



Limited Liability Company? You May Be Liable For More Than You Thought

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Mine operators have long relied upon the protections of a limited liability company ("LLC") to shield their individual agents from business-related liability. However, based on a recent decision of the Federal Mine Safety and Health Review Commission ("Commission"), MSHA can now seek civil and criminal penalties against individual agents of LLC's under Section 110(c) of the Mine Act. In *Secretary v. Simola* (March 7, 2012), the Commission rejected the mine operator's argument that Section 110(c) only applies to corporations (as opposed to LLC's) and provided MSHA another tool in its enforcement arsenal.

Simola was the Pellet Plant Coordinator for United Taconite, LLC. In late 2008, MSHA issued a 104(d)(1) Citation (§ 56.11001—safe access) and a 104(d)(1) Order (§ 56.14107(a)—guarding), based on United Taconite's alleged unwarrantable failure to comply with the mandatory safety standards. MSHA also issued civil penalties against Simola, as an agent for United Taconite, under Section 110(c) of the Act.

Congress drafted Section 110(c) to provide for civil and criminal penalties where "any director, officer, or agent" of a "corporate operator" has "knowingly authorized, ordered, or carried out" a violation of a mandatory health or safety standard, or has failed or refused to comply with an Order issued by MSHA. An "agent," for purposes of the Act is "any person charged with responsibility for the operation of all or a part of a coal or other mine." Typically, this includes foremen, plant managers, and other employees with supervisory or managerial duties.

While Section 110(c) explicitly refers to "corporations" – and not "limited liability companies," the Commission agreed with MSHA, holding that the language could reasonably be read to include agents of LLC's. The Commission stated that MSHA's interpretation "furthers the safety and remedial goals of the Mine Act by giving operators a 'greater incentive' to comply with the Mine Act."

This decision directly affects the approximately ten percent of mine companies in America currently organized as LLC's. Going forward, MSHA will continue to hold individual agents of LLC's liable under Section 110(c) of the Act. Future challenges will be precluded by the binding effect of the Commission's decision. If you are a director, officer, or agent of an LLC, remember that MSHA has now placed a limit on the limited liability of your organization.

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