

**Chapter 9****Section 110(c) Liability Under the Mine Act:  
A Fresh Look at Theories of Liability,  
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**Synopsis**

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## § 9.01. History and Elements of a Section 110(c) Case.

### [1] — Introduction.

Section 110(c) has become an important tool used by the Mine Safety and Health Administration (MSHA) to enforce the health and safety provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act)<sup>1</sup> and its accompanying regulations. Managerial employees, and even hourly employees with supervisory responsibility, have and will continue to be scrutinized for any involvement or contribution to health and safety violations. MSHA citation practices have and will continue to send the message that those who may be considered agents must be proactive in preventing and correcting potentially hazardous conditions occurring in areas under their control or heavy fines can ensue, even where they have little to no direct involvement in any resulting violation.

Section 110(c) and 110(d) allows personal, civil and criminal liability for agents of operators who knowingly authorize, order or carry out a violation of the Mine Act. Specifically, Section 110(c) of the Mine Act, 30 U.S.C. Section 820(c), provides that “[w]henver 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 . . . that may be imposed upon a person under subsections (a) and (d).” In enacting Section 110 (c), Congress sought to provide a vehicle for protecting the health and safety of the nation’s coal miners by holding corporate agents who commit knowing violations individually liable. While Congress did not intend “that the agent should bear the brunt of corporate violations,” “it was ultimately decided to let the agent stand on his own and be personally responsible for any penalties or punishment meted out to him.”<sup>2</sup>

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<sup>1</sup> 30 U.S.C. § 801 *et seq.* (West 1996 and Supp. 2005).

<sup>2</sup> Rep. John H. Dent (D-Pa.), House Debate on H.R. 13950, 91st Cong., 1st Sess. (1969); reprinted in Senate Subcommittee of Labor, Committee of Labor and Public Welfare, 94th Cong., 1st Sess., Legislative History of the Federal Coal Mine Health and Safety Act of 1969, Part I at 1191 (1975).

This chapter will examine 1) the theories behind Section 110(c); 2) agency requirements; 3) standards on whether an agent knowingly acted; 4) what is aggravated conduct; and 5) defenses to 110(c) charges. Finally, this chapter will examine a new line of defense centering on whether the agent has the ability to control a situation, and possible client conflicts for counsel this new defense raises.

### **[2] — Employee Must Be an Agent of a Corporation.**

Section 110(c) liability may be imposed whenever “any director, officer, or agent” of the operator has knowingly authorized, ordered, or carried out a mine safety violation or fails or refuses to comply with any order issued pursuant to the Mine Act. Section 110(c) of the Mine Act provides for individual liability only against agents of operators that are corporations. Thus, the initial inquiry is whether the agent must be an employee of a corporation. The Commission has held that employees of a partnership are not subject to Section 110(c) liability under the Mine Act.<sup>3</sup> However, agents of a limited liability company (LLC) may be held personally liable under Section 110(c) of the Mine Act according to a recent interpretive bulletin published on May 9, 2006 in the *Federal Register*. The recent interpretation is based upon the Secretary of Labor’s finding that “LLCs generally create the same sort of shield against personal liability which led Congress to impose personal liability on the directors, officers, and agents of corporations.”<sup>4</sup>

Section (e) of the Mine Act defines “agent” as “any person charged with responsibility for the operation of all or a part of a coal or other mine or the supervision of the miners in a coal or other mine.” Generally, a rank-and-file miner is not subject to penalties under the Mine Act, unless they have committed perjury or are found to have carried smoking materials underground.<sup>5</sup> However, even a rank-and-file miner can be considered an

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<sup>3</sup> Paul Shirel, 15 F.M.S.H.R.C. 2440, 2443 (December 13, 1993).

<sup>4</sup> 71 Fed. Reg. 26,983 (May 9, 2006).

<sup>5</sup> Sections 110 (f) and (g); 30 U.S.C. §§ 820(f) and (g)(Public Law 91-173, as amended by Public Law 95-164).