

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Charles F. Frazier)	State File No. M-12257
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Preferred Operators, Inc.)	
HBH Prestain, Inc.)	
H & H Properties, Inc.)	For: Michael S. Bertrand
)	Commissioner
Valiant Insurance Company,)	
Ins, Carrier for HBH Prestain)	Opinion No. 34-03WC

Submitted on stipulated facts and briefs

APPEARANCES:

Lon T. McLintock, Esq., for the Claimant
R. Marshall Witten, Esq., for the Employers
Eric A. Johnson, Esq., for Valiant Insurance, for the Defendant

ISSUE:

Is the claimant Charles Frazier a statutory employee of the defendant HBH Prestain, according to the definitions contained under the applicable provisions of the Vermont’s Workers’ Compensation Act?

THE FOLLOWING FACTS HAVE BEEN STIPULATED TO BY ALL THE PARTIES INVOLVED IN THIS MATTER:

The Parties

1. Charles Frazier, the claimant, is a resident of the Town of Bennington, State of Vermont.
2. Preferred Operators, Inc. (“Preferred Operators”) is a Vermont Corporation duly registered with the Vermont Secretary of State, having a principal place of business in Arlington, Vermont.
3. At all times relevant, hereto, Preferred Operators was in the commercial trucking business.

4. HBH Prestain, Inc. (“HBH”) is a Vermont Corporation duly registered with the Vermont Secretary of State, with a principal place of business in Arlington, Vermont.
5. HBH is engaged in the business of “pre-priming” and staining lumber for wholesalers and retailers located throughout the northeast and Mid-Atlantic States.
6. H&H Properties, Inc. (“H&H”) is a Vermont corporation duly registered with the Vermont Secretary of State, with a principal place of business in Arlington, Vermont.
7. H&H is in the business of owning and leasing land and buildings in Arlington, Vermont to HBH.
8. H&H retains no interest in the premises it leases to HBH other than that of landlord, and HBH has the exclusive right to possess, use and control the premises and facilities.
9. Valiant Insurance Company is the worker compensation insurance carrier for HBH.

Claimant’s Employment

10. At all times relevant to this action, Claimant Charles Frazier was an employee of Preferred Operators; Mr. Frazier’s employment ended in July 1999.
11. Preferred Operators hired Mr. Frazier as a truck driver; Mr. Frazier also periodically performed other tasks, such as truck and trailer maintenance, trailer loading, and load covering with tarps.
12. Preferred Operators owned the trucks and trailers Mr. Frazier operated.
13. The trucks and trailers used by Mr. Frazier had the “Preferred Operators” name on them.
14. Mr. Frazier used his own tools or HBH tools to maintain the trucks and trailers.
15. All necessary registration of the vehicles was in the name of Preferred Operators.
16. HBH was responsible for loading the lumber onto the trucks at its plant in Arlington, and the HBH’s customers were responsible for loading and unloading the trucks at their businesses.

17. From time to time, Preferred Operators truck drivers would use HBH's forklifts to put a tarp over a loaded trailer.
18. Preferred Operators paid Mr. Frazier weekly, based upon the miles driven, plus \$40.00 for each loaded trailer he covered with a tarp.
19. Mr. Frazier submitted time cards with notations on them indicating time spent driving trucks for Preferred Operators.
20. Preferred Operators paid Mr. Frazier's salary with funds from Preferred Operators' bank account. For the seven month period of March through September 1994, HBH provided payroll services to Preferred Operators, including preparation of Mr. Frazier's pay checks and deduction of payroll taxes (although the funds paid to Claimant were reimbursed to HBH by Preferred Operators the checks themselves were processed with HBH's Payroll on an HBH bank account using HBH checks).
21. Preferred Operators deducted taxes from Mr. Frazier's paychecks.
22. Rick Hawley terminated Mr. Frazier's employment in July 1999.

The Work-Related Accident

23. On December 9, 1998 Mr. Frazier drove one of Preferred Operators' trucks into the yard of the HBH Prestain plant to pick up a loaded trailer for transport.
24. The yard and the plant were owned by H&H Properties and leased to HBH.
25. Preferred Operators maintained its place of business at the yard and plant owned by H&H Properties and leased to HBH Prestain.
26. As an employee of Preferred Operators, Mr. Frazier's job was to drive the load to the customer of HBH and return the truck and trailer to Preferred Operators' place of business, where the trucks and trailers were kept.
27. When Mr. Frazier drove onto the yard, Mr. Frazier found a flatbed trailer that was owned by Preferred Operators and had been loaded by an HBH employee; the trailer and load were prepared for hauling.
28. The load consisted of bundles of pre-stained, wrapped in plastic or polyethylene.
29. Mr. Frazier coupled the tractor and trailer.

