



INSIGHTS JANUARY 2012 - LITIGATION/COURTS

OSHA'S MULTI-EMPLOYER POLICY

The US DC Circuit Court of Appeals upheld OSHA's multi-employer citation policy. Summit Contractors, Inc. had contested a citation for providing electrical equipment without ground fault circuit interrupters (GFCIs) to its subcontractors by arguing that OSHA's citation policy was invalid as it had not been subject to notice-and-comment rulemaking. Summit also contended that multi-employer liability establishes a common law duty of care to subcontractor employees in violation of Sec. 4(b)(4) of the Occupational Safety and Health Act. However, in a December 14 decision, the D.C. Circuit rejected both arguments. OSHA's multi-employer citation policy provides that, under specified circumstances, an employer may be cited for violations even if none of its own employees were exposed to the hazard.

\$209 MILLION UBB SETTLEMENT

In the largest settlement ever of a criminal investigation of a mine disaster, Alpha Natural Resources was reported to have reached a \$209.3 million deal with federal prosecutors over the Upper Big Branch-South Mine (UBB) accident. UBB was owned by Massey Energy Co., but Alpha assumed Massey's liabilities when it purchased Massey last year.

The agreement reportedly frees Alpha from corporate criminal prosecution or any civil action associated with the ongoing criminal investigation into the tragedy but does not exempt liability against individuals. In return, Alpha will invest at least \$80 million over the next two years into advanced mine safety enhancements at all its underground mines, including its Massey operations. The money will also go towards the construction of a state-of-the-art training facility. The company will place another \$48 million into a mine health and safety research trust to fund mine safety and health research. It will pay the two injured miners and the families of each of the 29 deceased victims \$1.5 million (\$46.5 million total).

Alpha also agreed to fully pay all outstanding penalties arising from MSHA's investigation of the accident, which total \$34.8 million. The total amount includes \$20.2 million in assessments involving contested violations, \$10.8 million in assessed fines for alleged violations MSHA issued in connection with its investigation of the accident, \$1.3 million in penalties against Massey legacy operations issued before Alpha's takeover, and \$2.5 million to pay off citations and orders that have become final orders.

In a statement, Alpha CEO Kevin Crutchfield said, "We believe the agreements we've reached represent the best path forward for everyone. We're particularly pleased that a substantial portion of the settlement is going towards furthering mine safety, which has always been Alpha's guiding principle."

Important Note: This document does not constitute legal advice and counsel should be consulted regarding specific factual situations which will determine the compliance advice applicable to any particular question regarding the subject matter. If you would like additional information or advice and counsel on training, compliance or audits, please let us know.
