



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.

SUMMIT CONTRACTING GROUP, INC.,

Respondent.

OSHRC Docket No. 18-1451

BRIEFING NOTICE

The parties are requested to brief the following issues:

- (1) Whether, as Respondent claims, Commission precedent regarding the “multi-employer worksite doctrine” should not apply in cases arising in the Eleventh Circuit. *See McDevitt Street Bovis, Inc.*, 19 BNA OSHC 1108, 1110 (No. 97-1918, 2000) (stating that the “Eleventh Circuit has neither decided nor directly addressed the issue of multi-employer liability,” and applying Commission precedent affirming such liability while distinguishing the circuit’s precedent); *Horn v. C. L. Osborn Contracting Co.*, 591 F.2d 318 (5th Cir. 1979); *Southern Pan Servs. v. U.S. Dep’t of Labor*, 685 F. App’x 692 (11th Cir. 2017) (unpublished).
- (2) Whether the judge erred in concluding that the Secretary established Respondent, as a controlling employer, had constructive knowledge of the violative condition. *See David Weekley Homes*, 19 BNA OSHC 1116, 1119-20 (No. 96-0898, 2000) (Secretary failed to prove that general contractor had constructive knowledge of violations created by subcontractors); *Evergreen Construction Co.*, 26 BNA OSHC 1615 (No. 12-2385, 2017) (two-member Commission agreeing to vacate direction for review and filing separate non-precedential opinions on whether general contractor cited under Secretary’s multi-employer worksite citation policy exercised reasonable diligence to discover and abate, or prevent, a subcontractor’s failure to provide its employees with fall protection).

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 the Commission in accordance with Commission Rule 93. The time for filing any responsive briefs (or letters filed in lieu of briefs) shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: September 25, 2020

/s/

John X. Cervený
Executive Secretary

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, 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.