30. During deposition testimony, Mr. Frazier described the work-related accident. The Employer and Insurer reserve the right to challenge Mr. Frazier's allegations regarding his work-related accident and the resulting injury. For purposes of the parties' Motions for Summary Judgment only, however, the parties agree that Mr. Frazier alleges the following regarding his work-related accident:
- a. Mr. Frazier got out of the driver's compartment of the tractor and climbed up onto the load of lumber.
 - b. While standing on top of the load of lumber, Mr. Frazier began spreading a heavy tarp over the lumber.
 - c. At the moment of the accident, Mr. Frazier was standing on the lumber, and the plastic or polyethylene material covering the lumber was wet and slippery.
 - d. Mr. Frazier slipped and fell approximately 13 feet from the top of the load, onto the ground, landing on the back of his neck, head, shoulders and back.
 - e. Mr. Frazier was injured by the fall, requiring medical treatment from a number of medical specialists, including a surgeon, an orthopaedic surgeon and a neurologist.
 - f. Due to the fall, Mr. Frazier cannot recall all of the details surrounding the accident.
31. At the time of the accident, Mr. Frazier was working alone; there were no witnesses to the accident or the injury he suffered.
32. Preferred Operators had workers' compensation insurance at certain times during Claimant's employment; however, on the day of the injury, the policy had lapsed.
33. On the date of the injury, HBH did have workers' compensation coverage; Valiant Insurance Company was the workers' compensation insurance carrier for HBH at that time.
34. Preferred Operators offered to pay for medical treatment of Mr. Frazier's injuries.
35. Preferred Operators paid some medical bills, but did not pay all of the medical bills.
36. On June 28, 1998, Frederick Hawley (Rick Hawley) formed HBH with his brother, Edward Hawley, and John (Jack) Batchelder.
37. Originally, Rick Hawley owned two-thirds of the HBH shares and Edward Hawley owned one-third.

38. Jack Batchelder left HBH before HBH began operations and has not been involved with the company since then.
39. HBH's officers and directors are:
- | | |
|-------------------|---------------------|
| President: | Frederick J. Hawley |
| Vice President: | Edward Hawley |
| Secretary: | Edward Hawley |
| Treasurer: | Frederick J. Hawley |
| Director 1: | Frederick J. Hawley |
| Director 2: | Edward Hawley |
| Registered Agent: | Frederick J. Hawley |
40. Frederick Hawley has been HBH's bookkeeper and financial manager since it opened.
41. The current HBH shareholders are Frederick Hawley and his wife, Connie Hawley, and Edward Hawley and his wife, Susan Hawley.
42. At all times relevant hereto, Rick Hawley and Edward Hawley were principally responsible for managing the business and carrying out the day-to-day tasks associated with operating the lumber staining business.
43. At all times relevant hereto, Rick Hawley and Edward Hawley maintained offices at HBH.
44. When HBH initiated its pre-priming lumber business, its customers were local to the Town of Arlington and Bennington County area, and the customers brought their lumber for staining or priming to HBH for staining and priming.
45. HBH's customers included homebuilders, contractors, lumberyards and suppliers.
46. Since HBH's first year of operation, HBH has owned or leased trucks to carry out its operations.
47. Since its first year of operation, HBH has purchased or leased a number of trucks for moving product, including a truck with 12-foot box bed, a truck with a 16-foot bed, a truck with an 18-foot bed and a truck with a 20-foot bed.
48. HBH used the trucks to pick up and deliver the lumber that HBH primed and painted when its customers could not transport the lumber themselves; HBH offered the pick up and delivery service to its customers and charged its customers for the service.

