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# CLIENT ALERT

## Commission ALJ Holds Production Operator Liable for Part 50 Reporting Violation Even Though the Temporary Employment Agency Had Reported the Injury

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An administrative law judge ("ALJ") at the Federal Mine Safety and Health Review Commission held that a production-operator's responsibility for reporting a temporary employee's injury to MSHA on Form 7000-1 pursuant to 30 CFR § 50.20 was not discharged even though the injured miner's employer (the temp agency) had itself already reported the injury. The case is *Dickenson-Russell Coal*, VA 2009-430, decided January 16, 2013.

The case stems from a 2009 injury to a temporary employee who was operating a roof bolter. As is the case where a mine uses miners provided by a temp agency, the mine operator, not the temp agency, supervised the temporary employee's work at the mine. In this case, though, when the temporary employee suffered his injury, the temp agency filed the 7000-1 injury report. Knowing this, the operator did not file its own report, thinking it would be duplicative. MSHA disagreed, and cited the operator for a violation of § 50.20.

The operator argued that no violation had occurred because the temp agency had already reported the injury so there was nothing more for the operator to report. The ALJ disagreed, holding that the temp agency's own filing was gratuitous, and that the mine operator, as the "operator" in charge of supervising the temporary employee and thus charged with the responsibility to file the 7000-1 report under § 50.20, had a legal duty to file it even where the temp agency had already done so. This was also consistent with MSHA's Program Policy Letter ("PPL") P11-V-05, which instructs mine operators to report the reportable injuries or illnesses of temporary employees since those employees are under the direct supervision of the mine operator. Importantly, the PPL distinguishes between temp agencies and true "independent contractor" operators, i.e., contactors performing actual services at a mine. The latter remain responsible under § 50.20 for reporting injuries or illnesses to their own employees. The ALJ noted this distinction.

Although he found the operator liable, the ALJ found it less negligent than MSHA alleged given that it believed its legal duty to report was discharged by the temp agency's filing.

We are aware that temp agencies and their production-operator customers sometimes enter into agreements by which the temp agency assumes responsibility for filing the 7000-1 report for reportable workplace injuries or illnesses suffered by their employees at the customer's mine. This decision demonstrates that MSHA disagrees with that approach, and that at least one ALJ agrees with MSHA that a non-dischargeable duty to report remains on the operator notwithstanding the temp agency's having already done so.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Thomas (Tim) C. Means**
Retired Partner – Washington, D.C.
Email: tmeans@crowellretiredpartners.com

**Daniel W. Wolff**
Partner – Washington, D.C.
Phone: +1 202.624.2621
Email: dwolff@crowell.com