



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.

A CRANE RENTAL, LLC

Respondent.

OSHRC Docket No. 19-1667

BRIEFING NOTICE

The parties are requested to brief the following issues with respect to Citation 1, Items 1 and 2:

- (1) Did the judge err in finding the Secretary failed to establish that Respondent had knowledge of the alleged violative conditions? Specifically, the parties should address:
 - a. Whether the crane operator was a supervisor such that his actual knowledge of the alleged violative conditions can be imputed to Respondent.
 - i. If so, whether the Secretary is required to show that the crane operator's conduct was foreseeable and, if required, whether the Secretary did so. *See ComTran Grp., Inc., v. U.S. Dep't of Labor*, 722 F.3d 1304, 1316 (11th Cir. 2013) (requiring Secretary to establish foreseeability before imputing supervisor's knowledge of his own misconduct); *Pa. Power & Light Co. v. OSHRC*, 737 F.2d 350, 357-58 (3d 1984) (same).
 - ii. If not, whether Respondent had constructive knowledge of the alleged violative conditions.

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

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 not intending to file a brief shall notify

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,

the Commission in writing 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: April 27, 2023

/s/

John X. Cerveny
Executive Secretary

regulations, case law, law journal 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.