

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.

ACME Energy Services,  
d/b/a/ Big Dog Drilling

Respondent.

OSHRC Docket No. 08-0088

APPEARANCES:	Josh Bernstein, Esquire	Steven R. McCown, Esquire
U.S. Department of Labor	Malone M. Lankford, Esquire	
Office of the Solicitor	Little Mendelson, P.C.	
Dallas, Texas	Dallas, Texas	
For the Complainant.	For the Respondent.	

BEFORE: Dennis L. Phillips  
Administrative Law Judge

**DECISION AND ORDER**

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). On July 20, 2007, a fatal accident occurred at a work site of Respondent, Acme Energy Services, d/b/a Big Dog Drilling (“Respondent” or “Big Dog”). The work site was located in Stanton, Texas. The accident took place as the crew at the site was “scoping up” the mast, or derrick, of “Rig No. 3,” one of Big Dog’s oil drilling rigs. The Occupational Safety and Health Administration (“OSHA”) investigated the accident. As a result, OSHA issued a citation to Respondent, alleging a violation of section 5(a)(1) of the Act. Respondent contested the citation. The hearing in this matter was held on December 2 and 3,

2008, in Midland, Texas. Both parties have filed post-hearing briefs, and Respondent has filed a reply brief.

### **Jurisdiction**

In its Answer, Respondent admits the Commission has jurisdiction of this matter pursuant to section 10(c) of the Act. It also admits that it is an employer engaged in a business affecting commerce within the meaning of section 3(5) of the Act. I find, therefore, that the Commission has jurisdiction of the parties and the subject matter in this case.

### **Background**

On the afternoon of July 20, 2007, a Big Dog crew was at the Stanton site to finish rigging up, or setting up, Rig No. 3. The mast, or derrick, of Rig No. 3 had been transported to the site in a horizontal position on a carrier. The first part of the rig-up involved raising the mast hydraulically up to vertical onto the rig floor at the site. The second part involved raising the interior of the mast with a hydraulic ram, or cylinder, located inside the mast, so that the mast would be extended up to its full height of 104 feet. This particular type of rig is called a "telescoping rig." The raising of the mast's interior, which is analogous to raising up an extension ladder, is referred to as "scoping up" the mast. Once the mast is vertical, and is in the process of being scoped up, it actually tilts 3 degrees over vertical. When fully scoped up, the top, or crown, of the mast is situated right over the hole, or well, where drilling will take place. Also, when the mast is being scoped up, there is a "traveling block," or "block," which is suspended by cables from the top of the mast. The block is part of the pulley system through which various cables travel. The block is very large and very heavy, weighing about 10,500 pounds. There are also other items suspended from the top of the mast, including counterweights. (Tr. 67-77, 104, 109-11, 116, 121-23, 132-35, 227).

Big Dog's crew at the site consisted of two supervisors, called "tool pushers," a driller, two rig hands, and two welders. Bobby Ruth was the "lead tool pusher." He was responsible for the other crew members and for operation of the rig. Mark Steele was the other tool pusher, and the driller was Gabriel Chavarria. The day before the accident, the crew had raised the mast of Rig No. 3 to vertical and scoped it up to its full height. On July 20, 2007, they lowered the top part of the mast to put more weight in the counterweight buckets. They then proceeded to scope up the top part of the mast again. Mr. Ruth, located back behind the mast, was operating the hydraulic controls to scope up the mast. The two rig hands were on the ground behind the mast. They were holding onto guy lines as the mast went up. The two welders were in the dog house. Mr. Steele was up on the rig floor. He was on the left side of the mast operating the brakes for the block. Mr. Chavarria was also up on the rig floor. His job was to watch the various cables and lines and the mast as it was scoped up. He was also to insure that the tubing/belly board halfway up the derrick folded out correctly and to communicate with the tool pushers if a problem occurred. As the mast was being scoped up, at about 3:00 p.m., there was a loud pop, the ram gave way, and the top part of the mast slid down inside itself. The ram buckled and fell, and the equipment suspended by cables and all of the drilling lines also fell. Mr. Chavarria was found lying on the rig floor with the ram adjacent to, and partly above, his left side. The block was to his right. Emergency medical help was summoned, but Mr. Chavarria was pronounced dead at about 4:00 p.m. (Tr. 66-77, 85-89, 92-97, 113-21, 125-28, 134-35, 165-66, 198, 227-32, 446; C-27, C-28, Nos. 61-64, C-34, C-44).

