthracite	PENN 2014-0108		1/3/17	8	
11	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	8	
12	Alcoa World Alumina	CENT 2015-0128		2/17/17	7	
13	Sims Crane	SE 2016-0081		2/22/17	7	
14	Signal Peak	WEST 2016-0624		4/17/17	5	
15	Pappas v. CalPortland	WEST 2016-0264		5/9/17	4	
16	M-Class Mining	LAKE 2012-0519		5/12/17	4	
17	American Coal (PIR)	LAKE 2014-0013		5/25/17	4	
18	Wilson, et al v. Armstrong Coal	KENT 2015-0673		6/15/17	3	
19	American Coal	LAKE 2009-0035		7/25/17	2	
20	Consol Pennsylvania Coal	PENN 2014-0816		8/8/17	1	
21	Rain for Rent	WEST 2016-0730		8/29/17	1	
Average age					9	

## Substantive Case Status

As of September 19, 2017

Case	Description	Meeting						
1 Consol Penn PENN 2013-0385 [REDACTED]	Ventilation violations - S&S and unwarrantable	Arg. Nov 8 Mtg. Nov 9	[REDACTED]			[REDACTED]		
2 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3	[REDACTED]			[REDACTED]		
3 Nally and Hamilton KENT 2012-0749 [REDACTED]	Highwall violations	Mtg. Mar 30	[REDACTED]					[REDACTED]
4 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11	[REDACTED]			[REDACTED]		
5 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15	[REDACTED]			[REDACTED]		
6 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Arg. Jun 29 Mtg. Jun 30	[REDACTED]			[REDACTED]		
7 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jul 13		[REDACTED]				
8 Kentucky Fuel Corp. KENT 2015-0383 [REDACTED]	Miner training	Mtg. Oct 12	[REDACTED]					
9 Marshall County Coal WEVA 2015-0586 [REDACTED]	CEO's prepared statement	Mtg. Oct 26		[REDACTED]				



# Motions To Reopen - Pipeline Meeting Report

Fiscal Year 2017

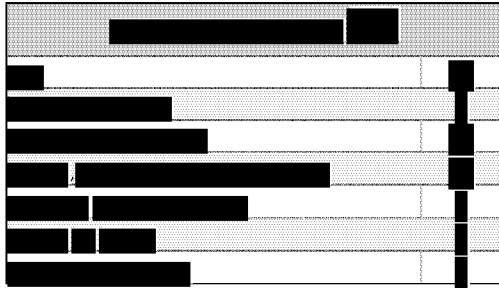
Report Date 9/19/2017

Default Cases Currently Pending	
↓	58

Average Age of Pending Cases	
↓	280 Days

Cases Issued This Fiscal Year
119

Average Pendancy This Fiscal Year
494 Days

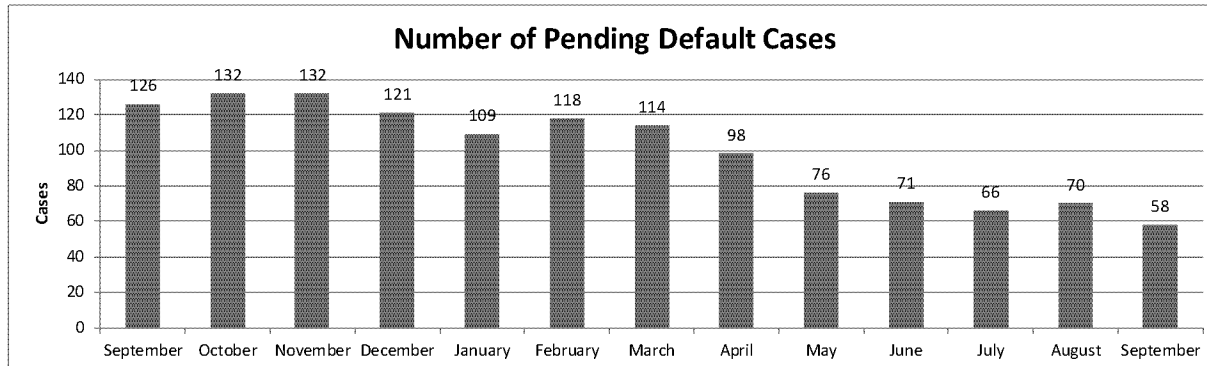
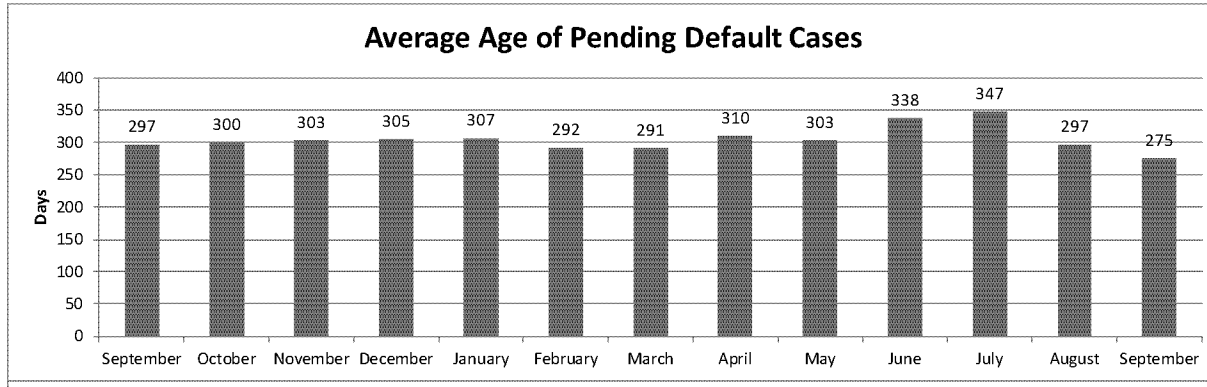


71%

Age of Pending Cases
29% < 6 Months
48% > 6 Months, < 1 Year
23% > 1 year

Average # of Cases Filed per Month This Fiscal Year
4

## Historical Trends



**Pipeline Meeting: October 25, 2017**

**Meeting Agenda**

Workload – FY 2014 – 2018

FY 2018 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status

**Next Pipeline Meeting: November 15, 2017, 2:00 pm**

### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016	FY 2017		FY 2018	
	Actual	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	18	18	18	21
New (PDRs & PIRs granted/PTR)	19	12	22	20	16	16	1
Dispositions	31	30	43	20	13	16	3
Ending balance	57	39	18	18	21	18	19
Average pendency of dispositions (months)	27	30	22	12	15	12	16
Average age of cases on hand at year end (months)	18	16	9	6	9	6	9

\* FY 2018 YTD as of October 24, 2017

New through                      A & G Coal  
Dispositions through        Nally & Hamilton

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**FY 2018 Dispositions**

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Case			Issue Date	Pendency (Months)
1	Consol Penn	PENN 2013-0385	10/5/17	25
2	A & G Coal	VA 2014-0243	10/10/17	0
3	Nally & Hamilton Enterprises	KENT 2012-0749	10/19/17	24
<b>Average pendency</b>				<b>16</b>

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Cases on Hand as of October 25, 2017						
	Case			DFR	Age (Mos)	
1	Pocahontas Coal Co.	WEVA 2014-0395		1/6/16	21	
2	Sims Crane	SE 2015-0315		6/1/16	17	
3	Monongalia County Coal	WEVA 2015-0904		6/9/16	16	
4	Mach Mining	LAKE 2014-0077		7/1/16	16	
5	Mach Mining	LAKE 2014-0746		9/29/16	13	
6	American Coal	LAKE 2011-0701		11/28/16	11	
7	Marshall County Coal	WEVA 2015-0583		12/6/16	10	
8	Lehigh Anthracite	PENN 2014-0108		1/3/17	10	
9	Kentucky Fuel Corp.	KENT 2015-0383		1/12/17	9	
10	Alcoa World Alumina	CENT 2015-0128		2/17/17	8	
11	Sims Crane	SE 2016-0081		2/22/17	8	
12	Signal Peak	WEST 2016-0624		4/17/17	6	
13	Pappas v. CalPortland	WEST 2016-0264		5/9/17	5	
14	M-Class Mining	LAKE 2012-0519		5/12/17	5	
15	American Coal (PIR)	LAKE 2014-0013		5/25/17	5	
16	Wilson, et al v. Armstrong Coal	KENT 2015-0673		6/15/17	4	
17	American Coal (remand)	LAKE 2009-0035		7/25/17	3	
18	Consol Pennsylvania Coal	PENN 2014-0816		8/8/17	3	
19	Rain for Rent	WEST 2016-0730		8/29/17	2	
Average age					9	

## Substantive Case Status

As of October 24, 2017

Case	Description	Meeting						
1 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3	[REDACTED]				[REDACTED]	
2 Mach Mining LAKE 2014-0746 [REDACTED]	Cumulations	Mtg. May 11	[REDACTED]				[REDACTED]	
3 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15	[REDACTED]				[REDACTED]	
4 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Arg. Jun 29 Mtg. Jun 30	[REDACTED]				[REDACTED]	
5 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED] [REDACTED]	Pattern of violations	Mtg. Jul 13		[REDACTED]				
6 Kentucky Fuel Corp. KENT 2015-0383 [REDACTED]	Miner training	Mtg. Oct 12		[REDACTED]				
7 Marshall County Coal WEVA 2015-0586 [REDACTED]	CEO's prepared statement	Mtg. Oct 26	[REDACTED]					
8 Alcoa World Alumina CENT 2015-0128 [REDACTED]	Miner as agent	Mtg. Nov 15		[REDACTED]				
9 American Coal LAKE 2011-0701 [REDACTED]	Penalties	Mtg. Nov 30		[REDACTED]				

# Motions To Reopen - Pipeline Meeting Report

Fiscal Year

2018

Report Date

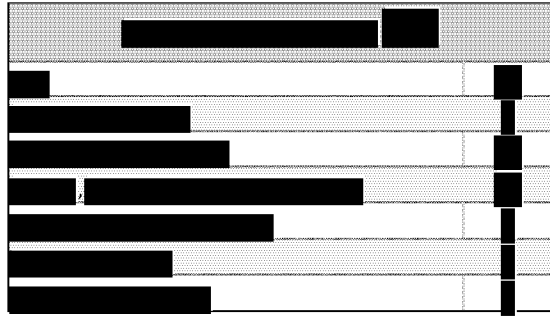
10/24/2017

Default Cases Currently Pending	
↓	57

Average Age of Pending Cases	
↓	267 Days

Cases Issued This Fiscal Year
0

Average Pendency This Fiscal Year
488 Days

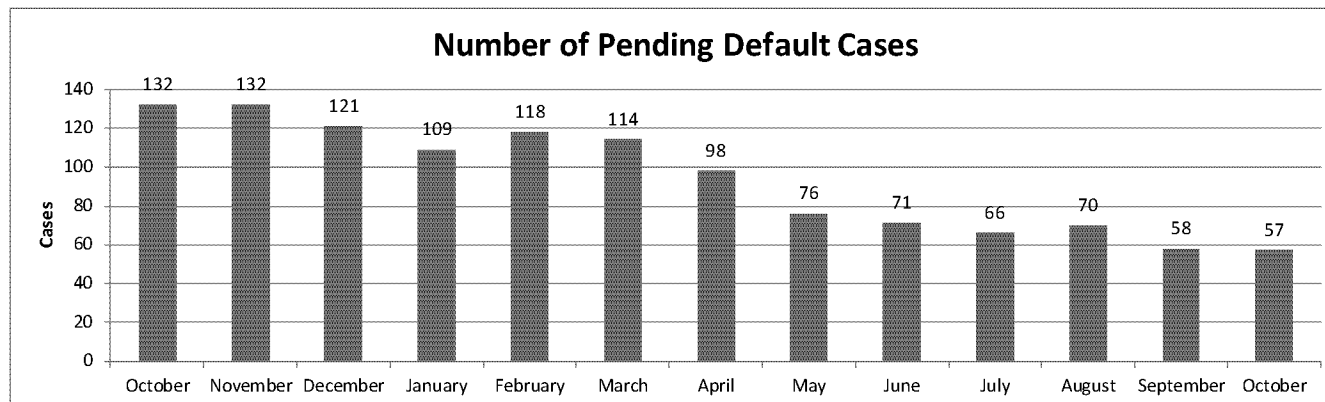
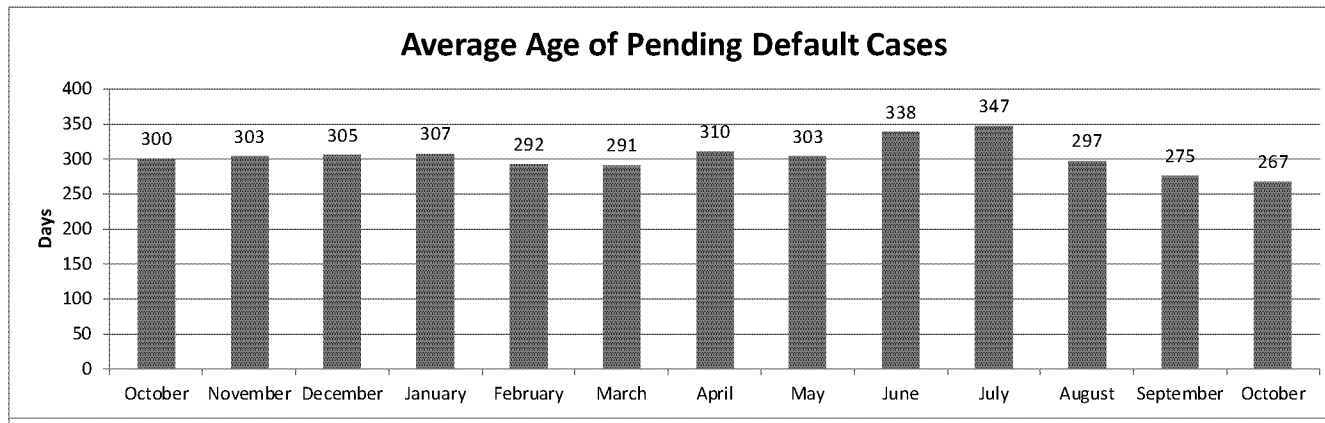


67% {

Age of Pending Cases
33% < 6 Months
40% > 6 Months, < 1 Year
27% > 1 year

Average # of Cases Filed per Month This Fiscal Year
0

## Historical Trends



**Pipeline Meeting: February 14, 2018**

**Meeting Agenda**

Workload – FY 2014 – 2018

FY 2018 Dispositions

Cases On Hand

Substantive Case Status

Motions to Reopen Case Status



### Substantive Cases (PDRs/PIRs/PTRs)

Number of cases

	FY 2014	FY 2015	FY 2016	FY 2017		FY 2018	
	Actual	Actual	Actual	Goal	Actual	Goal	YTD*
Beginning balance	69	57	39	18	18	18	21
New (PDRs & PIRs granted/PTR)	19	12	22	20	16	16	3
Dispositions	31	30	43	20	13	16	6
Ending balance	57	39	18	18	21	18	18
Average pendency of dispositions (months)	27	30	22	12	15	15	13
Average age of cases on hand at year end (months)	18	16	9	6	9	9	12

\* FY 2018 YTD as of February 13, 2018

New through	Alcoa World Aluminum CENT 2015-0279
Dispositions through	Shaffer v. Marion County WEVA 2018-0117

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**FY 2018 Dispositions**

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Case			Issue Date	Pendency (Months)
1	Consol Penn	PENN 2013-0385	10/5/17	25
2	A & G Coal	VA 2014-0243	10/10/17	0
3	Nally & Hamilton Enterprises	KENT 2012-0749	10/19/17	24
4	Mach Mining	LAKE 2014-0746	1/18/18	15
5	Kentucky Fuel	KENT 2015-0383	2/2/18	12
6	Shaffer v. Marion County (PTR)	WEVA 2018-0117	2/8/18	1
<b>Average pendency</b>				<b>13</b>

