



INSIGHTS JANUARY 2012 - LITIGATION/COURTS

APPEAL OF ATTORNEY FEE DENIAL IN OVERTURNING VIOLATION

A custodial firm doing business at a mine incurred some \$22,000 in legal expenses fighting an order MSHA issued, then vacated. A judge ruled the company is not entitled to compensation under the Equal Access to Justice Act (EAJA).

Since 1987, site-specific hazard awareness training had sufficed to allow employees of USA Cleaning Service and Building Maintenance to perform custodial services for the break rooms, bathrooms, offices and locker rooms at an Indiana mining operation. But, in February 2011, an MSHA inspector determined three janitors required new miner training instead, and threw them off the property until they got it. The company challenged the withdrawal order, and 10 days after MSHA issued it, the agency vacated it.

EAJA entitles a prevailing party to an award against the federal government if the government's position is not substantially justified. USA Cleaning brought an EAJA action, but an administrative law judge rejected it, ruling the company did not meet the legal definition of a prevailing party. There had been no court-ordered change in the legal relationship of the parties, he opined, nor had USA Cleaning obtained judicial relief because MSHA's withdrawal of the order had spared the company the expense of a legal proceeding.

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.
