



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.

AVCON, INC.; VASILIOS SAITES AND
NICHOLAS SAITES,

Respondents.

OSHRC Docket Nos. 98-0755 and
98-1168

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.

Respondents.

OSHRC Docket No. 99-0958

SECRETARY OF LABOR,

Complainant,

v.

SHARON and WALTER
CONSTRUCTION, INC.,

Respondent.

OSHRC Docket No. 00-1402

***NOTICE TO PARTIES & INVITATION TO INTERESTED AMICI CURIAE
TO FILE SUPPLEMENTAL BRIEFS***

The Commission hereby requests supplemental briefing by the parties, as well as interested *amici*, in the above-referenced cases to address issues raised by these matters:¹

1. Does the Commission have the authority to pierce the veil of a corporation and hold individuals personally liable for violations of the Occupational Safety and Health Act ("OSH Act")? In answering this question, parties and interested *amici* may wish to address § 3(5) of the Act, which defines the term "employer", and §10(c) of the Act, which authorizes the Commission to "direct[] other appropriate relief," (in addition to affirming, modifying, and vacating a citation or proposed penalty).
2. Does the OSH Act, with specific reference to § 10(c) of the Act, empower the Commission to extend a remedial order entered against a cited employer to a successor or alter ego of that employer?
3. Does 1 U.S.C. § 5 provide a basis by which the definition of "person" in § 3(4) of the OSH Act may be interpreted to include the successor of a cited employer?
4. Can § 17(a) of the OSH Act be interpreted as authorizing successor or alter ego liability for a repeat violation, assuming the other elements necessary for such a violation are established? *See Potlatch Corp.*, 7 BNA OSHC 1061 (No. 16183, 1979).
5. Are there policies embodied in the OSH Act that would be served, or frustrated, by piercing the corporate veil or by extending the Commission's remedial orders to successors and alter egos? How would those policies be served or frustrated by (a) piercing the corporate veil of Avcon, Inc., or Altor, Inc., or (b) finding that Sharon and Walter Construction, Inc., is the successor or alter ego of a previously cited employer?
6. What is the relationship between successor liability and alter ego liability under the OSH Act? Is there any difference in the type or scope of remedial action required pursuant to findings of successorship and alter ego status?
7. To what extent does the availability of a civil action under section 17(l) of the OSH Act affect the Commission's need to consider piercing the corporate veil, successor liability, and alter ego liability?

¹ Parties other than interested *amici* are urged to limit their supplemental briefing to those issues that arise in their respective case and not repeat arguments that have previously been presented in briefs filed with the Commission.

8. To the extent the Commission has the authority to pierce the corporate veil and to extend remedial orders to an employer's successor or alter ego, under what circumstances should the Commission exercise that authority? Are those circumstances present in the above-referenced cases?

In addressing these issues, the parties and interested *amici* are instructed to discuss the relevant Commission precedent as well as any federal and state law that is viewed as controlling. In this regard, the parties and *amici* may wish to address what relevance, if any, *United States v. Bestfoods*, 524 U.S. 51 (1998), has to the present cases.

All briefs shall be filed within 45 days of the date of this notice. No reply briefs will be permitted. Otherwise, all briefs shall be filed in accordance with Commission Rule 93.² A party that does not intend to file a brief must notify the Commission in writing setting forth the reason therefor within the time for filing briefs, and shall serve a copy of the notice on all other parties.

FOR THE COMMISSION


Ray H. Darling, Jr.
Executive Secretary

Date: January 8, 2004

² 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.