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Cases on Hand as of February 14, 2018							
	Case		Meeting		DFR	Age (Mos)	
1	Pocahontas Coal Co.	WEVA 2014-0395	mtg. on 7/12/2017		1/6/16	25	
2	Sims Crane	SE 2015-0315	mtg. on 6/30/2017		6/1/16	20	
3	Monongalia County Coal	WEVA 2015-0904	mtg. on 2/3/2017		6/9/16	20	
4	Mach Mining	LAKE 2014-0077	mtg. sch. for 2/15/18		7/1/16	19	
5	American Coal (penalty)	LAKE 2011-0701	mtg. on 11/30/17		11/28/16	14	
6	Marshall County Coal	WEVA 2015-0583	mtg. on 10/26/17		12/6/16	14	
7	Lehigh Anthracite	PENN 2014-0108	mtg. on 6/15/17		1/3/17	13	
8	Alcoa World Alumina	CENT 2015-0128	mtg. on 11/15/17		2/17/17	12	
9	Signal Peak	WEST 2016-0624	mtg. on 1/18/18		4/17/17	10	
10	Pappas v. CalPortland	WEST 2016-0264	mtg. on 12/13/17		5/9/17	9	
11	American Coal (PIR)	LAKE 2014-0013	pending		5/25/17	9	
12	Wilson, et al v. Armstrong Coal	KENT 2015-0673	pending		6/15/17	8	
13	American Coal (flagrant - remand)	LAKE 2009-0035	pending		7/25/17	7	
14	Consol Pennsylvania Coal	PENN 2014-0816	mtg. sch. for 3/23/18		8/8/17	6	
15	Sims Crane (roof fall)	SE 2016-0081	pending		2/22/17	12	
16	M-Class Mining	LAKE 2012-0519	pending		5/12/17	9	
17	Rain for Rent	WEST 2016-0730	pending		8/29/17	5	
18	McNary v. Alcoa	CENT 2015-0279	pending		1/30/18	0	
Average age						12	

Yellow indicates cases that should issue before 8/31/2018

Cases issued September 2017 through February 2018: 8

## Substantive Case Status

As of February 13, 2018

Case	Description	Meeting						
1 Monongalia Cnty Coal WEVA 2015-0904 [REDACTED]	Interference by bonus plans	Arg. Feb 2 Mtg. Feb 3	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 Lehigh Anthracite PENN 2014-0108 [REDACTED]	Sending miner into pit	Arg. Jun 14 Mtg. Jun 15	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	
3 Sims Crane SE 2015-0315 [REDACTED]	Suspended loads	Arg. Jun 29 Mtg. Jun 30	[REDACTED]		[REDACTED]			
4 Pocahontas Coal Co. WEVA 2014-0395 [REDACTED]	Pattern of violations	Mtg. Jul 13	[REDACTED]		[REDACTED]			
5 Marshall County Coal WEVA 2015-0586 [REDACTED]	CEO's prepared statement	Mtg. Oct 26	[REDACTED]					[REDACTED]
6 Alcoa World Alumina CENT 2015-0128 [REDACTED]	Miner as agent	Mtg. Nov 15	[REDACTED]					[REDACTED]
7 American Coal LAKE 2011-0701 [REDACTED]	Penalties	Arg. Nov 29 Mtg. Nov 30	[REDACTED]		[REDACTED]			
8 Pappas v. CalPortland WEST 2016-0264 [REDACTED]	Discrimination	Mtg. Dec 14		[REDACTED]				
9 Signal Peak WEST 2016-0624 [REDACTED]	Ventilation plan	Arg. Jan 17 Mtg. Jan 18		[REDACTED]				
10 American Coal LAKE 2009-0035 [REDACTED]	Flagrant penalties		[REDACTED]		[REDACTED]			
11 Mach Mining LAKE 2014-0077 [REDACTED]	Electrical protection devices	Mtg. Feb 15	[REDACTED]					
12 Consol Penn PENN 2014-0816 [REDACTED]	Reporting requirement	Arg. Mar 22 Mtg. Mar 23		[REDACTED]				

# JANUARY 2016 SUBSTANTIVE CASE REPORT

January 4, 2016

A. [REDACTED]

						[REDACTED]				
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-642-R, et al.	[REDACTED]	7/16/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review safeguard notices.	[REDACTED]	[REDACTED]			[REDACTED]
2	<b>Pocahontas Coal Co.</b>  WEVA 2014-202-R	[REDACTED]	6/25/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review POV notices.	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
3	<b>Black Beauty Coal Co.</b>  LAKE 2009-570	[REDACTED]	7/29/11  Argument 5/21/15 Meeting 5/26/15	[REDACTED]	Whether the safeguard notice in question, as modified, is valid.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	9/4/13  Meeting 6/3/15	[REDACTED]	On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					

No.	Case Name Docket No.		DFR Date		Description					
5	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
6	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					
7	<b>Drilling &amp; Blasting Systems</b>  SE 2012-510-M		7/10/13		Whether the ALJ erred by failing to accept the Secretary's interpretation of a standard providing that drills shall be attended at all times.					
8	<b>Warrior Coal</b>  KENT 2011-1259 et al.		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.					

No.	Case Name Docket No.		DFR Date		Description					
9	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
10	<b>United Steelworkers v. Hecla, Ltd.</b>  WEST 2012-466-CM		3/12/15  Argument 11/18/15  Meeting 11/19/15		Whether, in this compensation case, the Judge erred in determining the length of the period for which the operator was to compensate miners and the number of miners who were entitled to compensation.					
11	<b>Rex Coal Co.</b>  KENT 2010-956 et al.		9/9/13  Meeting 12/3/15		Whether the ALJ erred by upholding a citation issued because the operator allegedly failed to immediately notify MSHA that an accident had occurred.					
12	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					

No.	Case Name Docket No.		DFR Date		Description					
13	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13			Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.
2	<b>Oak Grove Resources and Bienna</b>  SE 2010-1236, et al.		5/15/13			Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).
3	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13			Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.



No.	Case Name & Docket No.		DFR Date			COMMENTS
4	<b>Hibbing Taconite Co.</b>  LAKE 2013-231-RM		9/20/13			Whether the ALJ erred by upholding certain abatement times.
5	<b>Maxxim Rebuild Co.</b>  KENT 2013-566  KENT 2013-989		11/22/13 3/19/14			Whether the ALJ erred by ruling that MSHA had jurisdiction over the company's fabrication shop. (Consolidated cases)
6	<b>The American Coal Co.</b>  LAKE 2011-701, et al.		10/29/13			Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.
7	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.		2/25/14			Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.
8	<b>Black Beauty Coal Co.</b>  LAKE 2009-410, et al.		4/16/14			On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.
9	<b>Big Ridge, Inc.</b>  LAKE 2013-66, et al.		5/23/14			Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.

No.	Case Name & Docket No.		DFR Date			COMMENTS
10	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14			Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.
11	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14			Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.
12	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14			Whether the Judge erred in upholding an imminent danger order.
13	<b>The American Coal Co.</b>  LAKE 2011-13		7/11/14			On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.
14	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14			Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.
15	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15			Whether a violation of the requirement to maintain a refuge alternative was S&S.

No.	Case Name & Docket No.		DFR Date			COMMENTS
16	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15			Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.
17	<b>Hecla, Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15			Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.
18	<b>Secretary o/b/o Arnold v. BHP Navajo Coal Co.</b>  CENT 2013-541-D		6/3/15			Whether in this discrimination case the Judge erred by shifting to the operator the burden of establishing that its reasons for disciplining a miner were not pretextual.
19	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
20	<b>Secretary o/b/o Riordan v. Knox Creek Coal Co.</b>  VA 2014-343-D		8/18/15			In this discrimination case, whether substantial evidence supports the Judge's determinations that a miner engaged in protected activity and that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.

C.

No.	Case Name & Docket Number		DFR Date		Description
1	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385		9/8/15		Whether the Judge erred in making high negligence and unwarrantable failure findings.
2	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15		Whether the Judge erred in concluding that two violations were not significant and substantial.
3	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.
4	<b>John Richards Construction</b>  WEST 2014-440-M		10/2/15		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry.
5	<b>United Mine Workers o/b/o/ Franks and Hoy v. Emerald Coal Res., LP</b>  PENN 2012-250-D, et al.		Court issued mandate on 10/21/15		Whether the operator discriminated against the complainants and/or interfered with their statutory rights by seeking to compel them to provide certain information.

No.	Case Name & Docket Number		DFR Date		Description
6	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.		10/31/15		Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
7	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15		Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
8	<b>Northshore Mining Co.</b>  LAKE 2014-219-M		11/25/15		Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
9	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15		Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."
10	<b>John Richards Construction</b>  WEST 2015-101-M		12/2/15		Whether the Judge erred by ruling that an annual inspection of fire extinguishers had not been conducted.

No.	Case Name & Docket Number		DFR Date		Description
11	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co.</b>  WEVA 2015-583-D, et al.		12/22/15		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	<b>Tilden Mining Co. v. FMSHRC</b> D.C. Cir. No. 14-1170	<b>Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014)</b> (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	<b>Rex Coal Co. V. FMSHRC and Sec'y of Labor</b> 6 <sup>th</sup> Cir. No. 14-4123	<b>Rex Coal Co., 36 FMSHRC 3195 (Dec. 2014) (ALJ)</b> (whether the judge erred in upholding three citations and orders and associated penalties issued as the result of a fatal truck accident)	Petition for review filed 11/12/2014 <u>Decision issued 10/29/15; mandate issued 12/29/15</u>
3	<b>Knox Creek Coal Corp. v. FMSHRC</b> 4 <sup>th</sup> Cir. No. 14-2313	<b>Knox Creek Coal Corp., 36 FMSHRC 1128 (May 2014)</b> (whether Commission erred in concluding that four violations were S&S)	Petition for review filed 12/2/14 Oral argument held 9/16/15; awaiting decision
4	<b>Cactus Canyon Quarries, Inc. v. FMSHRC</b> D.C. Cir. No. 14-1260	<b>Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ)</b> (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 Briefing complete; oral argument cancelled, to be decided on briefs

No.	Appellate Case Name and Docket No.	Commission Decision	Status
5	<b>Mach Mining, LLC v. FMSHRC</b> D.C. Cir. No. 14-1266	<b>Mach Mining, LLC, 36 FMSHRC 2533 (Sept. 2014) (ALJ) (whether the ALJ erred in affirming an accumulations violation as significant and substantial and due to the operator's high negligence)</b>	<b>Petition for review filed 12/4/14</b> <b>Oral argument held 10/14/15; awaiting decision</b>
6	<b>DQ Fire &amp; Explosion Consultants, Inc. v. FMSHRC</b> D.C. Cir. No. 15-1008	<b>DQ Fire &amp; Explosion Consultants, Inc., 36 FMSHRC 3090 (Dec. 2014) and 34 FMSRHC 2318 (Aug. 2012) (ALJ) (whether ALJ and Commission erred in affirming citation for violation of section 103(k) for unauthorized entrance into restricted zone during accident investigation).</b>	<b>Petition for review filed 1/15/15</b> <b><u>Decision issued 12/1/15; awaiting mandate</u></b>
7	<b>Consol Buchanan Mining Co. v. FMSHRC</b> 4 <sup>th</sup> Cir. No. 15-1321	<b>Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)</b>	<b>Petition for review filed 3/27/15</b> <b>Briefing complete; awaiting oral argument order</b>
8	<b>Northern Illinois Serv. Co. v. FMSHRC</b> 7 <sup>th</sup> Cir. No. 15-2640	<b>Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)</b>	<b>Petition for review filed 8/4/15</b> <b>Secretary's brief due 1/14/16</b>
9	<b>Small Mine Development v. FMSHRC</b> D.C. Cir. No. 15-1391	<b>Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&amp;S violation of the requirement that a refuge chamber be provided)</b>	<b>Petition for review filed 10/27/15</b> <b>Awaiting briefing schedule</b>
10	<b>Jim Walter Resources, Inc. v. Secretary of Labor</b> 11 <sup>th</sup> Cir. No. 15-14885	<b>Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)</b>	<b>Petition for review filed 10/30/15</b> <b>Secretary's motion to hold briefing in abeyance pending sale of mine at bankruptcy granted on 1/4/16</b>

# FEBRUARY 2016 SUBSTANTIVE CASE REPORT

February 9, 2016

A. [REDACTED]

No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-642-R, et al.	[REDACTED]	7/16/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review safeguard notices.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Pocahontas Coal Co.</b>  WEVA 2014-202-R	[REDACTED]	6/25/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review POV notices.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Black Beauty Coal Co.</b>  LAKE 2009-570  <u><b>DECISION</b></u> <u><b>ISSUED 1/28/16</b></u>	[REDACTED]	7/29/11  Argument 5/21/15 Meeting 5/26/15	[REDACTED]	Whether the safeguard notice in question, as modified, is valid.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



No.	Case Name Docket No.		DFR Date		Description					
4	<b>The American Coal Co.</b>  LAKE 2009-35		9/4/13  Meeting 6/3/15		On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					
5	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
6	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					
7	<b>Drilling &amp; Blasting Systems</b>  SE 2012-510-M		7/10/13		Whether the ALJ erred by failing to accept the Secretary's interpretation of a standard providing that drills shall be attended at all times.					

No.	Case Name Docket No.		DFR Date		Description					
8	<b>Warrior Coal</b>  KENT 2011-1259 et al.		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.	<b>I</b>			<b>I</b>	<b>I</b>
9	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
10	<b>United Steelworkers v. Hecla, Ltd.</b>  WEST 2012-466-CM		3/12/15  Argument 11/18/15  Meeting 11/19/15		Whether, in this compensation case, the Judge erred in determining the length of the period for which the operator was to compensate miners and the number of miners who were entitled to compensation.	<b>I</b>	<b>I</b>		<b>I</b>	<b>I</b>
11	<b>Rex Coal Co.</b>  KENT 2010-956 et al.		9/9/13  Meeting 12/3/15		Whether the ALJ erred by upholding a citation issued because the operator allegedly failed to immediately notify MSHA that an accident had occurred.		<b>I</b>			<b>I</b>

No.	Case Name Docket No.		DFR Date		Description					
12	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
13	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					
14	<b>Secretary o/b/o Pappas v. CalPortland Co.</b>  WEST 2016-156-DM  <u><b>DECISION</b></u> <u><b>ISSUED 2/8/16</b></u>		1/18/16 (filing of pet. for temp. reinstate.)		Whether the Judge erred in ruling that an employee was entitled to temporary reinstatement.					
15	<b>Hibbing Taconite Co.</b>  LAKE 2013-231-RM		9/20/13  Argument 1/13/16 Meeting 1/14/16		Whether the ALJ erred by upholding certain abatement times.					

No.	Case Name Docket No.		DFR Date		Description					
16	<b>Maxxim Rebuild Co.</b>  KENT 2013-566  KENT 2013-989		11/22/13 3/19/14  Meeting 1/7/16		Whether the ALJ erred by ruling that MSHA had jurisdiction over the company's fabrication shop. (Consolidated cases)					
17	<b>United Mine Workers o/b/o/ Franks and Hoy v. Emerald Coal Res., LP</b>  PENN 2012-250-D, et al.		Court issued mandate on 10/21/15		Whether the operator discriminated against the complainants and/or interfered with their statutory rights by seeking to compel them to provide certain information.					
18	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14  Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Premier Elkhorn Coal Co.</b> KENT 2011-827		2/27/13			Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.
2	<b>Oak Grove Resources and Bienna</b> SE 2010-1236, et al.		5/15/13			Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).
3	<b>Trivette Trucking</b> KENT 2011-1223		8/2/13			Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.
4	<b>The American Coal Co.</b> LAKE 2011-701, et al.		10/29/13			Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.
5	<b>Kentucky Fuel Corp.</b> KENT 2011-1557, et al.		2/25/14			Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.
6	<b>Black Beauty Coal Co.</b> LAKE 2009-410, et al.		4/16/14			On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>Big Ridge, Inc.</b> LAKE 2013-66, et al.		5/23/14			Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.
8	<b>The American Coal Co.</b> LAKE 2008-666, et al.		6/27/14			Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.
9	<b>Leeco, Inc.</b> KENT 2012-166		8/22/14			Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.
10	<b>The American Coal Co.</b> LAKE 2011-13		7/11/14			On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.
11	<b>CAM Mining, LLC</b> KENT 2013-196-R, et al.		9/24/14			Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.
12	<b>ICG Illinois, LLC</b> LAKE 2013-160		2/19/15			Whether a violation of the requirement to maintain a refuge alternative was S&S.
13	<b>Knight Hawk Coal, LLC</b> LAKE 2014-120-R, et al.		4/22/15			Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.

No.	Case Name & Docket No.		DFR Date			COMMENTS
14	<b>Hecla, Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15			Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.
15	<b>Secretary o/b/o Arnold v. BHP Navajo Coal Co.</b>  CENT 2013-541-D		6/3/15			Whether in this discrimination case the Judge erred by shifting to the operator the burden of establishing that its reasons for disciplining a miner were not pretextual.
16	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
17	<b>Secretary o/b/o Riordan v. Knox Creek Coal Co.</b>  VA 2014-343-D		8/18/15			In this discrimination case, whether substantial evidence supports the Judge's determinations that a miner engaged in protected activity and that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.
18	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385		9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
19	<b>Northshore Mining Co.</b>  LAKE 2014-219-M		11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.

C.

No.	Case Name & Docket Number		DFR Date		Description
1	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15		Whether the Judge erred in concluding that two violations were not significant and substantial.
2	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.
3	<b>John Richards Construction</b>  WEST 2014-440-M		10/2/15		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry.
4	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.		10/31/15		Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
5	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15		Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.



