



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

ALTOR, INC., and/or AVCON, INC., and/or  
VASILIOS SAITES, individually, and d/b/a  
ALTOR, INC., and/or AVCON, INC. and  
NICHOLAS SAITES, individually and d/b/a  
ALTOR INC., and/or AVCON, INC.

Respondent.

OSHRC Docket No. 99-0958

***BRIEFING NOTICE***

Briefs are requested with respect to the following issues:

- 1) Whether the administrative law judge erred in finding that Altor, Inc. and Avcon, Inc. "are a single entity for purposes of this matter and jointly constitute an employer within the meaning of the [Occupational Safety and Health] Act."
- 2) Whether the judge erred in finding that Nicholas Saites and Vasilios Saites are not employers and in dismissing them as respondents.
- 3) Whether the judge erred in affirming Items 1, 2, 4, and 5 of Citation 1, which allege serious violations of 29 C.F.R. § § 1926.20(b)(1), 1926.25(a), 1926.404(b)(1)(i), and 1926.501(c)(1).
- 4) Whether the judge erred in affirming Citation 2, Item 1, which alleges violations of 29 C.F.R. § 1926.100(a), and, if not, whether he erred in classifying the violations as willful.

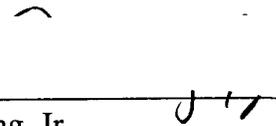
- 5) Whether the judge erred in assessing a penalty of \$32,000 for Citation 2, Item 1.
- 6) Whether the judge erred in affirming Items 2 through 7 of Citation 2, which allege violations of 29 C.F.R. § 1926.501(b)(1), and, if not, whether he erred in classifying the violations as willful.
- 7) Whether respondents established defenses of infeasibility or greater hazard with regard to the violations described in Items 2 through 7 of Citation 2.
- 8) Whether the judge erred in declining to group Items 2 through 7 of Citation 2 together for purposes of assessing a penalty, and whether he erred in assessing a penalty of \$25,000 for each item.
- 9) Whether the judge erred in affirming Citation 2, Item 8, which alleges violations of 29 C.F.R. § 1926.501(b)(4)(i), and, if not, whether he erred in classifying these violations as serious instead of willful.
- 10) Whether the judge erred in rejecting respondents' argument that the Occupational Safety and Health Administration selectively enforced the Act against them and thereby deprived them of due process of law.

The parties are advised that when the merits or characterization of an item are before the Commission for review, the appropriateness of the penalty also is subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.<sup>1</sup> The first brief is to be filed within 40 days of the date of this notice.

A party who does not intend to file a brief must notify the Commission in writing setting forth the reason therefor within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

FOR THE COMMISSION

  
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Ray H. Darling, Jr.  
Executive Secretary

Date: May 1, 2002

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<sup>1</sup> The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the lefthand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority other than statutes, case law, law journal articles and legal treatises be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.