

On the Hook: Company Owners and Managers At Personal Risk for Unpaid Employee Wages

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If a company does not timely pay all wages due to an employee, the South Carolina Payment of Wages Act (SCPWA) allows the employee to file a lawsuit for three times the amount of unpaid wages, plus court costs and attorneys fees. The lawsuit for unpaid wages can be filed not only against the company, but also against agents and officers who permit the company to violate the SCPWA.

In *Allen v. Pinnacle Healthcare Systems, LLC*, neurologist Aaron Allen sued his employer, Pinnacle Healthcare, a member-managed limited liability company that is now defunct, and four individuals affiliated with Pinnacle. Allen sought \$780,000 based on his employment contract. Following a trial, three of the individuals were found to be jointly and severally liable for Allen's unpaid wages, prejudgment interest, and attorney's fees.



On July 27, 2011, a three-judge panel of the South Carolina Court of Appeals voted 2-1 to affirm judgment against two of the individuals. One of the individuals was the executive manager who organized the company and owned 40 percent of it. The other was a member of Pinnacle Healthcare who owned 20 percent of the company.

Both were found to be personally liable because they handled the finances and payroll for Pinnacle Healthcare. And according to the Court of Appeals, both knew Allen was not being paid his wages for the last six months of his employment. The court concluded that both "had an obligation to advise the employees who were working and not getting paid that they may not get paid so they would not continue working without the payment of wages."

The Court of Appeals reversed the judgment against a third individual who was a member and 15 percent owner of Pinnacle Healthcare because he had no authority over the company's finances. The dissenting judge believed that only the executive manager of Pinnacle Healthcare should be held personally liable because the member who owned 20 percent of the company "lacked the authority to make any decisions regarding the payment of wages."

The *Allen* decision illustrates the wisdom of company owners and managers making sure employees are paid properly. While not all company owners and managers are necessarily personally liable for violations of the SCPWA, the *Allen* case makes clear that an agent or officer who knows a company is unable to pay the wages of its employees and continues to employ them may be required to pay the employees out of his or her pocket.

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