

## **APPENDIX A-12: “MACMILLAN” FACTORS CONCERNING SUCCESSOR EMPLOYER LIABILITY**

Requests for a determination of successor liability should include responses to the factors listed below. Responses should cite the source of the information and, where the source is written material, a copy of the relevant page(s) should be attached. Information on these factors may be obtained from a number of sources, including the contractor, Standard and Poor’s and other corporate guides, trade magazines, annual reports, collective bargaining agreements and the business section of local newspapers.

1. Whether the Successor Company had Notice of the Charge.

The date the alleged discriminatory act occurred, the date the complaint was filed and the dates concerning the transfer (announcement date, effective date of merger, acquisition, etc.).

2. The Ability of the Predecessor to Provide Relief.

Whether the predecessor continues to operate, and the extent and location of its new operations; whether the predecessor maintained any of its assets (what percentage and type); whether the transfer resulted from a bankruptcy action; and whether the predecessor could provide seniority, reinstatement, hiring, back pay, etc.

3. Whether there has been a Substantial Continuity of Business Operations.

The percentage of operating assets that were transferred to the successor; the status of the predecessor's patents, trademarks and operating name; whether there are corporate officers and members of the board of directors who are common to both the predecessor and the successor, etc.

4. Whether the Successor Uses the Same Plant.

5. Whether the Successor Uses the Same or Substantially the Same Workforce.

6. Whether the Successor Uses the Same or Substantially the Same Supervisory Personnel.

7. Whether the Same Jobs Exist Under Substantially the Same Working Conditions.

Whether the organization of the departments, sections, etc., remain substantially the same; the percentage of old jobs maintained; whether personnel practices are substantially the same; and the status of any collective bargaining agreements, etc.

8. Whether the Successor Uses the Same Machinery, Equipment and Methods of Production.

9. Whether the Successor Produces the Same Product.