Deputies from the Martin County Sheriff's Office, Stanton, Texas, also responded to the emergency summons. One of the deputies, Ashley Borgstedte, took a number of photographs at the site at about 4:00 p.m., July 20, 2007, that included views of the mast, the rig floor and the

accident scene. Texas Ranger Sergeant Don Williams also arrived at the oil rig. Later that evening, the law enforcement authorities obtained statements at the Sheriff's Office from some of the crew members, including Messrs. Ruth and Steele. The Sheriff's Office and the Texas Rangers determined that the incident had been an industrial accident. The Sheriff's Office and the Texas Rangers turned their entire investigation over to OSHA. (Tr. 32-42, 56-63; C-28).

Big Dog began investigating the accident, and notified OSHA, right after the incident occurred. According to statements of the crew members, the scope-up was proceeding normally and there was no indication anything was wrong. According to the statement of Mr. Steele, the block struck Mr. Chavarria on one side and the ram, or cylinder, struck him on the other side. Violet Hobbs, an OSHA compliance officer ("CO"), arrived at the site at about 6:40 p.m. She surveyed the scene, took photographs of her observations, and spoke with some Big Dog employees, including Mr. Sanchez, its safety director. The CO interviewed employees of Big Dog, including Mr. Ruth and Mr. Steele, during November 2007. OSHA made no determination as to the cause of the accident. The citation was issued on December 18, 2007. (Tr. 211-17; C-34).

### **The Alleged Violation**

The OSHA citation, as amended, alleges a violation of the general duty clause, section 5(a)(1) of the Act, as follows:

Section 5(a)(1) of the [Act]: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to the condition(s) below:

ACME Energy Services, Inc., DBA Big Dog Drilling, Rig 3, Lost Dutchman #1, Martin Co., TX. For the period of time up to and including 7/20/07, employees were exposed to "struck-by" hazards on the drill floor during "rig-up" operations on a telescoping drilling rig.

Among other methods, one feasible and acceptable abatement method to correct this hazard would include complying with API Recommended Practice 54, Third Edition, April 1999, titled "Recommended Practice for Occupational Safety for Oil and Gas Drilling and Servicing Operations," which states in Section 9, Paragraph 9.2.9, "Only personnel required to carry out the operation shall be allowed in or under the mast unless it is in the fully raised or lowered position. No one other than the operator should be allowed on the carrier platform in the derrick or under the mast until well servicing units are fully scoped, raised, or lowered."

### **The Secretary's Burden of Proof**

To prove a violation of the general duty clause, the Secretary has the burden of demonstrating that: (1) an activity or condition in the employer's workplace presented a hazard to employees; (2) the cited employer or its industry recognized that the condition or activity was hazardous; (3) the hazard was causing or likely to cause death or serious physical harm; and (4) there were feasible means to eliminate or materially reduce the hazard. *See Kokosing Constr. Co.*, 17 BNA OSHC 1869, 1872 (No. 92-2596, 1996), citing to *Waldon Healthcare Center*, 16 BNA OSHC 1052, 1058 (No. 89-2804, 1993). Hazards "must be defined in a way that apprises the employer of its obligations, and identifies conditions or practices over which the employer can reasonably be expected to exercise control." *Pelron Corp.*, 12 BNA OSHC 1833, 1835 (No. 82-388, 1986) (citation omitted).

The Secretary contends she has met her burden of proof as to all four elements. She asserts that the equipment suspended above Mr. Chavarria's work area, like the ram and the block, presented struck-by hazards during the scope-up of Rig No. 3. She also asserts that Big Dog and its industry recognized the hazard, based on the testimony of her expert, Big Dog personnel, and industry documents she presented at the hearing. She further asserts that the hazard was causing or likely to cause death or serious physical harm. Finally, she asserts that a feasible means of abating the hazard was to comply with American Petroleum Institute ("API")

Recommended Practice 54, Section 9. Respondent contends the Secretary has not met her burden of proving the alleged section 5(a)(1) violation.