49. HBH hired truck drivers possessing a Vermont commercial driver's license to drive the HBH trucks.
50. HBH had its own truck drivers driving the HBH trucks and providing delivery services, and continues to provide this service to its customers.
51. When HBH provided pick up and delivery services for its customers, HBH charged those customers a fee.
52. Rick Hawley handled the tasks of hiring and firing drivers, scheduling pick-ups and deliveries, and determining the order in which a truck would pick up or deliver lumber.
53. Rick Hawley managed the order of a truck's pick-ups and deliveries so the truck could hold and transport as much lumber as possible.
54. Rick and Edward Hawley each supervised the work of HBH's truck drivers in the yard, but Rick Hawley managed all of the office work.
55. Rick Hawley's wife, Connie Hawley, was a part-time employee at HBH from 1988-1992 and she has been a full-time employee of HBH since 1992.
56. Connie Hawley serves HBH in the position of office manager and handles employee relations.
57. HBH did not use Preferred Operators the year that Preferred Operators began operating since HBH had its own trucks and drivers.
58. Preferred Operators began trucking for HBH when HBH's truck was destroyed in a crash.
59. HBH provided pick up and delivery services throughout the period of time Preferred Operators was open and operating.
60. Since losing a truck in an accident in December 1998, HBH has hired independent truckers to pick up and deliver lumber.

PREFERRED OPERATORS, INC.

61. On March 3, 1994, Rick Hawley formed Preferred Operators with his brother, Edward Hawley.
62. Preferred Operators was incorporated on March 3, 1994, and ceased active operation in July 1999.

63. At all times relevant hereto, Preferred Operators was in the commercial trucking business.
64. Preferred Operators did not own or lease any real estate. It used a portion of the HBH facilities rent-free for parking and maintenance of its two tractor-trailers. It did not have the use of any office or other facilities except to the extent of the activities conducted in the HBH offices on behalf of Preferred Operators.
65. Preferred Operators' officers and directors were:
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|-------------------|-----------------------|
| President: | Frederick J. Hawley |
| Vice President: | Christopher B. Hawley |
| Secretary: | Edward Hawley |
| Treasurer: | Andre Koneczny |
| Director 1: | Frederick J. Hawley |
| Director 2: | Edward Hawley |
| Director 3: | Andre Koneczny |
| Registered Agent: | Frederick J. Hawley |
66. Initially, Preferred Operators was established to deliver prestained lumber to HBH customer, Philadelphia Forest Products.
67. Later, Preferred Operators transported stained lumber to HBH customers other than Philadelphia Forest Products.
68. HBH loaned Preferred Operators \$20,000.00 so that Preferred Operators could buy its first truck.
69. Rick Hawley was solely responsible for managing Preferred Operators' day-to-day operations.
70. Rick Hawley handled Preferred Operators' bookkeeping and financial affairs.
71. Rick Hawley was responsible for arranging the pick up and delivery of lumber.
72. Connie Hawley also took calls from Preferred Operators' customers and arranged pick up and delivery of lumber, after conferring with Rick Hawley.
73. Connie Hawley was responsible for completing the payroll cards for Preferred Operators' drivers, and for forwarding the cards to the payroll company so that payroll checks could be issued.

74. Since 1992, and throughout the period of time Preferred Operators actively engaged in business, Connie Hawley was employed by HBH; Connie Hawley has never been an employee of Preferred Operators.
75. Rick Hawley performed his duties for Preferred Operators out of his office at HBH.
76. Preferred Operators and HBH used separate mailing addresses.
77. The office equipment used to operate Preferred Operators was owned by HBH.
78. Rick Hawley never received a salary from Preferred Operators.
79. Connie Hawley never received a wage or salary from Preferred Operators.
80. Preferred Operators never paid a distribution (e.g., dividend) to its shareholders, Rick and Edward Hawley.
81. Preferred Operators' only employees were 2 truck drivers, including Mr. Frazier.
82. Preferred Operators' trucks began their pick up and delivery runs at HBH; once the HBH deliveries were completed, Preferred Operators tried to schedule return loads.
83. During his deposition, Rick Hawley testified that HBH and Preferred Operators were both conducting trucking operations:

HBH trucked its priming materials... Preferred didn't haul for HBH for quite a while. [Preferred Operators] hauled for Chesapeake Trading and Philadelphia Forest Products. HBH wasn't a customer [but Preferred Operators was hauling prestained materials from HBH's yard].
84. For example, Preferred Operators would haul a load of lumber from HBH to Philadelphia Forest Products and, after delivering the load, would try to find another load from a separate customer that would pay for some or all of the truck's return trip to Arlington.

85. At deposition, Rick Hawley described how rental loads were arranged, as follows:

[Philadelphia Forest Products] distributed a lot of products so [Preferred Operators] could get a load of 2x4s or something...[from] a different division to deliver back up this way. If we couldn't do that, then we would try to call a broker to try to find a load...

