

July 1, 2007

In late April, 2007, the Occupational Safety and Health Review Commission published an opinion, *Secretary of Labor v. Summit Contractors*, that reverses the longstanding application of the multi-employer worksite doctrine as the doctrine applies to general contractors. In the Summit Contractors case, the Review Commission held that a general contractor may not be properly cited as a “controlling employer” under the multi-employer worksite doctrine for a worksite hazard that the contractor did not create and to which its employees were not exposed.

The Summit decision is based upon the specific language of 29 C.F.R. §1910.12(a), which limits an employer’s safety obligations by requiring that an employer maintain a safe construction worksite only for “his employees.” According to the Summit case, application of the multi-employer policy against the general contractor who does not create hazards and does not expose its employees to them, is directly contrary to the language of the regulation.

The impact of the Summit decision may become quite significant. The first and most obvious impact is that OSHA’s ability to issue safety citations to general contractors is likely to be substantially reduced. The second and less obvious impact is on construction injury litigation by injured employees of subcontractors against general contractors. While OSHA regulations do not directly govern the duties, rights and liabilities of general contractors and employees in the context of personal injury litigation, the multi-employer worksite citation policy is commonly relied upon by plaintiff’s liability experts to formulate their opinions that the general contractor owes duties to the employees of its subcontractors. The Summit decision provides defense counsel with substantially greater tools with which to attack and undermine any opinions that a general contractor owes a duty to its subcontractors’ employees for hazards not created by the general contractor and to which the general contractors employees are not exposed.

The opinion is quite long so I have not included it with this letter but I would be more than happy to email a copy of the opinion if you would like one. If so, please email me at edgrasse@bussepc.com.

Very truly yours,

BUSSE, BUSSE & GRASSÉ, P.C.

Edward K. Grassé

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