

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, DC 20001

May 7, 2010

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2010-128-M
Petitioner	:	A.C. No. 21-03404-201338 A
v.	:	
	:	
BILL SIMOLA, employed by	:	United Plant
UNITED TACONITE, LLC,	:	Mine ID 21-03404
Respondent	:	

ORDER GRANTING RESPONDENT’S MOTION FOR CERTIFICATION OF INTERLOCUTORY RULING

The captioned civil penalty proceeding concerns a 104(d) citation and a 104(d) order issued pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 820(c), to Bill Simola, as an agent of United Taconite, LLC (United Taconite). Section 110(c) of the Mine Act provides, in pertinent part:

Whenever a corporate operator violates a mandatory health or safety standard . . . , any director, officer, or agent of such corporation who knowingly authorized, ordered or carried out such violation, . . . shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d) of this section.

30 U.S.C. § 820(c) (emphasis added).

United Taconite is not a traditional corporation. Rather it is a limited liability company (LLC) that is organized under the laws of the state of Delaware. It is authorized to operate as a business entity based on a Certificate of Formation filed with the Office of the Delaware Secretary of State in the Division of Corporation. As a general proposition, a limited liability company is a business entity that is taxed as a partnership while benefitting from the personal liability protection afforded to the assets of corporate officers.

Simola moved to dismiss this proceeding on jurisdictional grounds asserting that an agent of a limited liability company is not subject to the personal liability provisions of section 110(c). The Secretary opposed Simola’s motion. Simola’s motion was denied on April 6, 2010. 32 FMSHRC ____.

On April 23, 2009 Simola filed a motion for certification of the April 6, 2010, interlocutory ruling. On May 5, 2010, the Secretary filed a motion in opposition to Simola's motion for interlocutory review. The Secretary asserts immediate review will not materially advance the final disposition of this proceeding.

Commission Rule 76(a)(1)(i) provides that, upon motion of a party, a judge shall certify his interlocutory ruling to the Commission if the ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a)(1)(i). Simola's motion for an interlocutory ruling involves a novel controlling question of law. Moreover, contrary to the Secretary's assertion, an expeditious resolution of this jurisdictional question may materially advance the final disposition of this matter. In this regard, interlocutory review may obviate the need for adjudication if it is determined that Simola is not subject to the personal liability provisions of section 110(c) of the Mine Act. Consequently, Simola's certification request shall be granted.

ORDER

In view of the above, Bill Simola's Motion for Certification under Commission Rule 76 **IS GRANTED**. Accordingly, **IT IS ORDERED** that the question of the applicability of the personal liability provisions of section 110(c) to an agent of a mine operator doing business as a limited liability company **IS CERTIFIED** for Commission review.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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