No.	Case Name & Docket Number		DFR Date		Description
6	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15		Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”
7	<b>John Richards Construction</b>  WEST 2015-101-M		12/2/15		Whether the Judge erred by ruling that an annual inspection of fire extinguishers had not been conducted.
8	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co.</b>  WEVA 2015-583-D, et al.		12/22/15		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary’s complaint.
9	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
10	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16		Whether the Judge erred by rejecting consideration of the operator’s approved ventilation plan in interpreting a mandatory standard governing ventilation.

No.	Case Name & Docket Number		DFR Date		Description
11	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16		Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	<b>Tilden Mining Co. v. FMSHRC</b> D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	<b>Knox Creek Coal Corp. v. FMSHRC</b> 4 <sup>th</sup> Cir. No. 14-2313	Knox Creek Coal Corp., 36 FMSHRC 1128 (May 2014) (whether Commission erred in concluding that four violations were S&S)	Petition for review filed 12/2/14 <u>Decision issued 1/21/16; awaiting mandate</u>
3	<b>Cactus Canyon Quarries, Inc. v. FMSHRC</b> D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 Briefing complete; oral argument cancelled, to be decided on briefs
4	<b>Mach Mining, LLC v. FMSHRC</b> D.C. Cir. No. 14-1266	Mach Mining, LLC, 36 FMSHRC 2533 (Sept. 2014) (ALJ) (whether the ALJ erred in affirming an accumulations violation as significant and substantial and due to the operator's high negligence)	Petition for review filed 12/4/14 <u>Decision issued 1/12/16; awaiting mandate</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
5	DQ Fire & Explosion Consultants, Inc. v. FMSHRC D.C. Cir. No. 15-1008	DQ Fire & Explosion Consultants, Inc., 36 FMSHRC 3090 (Dec. 2014) and 34 FMSRHC 2318 (Aug. 2012) (ALJ) (whether ALJ and Commission erred in affirming citation for violation of section 103(k) for unauthorized entrance into restricted zone during accident investigation).	Petition for review filed 1/15/15 <u>Decision issued 12/1/15; mandate issued 1/23/16</u>
6	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; awaiting oral argument order
7	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 Petitioner's reply brief due 2/11/16
8	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Petitioner's brief due 3/7/16
9	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Secretary's response brief due 3/7/16
10	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC ____ (Dec. 2015), CENT 2015-71-M (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16

# MARCH 2016 SUBSTANTIVE CASE REPORT

March 1, 2016

A. [REDACTED]

						[REDACTED]				
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-642-R, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 2/12/16</b></u>	[REDACTED]	7/16/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review safeguard notices.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Pocahontas Coal Co.</b>  WEVA 2014-202-R  <u><b>DECISION</b></u> <u><b>ISSUED 2/16/16</b></u>	[REDACTED]	6/25/14  Meeting 3/17/15	[REDACTED]	Whether the Commission has jurisdiction to directly review POV notices.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	9/4/13  Meeting 6/3/15	[REDACTED]	On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.				[REDACTED]	

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
5	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					
6	<b>Drilling &amp; Blasting Systems</b>  SE 2012-510-M  <u><b>DECISION</b></u> <u><b>ISSUED 2/22/16</b></u>		7/10/13		Whether the ALJ erred by failing to accept the Secretary's interpretation of a standard providing that drills shall be attended at all times.					
7	<b>Warrior Coal</b>  KENT 2011-1259 et al.		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.					

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8	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.	I			I	
9	<b>United Steelworkers v. Hecla, Ltd.</b>  WEST 2012-466-CM  <u><b>DECISION</b></u> <u><b>ISSUED 2/24/16</b></u>		3/12/15  Argument 11/18/15  Meeting 11/19/15		Whether, in this compensation case, the Judge erred in determining the length of the period for which the operator was to compensate miners and the number of miners who were entitled to compensation.	I	I	I	I	I
10	<b>Rex Coal Co.</b>  KENT 2010-956 et al.  <u><b>DECISION</b></u> <u><b>ISSUED 2/25/16</b></u>		9/9/13  Meeting 12/3/15		Whether the ALJ erred by upholding a citation issued because the operator allegedly failed to immediately notify MSHA that an accident had occurred.	I	I	I	I	I
11	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					

No.	Case Name Docket No.		DFR Date		Description					
12	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					
13	<b>Hibbing Taconite Co.</b>  LAKE 2013-231-RM		9/20/13  Argument 1/13/16 Meeting 1/14/16		Whether the ALJ erred by upholding certain abatement times.					
14	<b>Maxxim Rebuild Co.</b>  KENT 2013-566  KENT 2013-989		11/22/13 3/19/14  Meeting 1/7/16		Whether the ALJ erred by ruling that MSHA had jurisdiction over the company's fabrication shop.  (Consolidated cases)					

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15	<b>United Mine Workers o/b/o/ Franks and Hoy v. Emerald Coal Res., LP</b>  PENN 2012-250-D, et al.  <u><b>DECISION ISSUED 2/10/16</b></u>		Court issued mandate on 10/21/15		Whether the operator discriminated against the complainants and/or interfered with their statutory rights by seeking to compel them to provide certain information.					
16	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14 Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					
17	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13 Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					
18	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13 Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.					



No.	Case Name Docket No.		DFR Date		Description					
19	<b>Oak Grove Resources and Bienia</b>  SE 2010-1236, et al.		5/15/13  Argument 2/24/16 Meeting 2/25/16		Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).					
20	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>The American Coal Co.</b>  LAKE 2011-701, et al.	[REDACTED]	10/29/13		[REDACTED]	Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.
2	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.	[REDACTED]	2/25/14		[REDACTED]	Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.
3	<b>Black Beauty Coal Co.</b>  LAKE 2009-410, et al.	[REDACTED]	4/16/14			On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.
4	<b>Big Ridge, Inc.</b>  LAKE 2013-66, et al.		5/23/14			Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.
5	<b>The American Coal Co.</b>  LAKE 2008-666, et al.	[REDACTED]	6/27/14		[REDACTED]	Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.
6	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	7/11/14			On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14			Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.
8	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15			Whether a violation of the requirement to maintain a refuge alternative was S&S.
9	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15			Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.
10	<b>Hecla, Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15			Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.
11	<b>Secretary o/b/o Arnold v. BHP Navajo Coal Co.</b>  CENT 2013-541-D		6/3/15			Whether in this discrimination case the Judge erred by shifting to the operator the burden of establishing that its reasons for disciplining a miner were not pretextual.
12	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.

No.	Case Name & Docket No.		DFR Date			COMMENTS
13	<b>Secretary o/b/o Riordan v. Knox Creek Coal Co.</b>  VA 2014-343-D		8/18/15			In this discrimination case, whether substantial evidence supports the Judge's determinations that a miner engaged in protected activity and that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.
14	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385		9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
15	<b>Northshore Mining Co.</b>  LAKE 2014-219-M		11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
16	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.		10/31/15			Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15	[REDACTED]	Whether the Judge erred in concluding that two violations were not significant and substantial.
2	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15	[REDACTED]	Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.
3	<b>John Richards Construction</b>  WEST 2014-440-M  WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
4	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15	[REDACTED]	Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
5	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."

No.	Case Name & Docket Number		DFR Date		Description
6	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co.</b>  WEVA 2015-583-D, et al.		12/22/15		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.
7	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
8	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16		Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
9	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16		Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	Knox Creek Coal Corp. v. FMSHRC 4 <sup>th</sup> Cir. No. 14-2313	Knox Creek Coal Corp., 36 FMSHRC 1128 (May 2014) (whether Commission erred in concluding that four violations were S&S)	Petition for review filed 12/2/14 <u>Decision issued 1/21/16; awaiting mandate</u>
3	Cactus Canyon Quarries, Inc. v. FMSHRC D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 Briefing complete; oral argument cancelled, to be decided on briefs
4	Mach Mining, LLC v. FMSHRC D.C. Cir. No. 14-1266	Mach Mining, LLC, 36 FMSHRC 2533 (Sept. 2014) (ALJ) (whether the ALJ erred in affirming an accumulations violation as significant and substantial and due to the operator's high negligence)	Petition for review filed 12/4/14 <u>Decision issued 1/12/16; awaiting mandate</u>
5	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; awaiting oral argument order
6	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 Oral argument scheduled 4/1/16
7	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Petitioner's brief due 3/7/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's brief filed 2/5/16 Secretary filed motion to hold briefing in abeyance pending bankruptcy court decision.
9	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC ____ (Dec. 2015), CENT 2015-71-M (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Petitioner's brief due 3/22/16



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April 1, 2016

A. [REDACTED]

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No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	9/4/13  Meeting 6/3/15	[REDACTED]	On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.	[REDACTED]			[REDACTED]	[REDACTED]
2	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.	[REDACTED]	10/31/13  Argument 6/23/15  Meeting 6/24/15	[REDACTED]	Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
3	<b>Newtown Energy</b>  WEVA 2011-283	[REDACTED]	9/5/13  Meeting 7/9/15	[REDACTED]	Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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4	<b>Warrior Coal</b>  KENT 2011-1259 et al.		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.					
5	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
6	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
7	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					

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8	<b>Hibbing Taconite Co.</b>  LAKE 2013-231-RM  <u><b>DECISION ISSUED 3/3/16</b></u>		9/20/13  Argument 1/13/16 Meeting 1/14/16		Whether the ALJ erred by upholding certain abatement times.					
9	<b>Maxxim Rebuild Co.</b>  KENT 2013-566  KENT 2013-989		11/22/13 3/19/14  Meeting 1/7/16		Whether the ALJ erred by ruling that MSHA had jurisdiction over the company's fabrication shop.  (Consolidated cases)					
10	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14  Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					
11	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13  Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					

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12	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13  Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.					
13	<b>Oak Grove Resources and Bienia</b>  SE 2010-1236, et al.		5/15/13  Argument 2/24/16 Meeting 2/25/16		Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).					
14	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					
15	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
16	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					

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18	<b>Secretary o/b/o Arnold v. BHP Navajo Coal Co.</b>  CENT 2013-541-D  <u><b>DISMISSAL ORDER ISSUED 3/29/16</b></u>		6/3/15		Whether in this discrimination case the Judge erred by shifting to the operator the burden of establishing that its reasons for disciplining a miner were not pretextual.					
19	<b>McGlothlin v. Dominion Coal Corp.</b>  VA 2014-233-D  <u><b>DECISION ISSUED 3/30/16</b></u>		3/21/16		Whether the Judge erred in ruling that the amount of attorney's fees mutually agreed upon in a discrimination case settlement should be reduced.					

B. [REDACTED]

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1	<b>The American Coal Co.</b>  LAKE 2011-701, et al.	[REDACTED]	10/29/13		[REDACTED]	Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.
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15	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
16	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."



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5	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16	[REDACTED]	Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	Knox Creek Coal Corp. v. FMSHRC 4 <sup>th</sup> Cir. No. 14-2313	Knox Creek Coal Corp., 36 FMSHRC 1128 (May 2014) (whether Commission erred in concluding that four violations were S&S)	Petition for review filed 12/2/14 <u>Decision issued 1/21/16; mandate issued 3/14/16</u>
3	Cactus Canyon Quarries, Inc. v. FMSHRC D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 Briefing complete; oral argument cancelled, to be decided on briefs
4	Mach Mining, LLC v. FMSHRC D.C. Cir. No. 14-1266	Mach Mining, LLC, 36 FMSHRC 2533 (Sept. 2014) (ALJ) (whether the ALJ erred in affirming an accumulations violation as significant and substantial and due to the operator's high negligence)	Petition for review filed 12/4/14 <u>Decision issued 1/12/16; mandate issued 3/8/16</u>
5	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; awaiting oral argument order
6	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 Oral argument held 4/1/16; awaiting decision
7	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Petitioner's brief filed 3/7/16 Secretary's brief due 4/6/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's brief filed 2/5/16 Court ordered briefing held in abeyance on 2/21/16 pending bankruptcy court decision. Motion to dismiss filed by Secretary 4/1/16
9	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Petitioner's brief due 4/21/16
10	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's initial submissions due 4/13/16
11	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Petitioner's initial submissions due 4/14/16

# MAY 2016 SUBSTANTIVE CASE REPORT

May 9, 2016

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	<b>The American Coal Co.</b>  LAKE 2009-35		9/4/13  Meeting 6/3/15		On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					
2	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
3	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15 5/4/16		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Warrior Coal</b>  KENT 2011-1259 et al.		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.					
5	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
6	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
7	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					

No.	Case Name Docket No.		DFR Date		Description					
8	<b>Maxxim Rebuild Co.</b>  KENT 2013-566  KENT 2013-989  <b><u>DECISION ISSUED 4/27/16</u></b>		11/22/13 3/19/14  Meeting 1/7/16		Whether the ALJ erred by ruling that MSHA had jurisdiction over the company's fabrication shop.  (Consolidated cases)					
9	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14  Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					
10	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13  Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					
11	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13  Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.					

No.	Case Name Docket No.		DFR Date		Description					
12	<b>Oak Grove Resources and Bienia</b>  SE 2010-1236, et al.		5/15/13  Argument 2/24/16 Meeting 2/25/16		Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).					
13	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					
14	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
15	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					
16	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14  Meeting 3/24/16		Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.					

No.	Case Name Docket No.		DFR Date		Description					
17	<b>The American Coal Co.</b>  LAKE 2011-701, et al.		10/29/13  Argument 4/20/16 Meeting 4/21/16		Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.					
18	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.		2/25/14  Meeting 4/5/16		Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.					
19	<b>Black Beauty Coal Co.</b>  LAKE 2009-410, et al.		4/16/14  Meeting 5/26/16 (if necessary)		On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.					
20	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					



No.	Case Name Docket No.		DFR Date		Description					
21	<b>Secretary o/b/o Riordan v. Knox Creek Coal Corp.</b>  VA 2014-343-D		8/18/15  Meeting 5/5/16		In this discrimination case, whether substantial evidence supports the Judge's determination that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.					

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Big Ridge, Inc.</b>  LAKE 2013-66, et al.		5/23/14			Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.
2	<b>The American Coal Co.</b>  LAKE 2011-13		7/11/14			On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.
3	<b>Hecla, Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15			Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.

No.	Case Name & Docket No.		DFR Date			COMMENTS
4	<b>Portable, Inc.</b> EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
5	<b>Consol Pennsylv- vania Coal Co.</b> PENN 2013-385		9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
6	<b>Northshore Mining Co.</b> LAKE 2014-219-M		11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
7	<b>Sherwin Alumina Co.</b> CENT 2015-151-RM, et al.		10/31/15			Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
8	<b>Nally &amp; Hamilton Enterprises, Inc.</b> KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two violations were not significant and substantial.
9	<b>KenAmerican Resources, Inc.</b> KENT 2013-211		10/1/15			Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.
10	<b>McNary v. Alcoa World Alumina, Inc.</b> CENT 2015-279-DM		11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.

No.	Case Name & Docket No.		DFR Date			COMMENTS
11	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”
12	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co.</b>  WEVA 2015-583-D, et al.		12/22/15			On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary’s complaint.
13	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
14	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator’s approved ventilation plan in interpreting a mandatory standard governing ventilation.
15	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>John Richards Construction</b>  WEST 2014-440-M  WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)

D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	<b>Tilden Mining Co. v. FMSHRC</b> D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	<b>Cactus Canyon Quarries, Inc. v. FMSHRC</b> D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 <u>Decision issued 4/19/16; awaiting mandate</u>
3	<b>Consol Buchanan Mining Co. v. FMSHRC</b> 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; awaiting oral argument order

No.	Appellate Case Name and Docket No.	Commission Decision	Status
4	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 <u>Decision issued 4/27/16; awaiting mandate</u>
5	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Briefing complete; awaiting oral argument order
6	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's brief filed 2/5/16 Court ordered briefing held in abeyance on 2/21/16 pending bankruptcy court decision. Awaiting action on motion to substitute petitioner
7	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Petitioner's brief filed 4/21/16 Secretary's brief due 5/23/16
8	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Awaiting briefing schedule
9	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Petitioner filed motion for summary reversal 4/29/16 Response to motion due 5/9/16 Awaiting briefing schedule and action on petitioner's motion for a stay

# JUNE 2016 SUBSTANTIVE CASE REPORT

June 3, 2016

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	<b>The American Coal Co.</b>  LAKE 2009-35		9/4/13  Meeting 6/3/15	12/21/15	On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					
2	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
3	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15 5/4/16 5/18/16 5/26/16		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Warrior Coal</b>  KENT 2011-1259 et al.  <u><b>DECISION</b></u> <u><b>ISSUED 5/17/16</b></u>		10/10/13  Argument & Meeting 10/8/15		Whether the ALJ erred in concluding that MSHA was authorized to require that the operator provide private contact information for every mine employee.					
5	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al.		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
6	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
7	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					

No.	Case Name Docket No.		DFR Date		Description					
8	<b>Knife River Construction</b>  WEST 2013-827-RM, et al.		9/12/14  Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					
9	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13  Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					
10	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13  Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure to comply with relevant standards.					
11	<b>Oak Grove Resources and Bienia</b>  SE 2010-1236, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 6/3/16</b></u>		5/15/13  Argument 2/24/16 Meeting 2/25/16		Whether the ALJ erred in concluding that a safeguard notice was valid and that an employee of a limited liability corporation can be liable for a penalty under section 110(c).					



