

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

FEB 15 2017

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

SIMS CRANE, INC.

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Docket No. SE 2015-315

ORDER

The Specialized Carriers and Rigging Association, Crane Owners Association, Mobile Crane Operators Group, and 39 other companies and organizations have notified the Commission of their interest in participating as amici curiae in this proceeding in support of Sims Crane, Inc. (“Sims”).

Twenty-four of the companies and organizations¹ filed notices with the Commission indicating their intent to participate in these proceedings but did not file subsequent motions requesting leave to participate as amici curiae as required by Commission procedural rules. *See* Commission Procedural Rule 74(a), 29 C.F.R. § 2700.74(a). While these companies and organizations were on notice of the requirements, they failed to comply with Commission procedure for participation as amicus curiae and are thus denied amicus status.

Twelve of the companies and organizations² filed Motions to Participate as Amici Curiae that met the requirements set forth in Rule 74(a). *See* 29 C.F.R. § 2700.74(b). Each of these

¹ These companies and organizations include: AmQuip Crane Rental, LLC; Apollo Mechanical Contractors; Lampson International; Ray Poland and Sons, Inc.; Lampson Canada Ltd.; Sterett Crane and Rigging; CCC Group, Inc.; Cote Corporation; Crane Rental Service, Inc.; F.B. McIntire Equipment Company; Davis Motor Crane Service, Inc.; RCD Equipment LLC; Marco Crane and Rigging Company; Eagle Mine Safety; Russel Crane Service, Inc.; Buchanan Hauling and Rigging, Inc.; Houston International Insurance Group; Houston Specialty Insurance Company; Great Midwest Insurance Company; Oklahoma Specialty Insurance Company; Imperium Insurance Company; TNT Crane and Rigging, Inc.; Budrovich Contracting Company, Inc.; and Budrovich Marine LLC.

² These companies and organizations include: the Texas Crane Owners Association; Barnhart Crane and Rigging Co.; Chellino Crane, Inc.; Olori Crane Service, Inc.; L.W. Connelly and Son, Inc.; the International Union of Operating Engineers; Nabholz Industrial Services; Allegiance Crane and Equipment; Fagioli, Inc.; H.K.B., Inc.; Blackhawk Mining, LLC; and Revelation Energy, LLC.

companies and organizations also included an extremely short amicus brief simply stating that it joins Sims' petition for review and opening brief based on the arguments and legal authorities cited therein. These companies and organizations are granted amicus status and their briefs are accepted as filed.

The Specialized Carriers and Rigging Association, Crane Owners Association, and Mobile Crane Operators Group filed a joint motion for leave to participate as amicus curiae and seeking to file an amicus brief after the closing of the briefing period. While noting that the aforementioned associations' motion was untimely filed, the Secretary does not object to the filing of a joint amicus brief as long as the Secretary is provided a reasonable period of time to respond.

Additionally, Broderson Manufacturing Corporation, Sautter Crane Rental, Inc., and Global Specialized Services LLC filed motions for leave to participate as amici curiae. The Secretary did not respond to these motions.

Upon consideration of the joint motion and the Secretary's response, the Specialized Carriers and Rigging Association, Crane Owners Association, and Mobile Crane Operators Group are granted amici status. In this instance, the Commission will follow the alternate briefing schedule in Rule 74(c). Accordingly, a single, joint amicus brief shall be filed no later than 20 days after the close of the regular briefing period.³ The Secretary may file a supplemental brief in response to the amicus brief within 20 days after service of that brief. *See* Commission Procedural Rule 74(c).

In addition, Broderson Manufacturing Corporation, Sautter Crane Rental, Inc., and Global Specialized Services LLC are also granted amici status. They may file a single, joint amicus brief no later than 20 days after the close of the regular briefing period. The Secretary may file a supplemental brief in response to that separate brief within 20 days after service of that brief.

For the Commission:



William I. Althen
Acting Chairman

³ The Secretary's Response Brief was filed with the Commission on January 26, 2017. Pursuant to 29 C.F.R. § 2700.74(a)(2), Sims' Reply Brief is due 20 days from that date—February 15, 2017. For purposes of setting the filing date for the amicus brief, the normal briefing period shall be deemed closed on February 15, 2017.

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