[If Philadelphia Forest Products did not have a return load for Preferred Operators, Preferred Operators] had set up a deal with Culpepper Wood Products, and they do pressure treated [lumber] that comes to the Northeast. So we'd make a phone call to their truck broker or their guy doing their trucking and tell them...we needed a load. They'd say come in and get a load...

Most of the time [when a Preferred Operator truck left HBH] Preferred Operators had [a return load arranged] or we would have it by the time he got down there...

If [a Preferred Operator] truck got stopped on the way down or for some reason didn't make it on time, you would lose [the return] load, so [the owner of the return load] couldn't commit unless [Preferred Operators could guarantee timely return].

86. Rick Hawley was responsible for arranging all of the return loads.
87. In the beginning, Philadelphia Forest Products was Preferred Operators' principle customer.
88. Preferred Operators' first truck was destroyed in a crash; HBH loaned Preferred Operators money to buy the second truck.
89. Preferred Operators subsequently purchased two more trucks.
90. HBH used one of Preferred Operators' trucks for HBH's own purposes the last year or the last part of the year that Preferred Operators was in business.
91. HBH periodically paid Preferred Operators' operating expenses and Preferred Operators would repay HBH.
92. When Preferred Operators ceased doing business, Preferred Operators was indebted to HBH for approximately \$20,000.00 in operating expenses HBH had paid on Preferred Operators' behalf.

93. HBH also paid off a loan that Preferred Operators owed to the Chittenden Bank.
94. When Preferred Operators ceased operations in July 1999, Rick Hawley handled the sale of Preferred Operator's assets, which HBH purchased. For purposes of the parties' pending Summary Judgment Motions, the Commissioner may assume that Preferred Operators paid the cash it received from the sale of its assets to its liquidated creditors.
95. At all times relevant hereto, Preferred Operators and HBH kept separate financial books and records for accounting, tax and other purposes.
96. At all times relevant hereto, Preferred Operators and HBH filed separate income tax returns.
97. At all times relevant hereto, Preferred Operators and HBH maintained separate payroll accounts for paying salaries to their employees, except for the seven month period from March through September 1994. Preferred Operators transferred funds to HBH for payroll and HBH processed the checks, withholding, etc., on regular HBH payroll checks with the HBH payroll.
98. Preferred Operators and HBH maintained separate bank accounts.
99. At all times relevant hereto, Preferred Operators and HBH obtained separate insurance policies and paid insurance premiums separately.
100. The assets and liabilities of HBH and Preferred Operators were tracked by bookkeeping entries.

H&H PROPERTIES, INC.

101. Rick Hawley originally formed H&H with his brother, Edward Hawley.
102. Rick and Edward Hawley are the sole shareholders of H&H, each owning one-half of HBH's shares of stock.
103. H&H's officers and directors are:

President:	Frederick J. Hawley
Vice President:	Edward Hawley
Secretary:	Edward Hawley
Treasurer:	Frederick J. Hawley
Director 1:	Frederick J. Hawley
Director 2:	Edward Hawley
Registered Agent:	Connie Hawley

104. Rick Hawley has always kept the books and handled the financial affairs of H&H.
105. At all times relevant hereto, H&H Properties, Inc. was the owner of the premises upon which HBH and Preferred Operators ran their businesses.
106. Rick Hawley never received a salary from H&H.
107. H&H Properties was formed to purchase the former Hale Furniture Company's land and manufacturing plant.
108. One of the purposes of forming H&H was to allow Rick and Edward Hawley to shield themselves from whatever liabilities or environmental clean-up costs they could incur as owners of the government designated hazardous waste site.
109. Rick and Edward Hawley also formed H&H properties to give them the flexibility of selling HBH while retaining the land and plant as a commercial rental property.

CONCLUSIONS OF LAW:

1. The Workers' Compensation Act defines an employee as "a person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer." 21 V.S.A. § 601(14).
2. An employer is "any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and includes the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there to be carried on, but who, by reason of there being an independent contractor or for any other reason is not the direct employer of the worker there employed." 21 V.S.A. § 601(3).

3. In *Edson v. State*, 2003 VT 32 ¶ 6, ___Vt.___, the Vermont Supreme Court recently outlined the intent underlying this statutory provision:

As we stated in *King v. Snide*, 144 Vt. 395, 400, 479 A.2d 752, 754 (1984), § 601(3) creates a statutory relationship of employer and employee, where no such relationship existed at common law. The statute was intended to impose liability for worker's compensation benefits upon business owners who hire independent contractors to carry out some phase of their business. *Id.* at 401, 479 A.2d at 754. The idea was to prevent business owners or general contractors from attempting to avoid liability for workers' compensation benefits by hiring independent contractors to do what they would otherwise have done themselves through their direct employees.

