

## Chapter 6

# Critical Issues in the Law of Civil and Criminal Liability Under the Mine Act

**Bridget E. Littlefield<sup>1</sup>**

**Ann M. Mason<sup>2</sup>**

***Crowell & Moring LLP***

**Washington, DC**

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<sup>1</sup> Bridget E. Littlefield is an associate in the Crowell & Moring LLP Environment & Natural Resources Group. She received both her undergraduate and law degree from the University of Maryland.

<sup>2</sup> Ann M. Mason is a counsel in the Crowell & Moring LLP White Collar & Regulatory Enforcement Group. She is a graduate of the University of Virginia and the William & Mary School of Law.

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**§ 6.01. Introduction.**

The Sago and Aracoma mine accidents resulted in the passage of the Mine Improvement and New Emergency Response Act of 2006 (“MINER Act”)<sup>3</sup> and the start of a new Mine Safety and Health Administration (MSHA) regulatory era characterized by more stringent enforcement of the Federal Mine Safety and Health Act of 1977 (“Mine Act”)<sup>4</sup> and its regulations as well as substantially higher penalties. Increased funding from Congress has enabled MSHA to hire more inspectors and increase the number of inspections conducted. Since passage of the MINER Act, there has been a dramatic increase in the number of citations issued to operators, and an even greater increase in the size of the civil penalties, as well as an increase in findings of unwarrantable failure and high negligence, highlighted by vigorous use of MSHA’s new power to assess huge penalties for “flagrant violations.”

The recent tragedy at the Upper Big Branch Mine in Whitesville, West Virginia has prompted further Congressional hearings on the adequacy of existing mine safety laws and their enforcement. Extensive media attention and comments by the president himself have also highlighted safety issues in the mining industry. Again in the spotlight, operators should expect MSHA to continue or even further increase scrutiny of their compliance efforts and to employ some of its harsher enforcement tools, including individual civil penalties and criminal investigations and prosecutions.

This chapter analyzes issues in the interpretation and enforcement of federal laws that expose mine operators and supervisors to civil and criminal liability, focusing on sections 110(c) and 110(d) of the Mine Act. In addition to setting forth principles of liability developed through case law,

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<sup>3</sup> Mine Improvement and New Emergency Response Act of 2006, P.L. 109-236 (June 15, 2006).

<sup>4</sup> Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 *et seq.* (1982).

this chapter will focus on potentially critical issues not yet fully addressed by the Federal Mine Safety & Health Review Commission (Commission) or the courts, in the context of first civil, and then criminal, prosecutions. The chapter also touches briefly upon federal obstruction, false statement, and conspiracy provisions which may arise from investigations of alleged mine operator misconduct.

### **§ 6.02. Civil Enforcement of Mine Act Section 110(c).**

Section 110(c) provides for individual civil and criminal liability for officers, directors and agents who knowingly authorize, order or carry out certain violations of the Mine Act.<sup>5</sup> Section 110(c) enforcement actions are brought as the result of a “special investigation” usually triggered by a mine accident, the receipt of a miner complaint, or a review of certain citations and orders for possible knowing violations of the Mine Act.<sup>6</sup> In a civil enforcement action, individuals found liable for a knowing violation under section 110(c) are subject to a maximum penalty of \$70,000.<sup>7</sup>

#### **[1] — Elements of Section 110(c) Liability.**

Section 110(c) of the Mine Act provides that:

Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) of this section or section 815(c) of this title, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation,

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<sup>5</sup> *Id.* § 820(c).

<sup>6</sup> See I MSHA Program Policy Manual: Interpretation and Guidelines on Enforcement of the 1977 Act at 39-40 (Release I-14, Aug. 2007), available at <http://www.msha.gov/REGS/COMPLIAN/PPM/PDFVersion/PPM%20Vol%20I.pdf>. The following citations and orders are reviewed for possible knowing violations: 1) each 104(a) citation contributing to the issuance of an imminent danger order; 2) each 104(d) order that is marked “significant and substantial” and “high negligence” or “reckless disregard;” and 3) each citation issued for working in violation of a withdrawal order. *Id.*

<sup>7</sup> See 30 C.F.R. § 100.3(a)(2010).