**Testimony of Bobby Ruth**

Mr. Ruth has worked in oil drilling for 34 years. He testified it is known in the oil industry that the rig-up of a mast like on Rig No. 3 can be potentially dangerous due to the suspended equipment over an area where people may be working. He further testified that how the scope-up was done on July 20, 2007, with Mr. Chavarria located about mid-center on the racking board, was standard procedure. He and Big Dog were unaware then that where Mr. Chavarria was standing was hazardous or dangerous during the scope-up operation. Mr. Ruth said he had worked for about 12 oil companies. Four of those had telescoping rigs like Rig No. 3. As driller for those companies, he had stood on the racking board of those rigs during scope-up “hundreds of times.” He also said that before the accident, he did not think a man could be hit as Mr. Chavarria was. In all of his experience he had never seen a similar accident. Mr. Ruth agreed Rig No. 3 had two previous failures. They were not the same as the one occurring on July 20, 2007, and had not caused any injuries. The first, occurring in about 2006, was due to equipment deterioration, which caused the ram to “curl up” on the floor. After that incident, the mast was completely rebuilt and recertified. The second was due to an operator trying to pull too much weight through the block, causing the ram to buckle. After that incident, the mast and ram were replaced with a new mast and ram. Mr. Ruth did not know what had caused the July 20, 2007 accident, but he believed it was due to equipment failure. (Tr. 71-72, 77-85, 93-94, 98-106, 117-18, 125).

Mr. Ruth viewed R-24A and said it accurately depicted Rig No. 25 and where the drill floor and racking board were. He drew a line he marked as “A” on R-24A to show where the

raised mast would be. He noted that neither the drill floor nor the racking board was actually under the mast. Rather, "under the mast" was the 3-foot space between the mast and the drill floor where the rotary table, guard and chain were located. Mr. Ruth also viewed C-43, a sketch of the raised mast of Rig No. 3 over the rig floor. He marked an "A" on the sketch to indicate where Mr. Chavarria had been standing, a "B" to show the drill floor, a "C" to show the rotary table area, and a "Y" to indicate where the block would have been suspended. Mr. Ruth next viewed C-28, No. 61, which is a front view of the raised mast of Rig No. 3 right after the accident. He marked various areas on No. 61, including a "D" to show where at the time of the accident he had been, an "E" to show where Mr. Steele had been, and an "F" and "G" to show where the rig hands had been. He identified "A" as where Mr. Chavarria had been. Finally, Mr. Ruth viewed C-28, Nos. 63 and 64. They showed Mr. Chavarria after the accident with the ram to his left side and the block to his right. Photograph No. 64 also showed where Mr. Chavarria was from the legs of the mast. He testified that he had no reason to believe that the ram did not strike Mr. Chavarria and that it was a "possibility" the block also struck him. (Tr. 70-74, 108-21, 125-27, 134-38, 165-68).

Mr. Ruth testified that during both a rig-up and scope-up there are lots of wires which could potentially get tangled or fouled up and which need to be watched by all of the crew. There are at least ten wires that the crew needed to keep an eye on during the scope-up that occurred on July 20, 2007. Mr. Ruth also testified that while he was at the raising controls, Mr. Steele was on the brake, and the two "rig hands" were on the ground at the back or opposite side of the rig. They were all watching the cables so that they would not "get hung up," as well as the board to insure that it folded out correctly. They were also trying to guide the wires as they came up to the rig floor so that the wires did not get caught. Mr. Chavarria was an extra set of eyes to

insure the same while he stood on the racking board, also known as the rig floor. He was also there to watch the derrick going up and the stabilizer bars that come out and go around the scoping ram. Mr. Chavarria's role was also to communicate with both tool pushers during the scope-up operation. From his position on the racking board, Mr. Chavarria could view the whole derrick and better see what was coming toward the front end of the rig. Two welders, located inside the dog house, were also present during the scope-up on July 20, 2007. The welders were adding weight to the counterweight buckets. Respondent's general rule during scope-up was not to allow third parties, such as the welders, on the rig floor. (Tr. 86-95, 127).

