COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 018**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING COMPLAINANT

vs. **FINAL ORDER REGARDING THOMAS A. BAKER**

CORBETT HOWELL, CORBIT DARREN HOWELL,
THOMAS A. BAKER, THOMAS L. CARROLL &
ANTHONY BAKER RESPONDENTS

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Thomas A. Baker, and the members of the Commission having reviewed the Settlement Agreement filed on February 17, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 14TH day of April 2005.

MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 15TH day of April 2005:

THOMAS A. BAKER
P.O. BOX 462
MCDOWELL KY 41647
Respondent

And by messenger mail to:

HON. TONY OPPEGARD
GENERAL COUNSEL
OFFICE OF MINE SAFETY & LICENSING
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

Bryon Alan Thompson

Bryon Alan Thompson
General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION

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MINE SAFETY
REVIEW COMMISSION

KY. OFFICE OF MINE SAFETY & LICENSING	)	
	)	
Complainant	)	
	)	
v.	)	Admin. Action No. 04-MSRC-018
	)	
CORBETT HOWELL, CORBETT DARREN HOWELL, THOMAS A. BAKER, THOMAS L. CARROLL & ANTHONY BAKER	)	
	)	
Respondents	)	

SETTLEMENT AGREEMENT BETWEEN OMSL & THOMAS A. BAKER

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent Thomas A. Baker ("Baker"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the final resolution of this action against him,[1] and the cancellation of the hearing (as it pertains to him) that is currently scheduled for July 14, 2005, Baker hereby admits that he had smoking articles in his possession underground on September 15, 2004, at Star Coal Trucking's No. 2 mine, in violation of KRS 352.170 (3), as alleged in OMSL's Complaint. Therefore, Baker hereby agrees to the following:

1. The **PROBATION OF HIS UNDERGROUND MINER'S CERTIFICATE (#) FOR A PERIOD OF ONE (1) YEAR**, effective upon the signing of this Settlement Agreement by both parties.

[1] OMSL and Baker are filing a joint motion with the Mine Safety Review Commission ("the Commission") to approve the Settlement Agreement and dismiss this action.

2. During this one-year probationary period, Baker shall comply with all state and federal mine safety laws and regulations. The willful violation by Baker of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground miner's certificate for the remainder of the probationary period.[2]

3. Within 45 days of the effective date of this Settlement Agreement, Baker must take **EIGHT(8) HOURS OF SPECIAL SAFETY TRAINING** from OMSL at its Martin District office.[3]

Baker further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

Baker understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Baker further states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Baker acknowledge and agree that there are no other promises, inducements,

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[2] If the circumstances warranted, OMSL would also retain the right to file a separate action with the Commission seeking other penalties against Baker for his actions. In either event, Baker would have the right to a hearing before the Commission on the allegations against him.

[3] Said special safety training is in addition to any annual refresher training or other safety training that Baker is legally required to take.

representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

THOMAS A. BAKER
P.O. Box 462
McDowell, Kentucky 41647

PARIS L. CHARLES
Executive Director
Ky. Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

2/16/05
DATE

2-17-05
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL & Thomas A. Baker was mailed this 17TH day of February, 2005, to: Corbett Howell, P.O. Box 327, Wayland, Kentucky 41666; Corbett Darren Howell, P.O. Box 327, Wayland, Kentucky 41666; Thomas A. Baker, P.O. Box 462, McDowell, Kentucky 41647; Thomas L. Carroll, 132 Oliver Hall Village, Printer, Kentucky 41655; and Anthony Baker, P. O. Box 462, McDowell, Kentucky 41647.

TONY OPPEGARD
General Counsel

KY. OFFICE OF MINE SAFETY & LICENSING