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SOL (MSHA) V. ERNST MATERIALS SERVICE  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
HARRY W. MULLEN,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. LAKE 90-57-DM  
MSHA Case No. MD 89-65

Sand and Gravel Plant

v.

ERNST MATERIALS SERVICE,  
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Koutras

Statement of the Case

On June 12, 1990, I issued an order granting the Secretary's motion for a continuance of the hearing scheduled for June 26, 1990, in Cincinnati, Ohio, and for a stay of the proceeding in order to afford the Secretary time to conduct an additional investigation. The Secretary has now filed a Motion to Dismiss this matter on the ground that further investigation revealed that the respondent corporation is no longer in business and the owner of the former respondent corporation died on June 22, 1990. The Secretary states that an analysis of successor liability was conducted under the standard enunciated in *Munsey v. Smitty Baker Coal Company, et al.*, 2 FMSHRC 3463 and its progeny, and that the results of the analysis show that no successor corporation exists that could reasonably be impleaded by the Secretary.

ORDER

In view of the foregoing circumstances, the previously issued stay order IS LIFTED, and for good cause shown, the Secretary's motion IS GRANTED, and this matter IS DISMISSED.

George A. Koutras  
Administrative Law Judge