Mr. Ruth said no one should be on the carrier when the mast is raised to vertical. It is raised hydraulically, and if that equipment fails, the mast can fall and injure someone. He also said that no one should be inside the mast, the area within its four legs, during the scope-up operation. It would be very dangerous to be inside the mast since the derrick could slide down inside itself and because of any overhead suspended equipment. Mr. Ruth noted that no one should be in the rotary table area, shown in C-28, No. 49, during scope-up. If equipment fails, the block or ram can fall in that area. He further noted that while Big Dog no longer has a driller stand in the area where Mr. Chavarria was standing, a driller still stands on the racking board during the scope-up of a telescoping rig. Mr. Ruth stated that although the driller's job could be done from the ground, it would not be as effective. The driller has the best view of the mast, cables and lines from the racking board. There is not a good vantage point from the ground. Unclear communications and an inability to watch the stabilizer arms and other rig areas occur when the driller is on the ground. If a cable or line gets caught, or if there is a problem with the mast, the driller is in the best position to see it and tell a tool pusher before the problem becomes a hazard. Mr. Ruth also stated that it can be more dangerous to not have a driller up on the

racking board. If a cable or line catches on something, it can have a slingshot effect and rip a board or equipment off the rig that can strike someone on the ground. He noted that being on the ground is not necessarily safer than being on the racking board. When a mast failure occurs, there is no way to tell which way or where it will fall. The tool pusher on the controls or a rig hand in another area of the rig can just as easily be hit by the mast if it fails. Mr. Ruth did not consider Mr. Chavarria to be in the zone of danger when he was standing on the racking board at the time of the accident. (Tr. 77-79, 84, 92-99, 103-08, 132, 141-42, 147, 153-63).

**Testimony of Lee Sanchez**

Mr. Sanchez was Big Dog's safety director at the time of the accident. He no longer works for the company. He testified that before July 20, 2007, he was unaware of a telescoping rig ever collapsing. It had never occurred to him an accident like that could happen. He had never heard of such an accident before. Mr. Sanchez agreed that being anywhere on the rig floor during scope-up was hazardous and dangerous. If a block falls, you cannot know where it will fall. He stated that he did not know whether Mr. Chavarria was exposed to a hazard during the scope-up process in the area where he was standing. He further agreed that he and Big Dog recognized before the accident that drilling rig moves were among the most hazardous tasks the employees performed and that all personnel were to be completely and safely clear before a derrick or mast was raised. He said he did not know all the procedures for setting up rigs and that he relied on the operational personnel in that regard. He also said that when he went to sites to inspect rigs he was looking at items such as fall protection, grounding, and substructure. Mr. Sanchez noted that while Big Dog attempted to have a safety person at sites during rig-up, it was not possible to do so for every rig-up. Prior to July 20, 2007, Mr. Sanchez did not think that where Mr. Chavarria was standing at the time of the accident was unsafe. He had not recognized

prior to the accident that being on the rig floor was a hazard. He further noted that after the accident, Big Dog no longer had anyone on the rig floor where Mr. Chavarria had been. Mr. Sanchez did not know why the ram or cylinder in the mast had failed on July 20, 2007. (Tr. 175-208).

**Testimony of Ronald Britton**

Mr. Britton has been continuously in the oil business since 1965. He is a registered petroleum engineer and a board-certified oil and gas forensic examiner. He worked for several oil companies before starting his own consulting firm. He also designed, built and operated his own drilling rigs. He has been a member of the API for most of his career. For the past ten years, he has been on API subcommittees that address hoisting systems on drilling rigs. Mr. Britton's experience has included the operation of telescoping rigs like Rig No. 3. (Tr. 219-20).

