

Chapter 9

Welcome to Our World: MSHA Vulnerability to Suit Under Federal Tort Claims Act for Negligent Inspection

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§ 9.01. Introduction.

It goes without saying that MSHA’s (Mine Safety and Health Administration) involvement in the day to day lives of coal operators has increased dramatically over the last five years. With this level of involvement comes a corresponding level of responsibility and, as we will see over the course of this presentation, accountability. As MSHA’s enforcement power increases so does its perceived ability to play a more central role in the prevention of all manner of coal mine accidents. If it is foreseeable that harm to a miner could occur if MSHA does not act, then MSHA’s failure to act opens it up to civil liability.

§ 9.02. Overview of the Federal Tort Claims Act.

The Federal Tort Claims Act (FTCA)² was enacted in 1948 to make the United States’ tort liability “the same as that of a private person under like circumstance, in accordance with local law.”³ Subject to exceptions, the FTCA establishes that the United States is liable for the tortious actions of its employees or, more specifically,

² Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(β), 2671 2680.
³ S. Rep. No. 79-1400, at 32 (1946).