No.	Case Name Docket No.		DFR Date		Description					
12	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					
13	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
14	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					
15	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14  Meeting 3/24/16		Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.					
16	<b>The American Coal Co.</b>  LAKE 2011-701, et al.		10/29/13  Argument 4/20/16 Meeting 4/21/16		Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.					

No.	Case Name Docket No.		DFR Date		Description					
17	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.		2/25/14  Meeting 4/5/16		Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.					
18	<b>Black Beauty Coal Co.</b>  LAKE 2009-410, et al.		4/16/14		On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.					
19	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					
20	<b>Secretary o/b/o Riordan v. Knox Creek Coal Corp.</b>  VA 2014-343-D		8/18/15  Meeting 5/5/16		In this discrimination case, whether substantial evidence supports the Judge's determination that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.					

No.	Case Name Docket No.		DFR Date		Description					
21	<b>UMWA on behalf of Franks and Hoy v. Emerald Resources, LP</b>  PENN 2012-250-D, et al.  <u><b>DECISION ISSUED 5/17/16</b></u>		5/17/16		Whether the Judge erred in concluding that the two miners had been subjected to discrimination or interference.					
22	<b>Oak Grove Resources, LLC</b>  SE 2009-261-R		5/24/16		Whether the Judge erred in determining that a safeguard violation resulted from high negligence and in assessing the civil penalty.  Motion to Approve Settlement filed 4/26/16					
23	<b>Big Ridge, Inc.</b>  LAKE 2013-66, et al.		5/23/14		Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.  Motion to Approve Settlement filed 5/25/16					

No.	Case Name Docket No.		DFR Date		Description					
24	<b>Hecla Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15  Argument 5/25/16 Meeting 5/26/16		Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.					
25	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15  Meeting 5/18/16		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.					

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>The American Coal Co.</b>  LAKE 2011-13		7/11/14			On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.
2	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.

No.	Case Name & Docket No.		DFR Date			COMMENTS
3	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385		9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
4	<b>Northshore Mining Co.</b>  LAKE 2014-219-M		11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
5	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.		10/31/15			Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
6	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two violations were not significant and substantial.
7	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
8	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."

No.	Case Name & Docket No.		DFR Date			COMMENTS
9	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co.</b>  WEVA 2015-583-D, et al.		12/22/15			On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.
10	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
11	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
12	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

C.



No.	Case Name & Docket Number		DFR Date		Description
1	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
2	<b>Sims Crane</b>  SE 2015-315		6/1/16		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.

D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	<b>Tilden Mining Co. v. FMSHRC</b> D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	<b>Cactus Canyon Quarries, Inc. v. FMSHRC</b> D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 <u>Decision issued 4/19/16;</u> <u>Petition for rehearing en banc denied 6/2/16;</u> <u>Awaiting mandate</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
3	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; awaiting oral argument order
4	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 <u>Decision issued 4/27/16; awaiting mandate</u>
5	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Briefing complete; awaiting oral argument order
6	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's brief filed 2/5/16 Court ordered briefing held in abeyance on 2/21/16 pending bankruptcy court decision. Awaiting action on motion to substitute petitioner
7	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Secretary's brief filed 5/23/16 Petitioner's reply brief due 6/10/16
8	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's brief due 7/11/16
9	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Court denied petitioner's motions for stay and summary reversal 5/31/16 Petitioner's brief due 6/30/16



No.	Appellate Case Name and Docket No.	Commission Decision	Status
10	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC ___, KENT 2013-566 et al. (Apr. 27, 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Record index due 6/29/16
11	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Preliminary filings due 6/15/16

# JULY 2016 SUBSTANTIVE CASE REPORT

July 7, 2016

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	<b>The American Coal Co.</b>  LAKE 2009-35		9/4/13  Meeting 6/3/15		On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					
2	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
3	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15 5/4/16 5/18/16 5/26/16		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Hopkins County Coal</b>  KENT 2009-820-R, et al. <b><u>DECISION</u></b> <b><u>ISSUED 6/24/16</u></b>		5/10/12  Argument & Meeting 10/8/15		Whether MSHA was authorized to gain access to certain personnel records as part of a discrimination investigation without obtaining a warrant.					
5	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
6	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					
7	<b>Knife River Construction</b>  WEST 2013-827-RM, et al. <b><u>DECISION</u></b> <b><u>ISSUED 6/8/16</u></b>		9/12/14  Meeting 1/28/16		Whether the Judge erred in upholding an imminent danger order.					

No.	Case Name Docket No.		DFR Date		Description					
8	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827		2/27/13  Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					
9	<b>Trivette Trucking</b>  KENT 2011-1223		8/2/13  Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure.					
10	<b>Leeco, Inc.</b>  KENT 2012-166		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					
13	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
14	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					

No.	Case Name Docket No.		DFR Date		Description					
15	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14  Meeting 3/24/16		Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.					
16	<b>The American Coal Co.</b>  LAKE 2011-701, et al.		10/29/13  Argument 4/20/16 Meeting 4/21/16		Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.					
17	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.		2/25/14  Meeting 4/5/16		Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.					
18	<b>Black Beauty Coal Co.</b>  LAKE 2009-410, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 6/16/16</b></u>		4/16/14		On cross petitions, (1) whether the ALJ erred in basing his findings that injury or illness was not reasonably likely in part on the presence of safety measures, and (2) whether a particular safeguard was valid.					

No.	Case Name Docket No.		DFR Date		Description					
19	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					
20	<b>Secretary o/b/o Riordan v. Knox Creek Coal Corp.</b>  VA 2014-343-D		8/18/15  Meeting 5/5/16		In this discrimination case, whether substantial evidence supports the Judge's determination that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.					
21	<b>Oak Grove Resources, LLC</b>  SE 2009-261-R  <u><b>DECISION</b></u> <u><b>ISSUED 6/7/16</b></u>		5/24/16		Whether the Judge erred in determining that a safeguard violation resulted from high negligence and in assessing the civil penalty.  Motion to Approve Settlement filed 4/26/16					
22	<b>Big Ridge, Inc.</b>  LAKE 2013-66, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 6/30</b></u>		5/23/14		Whether the ALJ erred in vacating an unwarrantable failure designation involving a welder not being examined.  Motion to Approve Settlement filed 5/25/16					

No.	Case Name Docket No.		DFR Date		Description					
23	<b>Hecla Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15  Argument 5/25/16 Meeting 5/26/16		Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.					
24	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15  Meeting 5/18/16		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.					
25	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co. et al.</b>  WEVA 2015-583-D, et al.		12/22/15  Argument 6/13/16  Meeting 6/14/16		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.					

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	7/11/14		[REDACTED]	On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.
2	<b>Portable, Inc.</b>  EAJA 2015-1-M	[REDACTED]	8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
3	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
4	<b>Northshore Mining Co.</b>  LAKE 2014-219-M		11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
5	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.	[REDACTED]	10/31/15			Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
6	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two violations were not significant and substantial.



No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
8	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."
9	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
10	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
11	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
2	<b>Sims Crane</b>  SE 2015-315		6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
3	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
4	<b>Mach Mining, Inc.</b>  LAKE 2014-77, et al.		7/1/16	[REDACTED]	Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	Cactus Canyon Quarries, Inc. v. FMSHRC D.C. Cir. No. 14-1260	Cactus Canyon Quarries, Inc., 36 FMSHRC 3186 (Dec. 2014) (ALJ) (whether the ALJ erred in denying the operator's EAJA application)	Petition for review filed 11/24/2014 <u>Decision issued 4/19/16;</u> <u>Petition for rehearing en banc denied 6/2/16;</u> <u>Mandate issued 6/15/16</u>
3	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; oral argument scheduled for 9/22/16
4	Northern Illinois Serv. Co. v. FMSHRC 7 <sup>th</sup> Cir. No. 15-2640	Northern Illinois Serv. Co., 37 FMSHRC 1225 (June 2015)(ALJ) (whether, in upholding two violations, the ALJ erred in finding Mine Act jurisdiction over the operator with regard to one violation and concluding that the operator had notice of the interpretation of the standard involved in the second violation)	Petition for review filed 8/4/15 <u>Decision issued 4/27/16;</u> <u>Mandate issued 6/8/16</u>
5	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Briefing complete; awaiting oral argument order
6	Jim Walter Resources, Inc. v. FMSHC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's brief filed 2/5/16 Secretary's motion to dismiss as moot denied and petitioner's motion to substitute granted 6/27/16 Secretary's brief due 7/27/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
7	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Briefing complete; awaiting oral argument order
8	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's brief due 9/16/16
9	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Secretary's brief due 8/1/16
10	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC ___, KENT 2013-566 et al. (Apr. 27, 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Petitioner's brief due 8/5/16
11	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Petitioner's brief due 8/8/16
12	Warrior Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. ___	Warrior Coal, LLC, 38 FMSHC ___, KENT 2011-1259-R (May 2016) (Whether the Commission erred in affirming a citation and order issued for operator's failure to provide requested information to MSHA investigators)	Petition for review filed 6/15/16 Record due 8/1/16

# AUGUST 2016 SUBSTANTIVE CASE REPORT

August 1, 2016

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	<b>The American Coal Co.</b>  LAKE 2009-35		9/4/13  Meeting 6/3/15		On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.					
2	<b>Sunbelt Rentals, et al.</b>  VA 2013-275, et al.  <u><b>DECISION ISSUED 7/12/16</b></u>		10/31/13  Argument 6/23/15  Meeting 6/24/15		Whether the ALJ erred in ruling that workplace examinations must be adequate and that the operator had fair notice of this interpretation.					
3	<b>Newtown Energy</b>  WEVA 2011-283		9/5/13  Meeting 7/9/15 5/4/16 5/18/16 5/26/16		Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.					

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Lewis-Goetz and Co.</b>  WEVA 2012-1821  <u><b>DECISION</b></u> <u><b>ISSUED 7/19/16</b></u>		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that safety lines be used even though a miner might not be using a safety line.					
5	<b>Nally &amp; Hamilton Enterprises</b>  KENT 2011-434  <u><b>DECISION</b></u> <u><b>ISSUED 7/19/16</b></u>		8/29/13  Meeting 12/17/15		Whether the ALJ erred by ruling that the fall standard is not violated if the operator has taken certain steps to require that seatbelts be worn even though a miner might not be wearing a seatbelt.					
6	<b>Premier Elkhorn Coal Co.</b>  KENT 2011-827  <u><b>DECISION</b></u> <u><b>ISSUED 7/8/16</b></u>		2/27/13  Meeting 2/11/16		Whether the ALJ erred in not finding that a driver failed to maintain control of a truck when it hit a berm and flipped over.					
7	<b>Trivette Trucking</b>  KENT 2011-1223  <u><b>DECISION</b></u> <u><b>ISSUED 7/8/16</b></u>		8/2/13  Meeting 2/11/16		Whether the ALJ erred by concluding that a driver's inability to maintain control of his truck resulted from the mine operator's unwarrantable failure.					

No.	Case Name Docket No.		DFR Date		Description					
8	<b>Leeco, Inc.</b>  KENT 2012-166  <u><b>DECISION ISSUED 7/18/16</b></u>		8/22/14  Meeting 2/25/16		Whether the Judge erred in concluding that the mine operator was negligent where a continuous miner operator placed himself in an unsafe location.					
9	<b>ICG Illinois, LLC</b>  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
10	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					
11	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.		9/24/14  Meeting 3/24/16		Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.					
12	<b>The American Coal Co.</b>  LAKE 2011-701, et al.		10/29/13  Argument 4/20/16 Meeting 4/21/16		Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.					

No.	Case Name Docket No.		DFR Date		Description					
13	<b>Kentucky Fuel Corp.</b>  KENT 2011-1557, et al.  <u><b>DECISION ISSUED 7/8/16</b></u>		2/25/14  Meeting 4/5/16		Whether the ALJ erred in ruling that a dozer was subject to a standard covering "loading and haulage equipment" and that MSHA's citing of two separate standards was not impermissibly duplicative.					
14	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					
15	<b>Secretary o/b/o Riordan v. Knox Creek Coal Corp.</b>  VA 2014-343-D		18/15  Meeting 5/5/16		In this discrimination case, whether substantial evidence supports the Judge's determination that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.					
16	<b>Hecla Ltd. and Bayer</b>  WEST 2012-760-M, et al.		6/4/15  Argument 5/25/16 Meeting 5/26/16		Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.					



No.	Case Name Docket No.		DFR Date		Description					
24	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211		10/1/15  Meeting 5/18/16		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.					
25	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co. et al.</b>  WEVA 2015-583-D, et al.		12/22/15  Argument 6/13/16  Meeting 6/14/16		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.					
26	<b>The American Coal Co.</b>  LAKE 2011-13		7/11/14  Argument 7/12/16  Meeting 7/14/16		On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.					

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Portable, Inc.</b> EAJA 2015-1-M	[REDACTED]	8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
2	<b>Consol Pennsylvania Coal Co.</b> PENN 2013-385	[REDACTED]	9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
3	<b>Northshore Mining Co.</b> LAKE 2014-219-M	[REDACTED]	11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
4	<b>Sherwin Alumina Co.</b> CENT 2015-151-RM, et al.	[REDACTED]	10/31/15			Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.
5	<b>Nally &amp; Hamilton Enterprises, Inc.</b> KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two violations were not significant and substantial.
6	<b>McNary v. Alcoa World Alumina, Inc.</b> CENT 2015-279-DM	[REDACTED]	11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”
8	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
9	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator’s approved ventilation plan in interpreting a mandatory standard governing ventilation.
10	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
2	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
3	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
4	<b>Mach Mining, Inc.</b>  LAKE 2014-77, et al.		7/1/16	[REDACTED]	Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; Oral argument held 12/11/15; awaiting decision
2	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; oral argument scheduled for 9/22/16
3	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Briefing complete; awaiting oral argument order
4	Warrior Met Coal Mining, LLC v. FMSHRC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Petitioner's reply brief due 8/11/16
5	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Oral Argument scheduled for week of 10/31/16
6	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's brief due 9/16/16
7	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Petitioner's reply brief due 8/16/16 Oral argument scheduled 10/6/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Petitioner's brief due 8/5/16
9	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Petitioner's brief due 8/8/16
10	Warrior Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3646	Warrior Coal, LLC, 38 FMSHC ____, KENT 2011-1259-R (May 2016) (Whether the Commission erred in affirming a citation and order issued for operator's failure to provide requested information to MSHA investigators)	Petition for review filed 6/15/16 Petitioner's brief due 9/2/16
11	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC ____, WEST 2013-827-RM (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Petitioner's initial submissions due 8/11/16
12	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC ____, WEST 2014-527-M (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner must retain counsel who enters an appearance or show cause why it did not by 8/25/16
13	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC ____, KENT 2009-820-R (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Certified index due 9/1/16
14	Browning v. FMSHRC and Wilson D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC ____, KENT 2016-95-D (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.	Petitioner's initial submissions due 8/25/16

# SEPTEMBER 2016 SUBSTANTIVE CASE REPORT

September 1, 2016

A. [REDACTED]

No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>The American Coal Co.</b>  LAKE 2009-35  <u><b>DECISION</b></u> <u><b>ISSUED 8/30/16</b></u>	[REDACTED]	9/4/13  Meeting 6/3/15	[REDACTED]	On cross-petitions, whether the shift examiners' conduct was attributable to the operator for negligence purposes and whether the ALJ correctly interpreted the term "repeated failure" with regard to liability for a flagrant penalty.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Newtown Energy</b>  WEVA 2011-283  <u><b>DECISION</b></u> <u><b>ISSUED 8/29/16</b></u>	[REDACTED]	9/5/13  Meeting 7/9/15 5/4/16 5/18/16 5/26/16	[REDACTED]	Whether the ALJ erred by vacating an unwarrantable failure designation based on factors that are unsupported by substantial evidence and inconsistent with the law and by failing to address a supervisor's involvement in the violation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>ICG Illinois, LLC</b>  LAKE 2013-160	[REDACTED]	2/19/15  Meeting 3/10/16	[REDACTED]	Whether a violation of the requirement to maintain a refuge alternative was S&S.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
4	<b>Knight Hawk Coal, LLC</b>  LAKE 2014-120-R, et al.		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					
5	<b>CAM Mining, LLC</b>  KENT 2013-196-R, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 8/12/16</b></u>		9/24/14  Meeting 3/24/16		Whether the Judge erred in interpreting the preshift examination standard and ruling that the violation was S&S and an unwarrantable failure.					
6	<b>The American Coal Co.</b>  LAKE 2011-701, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 8/26/16</b></u>		10/29/13  Argument 4/20/16 Meeting 4/21/16		Whether the ALJ erred by not requiring that the Secretary prove by a preponderance of the evidence that the amounts of proposed penalties based on special assessments were appropriate.					
7	<b>The American Coal Co.</b>  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					



No.	Case Name Docket No.		DFR Date		Description					
8	<b>Secretary o/b/o Riordan v. Knox Creek Coal Corp.</b>  VA 2014-343-D  <u><b>DECISION ISSUED 8/23/16</b></u>		8/18/15  Meeting 5/5/16		In this discrimination case, whether substantial evidence supports the Judge's determination that the proffered reason for termination was pretextual, and whether the Judge erred in applying the <i>Pasula/Robinette</i> burden shifting framework.					
9	<b>Hecla Ltd. and Bayer</b>  WEST 2012-760-M, et al.  <u><b>DECISION ISSUED 8/30/16</b></u>		6/4/15  Argument 5/25/16 Meeting 5/26/16		Whether the Judge erred in ruling that the operator did not violate the standard requiring that ground conditions be examined and tested.					
10	<b>KenAmerican Resources, Inc.</b>  KENT 2013-211  <u><b>DECISION ISSUED 8/25/16</b></u>		10/1/15  Meeting 5/18/16		Whether the Judge erred in vacating an alleged violation of section 103(a), which prohibits advanced notice of an inspection.					