Mr. Britton testified Rig Nos. 3 and 25 were actually pulling units that had been modified to be drilling rigs by adding a drill floor. He further testified that in his experience with telescoping rigs, he never had anyone on the rig floor where Mr. Chavarria had been during scope-up. He drew C-44, a bird's-eye, not to scale, sketch of the mast and floor of Rig No. 3. The sketch showed where the ram was after it failed and the approximate area where Mr. Chavarria could have been standing based on photographs he had seen and witness testimony. Mr. Britton estimated the rig floor to be 10 by 12 feet with the hole in its center. He stated that the testimony had been that, at the time of the accident, Mr. Chavarria was "everywhere" on the rig floor, from the two matting boards to the V-door. He noted that the photographs of Mr. Chavarria's body showed him laying alongside the side of the hole in the floor. Mr. Britton assumed that Mr. Chavarria was standing where he was found, or on one of the mats. He said that Mr. Chavarria was trying to keep straight two guy lines off the top of the crown, as well as two other guy lines

that were on the tubing/belly board halfway up the derrick as the derrick was being raised. He also said an employee anywhere on the rig floor where Mr. Chavarria may have been standing could be struck by falling equipment should the mast fail during scope-up. Mr. Britton noted this was due to possible equipment failure, as in this case, which can cause the ram, block and drilling cables to fall to the floor. He stated that the crown got scoped almost up to the top [104 feet] before the scoping cylinder either failed or the latching “dogs” did not catch. The block, which is 6 to 8 feet off the floor at about head height and essentially over the hole during scope-up, can fall in any direction. The drilling cables, which are heavy and stiff, can also fall and “whip all over” the rig floor. He further noted that the only persons who should be on the floor during scope-up are the two persons operating the controls on either side of the mast, that is, the driller’s controls on the left and the scoping controls on the right. Mr. Britton explained that those persons have to be there to operate the controls and that they are protected by being right next to the legs of the mast. (Tr. 223-34, 306, 323, 388-90, 408-09).

Mr. Britton identified various exhibits as safety and operating manuals that address rigging up in the oil and gas industry. He said the exhibits were from his library of manuals from the many companies with which he had worked. He also said that while the exhibits mainly prohibit being under a suspended load, some of them prohibit being on the rig floor or carrier during raising operations. Mr. Britton stated that when the mast is being raised or lowered the suspended load is the block. He also stated that the scoping cylinder was not a suspended load. Mr. Britton discussed provisions from the manuals. He testified that the manuals “say mainly don’t be under a suspended load.” He further testified that some manuals say “don’t be on rig floors during rigging up. There are some [manuals] that say don’t be in the rig or the carriers.” The Pool Company manual, “U.S. Land Accident Prevention Handbook,” revised August, 1988

("Pool Manual"), requires all persons, except the crew chief, to stay clear of the carrier while the derrick is being raised, lowered, or scoped up or down. The Pool manual also states that all persons, except the crew chief, shall stay clear of the carrier while the derrick is being raised, lowered, or telescoped up or down. (C-6, DOL 83). Mr. Britton defined "carrier" as being "the mobile 18-wheeler under the rig that brings the rig out to the location .... And it has the mast mounted on the top of it. It's one piece." Mr. Britton interpreted "carrier" in these and other manuals to mean the actual vehicular carrier, as well as the rig floor. He explained that using the word carrier now "gets confusing" because small pulling or servicing rigs, like Rig No. 3, originally had a small floor that was attached to the carrier. The carrier then obviously included the floor. When such rigs were modified to become drilling rigs, the rig floor was a completely separate piece. The terms in the manuals were never changed. He believed that when the manuals referred to the carrier it included the rig floor and meant that workers were to stay clear of the mast on both the carrier and the rig floor during raising and scoping operations. The Key Energy manual, "Key Energy Services Employee Safety Handbook," January, 1999, prohibits standing under the derrick or on the carrier while it is being raised or lowered. The manual issued by the Association of Energy Servicing Companies ("AESCC") entitled "Recommended Safe Procedures and Guidelines for Oil and Gas Well Servicing," 4<sup>th</sup> revision, April, 2000, recommends as a safe operating practice that "people on the floor should stand clear when rigging up ...." (Tr. 235-71, 277-79, 288; C-7, at DOL 89, C-11, DOL 114).

A Schramm, Inc. manual, "Schramm Rotadrill Operator's & Maintenance Manual," undated, states as follows:

Before raising the mast (derrick), clear all drill rig personnel (with exception of the operator) and visitors from the areas immediately to the rear and sides of the mast. Inform all drill rig personnel and visitors that the mast is being raised prior to raising it. (Tr. 272-73; C-9, DOL 98).