Id. See also, *Fotinopoulos v. Dept of Corrections*, 2001 VT 435__VT__ (invalidating work contracts that attempt to circumvent worker's compensation laws).

NATURE OF THE BUSINESS

4. The crucial test, as the Court clearly explained, is the nature of the business. “[T]he question is whether the work that the owner contracted for ‘is a part of, or process in, the trade, business or occupation of the owner.’” *Edson*, ¶ 7. This test involves determining how closely the claimant's work correlates to the employer's business. The commissioner is required to determine the nature of both the claimant's work and the employer's work, and then assess how closely the two relate to each other.
5. The nature of business test is supported by long standing Supreme Court and Department precedent, as the following cases illustrate. The owner of a wood lot was not the statutory employer of a logger's employee. *King*, 144 Vt. 395. The owner of a creamery business was not the statutory employer of an employee of a contractor hired to build on the creamery site. *Packett v. Moretown Creamery Co.*, 91 Vt. 97 (1917). An employee of a roofer was not the statutory employer of a Condominium Association, *Chandler v. Continental Loss Adjusting Services*, et al. Op. No. 59-94WC (1995). In each of those cases, the injured worker was an employee in a business quite different from the putative employer. See, *Hathaway v. Addison County Commission Sales*, Opinion No. 23-03WC (2003).

6. In contrast, a manufacturer of wood products who hired an independent contractor to haul its lumber and load it on railroad cars was the deceased employee's statutory employer because hauling and loading the lumber was an integral part of the business. See, *O'Boyle v. Parker-Young Co.*, 95 Vt. 58, 112 A. 385 (1921). And a worker who had received workers' compensation benefits from a trucking firm was the statutory employee of the State Department of Liquor Control, whose business is the sale and distribution of liquor. *Edson*, supra. A trucking firm had a contract with the State to load and deliver merchandise. The Court held that the State Department of Liquor Control was the statutory employer of the trucking firm employee, thereby immunizing the State from civil liability. According to the Court, the "true test" was whether the work being done by the injured employee pertained to the defendant's business. Because the business of the Department of Liquor Control was both sales and distribution, the Court held that the trucker's delivery work met the test. *Edson*, ¶ 9.
7. Indeed, the leading commentator in the field of workers' compensation advises that the modern tendency is to find employment when the work being done is an integral part of the regular business of the employer, and when the worker, relative to the employer, does not furnish an independent business or professional service. 3 Larson's Workers' Compensation Law, § 62.00.
8. Using this test, HBH can be considered to be the claimant Frazier's statutory employer, because Frazier was doing the work of HBH at the time of his injury.
9. Although HBH is attempting to define its business simply as lumber staining and pre-priming, the fact is that the nature of HBH's business must be defined more broadly. There are surely many essential functions of HBH's business that are not directly linked to actual staining and pre-priming. HBH is not in the business of manufacturing pre-stained or primed lumber for no purpose, HBH is in the business of manufacturing pre-stained or primed lumber for sale in the marketplace. In order to sell its lumber, HBH must have a method to deliver its product to market. Without a means of transportation, HBH's ability to function as a business would be greatly limited. Since its first year of operation, HBH has owned or leased trucks to carry out its operations. It also has employed drivers for those trucks throughout its existence. HBH has also chosen the use of Preferred Operators' trucks as a primary means of making many of its deliveries. HBH was using Preferred Operators to deliver its lumber at the time of claimant's work related accident. Claimant, although he received paychecks from Preferred Operators, was thus carrying out an integral function of HBH's business. HBH is using Preferred Operators (which is quite similar to an independent contractor), See *Edson*, to carry out an activity that it otherwise had done through direct employees in the past. In short, the claimant's work as a truck driver in transporting HBH's product was an essential activity to HBH's business.