No.	Case Name Docket No.		DFR Date		Description					
11	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co. et al.</b>  WEVA 2015-583-D, et al.  <b><u>DECISION</u></b> <b><u>ISSUED 8/26/16</u></b>		12/22/15  Argument 6/13/16  Meeting 6/14/16		On cross petitions, whether the Judge erred in concluding that certain statements by mine management constituted an interference with safety rights under the Mine Act and whether the Judge erred in dismissing one count of the Secretary's complaint.					
12	<b>The American Coal Co.</b>  LAKE 2011-13  <b><u>DECISION</u></b> <b><u>ISSUED 8/25/16</u></b>		7/11/14  Argument 7/12/16  Meeting 7/14/16		On interlocutory review, whether the Judge erred in denying the Secretary's motion to approve settlement.					
13	<b>Sherwin Alumina Co.</b>  CENT 2015-151-RM, et al.  <b><u>DISMISSAL</u></b> <b><u>ORDER ISSUED</u></b> <b><u>8/17/16</u></b>		10/31/15		Whether an operator must allow a miner to enter a mine during a lockout when the miner had previously been designated as a miners' representative.					

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Portable, Inc.</b> EAJA 2015-1-M	[REDACTED]	8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
2 *	<b>Consol Pennsylv- ania Coal Co.</b> PENN 2013-385	[REDACTED]	9/8/15			Whether the Judge erred in making high negligence and unwarrantable failure findings.
3 *	<b>Northshore Mining Co.</b> LAKE 2014-219-M	[REDACTED]	11/25/15			Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
4	<b>Nally &amp; Hamilton Enterprises, Inc.</b> KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two violations were not significant and substantial.
5 *	<b>McNary v. Alcoa World Alumina, Inc.</b> CENT 2015-279-DM	[REDACTED]	11/5/15			Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
6	<b>Consolidation Coal Co.</b> VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
8 *	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
9	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
2	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED] s	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
3	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
4	<b>Mach Mining, Inc.</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16	[REDACTED]	Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
5	<b>Arnold Stone Co.</b>  CENT 2016-95-M	[REDACTED]	8/26/16	[REDACTED]	Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; <u>Decision issued 8/12/16</u> <u>Petition for rehearing filed 8/22/16</u>
2	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Briefing complete; oral argument scheduled for 9/22/16
3	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Briefing complete; awaiting oral argument order
4	Warrior Met Coal Mining, LLC v. FMSHRC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Briefing complete; awaiting oral argument order
5	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Oral Argument scheduled for week of 10/31/16
6	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's brief due 9/16/16
7	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Briefing complete Oral argument scheduled 10/6/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Secretary's brief due 9/6/16
9	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Secretary's brief due 9/7/16
10	Warrior Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3646	Warrior Coal, LLC, 38 FMSHC 913, KENT 2011-1259-R (May 2016) (Whether the Commission erred in affirming a citation and order issued for operator's failure to provide requested information to MSHA investigators)	Petition for review filed 6/15/16 <u>Voluntarily dismissed 8/31/16</u>
11	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC ___, WEST 2013-827-RM (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Awaiting briefing order
12	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner must retain counsel who enters an appearance or show cause why it did not by 8/25/16 – neither has occurred
13	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC ___, KENT 2009-820-R (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Petitioner's brief due 10/13/16
14	Browning v. FMSHRC and Wilson D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Certified index due 9/9/16

# OCTOBER 2016 SUBSTANTIVE CASE REPORT

October 3, 2016

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	ICG Illinois, LLC  LAKE 2013-160		2/19/15  Meeting 3/10/16		Whether a violation of the requirement to maintain a refuge alternative was S&S.					
2	Knight Hawk Coal, LLC  LAKE 2014-120-R, et al.  <u>DECISION</u> <u>ISSUED 9/29/16</u>		4/22/15  Argument 3/23/16 Meeting 3/24/16		Whether the Judge erred in affirming an unwarrantable failure finding and imposing a \$70,000 penalty in connection with a fatality involving a continuous miner operator.					
3	The American Coal Co.  LAKE 2008-666, et al.		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.					



B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Portable, Inc.</b> EAJA 2015-1-M	[REDACTED]	8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
2 *	<b>Consol Pennsylvania Coal Co.</b> PENN 2013-385	[REDACTED]	9/8/15		[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.
3 *	<b>Northshore Mining Co.</b> LAKE 2014-219-M	[REDACTED]	11/25/15		[REDACTED]	Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.
4	<b>Nally &amp; Hamilton Enterprises, Inc.</b> KENT 2012-749, et al.	[REDACTED]	9/28/15			Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
5 *	<b>McNary v. Alcoa World Alumina, Inc.</b> CENT 2015-279-DM	[REDACTED]	11/5/15		[REDACTED]	Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
6	<b>Consolidation Coal Co.</b> VA 2012-42 et al.	[REDACTED]	11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
8 *	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
9	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
10	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16			Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
11	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M	[REDACTED]	10/2/15	[REDACTED]	Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted.  (consolidated cases)
2	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
3	<b>Arnold Stone Co.</b>  CENT 2016-95-M	[REDACTED]	8/26/16	[REDACTED]	Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
4	<b>Canyon Fuel Co.</b>  WEST 2015-635		9/26/16	[REDACTED]	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.
5	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16	[REDACTED]	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; <u>Decision issued 8/12/16</u> <u>Petition for rehearing filed 8/22/16</u> <u>Rehearing and rehearing en banc denied 10/3/16</u>
2	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Oral argument held 9/22/16; awaiting decision
3	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Oral argument scheduled 12/8/16
4	Warrior Met Coal Mining, LLC v. FMSHRC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 Briefing complete; awaiting oral argument order
5	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Oral Argument will not be held; awaiting decision
6	Petro Chemical Insulation, Inc. v. Sec. of Labor D.C. Cir. No. 16-1090	Petro Chemical Insulation, Inc., 37 FMSHRC 2826 (Dec. 2015) (ALJ) (whether the ALJ erred in determining that the operator violated a standard requiring that mobile equipment be capable of sounding an audible alarm when in reverse)	Petition for review filed 3/7/16 Petitioner's brief due 9/16/16 <u>Case voluntarily dismissed 9/23/16</u>
7	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 Briefing complete Oral argument scheduled 10/6/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Secretary's brief due 10/7/16
9	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Briefing complete; awaiting oral argument
10	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
11	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner's brief due 10/31/16
12	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Petitioner's brief due 10/13/16
13	Browning v. FMSHRC and Wilson D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Petitioner's brief due 10/24/16
14	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC ____, LAKE 2011-13 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 Petitioner's initial submissions due 10/24/16

# NOVEMBER 2016 SUBSTANTIVE CASE REPORT

November 2, 2016

A. [REDACTED]

						[REDACTED]				
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	ICG Illinois, LLC  LAKE 2013-160  <u>DECISION</u> <u>ISSUED 10/21/16</u>	[REDACTED]	2/19/15  Meeting 3/10/16	[REDACTED]	Whether a violation of the requirement to maintain a refuge alternative was S&S.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	The American Coal Co.  LAKE 2008-666,etal.	[REDACTED]	6/27/14  Meeting 4/5/16	[REDACTED]	Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	Northshore Mining Co.  LAKE 2014-219-M	[REDACTED]	11/25/15  Argument 10/20/16 Meeting 10/21/16		Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.				[REDACTED]	

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Portable, Inc.</b> EAJA 2015-1-M	[REDACTED]	8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
2 *	<b>Consol Pennsylvania Coal Co.</b> PENN 2013-385	[REDACTED]	9/8/15		[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.
3	<b>Nally &amp; Hamilton Enterprises, Inc.</b> KENT 2012-749, et al.	[REDACTED]	9/28/15			Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
4 *	<b>McNary v. Alcoa World Alumina, Inc.</b> CENT 2015-279-DM	[REDACTED]	11/5/15		[REDACTED]	Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.
5	<b>Consolidation Coal Co.</b> VA 2012-42 et al.	[REDACTED]	11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."
6	<b>Pocahontas Coal Co.</b> WEVA 2014-395-R, et al.	[REDACTED]	1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7 *	<b>Peabody Twentymile Mining, LLC</b>  WEST 2014-930-R		1/8/16			Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.
8	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
9	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16			Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
10	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
11	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15			Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)



C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
2	<b>Arnold Stone Co.</b>  CENT 2016-95-M	[REDACTED]	8/26/16	[REDACTED]	Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
3	<b>Canyon Fuel Co.</b>  WEST 2015-635		9/26/16	[REDACTED]	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.
4	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16	[REDACTED]	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Tilden Mining Co. v. FMSHRC D.C. Cir. No. 14-1170	Tilden Mining Co., 36 FMSHRC 1965 (Aug. 2014) (whether the Commission erred in holding that extension cords can be considered part of a grounding system subject to continuity and resistance testing)	Petition for review filed 9/8/14; <u>Mandate issued 10/14/16</u>
2	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 Oral argument held 9/22/16; awaiting decision
3	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Oral argument scheduled 12/8/16
4	Warrior Met Coal Mining, LLC v. FMSHRC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 <u>Decision issued 10/6/16; awaiting mandate</u>
5	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 Oral Argument will not be held; awaiting decision
6	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 <u>Decision issued 10/20/16; awaiting mandate</u>
7	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Briefing complete; awaiting oral argument order

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Briefing complete; awaiting oral argument
9	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
10	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner's brief due 10/31/16
11	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Secretary's brief due 11/15/16
12	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Browning's brief due 11/23/16
13	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC ____, LAKE 2011-13 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 Certified index due 11/7/16
14	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC ____, CENT 2015-598 (Aug. 2016) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16

# DECEMBER 2016 SUBSTANTIVE CASE REPORT

December 5, 2016

A. [REDACTED]

						[REDACTED]				
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>The American Coal Co.</b>  LAKE 2008-666,et al.	[REDACTED]	6/27/14  Meeting 4/5/16	[REDACTED]	Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Northshore Mining Co.</b>  LAKE 2014-219-M	[REDACTED]	11/25/15  Argument 10/20/16 Meeting 10/21/16	[REDACTED]	Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16		Whether the Judge erred in making high negligence and unwarrantable failure findings.				[REDACTED]	
4	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM	[REDACTED]	11/5/15  Argument 11/17/16 Meeting 11/18/16		Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.				[REDACTED]	

No.	Case Name Docket No.		DFR Date		Description					
5	<b>Peabody Twenty-mile Mining, LLC</b>  WEST 2014-930-R		1/8/16  Argument 11/10/16 Meeting 11/15/16		Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.					

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15			Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.
2	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
3	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15			Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."

No.	Case Name & Docket No.		DFR Date			COMMENTS
4	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
5	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
6 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16			Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.
7	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
8	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15			Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)
9	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16			Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
2	<b>Canyon Fuel Co.</b>  WEST 2015-635		9/26/16	[REDACTED]	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.
3	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16	[REDACTED]	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.
4	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16	[REDACTED]	Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
5	<b>Lowe and Varady v. Veris Gold USA, Inc., et al.</b>  WEST 2014-614-DM	[REDACTED]	12/2/16	[REDACTED]	Whether the Judge erred in dismissing two discrimination cases where the original operator was the subject of bankruptcy proceedings.

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 <u>Decision issued 11/10/16; awaiting mandate</u>
2	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
3	Warrior Met Coal Mining, LLC v. FMSHRC 11 <sup>th</sup> Cir. No. 15-14885	Jim Walter Resources, Inc., 37 FMSHRC 1968 (Sept. 2015) (whether the Commission erred in upholding a section 107(a) imminent danger order)	Petition for review filed 10/30/15 <u>Decision issued 10/6/16; mandate issued 11/29/16</u>
4	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 <u>Decision issued 11/19/16; awaiting mandate</u>
5	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC ___, WEST 2016-156-DM (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 <u>Decision issued 10/20/16; awaiting mandate</u>
6	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Briefing complete; awaiting oral argument order
7	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 Briefing complete Oral argument scheduled 12/19/16



No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
9	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Awaiting action on FMSHRC's motion to dismiss/clarify
10	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete; awaiting oral argument order
11	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Browning's brief due 12/23/16
12	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC 1972 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 Secretary's brief due 1/9/17
13	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Petitioner's brief due 12/14/16
14	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Certified index brief due 12/19/16
15	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC ____, WEST 2015-346-M, etc. (Sept. 20, 2016) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for Review filed 9/18/16 Certified index due 12/28/16

No.	Appellate Case Name and Docket No.	Commission Decision	Status
16	GMS Mine Repair & Maintenance, Inc. v. Sec'y of Labor and Shayne Bungard 4th Cir. No. 16-2368	Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maintenance, Inc., 38 FMSHRC ____, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)	Petition for review filed 12/1/16 Certified index due 1/10/17

# JANUARY 2017 SUBSTANTIVE CASE REPORT

January 6, 2017

A. [REDACTED]

						[REDACTED]				
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>The American Coal Co.</b>  LAKE 2008-666,et al.	[REDACTED]	6/27/14  Meeting 4/5/16	[REDACTED]	Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Northshore Mining Co.</b>  LAKE 2014-219-M	[REDACTED]	11/25/15  Argument 10/20/16 Meeting 10/21/16	[REDACTED]	Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.					

No.	Case Name Docket No.		DFR Date		Description					
4	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15  Argument 11/17/16 Meeting 11/18/16		Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.					
5	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R		1/8/16  Argument 11/10/16 Meeting 11/15/16		Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.					
6	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15  Meeting 12/8/16		Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.					
7	<b>Lowe and Varady v. Veris Gold USA, Inc., et al.</b>  WEST 2014-614-DM et al.  <b><u>REMAND ORDER</u></b> <b><u>ISSUED 12/16/16</u></b>		12/2/16		Whether the Judge erred in dismissing two discrimination cases where the original operator was the subject of bankruptcy proceedings.					

