

Construction Accident Leads to Important OSHRC Ruling

On behalf of Johnston, Moore & Thompson

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The Occupational Safety & Health Review Commission, which hears appeals of OSHA citations and penalties, has ruled that employers cannot escape liability for repeat safety violations by reorganizing. The case was an appeal of an April 2001 [construction accident](#) in which a worker fell from a pitched metal roof.

After the worker's fall, OSHA cited the construction company, S&W Corporation, with a willful safety violation and repeat citation for failing to provide any means of fall protection for its workers. S&W denied that it could be held responsible for the repeat citation because it was not the same legal entity as its predecessor company that had been cited previously.

If a Construction Company Goes Out of Business But Reopens Under a New Name, Is It the Same Company?

In the OSHRC's decision, the first company is referred to as "S&W I" and the second company is called "S&W II." According to the facts reviewed by the commissioners, S&W I had been incorporated in New Hampshire in 1995 and filed for bankruptcy in 1994. Six weeks later, Walter Jensen, the sole proprietor of S&W I, started the new company.

Jensen was also the sole proprietor of S&W II. The two companies provided essentially the same construction services, operated out of the same offices and had the same phone number. In at least one case, a bill owed by S&W II was paid out of a remaining S&W I account.

While it was in operation, S&W I had been cited twice by OSHA for violating the same workplace safety standard that led to the 2001 construction accident. It had failed to provide any safety equipment to protect its workers from [falls from heights](#).

When S&W II was cited as a repeat violator, it contested that citation because it had been S&W I that was responsible for the previous safety violations.

The OSHRC admitted that it had never seen such a defense raised before, but thoroughly rejected it. The commissioners ruled that the purpose of the repeat violator language in the section 17(a) of the OSHA Act was to deter employers from repeatedly putting workers' safety at risk. That goal was to be achieved by setting up an enforcement scheme where employers know the penalties for repeat violations will be significantly greater.

"[W]e conclude," reads the decision, "that the statutory language in section 17(a) is most reasonably read to permit, in appropriate circumstances...a 'repeat' characterization to cases where the cited employer has altered its legal identity from that of the predecessor employer whose citation history forms the basis of that characterization.

"Such an interpretation is not only consistent with the Act's purpose, but also ensures the effectiveness of its enforcement scheme."

The OSHRC affirmed OSHA's willful citation, which carried a penalty of \$7,000, and the repeat citation and its \$3,750 penalty against S&W II.

Source: Occupational Health & Safety magazine, "[Predecessor Company's Violations Count, OSHRC Holds](#)," Nov 30, 2010