

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

April 6, 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 DENYING RESPONDENT'S  
MOTION TO DISMISS FOR LACK OF JURISDICTION**

On October 1, 2008, 104(d)(1) Citation No. 6407901 and 104(d)(1) Order No. 6407902 were issued to United Taconite, LLC (“United Taconite”). Citation No. 6407901 was issued for an alleged violation of the mandatory safety standard in 30 C.F.R. § 56.11001. This standard requires that a safe means of access shall be provided and maintained to all working places. Order No. 6407902 was issued for an alleged violation of the mandatory safety standard in 30 C.F.R. § 56.4107(a). This standard provides that moving machine parts shall be guarded to protect persons from moving parts that can cause injury.

At issue is a Petition for Assessment of Civil Penalties filed on December 21, 2009, by the Secretary of Labor (“the Secretary”), pursuant to the provisions section 110(c) of the Federal Mine Safety and Health Act of 1977 (“the Mine Act”). The petition seeks to impose personal liability against Bill Simola, as an agent of United Taconite, for the violations alleged in Citation No. 6407901 and Order No. 6407902. 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).

Simola is employed as the Pellet Plant Coordinator at the United Plant operated by United Taconite, a limited liability company (“LLC”) organized under the laws of the State of Delaware. As a general proposition, a LLC, first recognized in 1977 by the State of Wyoming, is a hybrid business structure that is taxed as a partnership while benefitting from the personal liability shield afforded to employee agents of corporations. *Sec’y Interpretive Bulletin*, 71 Fed. Reg. 38902.

On February 26, 2010, Simola filed a Motion for Summary Decision asserting that section 110(c) of the Mine Act should be narrowly construed to limit personal liability only to agents of corporate mine operators. As United Taconite is a limited liability company, authorized under a Certificate of Formation filed with the Office of the Delaware Secretary of State in the Division of Corporations, Simola argues that he is not subject to personal liability under section 110(c) of the Act. I construe Simola’s motion as a motion to dismiss.

The Secretary filed her opposition to Simola’s motion on March 22, 2010. The Secretary’s opposition primarily relies on her July 10, 2006, Interpretive Bulletin regarding section 110(c) of the Mine Act as it relates to agents of LLCs. *Id.* The relevant history of LLC entities noted in the bulletin is not disputed by Simola. Although LLCs were first recognized in 1977, LLCs did not achieve significant popularity until 1988, when the Internal Revenue Service announced that LLCs could be taxed as partnerships despite their limited corporate-like liability. *Id.* In recent years, the number of mine operators doing business as LLCs has significantly increased. According to Mine Safety and Health Administration (MSHA) records at least 10 percent of mine operators now identify themselves as LLC business entities. *Id.*

The Secretary asserts that LLCs should be treated the same as corporate mine operators because both business structures enjoy the benefits of shielding personal liability. Since LLCs were first recognized and have become popular as business entities after section 110(c) of the Mine Act was promulgated, the Secretary contends that the reach of the provisions of section 110(c) that limit personal liability to agents of corporations can be reasonably interpreted to extend to agents of limited liability companies.

### Findings and Conclusions

At the outset, I note that the first inquiry in statutory construction is “whether Congress has directly spoken to the precise question at issue.” *Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984), *Thunder Basin Coal Co.*, 18 FMSHRC 582, 584 (April 1996). “If the intent of Congress is clear, that is the end of the matter; for the court as well as the agency must give effect of the unambiguously expressed intent of Congress.” *Chevron* at 842-843. If the statute is silent or ambiguous with respect to the specific issue, the question is whether the Secretary’s interpretation is based on a reasonable construction and application of the statute. *Id.* at 843.

Here, Congress obviously did not consider the applicability of section 110(c) to agents of LLCs because the operation of mines as LLC entities occurred after the legislation was adopted. Accordingly, the focus shifts to whether the Secretary's interpretation of section 110(c) is reasonable. Generally speaking, the Secretary's interpretation of the enabling statute she is authorized to enforce should be given deference so long as it is consistent with the intent of the statutory language, and if the interpretation serves a permissible regulatory function. *Buffalo Crushed Stone, Inc.*, 19 FMSHRC 231, 234 (Feb. 1977) (citations omitted). In addition, the legislative history of the Act provides that "the Secretary's interpretations of the law and regulations shall be given weight by both the Commission and the courts." *Id.* at 234-35 citing S. Rep. No. 181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 49 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95<sup>th</sup> Cong., 2<sup>nd</sup> Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 637 (1978).

The Commission has addressed the purpose and intent of the limited personal liability provisions of section 110(c) in *Donald Guess*, 15 FMSHRC 2440 (Dec. 1993), *aff'd sub nom. Sec'y of Labor v. Shirel*, 52 F.3d 1123 (D.C. Cir. 1995). In *Guess*, the Commission affirmed the dismissal of civil penalty proceedings under section 110(c) against two employees of the Pyro Mining Company doing business as a partnership. The Commission noted that unlike corporations, agents of partnerships were not shielded from personal liability. *Id.* at 2442-43. The Commission emphasized that:

The legislative history of section 110(c) of the Mine Act, and its predecessor, section 109(c) of the Coal Act, manifests a Congressional intent to proceed individually against persons employed by corporate operators "to assure that the decision-makers responsible for illegal acts of corporate operators would also be held personally liable for violations."

*Id.* citing *Richardson v. Secretary of Labor*, 689 F.2d 632, 633 (6<sup>th</sup> Cir. 1982), *aff'g*, *Kenny Richardson*, 3 FMSHRC 8 (January 1981), *cert. denied*, 461 U.S. 928 (1983)(emphasis added). See also H.R. Rep. No. 563, 91<sup>st</sup> Cong., 1<sup>st</sup> Sess. 11-12 (1969), reprinted in Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94<sup>th</sup> Congress, 1<sup>st</sup> Sess., Part I *Legislative History of the Federal Coal Mine Health and Safety Act of 1969*, at 1041-42 (1975).

Simola, in essence, seeks to differentiate a limited liability company from a corporation based on its Internal Revenue Service tax treatment despite the fact that both business entities shield agents from personal liability. Thus, Simola relies on a distinction without a difference. As the purpose of section 110(c) is to pierce the corporate-like liability shield, the Secretary's interpretation that the provisions of section 110(c) apply to agents of mine operators operating as both corporate and limited liability companies is manifestly reasonable and consistent with the intent of the legislation. In the final analysis, United Taconite is a "limited liability" company that has registered in the Division of Corporations in the Office of the Delaware Secretary of State. Consequently, it should receive the same coverage as a corporation under section 110(c).

## **ORDER**

In view of the above, **IT IS ORDERED** that Simola's motion to dismiss for lack of jurisdiction under section 110(c) of the Act with respect to his personal liability as an agent of a limited liability company **IS DENIED**.

Jerold Feldman  
Administrative Law Judge

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