10. HBH has argued that it is in “the lumber staining business and not the ‘transportation’ business.” Under this analysis, it is claimed that the claimant is not an employee because he is a truck driver. If this assertion is accepted, it could also be argued that office workers doing clerical work in HBH’s management office are also not employees, because they are not directly involved in staining lumber. There are activities conducted by HBH employees that cannot be strictly confined to only pre-priming and lumber staining. Indeed, the commissioner has refused to allow employers to define the nature of their businesses in the rigid terms that HBH is trying to do. In *Forcier v. LaBranch Lumber Co.*, Opinion No. 04-02WC it was concluded that a welder could be considered an employee of a lumber company, although he was not directly involved in the manufacture of the company’s lumber.
11. In this case, although the claimant, Mr. Frazier, was not directly involved in the actual staining of lumber, this does not bar him from being considered a “statutory employee” of HBH. Under the nature of the business test, Mr. Frazier is a statutory employee of HBH.

RIGHT TO CONTROL

12. Apart from the statutory nature of the business test, the Commissioner has also recognized the right to control test under Vermont Law. Under this separate test, the Commissioner is asked to evaluate “the nature and extent of control exercised” by the business so that it is fair to conclude the worker was an employee of the business. *Falconer v. Cameron*, 151 Vt. 530, 532-33. This test also allows for Mr. Frazier to be considered an employee of HBH. In *Falconer* the Court stated:

The court found that Defendants instructed plaintiff on maintaining the truck, where to park it and how much of a load to put on it. Plaintiff never contracted directly with a third party to haul goods; instead, defendants would make the arrangements with the third parties and would assign work to plaintiff. Defendants suggested driving routes and directed plaintiff not to drive during inclement weather... Thus, despite the wording of the lease agreement...defendants had significant control over plaintiff’s work as a driver, and that plaintiff “did not make independent decisions pertaining to the trucking contacts or the truck.” In fact, on the day the accident occurred, the court found that plaintiff’s sole responsibility was to drive the truck. Defendant had procured the contract, directed the plaintiff to the destinations and required plaintiff to return at a certain time in order to make an appointment that defendant had scheduled. In essence the defendant was directing the means and methods of the work being performed.

Id.

13. These facts from *Falconer* are quite similar to facts from Mr. Frazier's claim now before the Commissioner. As in *Falconer*, it can be concluded that HBH was directing the means and methods of the work that Mr. Frazier was performing.
14. Mr. Frazier acted at the direction of Frederick Hawley, Connie Hawley and Edward Hawley, who were the managers of HBH, regardless of what "hat" of business affiliation they might have been wearing. In fact, all three of those individuals were being paid by HBH, not Preferred Operators, while they were managing and directing Mr. Frazier's activity when he was on the job. In essence, it was HBH that was directing Mr. Frazier's daily routine, not Preferred Operators. HBH's management, not Preferred Operators' management, directed the size and type of the loads that were being transported by Mr. Frazier. HBH's management, not Preferred Operators' management, determined the time and place for the pick-ups and deliveries that Mr. Frazier was making. Mr. Frazier's delivery runs began at the HBH factory. Nearly all of the deliveries that Mr. Frazier made contained loads of HBH product and were delivered to HBH customers. HBH's management, not Preferred Operators' management, made arrangements with third parties for deliveries and pick ups, and collected the fees from those parties, which were later distributed to Preferred Operators.
15. It is entirely reasonable to conclude that the majority of Mr. Frazier's employment was controlled by HBH. He was thus an employee of HBH under the Falconer test.
16. Under both the "nature of the business" test and the *Falconer* "right to control" test Mr. Frazier can thus be considered a statutory employee of HBH Prestain. There is no need to consider issues of corporations law, such as "piercing the corporate veil," in order to make this decision. Workers' compensation law provides the necessary precedent to find that Mr. Frazier is an employee of HBH, and he is thus entitled to workers' compensation benefits.
17. The central question at issue in this case, was whether HBH was Mr. Frazier's employer. Because Mr. Frazier has been found to be an employee of HBH under Vermont worker's compensation law, the Commissioner is not required to determine whether H&H Properties is also Mr. Frazier's employer. See, *Race v. Abair Roofing*, Op. No. 21SJ-02WC. (2002) "It is impractical and costly for this contested case to proceed against multiple defendants for an alleged single incident." See, *Morrisseau v. Legac*, 123 Vt. 70 (1962) at 78: "While the Commissioner should pass upon the primary liability of the parties defendant, he is not required or authorized under the act to pass upon the ultimate rights or liability as between carriers."

THEREFORE, because he was a statutory employee of HBH, Claimant's motion for summary judgment is GRANTED.

Dated at Montpelier, Vermont this 3rd day of September 2003.

Michael S. Bertrand
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.