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.	[REDACTED]	9/28/15			Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
2	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15		[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”
3	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.	[REDACTED]	1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
4	<b>Bussen Quarries, Inc.</b>  CENT 2015-385	[REDACTED]	1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
5 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16		[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners’ rights under the Mine Act.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
7	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15			Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)
8	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16			Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
9 *	<b>Canyon Fuel Co.</b>  WEST 2015-635 et al.		9/26/16			Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.
10	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16			Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
2 *	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16	[REDACTED]	Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16	[REDACTED]	Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.	[REDACTED]	1/3/17	[REDACTED]	Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 <u>Decision issued 11/10/16; awaiting mandate</u>
2	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
3	Noranda Alumina, LLC v. FMSHRC 5 <sup>th</sup> Cir. No. 16-60049	Noranda Alumina, LLC, 37 FMSHRC 2731 (Dec. 2015) (whether Commission erred in denying operator's motion to reopen)	Petition for review filed 1/20/16 <u>Decision issued 11/19/16;</u> <u>Mandate issued 1/3/17</u>
4	CalPortland Co. v. FMSHRC D.C. Cir. No. 16-1094	Sec. of Labor on behalf of Pappas v. CalPortland Co., 38 FMSHRC 137 (Feb. 2016) (whether the Commission erred in affirming the ALJ's granting of a temporary reinstatement application)	Petition for review filed 3/8/16 <u>Decision issued 10/20/16;</u> <u>Mandate issued 12/13/16</u>
5	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Briefing complete Oral argument scheduled 2/1/17
6	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 <u>Decision issued 12/20/16; awaiting mandate</u>
7	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
8	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Awaiting action on FMSHRC's motion to dismiss/clarify



No.	Appellate Case Name and Docket No.	Commission Decision	Status
9	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete; awaiting oral argument order
10	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Browning's brief filed 12/23/16 Petitioner's reply brief due 1/20/17
11	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC 1972 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 Secretary's brief due 1/17/17
12	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Petitioner ordered to file brief by 1/3/17 or face dismissal
13	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Case held in abeyance pending initiation of mediation
14	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for Review filed 9/18/16 Petitioner's brief due 2/6/17
15	GMS Mine Repair & Maintenance, Inc. v. Sec'y of Labor and Bungard 4 <sup>th</sup> Cir. No. 16-2368	Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maintenance, Inc., 38 FMSHRC ___, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)	Petition for review filed 12/1/16 Certified index due 1/10/17

# FEBRUARY 2017 SUBSTANTIVE CASE REPORT

February 3, 2017

A. [REDACTED]

No.	Case Name Docket No.		DFR Date		Description					
1	<b>The American Coal Co.</b>  LAKE 2008-666,et al.  <u><b>DECISION ISSUED</b></u> <u><b>1/24/17</b></u>		6/27/14  Meeting 4/5/16		Whether the ALJ erred in vacating the unwarrantable failure findings for three violations.	Comments [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Northshore Mining Co.</b>  LAKE 2014-219-M  <u><b>DECISION</b></u> <u><b>ISSUED 1/11/17</b></u>		11/25/15  Argument 10/20/16 Meeting 10/21/16		Whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.	Comments [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385		9/8/15  Argument 11/8/16 Meeting 11/9/16		Whether the Judge erred in making high negligence and unwarrantable failure findings.				[REDACTED]	

No.	Case Name Docket No.		DFR Date		Description					
4	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		11/5/15  Argument 11/17/16 Meeting 11/18/16		Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.					
5	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R		1/8/16  Argument 11/10/16 Meeting 11/15/16		Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.					
6	<b>Portable, Inc.</b>  EAJA 2015-1-M		8/11/15  Meeting 12/8/16		Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.					
7	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15  Meeting 1/19/17		Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."					
8 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.		9/26/16  Argument 2/15/17 Meeting 2/16/17		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.					

No.	Case Name Docket No.		DFR Date		Description					
9 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.					
10	<b>Secretary o/b/o Anderson v. A &amp; G Coal Corp.</b>  VA 2017-069-D		1/24/17 (filing of PTR)		Whether the Judge erred in denying a tolling motion with regard to a temporary reinstatement order.					

**B.** [REDACTED]

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15			Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
2	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.

No.	Case Name & Docket No.		DFR Date			COMMENTS
3	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16			Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
4	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
5	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15			Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)
6	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16			Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
7 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.		9/26/16			Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.
8	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16			Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Sims Crane</b>  SE 2015-315	[REDACTED]	6/1/16	[REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
2 *	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16	[REDACTED]	Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16	[REDACTED]	Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17	[REDACTED]	Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."
5	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17	[REDACTED]	Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Consol Buchanan Mining Co. v. FMSHRC 4 <sup>th</sup> Cir. No. 15-1321	Consol Buchanan Mining Co., 37 FMSHRC 90 (Jan. 2015) (ALJ) (whether ALJ erred in concluding that a violation was due to an unwarrantable failure)	Petition for review filed 3/27/15 <u>Decision issued 11/10/16; mandate issued 1/3/17</u>
2	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
3	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 Briefing complete Oral argument held 2/1/17
4	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 <u>Decision issued 12/20/16; awaiting mandate</u>
5	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
6	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner's brief due 4/28/17
7	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete Oral argument scheduled 3/15/17

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	<b>Wilson v. FMSHRC and Browning</b> D.C. Cir. No. 16-250	<b>Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)</b>	<b>Petition for review filed 7/25/16</b> <b>Briefing complete; awaiting oral argument order</b>
9	<b>Sec'y of Labor v. FMSHRC</b> D.C. Cir. No. 16-1333	<b>The American Coal Co., 38 FMSHRC 1972 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)</b>	<b>Petition for Review filed 9/23/16</b> <b>Secretary's brief due 3/20/17</b>
10	<b>Gary Servaes Enterprises v. Hirt and FMSHRC</b> 10 <sup>th</sup> Cir. No. 16-9552	<b>Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)</b>	<b>Petition for review filed 9/23/16</b> <b>Motion to dismiss pending</b>
11	<b>Hamilton v. FMSHRC</b> 9th Cir. No. 16-73571	<b>Sec'y on behalf of Hamilton v. American Mining &amp; Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)</b>	<b>Petition for review filed 11/8/16</b> <b>Motion to add operator pending</b>
12	<b>Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor</b> 9th Cir. No. 16-73682	<b>Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)</b>	<b>Petition for Review filed 9/18/16</b> <b>Petitioner's brief due 2/6/17</b>
13	<b>GMS Mine Repair &amp; Maintenance, Inc. v. Sec'y of Labor and Bungard</b> 4th Cir. No. 16-2368	<b>Sec'y of Labor on behalf of Bungard v. GMS Mine Repair &amp; Maintenance, Inc., 38 FMSHRC ____, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)</b>	<b>Petition for review filed 12/1/16</b> <b>Petitioner's brief due 3/23/17</b>



## MARCH 2017 SUBSTANTIVE CASE REPORT

March 1, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.	[REDACTED]		[REDACTED]	
2	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM	[REDACTED]	11/5/15  Argument 11/17/16 Meeting 11/18/16	[REDACTED]	Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.	[REDACTED]			
3	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.				

No.	Case Name Docket No.		DFR Date		Description				
4	<b>Portable, Inc.</b>  EAJA 2015-1-M  <u><b>DISMISSAL ORDER ISSUED 2/21/17</b></u>		8/11/15  <b>Meeting 12/8/16</b>		Whether the Judge erred in ruling in this EAJA case that the Secretary's position was not substantially justified.				
5	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15  <b>Meeting 1/19/17</b>		Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."				
6 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.		9/26/16  <b>Argument 2/15/17 Meeting 2/16/17</b>		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.				
7 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16  <b>Argument 2/2/17 Meeting 2/3/17</b>		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				

No.	Case Name Docket No.		DFR Date		Description				
8	<b>Secretary o/b/o Anderson v. A &amp; G Coal Corp.</b>  VA 2017-069-D  <u><b>REMAND ORDER ISSUED 2/10/17</b></u>		1/24/17 (filing of PTR)		Whether the Judge erred in denying a tolling motion with regard to a temporary reinstatement order.				
9	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15  Meeting 2/16/17		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.	[REDACTED]	9/28/15		[REDACTED]	Whether the Judge erred in concluding that two highwall violations were not significant and substantial.
2	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.	[REDACTED]	1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
3 *	<b>Bussen Quarries, Inc.</b>  CENT 2015-385	[REDACTED]	1/21/16		[REDACTED]	Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.
4	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
5	<b>Arnold Stone Co.</b>  CENT 2016-95-M	[REDACTED]	8/26/16			Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
6	<b>Mach Mining, LLC</b>  LAKE 2014-746	[REDACTED]	9/29/16			Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.

C.

No.	Case Name & Docket Number		DFR Date		Description
1 *	<b>Sims Crane</b>  SE 2015-315		6/1/16		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
2	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
3	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."

No.	Case Name & Docket Number		DFR Date		Description
4	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
5	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17		Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
6	<b>Sims Crane</b>  SE 2016-81		2/22/17		Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.

## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 <u>Decision issued 2/13/17; awaiting mandate</u>
3	Consol Pennsylvania Coal Co. v. Sec. of Labor 3 <sup>rd</sup> Cir. No. 16-2643	Consol Pennsylvania Coal Co., 38 FMSHRC 470 (Mar. 2016) (ALJ) (whether the ALJ erred in concluding that the operator violated examination and accident reporting requirements with respect to a hoist)	Petition for review filed 5/26/16 <u>Decision issued 12/20/16; mandate issued 2/12/17</u>
4	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 Briefing held in abeyance pending mediation
5	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner's brief due 4/28/17
6	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete Oral argument scheduled 3/15/17
7	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Briefing complete; awaiting oral argument order

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC 1972 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 Secretary's brief due 3/20/17
9	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Motion to abate proceeding pending penalty assessment granted 2/21/17
10	Hamilton v. FMSHRC 9th Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Motion to add operator to caption pending
11	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for Review filed 9/18/16 Petitioner's brief filed 2/6/17 Secretary's brief due 4/7/17
12	GMS Mine Repair & Maintenance, Inc. v. Sec'y of Labor and Bungard 4th Cir. No. 16-2368	Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maintenance, Inc., 38 FMSHRC ____, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)	Petition for review filed 12/1/16 Motion to approve settlement filed 2/27/17



**APRIL 2017 SUBSTANTIVE CASE REPORT**

April 3, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	Consol Pennsylv- ania Coal Co.  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	McNary v. Alcoa World Alumina, Inc.  CENT 2015-279-DM  <u>DECISION</u> <u>ISSUED 3/28/17</u>	[REDACTED]	11/5/15  Argument 11/17/16 Meeting 11/18/16	[REDACTED]	Whether the Judge erred in issuing a summary decision concluding that the operator did not interfere with the complainant's statutory rights as a miners' representative.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	Peabody Twenty- mile Mining, LLC  WEST 2014-930-R	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.		11/30/15  Meeting 1/19/17		Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."				
5 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.		9/26/16  Argument 2/15/17 Meeting 2/16/17		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.				
6 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
7	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15  Meeting 2/16/17		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)				

No.	Case Name Docket No.		DFR Date		Description				
8 *	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16  Meeting 3/16/17		Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.				
9	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				

**B.** [REDACTED]

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
2	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.

No.	Case Name & Docket No.		DFR Date			COMMENTS
3	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16			Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.
4	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16			Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.
5	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
6 *	<b>Sims Crane</b>  SE 2015-315		6/1/16			Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
7	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.	[REDACTED]	1/3/17	[REDACTED]	Whether the Judge erred by ruling that sending a miner into the pit in question constituted “high negligence” rather than “reckless disregard.”
2	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17	[REDACTED]	Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
3	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17	[REDACTED]	Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
4	<b>Sims Crane</b>  SE 2016-81		2/22/17	[REDACTED]	Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.

#### D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Maxxim Rebuild Co. v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3530	Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)	Petition for review filed 5/20/16 <u>Decision issued 2/13/17; awaiting mandate</u>
3	Knife River Constr. v. FMSHRC D.C. Cir. No. 16-1233	Knife River Constr., 38 FMSHRC 1289 (June 2016) (Whether Commission erred in affirming Judge's decision upholding imminent danger order)	Petition for review filed 7/7/16 <u>Dismissed pursuant to settlement order</u> <u>Mandate issued 3/28/17</u>
4	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petitioner's brief due 4/28/17
5	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete Oral argument held 3/15/17; awaiting decision
6	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Briefing complete Oral argument scheduled 5/4/17
7	Sec'y of Labor v. FMSHRC D.C. Cir. No. 16-1333	The American Coal Co., 38 FMSHRC 1972 (Aug. 25, 2016) (Whether the Commission erred in upholding the ALJ's authority to review proposed settlements)	Petition for Review filed 9/23/16 <u>Voluntarily dismissed and mandate issued 3/28/17</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Motion to abate proceeding pending penalty assessment granted 2/21/17
9	Hamilton v. FMSHRC 9th Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Motion to add operator to caption pending
10	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for Review filed 9/18/16 Petitioner's brief filed 2/6/17 Secretary's brief due 4/7/17
11	GMS Mine Repair & Maintenance, Inc. v. Sec'y of Labor and Bungard 4th Cir. No. 16-2368	Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maintenance, Inc., 38 FMSHRC ____, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)	Petition for review filed 12/1/16 <u>Dismissed pursuant to settlement 3/8/17</u> <u>Awaiting mandate</u>

# MAY 2017 SUBSTANTIVE CASE REPORT

May 9, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.	[REDACTED]	9/26/16  Argument 2/15/17 Meeting 2/16/17	[REDACTED]	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



No.	Case Name Docket No.		DFR Date		Description				
5 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
6	<b>John Richards Construction</b>  WEST 2014-440-M WEST 2015-101-M		10/2/15  Meeting 2/16/17		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)				
7 *	<b>Bussen Quarries, Inc.</b>  CENT 2015-385		1/21/16  Meeting 3/16/17		Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.				
8	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				

No.	Case Name Docket No.		DFR Date		Description				
9	Arnold Stone Co.  CENT 2016-95-M		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				

B.

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	Pocahontas Coal Co.  WEVA 2014-395-R, et al.		1/6/16			Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
2	Mach Mining, LLC  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
3	Mach Mining, LLC  LAKE 2014-746		9/29/16			Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.

No.	Case Name & Docket No.		DFR Date			COMMENTS
4	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
5 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16			Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
6	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
7 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17			Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>Kentucky Fuel Corp.</b>  KENT 2015-383	[REDACTED]	1/12/17	[REDACTED]	Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
2	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17	[REDACTED]	Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
3	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17	[REDACTED]	Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
4	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R		4/17/17	[REDACTED]	Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
5	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17	[REDACTED]	Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.

## **D. COMMISSION DECISIONS ON APPEAL**

<b>No.</b>	<b>Appellate Case Name and Docket No.</b>	<b>Commission Decision</b>	<b>Status</b>
<b>1</b>	<b>Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391</b>	<b>Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&amp;S violation of the requirement that a refuge chamber be provided)</b>	<b>Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions</b>
<b>2</b>	<b>Maxxim Rebuild Co. v. FMSHRC 6<sup>th</sup> Cir. No. 16-3530</b>	<b>Maxxim Rebuild Co., 38 FMSHRC 605 (Apr. 2016) (whether the operator is subject to Mine Act jurisdiction)</b>	<b>Petition for review filed 5/20/16 <u>Decision issued 2/13/17; mandate issued 4/11/17</u></b>
<b>3</b>	<b>Original Sixteen to One Mine, Inc. v. FMSHRC 9<sup>th</sup> Cir. No. 16-72349</b>	<b>Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)</b>	<b>Petition for review filed 7/12/16 Petitioner's brief due 5/30/17</b>
<b>4</b>	<b>Hopkins County Coal, LLC v. FMSHRC 6<sup>th</sup> Cir. No. 16-3848</b>	<b>Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)</b>	<b>Petition for review filed 7/22/16 Briefing complete Oral argument held 3/15/17; awaiting decision</b>
<b>5</b>	<b>Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250</b>	<b>Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)</b>	<b>Petition for review filed 7/25/16 Briefing complete Oral argument held 5/4/17</b>
<b>6</b>	<b>Gary Servaes Enterprises v. Hirt and FMSHRC 10<sup>th</sup> Cir. No. 16-9552</b>	<b>Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)</b>	<b>Petition for review filed 9/23/16 Motion to abate proceeding pending penalty assessment granted 2/21/17</b>
<b>7</b>	<b>Hamilton v. FMSHRC 9<sup>th</sup> Cir. No. 16-73571</b>	<b>Sec'y on behalf of Hamilton v. American Mining &amp; Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)</b>	<b>Petition for review filed 11/8/16 Motion to add operator to caption pending</b>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for Review filed 9/18/16 Briefing complete; awaiting oral argument order
9	GMS Mine Repair & Maintenance, Inc. v. Sec'y of Labor and Bungard 4th Cir. No. 16-2368	Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maintenance, Inc., 38 FMSHRC ____, WEVA 2015-793-D (Oct. 21, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in increasing the Secretary's proposed penalty.)	Petition for review filed 12/1/16 <u>Dismissed pursuant to settlement 3/8/17</u> <u>Mandate issued 5/1/17</u>

## JUNE 2017 SUBSTANTIVE CASE REPORT

June 1, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsylvania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.	[REDACTED]	[REDACTED]	[REDACTED]	
2	<b>Peabody Twenty-mile Mining, LLC</b>  WEST 2014-930-R	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	Canyon Fuel Co., LLC  WEST 2015-635 et al.		9/26/16  Argument 2/15/17 Meeting 2/16/17		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.				
5 *	Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
6	John Richards Construction  WEST 2014-440-M WEST 2015-101-M  <u>DECISION</u> <u>ISSUED</u> <u>5/11/17</u>		10/2/15  Meeting 2/16/17		Whether the Judge erred in granting summary decision in a case involving an MSHA inspector's right of entry and in ruling that an annual inspection of fire extinguishers had not been conducted. (consolidated cases)				
7 *	Bussen Quarries, Inc.  CENT 2015-385  <u>DECISION</u> <u>ISSUED</u> <u>5/31/17</u>		1/21/16  Meeting 3/16/17		Whether the Judge erred in determining there had been a violation of a mandatory standard governing the requirement to use safety belts and lines.				



