



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

Mid South Waffles, Inc.,
d/b/a Waffle House #1283,

Respondent.

OSHRC Docket No. 13-1022

BRIEFING NOTICE

The Commission requests that the parties brief all issues identified in Respondent's Petition for Discretionary Review and, specifically:

1. With respect to Citation 1, Item 1, whether the judge erred by finding that the Secretary established recognition of the cited hazard; in particular, whether Respondent's practice of emptying the grease trap was evidence of its recognition of the hazard.
2. With respect to Citation 1, Item 1, whether the judge erred in finding that the Secretary established Respondent had constructive knowledge of the violative condition. In addressing this issue, the parties are asked to discuss the court's holding in *ComTran Group, Inc. v. U.S. Dep't of Labor*, 722 F.3d 1304 (11th Cir. 2013), and the conclusion that the Secretary must meet his *prima facie* burden of establishing knowledge by "do[ing] more than merely point[ing] to the misconduct" of a supervisor. Specifically, discuss whether the judge erred by imputing constructive knowledge of the alleged hazardous condition from the night shift manager to Respondent.
3. With respect to characterization and penalties, should the judge's decision be affirmed?

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal

Commission in writing setting forth the reason therefor within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: February 3, 2015

_____/s/_____
John X. Cervený
Executive Secretary

articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.

DOCKET NO. 13-1022

NOTICE IS GIVEN TO THE FOLLOWING:

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