

Recent Third Circuit OSHA Decision Sounds Alarm for Employers and Their Officers

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The Third Circuit Court of Appeals recently issued an opinion that should serve as a warning not only to employers, but to their corporate officers. The case against Altor, Inc., a New Jersey-based construction company, began in 2012 when the Occupational Safety and Health Administration (OSHA) directed Altor and its sole director and officer to pay a \$412,000 penalty (Payment Order) to OSHA for several violations, including the failure to comply with fall protection standards. The company refused to pay, arguing that it did not possess sufficient assets. The Secretary of Labor filed a Petition for Civil Contempt against Altor and its President, Vasilios Saites. The court acknowledged that the company and Mr. Saites could defend against a contempt finding by showing that he and the company were unable to comply with the Payment Order. Beyond merely stating that they could not pay, the court required that they must show that they made good faith efforts to comply with the Order.

After considering all of the evidence, the court ultimately relied on Altor's bank records, which reflected that the company ended each month during a two-year period *after* the violations with a positive bank balance. Thus, the court determined that Altor could have made "at least relatively modest" payments and emphasized that the company never attempted to negotiate a reduced sum or a payment plan.

Notably, the court also affirmed a special master's recommendation that Mr. Saites also be held in contempt despite a lack of evidence to establish that he intentionally dissipated corporate assets to avoid payment. In this regard, Third Circuit precedent provides that an officer's behavior "need not be willful in order to contravene the applicable decree." Considering that Mr. Saites was aware of the issuance of the decree awarding penalties and, along with Altor, disobeyed it, he was held in contempt. The court stated, "When a corporate officer fails to act on behalf of the corporation to comply with a court order, the officer too may be held in contempt." But that is not all for Altor and its leader, they are also both subject to a daily penalty for each day that the \$412,000 remains unpaid.

OSHA regulations are often overlooked in the day-to-day operation of any business. They are relegated to the backseat by corporate officers who are dealing with other pressing matters. The *Altor* case, particularly because it highlights the personal liability of its officers, should encourage businesses to provide a strong and comprehensive response at the early stages of an OSHA investigation to minimize the risks of runaway penalties and personal liability.

If you have questions or would like more information, please contact John Baker (bakerj@whiteandwilliams.com; 610.782.4913) or another member of the Labor and Employment Group.

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