No.	Case Name Docket No.		DFR Date		Description				
8	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				
9	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				
10	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.	[REDACTED]	1/6/16		[REDACTED]	Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
2	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
3	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
4 *	<b>Sims Crane, Inc.</b>  SE 2015-315	[REDACTED]	6/1/16		[REDACTED] [REDACTED]	Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.
5	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17			Whether the Judge erred by ruling that sending a miner into the pit in question constituted “high negligence” rather than “reckless disregard.”
7	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17			Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
8	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17			Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
9	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]y	DFR Date	[REDACTED]	Description
1 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R		4/17/17	[REDACTED]	Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
2	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17	[REDACTED]	Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.
3	<b>M-Class Mining, LLC</b>  LAKE 2012-519		5/12/17	[REDACTED]	Whether the Judge erred by concluding that miner was not required to wear gloves while troubleshooting an energized continuous mining machine.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petition for review filed 7/12/16 <u>Petitioner's motion to voluntarily dismiss 5/30/17</u>
3	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete Oral argument held 3/15/17; awaiting decision
4	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Briefing complete Oral argument held 5/4/17; awaiting decision
5	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Motion to abate proceeding pending penalty assessment granted 2/21/17
6	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Motion to add operator to caption pending
7	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Awaiting briefing schedule

# JULY 2017 SUBSTANTIVE CASE REPORT

July 5, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings.	[REDACTED]	[REDACTED]	[REDACTED]	
2	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	Canyon Fuel Co., LLC  WEST 2015-635 et al.		9/26/16  Argument 2/15/17 Meeting 2/16/17		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.				
5 *	Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
6	Nally & Hamilton Enterprises, Inc.  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				
7	Arnold Stone Co.  CENT 2016-95-M		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				



No.	Case Name Docket No.		DFR Date		Description				
8	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				
9 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17  Argument 6/14/17  Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."				
10 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.	[REDACTED]	1/6/16		[REDACTED]	Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.
2	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
3	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
4	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
5	<b>Kentucky Fuel Corp.</b>  KENT 2015-383	[REDACTED]	1/12/17			Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17			Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
7	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
8	<b>M-Class Mining, LLC</b>  LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R		4/17/17	[REDACTED]	Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
2	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17	[REDACTED]	Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.
3	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	5/25/17	[REDACTED]	On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
4	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.		6/15/17	[REDACTED]	On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Original Sixteen to One Mine, Inc. v. FMSHRC 9 <sup>th</sup> Cir. No. 16-72349	Original Sixteen to One Mine, Inc., 38 FMSHRC 1019 (May 2016) (ALJ) (Whether the Judge erred in affirming 22 citations against the operator)	Petition for review filed 7/12/16 <u>Court granted Petitioner's motion to voluntarily dismiss 6/6/17</u>
3	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 Briefing complete Oral argument held 3/15/17; awaiting decision
4	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 Briefing complete Oral argument held 5/4/17; awaiting decision
5	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Abatement of proceeding pending penalty assessment lifted 6/28/17 Petitioner's brief due 8/7/17
6	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Petitioner's brief due 7/17/17
7	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Awaiting briefing schedule
9	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. ____	John Richards Construction, 39 FMSHRC ____ (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed ____

## AUGUST 2017 SUBSTANTIVE CASE REPORT

August 1, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsylv- ania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings regarding water in a bleeder system.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Peabody Twenty- mile Mining, LLC</b>  WEST 2014-930-R  <u><b>DECISION</b></u> <u><b>ISSUED 7/31/17</b></u>	[REDACTED]	1/8/16  Argument 11/10/16 Meeting 11/15/16	[REDACTED]	Whether the Judge erred by rejecting consideration of the operator's approved ventilation plan in interpreting a mandatory standard governing ventilation.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not "significant and substantial."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	Canyon Fuel Co., LLC  WEST 2015-635 et al.		9/26/16  Argument 2/15/17 Meeting 2/16/17		Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.				
5 *	Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
6	Nally & Hamilton Enterprises, Inc.  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				
7	Arnold Stone Co.  CENT 2016-95-M		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				



No.	Case Name Docket No.		DFR Date		Description				
8	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				
9 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17  Argument 6/14/17  Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."				
10 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
11	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	<b>Kentucky Fuel Corp.</b>  KENT 2015-383	[REDACTED]	1/12/17			Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
5	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.	[REDACTED]	2/17/17			Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6	<b>Sims Crane, Inc.</b> SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
7	<b>M-Class Mining, LLC</b> LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
8 *	<b>Signal Peak Energy, LLC</b> WEST 2016-624-R		4/17/17			Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.

C.

No.	Case Name & Docket Number		DFR Date		Description
1 *	<b>Pappas v. CalPortland Co., et al.</b> WEST 2016-264-DM		5/9/17		Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.
2	<b>The American Coal Co.</b> LAKE 2011-13		5/25/17		On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.

No.	Case Name & Docket Number		DFR Date		Description
3	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.		6/15/17		On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.
4	<b>The American Coal Co.</b>  LAKE 2009-35		7/25/17		Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.

#### **D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	<b>Small Mine Development v. FMSHRC</b> D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	<b>Hopkins County Coal, LLC v. FMSHRC</b> 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 <u>Decision issued 7/18/17</u> <u>Awaiting mandate</u>
3	<b>Wilson v. FMSHRC and Browning</b> D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 <u>Decision issued 7/21/17</u> <u>Awaiting mandate</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
4	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Petitioner's brief due 8/7/17
5	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Petitioner's brief due 8/16/17
6	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
7	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Petitioner's brief due 8/15/17
8	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Secretary's brief due 8/16/17
9	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 Petitioners must file Commission decision and pay filing fee by 8/2/17
10	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 Petitioners must file Commission decision by 8/4/17

# SEPTEMBER 2017 SUBSTANTIVE CASE REPORT

September 5, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsyl- vania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings regarding water in a bleeder system.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 *	<b>Canyon Fuel Co., LLC</b>  WEST 2015-635 et al.  <u><b>DECISION ISSUED 8/16/17</b></u>	[REDACTED]	9/26/16  Argument 2/15/17 Meeting 2/16/17	[REDACTED]	Whether the Judge erred in concluding that the operator had violated a standard governing alternate escapeways.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.		6/9/16  Argument 2/2/17 Meeting 2/3/17		Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.				
5	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				
6	<b>Arnold Stone Co.</b>  CENT 2016-95-M		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				
7	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				

No.	Case Name Docket No.		DFR Date		Description				
8 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17  Argument 6/14/17  Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted “high negligence” rather than “reckless disregard.”				
9 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
10	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				



B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16			Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	<b>Kentucky Fuel Corp.</b>  KENT 2015-383	[REDACTED]	1/12/17			Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
5	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.	[REDACTED]	2/17/17			Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6	<b>Sims Crane, Inc.</b> SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
7	<b>M-Class Mining, LLC</b> LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
8 *	<b>Signal Peak Energy, LLC</b> WEST 2016-624-R		4/17/17			Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
9 *	<b>Pappas v. CalPortland Co., et al.</b> WEST 2016-264-DM		5/9/17			Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	5/25/17	[REDACTED]	On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
2	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.	[REDACTED]	6/15/17	[REDACTED]	On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.
3 *	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	7/25/17	[REDACTED]	Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
4 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816		8/8/17	[REDACTED]	Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."
5	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17	[REDACTED]	Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 <u>Decision issued 7/18/17</u> <u>Awaiting mandate</u>
3	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 <u>Decision issued 7/21/17</u> <u>Awaiting mandate</u>
4	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Motion to remand for additional administrative proceedings pending
5	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Petitioner's brief due 9/18/17
6	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
7	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Secretary's brief due 9/11/17

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
9	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 Secretary's motion to dismiss pending
10	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 Petitioners ordered to file Commission decision by 8/24/17
11	Peabody Twentymile, LLC v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9540	Peabody Twentymile, LLC, 39 FMSHRC ____ (July 31, 2017) (Nos. WEST 2015-64, et al.) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)	Petition for review filed 8/25/17 Index of agency record due 10/4/17
12	Canyon Fuel Co. v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9541	Canyon Fuel, 39 FMSHRC ____ (Aug. 16, 2017) (Nos. WEST 2015-635, et al.) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)	Petition for review filed 8/31/17 Index of agency record due 10/10/17

# OCTOBER 2017 SUBSTANTIVE CASE REPORT

October 2, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsyl- vania Coal Co.</b>  PENN 2013-385	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings regarding water in a bleeder system.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Consolidation Coal Co.</b>  VA 2012-42 et al.  <u><b>DECISION ISSUED 9/14/17</b></u>	[REDACTED]	11/30/15  Meeting 1/19/17	[REDACTED]	Whether the Judge erred by concluding that a deep cut in violation of a roof control plan was not “significant and substantial.”	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16  Argument 2/2/17 Meeting 2/3/17	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners’ rights under the Mine Act.	[REDACTED]		[REDACTED]	

No.	Case Name Docket No.		DFR Date		Description				
4	Nally & Hamilton Enterprises, Inc.  KENT 2012-749, et al.		9/28/15  Meeting 3/30/17		Whether the Judge erred in concluding that two highwall violations were not significant and substantial.				
5	Arnold Stone Co.  CENT 2016-95-M  <u>DECISION</u> <u>ISSUED 9/12/17</u>		8/26/16  Meeting 4/13/17		Whether the Judge erred in concluding that a violation involving a loader with a defective safety lockout did not result from an unwarrantable failure to comply.				
6	Mach Mining, LLC  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				
7 *	Lehigh Anthracite Coal, LLC, and Wetzel  PENN 2014-108 et al.		1/3/17  Argument 6/14/17  Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."				

No.	Case Name Docket No.		DFR Date		Description				
8 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
9	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				



B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16			Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.	[REDACTED]	12/6/16		[REDACTED]	Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.
4	<b>Kentucky Fuel Corp.</b>  KENT 2015-383	[REDACTED]	1/12/17		[REDACTED]	Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.
5	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.	[REDACTED]	2/17/17			Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.

No.	Case Name & Docket No.		DFR Date			COMMENTS
6	<b>Sims Crane, Inc.</b> SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
7	<b>M-Class Mining, LLC</b> LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
8 *	<b>Signal Peak Energy, LLC</b> WEST 2016-624-R		4/17/17			Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
9 *	<b>Pappas v. CalPortland Co., et al.</b> WEST 2016-264-DM		5/9/17			Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1 *	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	5/25/17	[REDACTED]	On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
2	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.	[REDACTED]	6/15/17	[REDACTED]	On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.
3 *	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	7/25/17	[REDACTED]	Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
4 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816		8/8/17	[REDACTED]	Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."
5 *	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17	[REDACTED]	Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Hopkins County Coal, LLC v. FMSHRC 6 <sup>th</sup> Cir. No. 16-3848	Hopkins County Coal, LLC, 38 FMSHRC 1317 (June 2016) (Whether the Commission erred in upholding citations and orders against operator for refusing to provide personnel records to MSHA)	Petition for review filed 7/22/16 <u>Decision issued 7/18/17</u> <u>Mandate issued 9/12/17</u>
3	Wilson v. FMSHRC and Browning D.C. Cir. No. 16-250	Browning v. Wilson, 38 FMSHRC 1161 (May 2016) (ALJ) (Whether the Judge erred in dismissing miner representative's complaint of interference against a miner.)	Petition for review filed 7/25/16 <u>Decision issued 7/21/17</u> <u>Mandate issued 9/19/17</u>
4	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 Petitioner's brief due 10/11/17
5	Hamilton v. FMSHRC 9 <sup>th</sup> Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 Petitioner's brief due 9/18/17
6	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9 <sup>th</sup> Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
7	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Briefing stayed pending action on motion to strike argument regarding Appointments Clause

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
9	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 <u>Order dismissing petition as untimely issued 9/19/17</u>
10	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 Order to show cause why case should not be dismissed pending
11	Peabody Twentymile, LLC v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9540	Peabody Twentymile, LLC, 39 FMSHRC ____ (July 31, 2017) (Nos. WEST 2015-64, et al.) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)	Petition for review filed 8/25/17 Petitioner's brief due 11/6/17
12	Canyon Fuel Co. v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9541	Canyon Fuel, 39 FMSHRC ____ (Aug. 16, 2017) (Nos. WEST 2015-635, et al.) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)	Petition for review filed 8/31/17 Index of agency record due 10/10/17

# NOVEMBER 2017 SUBSTANTIVE CASE REPORT

November 2, 2017

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1	<b>Consol Pennsyl- vania Coal Co.</b>  PENN 2013-385  <u><b>DECISION</b></u> <u><b>ISSUED 10/5/17</b></u>	[REDACTED]	9/8/15  Argument 11/8/16 Meeting 11/9/16	[REDACTED]	Whether the Judge erred in making high negligence and unwarrantable failure findings regarding water in a bleeder system.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16  Argument 2/2/17 Meeting 2/3/17	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	<b>Nally &amp; Hamilton Enterprises, Inc.</b>  KENT 2012-749, et al.  <u><b>DECISION</b></u> <u><b>ISSUED 10/19/17</b></u>	[REDACTED]	9/28/15  Meeting 3/30/17	[REDACTED]	Whether the Judge erred in concluding that two highwall violations were not significant and substantial.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4	<b>Mach Mining, LLC</b>  LAKE 2014-746		9/29/16  Meeting 5/11/17		Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.				
5 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.		1/3/17  Argument 6/14/17  Meeting 6/15/17		Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."				
6 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
7	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				

No.	Case Name Docket No.		DFR Date		Description				
8	A & G Coal Corp.  VA 2014-243  <u><b>DISMISSAL ORDER ISSUED 10/10/17</b></u>		10/10/17		Whether the Judge erred in issuing a default order.				
9	Kentucky Fuel Corp.  KENT 2015-383		1/12/17  Meeting 10/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.				
10	Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.  WEVA 2015-583-D, et al.		12/6/16  Meeting 10/26/17		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.				



B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2 *	<b>The American Coal Co.</b>  LAKE 2011-701	[REDACTED]	11/28/16		[REDACTED]	Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.
3	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.	[REDACTED]	2/17/17		[REDACTED]	Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.
4	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
5	<b>M-Class Mining, LLC</b>  LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
6 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R	[REDACTED]	4/17/17			Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7 *	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17			Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.
8 *	<b>The American Coal Co.</b>  LAKE 2011-13		5/25/17			On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
9	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.		6/15/17			On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1 *	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	7/25/17	[REDACTED]	Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
2 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816		8/8/17	[REDACTED]	Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a “reasonable potential to cause death.”
3 *	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17	[REDACTED]	Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 <u>Petitioner's motion to dismiss granted 10/31/17</u>
3	Hamilton v. FMSHRC 9th Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 <u>Order dismissing case for failure to prosecute issued 10/20/17</u> <u>Mandate to take effect 11/13/17</u>
4	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
5	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Response briefs due 12/7/17
6	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
7	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 <u>Order dismissing petition as untimely issued 9/19/17</u> <u>Mandate issued 10/30/17</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 Order to show cause why case should not be dismissed pending
9	Peabody Twentymile, LLC v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9540	Peabody Twentymile, LLC, 39 FMSHRC 1323 (July 2017) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)	Petition for review filed 8/25/17 Petitioner's brief due 11/6/17
10	Canyon Fuel Co. v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9541	Canyon Fuel, 39 FMSHRC ____ (Aug. 16, 2017) (Nos. WEST 2015-635, et al.) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)	Petition for review filed 8/31/17 Awaiting briefing schedule
11	Consolidation Coal Co. v. FMSHRC D.C. Cir. No. 17-1219	Consolidation Coal Co., 39 FMSHRC ____ (Sept. 14, 2017) (No. VA 2012-42) (Whether the ALJ erred in concluding that a roof control plan violation was not S&S.)	Petition for review filed 10/16/17 Index of record due 12/1/17

# DECEMBER 2017 SUBSTANTIVE CASE REPORT

December 6, 2017

A. [REDACTED]

						<span style="background-color: black; color: black;">[REDACTED]</span>			
No.	Case Name Docket No.	<span style="background-color: black; color: black;">[REDACTED]</span>	DFR Date	<span style="background-color: black; color: black;">[REDACTED]</span>	Description	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>
1 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	<span style="background-color: black; color: black;">[REDACTED]</span>	6/9/16  Argument 2/2/17 Meeting 2/3/17	<span style="background-color: black; color: black;">[REDACTED]</span>	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>
2	<b>Mach Mining, LLC</b>  LAKE 2014-746	<span style="background-color: black; color: black;">[REDACTED]</span>	9/29/16  Meeting 5/11/17	<span style="background-color: black; color: black;">[REDACTED]</span>	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>
3 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.	<span style="background-color: black; color: black;">[REDACTED]</span>	1/3/17  Argument 6/14/17  Meeting 6/15/17	<span style="background-color: black; color: black;">[REDACTED]</span>	Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>	<span style="background-color: black; color: black;">[REDACTED]</span>

No.	Case Name Docket No.		DFR Date		Description				
4 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
5	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				
6	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17  Meeting 10/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.				
7	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16  Meeting 10/26/17		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.				

No.	Case Name Docket No.		DFR Date		Description				
8	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17  Meeting 11/15/17		Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.				
9 *	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16  Argument 11/29/17  Meeting 11/30/17		Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.				

**B.** [REDACTED]

No.	Case Name & Docket No.		DFR Date			COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.		7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.



No.	Case Name & Docket No.		DFR Date			COMMENTS
3	<b>M-Class Mining, LLC</b>  LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
4 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R		4/17/17			Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
5	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17			Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.
6 *	<b>The American Coal Co.</b>  LAKE 2011-13		5/25/17			On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
7 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816		8/8/17			Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."
8 *	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17			Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

C. [REDACTED]

No.	Case Name & Docket Number	[REDACTED]	DFR Date	[REDACTED]	Description
1 *	<b>The American Coal Co.</b>  LAKE 2009-35	[REDACTED]	7/25/17	[REDACTED]	Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
2	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.	[REDACTED]	6/15/17	[REDACTED]	On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Gary Servaes Enterprises v. Hirt and FMSHRC 10 <sup>th</sup> Cir. No. 16-9552	Hirt v. Gary Servaes Enterprises, 38 FMSHC 2319 (Aug. 24, 2016) (ALJ) (Whether the Judge erred in concluding that the operator discriminated against the miner and in awarding backpay.)	Petition for review filed 9/23/16 <u>Petitioner's motion to dismiss granted 10/31/17</u> <u>Mandate issued 10/31/17</u>
3	Hamilton v. FMSHRC 9th Cir. No. 16-73571	Sec'y on behalf of Hamilton v. American Mining & Tunneling, LLC, 38 FMSHRC 2346 (Aug. 2016) (ALJ) (Whether the Judge erred in dismissing miner's discrimination complaint)	Petition for review filed 11/8/16 <u>Order dismissing case for failure to prosecute issued 10/20/17</u> <u>Mandate took effect 11/13/17</u>
4	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
5	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Response briefs due 12/7/17
6	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
7	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 <u>Order dismissing petition as untimely issued 9/19/17</u> <u>Mandate recalled 11/30/17 due to pending reconsideration request</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
8	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 <u>Petition dismissed as untimely 11/15/17</u>
9	Peabody Twentymile, LLC v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9540	Peabody Twentymile, LLC, 39 FMSHRC 1323 (July 2017) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)	Petition for review filed 8/25/17 Secretary's brief due 12/11/17
10	Canyon Fuel Co. v. FMSHRC 10 <sup>th</sup> Cir. No. 17-9541	Canyon Fuel, 39 FMSHRC ____ (Aug. 16, 2017) (Nos. WEST 2015-635, et al.) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)	Petition for review filed 8/31/17 Secretary's brief due 12/14/17
11	Consolidation Coal Co. v. FMSHRC D.C. Cir. No. 17-1219	Consolidation Coal Co., 39 FMSHRC ____ (Sept. 14, 2017) (No. VA 2012-42) (Whether the ALJ erred in concluding that a roof control plan violation was not S&S.)	Petition for review filed 10/16/17 Awaiting briefing schedule

# JANUARY 2018 SUBSTANTIVE CASE REPORT

January 4, 2018

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16  Argument 2/2/17 Meeting 2/3/17	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Mach Mining, LLC</b>  LAKE 2014-746	[REDACTED]	9/29/16  Meeting 5/11/17	[REDACTED]	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.	[REDACTED]	1/3/17  Argument 6/14/17  Meeting 6/15/17	[REDACTED]	Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
5	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				
6	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17  Meeting 10/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.				
7	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16  Meeting 10/26/17		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.				

No.	Case Name Docket No.		DFR Date		Description				
8	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17  Meeting 11/15/17		Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.				
9 *	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16  Argument 11/29/17  Meeting 11/30/17		Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.				
10 *	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17  Meeting 12/14/17		Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16			Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
3	<b>M-Class Mining, LLC</b>  LAKE 2012-519		5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
4 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R	[REDACTED]	4/17/17	[REDACTED]	[REDACTED] [REDACTED]	Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily or capriciously in rejecting the operator's ventilation plan.
5 *	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	5/25/17			On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
6 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816	[REDACTED]	8/8/17			Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."



No.	Case Name & Docket No.		DFR Date			COMMENTS
7 *	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17			Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

C. [REDACTED]

No.	Case Name & Docket Number		DFR Date		Description
1 *	<b>The American Coal Co.</b>  LAKE 2009-35		7/25/17		Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
2	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.		6/15/17		On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.

**D. COMMISSION DECISIONS ON APPEAL**

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
3	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Reply brief due 1/10/18
4	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
5	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 <u>Order dismissing petition as untimely issued 9/19/17</u> <u>Mandate recalled 11/30/17 due to pending reconsideration request</u>
6	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 <u>Petition dismissed as untimely 11/15/17</u> <u>Petition for reconsideration filed 12/30/17</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
7	<b>Peabody Twentymile, LLC v. FMSHRC</b> 10 <sup>th</sup> Cir. No. 17-9540	<b>Peabody Twentymile, LLC, 39 FMSHRC 1323 (July 2017) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)</b>	<b>Petition for review filed 8/25/17</b> <b>Briefing complete; awaiting oral argument order</b>
8	<b>Canyon Fuel Co. v. FMSHRC</b> 10 <sup>th</sup> Cir. No. 17-9541	<b>Canyon Fuel, 39 FMSHRC 1578 (Aug. 2017) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)</b>	<b>Petition for review filed 8/31/17</b> <b>Briefing complete; awaiting oral argument order</b>
9	<b>Secretary of Labor v. FMSHRC</b> D.C. Cir. No. 17-1219	<b>Consolidation Coal Co., 39 FMSHRC 1737 (Sept. 2017) (Whether the ALJ erred in concluding that a roof control plan violation was not S&amp;S.)</b>	<b>Petition for review filed 10/16/17</b> <b>Secretary's brief due 1/22/2018</b>
10	<b>Con-Ag, Inc. v. FMSHRC</b> 6 <sup>th</sup> Cir. No. 17-4200	<b>Sec'y obo Groves v. Con-Ag, Inc., 39 FMSHRC 1811 (Sept. 2017) (Whether the ALJ erred in finding discrimination and in her backpay and reinstatement order.)</b>	<b>Petition for review filed 11/15/17</b> <b>Petitioner's brief due 2/12/18</b>

# FEBRUARY 2018 SUBSTANTIVE CASE REPORT

February 1, 2018

A. [REDACTED]

						[REDACTED]			
No.	Case Name Docket No.	[REDACTED]	DFR Date	[REDACTED]	Description	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
1 *	<b>Secretary o/b/o Greathouse, et al. v. Monongalia County Coal Co., et al.</b>  WEVA 2015-904-D, et al.	[REDACTED]	6/9/16  Argument 2/2/17 Meeting 2/3/17	[REDACTED]	Whether the Judge erred in ruling that certain bonus plans instituted by the operators interfered with miners' rights under the Mine Act.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	<b>Mach Mining, LLC</b>  LAKE 2014-746  <u><b>DECISION ISSUED 1/18/18</b></u>	[REDACTED]	9/29/16  Meeting 5/11/17	[REDACTED]	Whether the Judge erred in upholding citations for excessive accumulations of coal and finding that they were S&S and resulted from high negligence.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3 *	<b>Lehigh Anthracite Coal, LLC, and Wetzel</b>  PENN 2014-108 et al.	[REDACTED]	1/3/17  Argument 6/14/17  Meeting 6/15/17	[REDACTED]	Whether the Judge erred by ruling that sending a miner into the pit in question constituted "high negligence" rather than "reckless disregard."	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No.	Case Name Docket No.		DFR Date		Description				
4 *	<b>Sims Crane, Inc.</b>  SE 2015-315		6/1/16  Argument 6/29/17  Meeting 6/30/17		Whether the Judge erred in interpreting the standard providing that miners must stay clear of the suspended loads of a crane.				
5	<b>Pocahontas Coal Co.</b>  WEVA 2014-395-R, et al.		1/6/16  Meeting 7/13/17		Whether the Judge erred by finding that MSHA had established a pattern of violations at the mine in question.				
6	<b>Kentucky Fuel Corp.</b>  KENT 2015-383		1/12/17  Meeting 10/12/17		Whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.				
7	<b>Secretary o/b/o McGary, et al. v. The Marshall County Coal Co., et al.</b>  WEVA 2015-583-D, et al.		12/6/16  Meeting 10/26/17		Whether on remand the Judge erred in requiring the operators' CEO to personally read a prepared statement at the mines in question.				

No.	Case Name Docket No.		DFR Date		Description				
8	<b>Alcoa World Alumina, LLC</b>  CENT 2015-128-M, et al.		2/17/17  Meeting 11/15/17		Whether the Judge erred in making negligence and unwarrantable failure determinations because he did not treat a particular employee as an agent of the operator.				
9 *	<b>The American Coal Co.</b>  LAKE 2011-701		11/28/16  Argument 11/29/17  Meeting 11/30/17		Whether on remand the Judge erred by not adequately explaining the basis for the assessed penalty amounts.				
10	<b>Pappas v. CalPortland Co., et al.</b>  WEST 2016-264-DM		5/9/17  Meeting 12/14/17		Whether the Judge erred in ruling that the operators had not discriminated against the miner by not rehiring him.				
11 *	<b>Signal Peak Energy, LLC</b>  WEST 2016-624-R		4/7/17  Argument 1/17/18  Meeting 1/18/18		Whether the Judge erred in concluding that the MSHA District Manager did not act arbitrarily in rejecting the operator's ventilation plan.				

B. [REDACTED]

No.	Case Name & Docket No.	[REDACTED]	DFR Date	[REDACTED]	[REDACTED]	COMMENTS
1	<b>Mach Mining, LLC</b>  LAKE 2014-77, et al.	[REDACTED]	7/1/16		[REDACTED]	Whether the Judge erred by ruling that the operator did not violate the standard requiring that electrical protection devices on high-voltage longwall equipment be maintained.
2	<b>Sims Crane, Inc.</b>  SE 2016-81		2/22/17			Whether the Judge erred in upholding a citation alleging that a miner had not used fall protection when required.
3	<b>M-Class Mining, LLC</b>  LAKE 2012-519	[REDACTED]	5/12/17			Whether the Judge erred by concluding that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.
4 *	<b>The American Coal Co.</b>  LAKE 2011-13	[REDACTED]	5/25/17			On interlocutory review, whether the Judge applied an incorrect legal standard in denying the Secretary's revised motion to approve settlement.
5 *	<b>Consol Pennsylvania Coal Co.</b>  PENN 2014-816	[REDACTED]	8/8/17		[REDACTED] [REDACTED]	Whether the Judge erred in concluding that the operator violated a reporting requirement that applies when an accident has a "reasonable potential to cause death."
6 *	<b>Rain for Rent</b>  WEST 2016-730-M		8/29/17			Whether the Judge erred by relying on state law in determining that a contractor violated a standard governing the inspection of pressure vessels.

No.	Case Name & Docket No.		DFR Date			COMMENTS
7	<b>Wilson, et al. v. Armstrong Coal Co.</b>  KENT 2015-673-D, et al.		6/15/17			On cross petitions, whether the Judge erred in ruling whether or not the operator interfered with the rights of miners' representatives.

C. [REDACTED]

No.	Case Name & Docket Number		DFR Date		Description
1 *	<b>The American Coal Co.</b>  LAKE 2009-35		7/25/17		Whether the Judge erred by ruling that certain coal accumulations constituted a flagrant violation under the Mine Act.
2 *	<b>McNary v. Alcoa World Alumina, Inc.</b>  CENT 2015-279-DM		1/30/18		On remand from the Commission, whether the Judge erred by ruling that the Complainant had failed to establish that his supervisor's actions constituted unlawful interference with his rights under the Mine Act.



## D. COMMISSION DECISIONS ON APPEAL

No.	Appellate Case Name and Docket No.	Commission Decision	Status
1	Small Mine Development v. FMSHRC D.C. Cir. No. 15-1391	Small Mine Development, 37 FMSHRC 1892 (Sept. 2015) (whether the Commission erred in upholding an S&S violation of the requirement that a refuge chamber be provided)	Petition for review filed 10/27/15 Case held in abeyance pending settlement discussions
2	Coeur Alaska, Inc. v. FMSHRC and Sec'y of Labor 9th Cir. No. 16-73682	Coeur Alaska, Inc., 38 FMSHRC 2384 (Sept. 2016) (ALJ) (Whether the ALJ erred with regard to nine citations he upheld for ground support and condition violations.)	Petition for review filed 9/18/16 Briefing complete; awaiting oral argument order
3	Jones Bros., Inc. v. FMSHRC and Sec'y of Labor 6 <sup>th</sup> Cir. No. 17-3483	Jones Bros., Inc., 39 FMSHRC 570 (Mar. 2017) (ALJ) (Whether the ALJ erred in concluding that operation was not a "borrow pit" and therefore was subject to the Mine Act.)	Petition for review filed 5/9/17 Briefing complete; awaiting oral argument order
4	Bussen Quarries, Inc. v. FMSHRC and Sec'y of Labor 8 <sup>th</sup> Cir. No. 2281	Bussen Quarries, Inc., 39 FMSHRC 970 (May 2017) (Whether the ALJ erred in finding that the operator had violated a fall protection standard.)	Petition for review filed 6/8/17 Briefing complete; awaiting oral argument order
5	John Richards Construction v. FMSHRC 9 <sup>th</sup> Cir. No. 17-71948	John Richards Construction, 39 FMSHRC 959 (May 2017) (No. WEST 2014-440) (Whether the ALJ erred in ruling that the operator had unlawfully denied an MSHA inspector entry to its mine.)	Petition for review filed 7/3/17 <u>Order dismissing petition as untimely issued 9/19/17</u> <u>Petition for reconsideration denied 1/11/18</u> <u>Mandate issued 1/19/18</u>
6	Lowe, et al. v. FMSHRC 9 <sup>th</sup> Cir. No. 17-72019	Lowe, et al. v. VerisGold USA, Inc., et al., 39 FMSHRC 781 (Mar. 2017) (ALJ) (Whether the ALJ erred in dismissing a discrimination complaint against the successor in interest to a bankrupt operator.)	Petition for review filed 7/18/17 <u>Petition dismissed as untimely 11/15/17</u> <u>Petition for reconsideration filed 12/30/17</u>

No.	Appellate Case Name and Docket No.	Commission Decision	Status
7	<b>Peabody Twentymile, LLC v. FMSHRC</b> 10 <sup>th</sup> Cir. No. 17-9540	<b>Peabody Twentymile, LLC, 39 FMSHRC 1323 (July 2017) (Whether the operator's use of polyurethane spray foam to seal the perimeters of concrete block ventilation stoppings violates 30 C.F.R. § 75.333(e)(1)(i).)</b>	<b>Petition for review filed 8/25/17</b> <b>Oral argument scheduled 3/22/18</b>
8	<b>Canyon Fuel Co. v. FMSHRC</b> 10 <sup>th</sup> Cir. No. 17-9541	<b>Canyon Fuel, 39 FMSHRC 1578 (Aug. 2017) (ALJ) (Whether the Commission erred in upholding two citations against the operator for the surface conditions at a mine opening where the operator's alternate escapeway terminates.)</b>	<b>Petition for review filed 8/31/17</b> <b>Oral argument scheduled 3/21/18</b>
9	<b>Secretary of Labor v. FMSHRC</b> D.C. Cir. No. 17-1219	<b>Consolidation Coal Co., 39 FMSHRC 1737 (Sept. 2017) (Whether the ALJ erred in concluding that a roof control plan violation was not S&amp;S.)</b>	<b>Petition for review filed 10/16/17</b> <b>Operator's brief due 2/21/18</b>
10	<b>Con-Ag, Inc. v. FMSHRC</b> 6 <sup>th</sup> Cir. No. 17-4200	<b>Sec'y obo Groves v. Con-Ag, Inc., 39 FMSHRC 1811 (Sept. 2017) (Whether the ALJ erred in finding discrimination and in her backpay and reinstatement order.)</b>	<b>Petition for review filed 11/15/17</b> <b>Petitioner's brief due 2/12/18</b>