Mr. Britton discussed other manuals. One, called "Safety on the Rig," published by PETEX in 1999, notes that one of the most dangerous times is during rigging up and down and that these periods account for 15.8 percent of lost time incidents. (Tr. 273-74; C-10, DOL 106). It also states: "Absolutely no one should be on or under the derrick while it is being raised because the possibility of equipment failure is always present." (Tr. 275; C-10, DOL 108). It additionally states:

Never walk or stand under anything being lifted. Use tag lines to guide a load. When loads are being hoisted there is always the possibility that a line may slip or break; objects may fall from above; and, broken lines can whip about dangerously. *Id.*

Mr. Britton also considered the PETEX provision prohibiting being under a load relevant as it shows that industry standards require keeping the rig floor clear. (Tr. 275-76). A Corsair manual, "Owner Operator's Manual for CORSAIR Oil Well Servicing Rig," by Crane Carrier Company, March 1, 1982, provides: "Do not permit personnel under mast when it is being raised or lowered, and do not let personnel climb or be on mast when extending upper section." (C-12, DOL 216). Mr. Britton considered that Mr. Chavarria was under the mast when he was killed. He noted that accidents commonly occur when people are struck by the falling block or drill lines. (Tr. 276-78, 377). A Continental Emsco Company manual for Wilson Fabricated masts, "Wilson Manufacturing, Mogul 42-B Double Drum B.I. Winchmobile, Operation & Maintenance," recommends that the operator study safety points that include a recommendation that all personnel keep clear of the mast in the raising, lowering, and telescoping operations. It also states that the crew should never be beneath the mast in these operations. (Tr. 283-84, C-15, DOL 153). Another Wilson manual, "Wilson Manufacturing, Drilling Rig Manuals, Machine: Mogul "42" S.D. Winchmobile for J. & C. Drilling Company," dated February 23, 1970 [The 65',

84', 90', 96', 102', and 110' Wilson Fabricated Masts], has similar provisions, except that it recognizes the necessity "for the crew to keep the guy lines clear in both raising and lowering operations, but these men should never be beneath the mast in raising and lowering operations." In addition, it prohibits "[being] in a position where he might be injured if the upper section should fall, and the upper section should not be moved while any man is up on the mast..." (Tr. 279-80; C-14, DOL 125-26). A Stewart & Stevenson ("Stewart") manual, "Parts and Service Manual Workover Rig Model: WTD-00550, rev00-February07," states:

WARNING: Personnel must never work on the raised mast unless wearing their safety harness.

WARNING: If the latches are not fully extended, the top section of the mast may fail. This may cause extensive damage to the equipment and possible injury to personnel.

(Tr. 285-86; C-16, DOL 166). Mr. Britton agreed that the cited Stewart reference did not address

workers being in or under the mast, or on the rig floor.

A Unit Drilling Company "Safe Workplace Handbook," undated, states that when raising a derrick, workers should not be positioned underneath the derrick. It further states, when securing a derrick to A legs with pins/bolts, all personnel should stand clear of all overhead work. Mr. Britton also identified a Safety Alert from the International Association of Drilling Contractors, "Alert 07-03," undated, that pertained to a drilling rig mast that had a raising line whip during failure. He explained that the Safety Alert was not "100 percent on point." Finally, a Basic Energy Services, "Employee Safety Handbook," August 2000 ("BES Handbook"), states that before a derrick is raised, personnel are to be placed to observe the derrick from all positions to prevent line entanglement. The BES Handbook further states that "No one but the operator

should stand under the derrick or on the carrier, while it is being raised or lowered.” (Tr. 287-89; C-17, DOL 162, C-19, C-21, DOL 181).

Mr. Britton testified that, based on his experience, there was “no question in [his] mind” that the industry recognized that employees working up on the rig floor where Mr. Chavarria was were exposed to the hazard of being struck by equipment during scope-up. He opined that the ram, the block, or a cable could have struck Mr. Chavarria. He said that the block and cables were clearly suspended loads. He also believed the ram was a suspended load. He explained that the ram was part of the mast and that the mast, once it was “up there,” was a suspended load. (Tr. 281-85, 289, 383-85).

At the hearing, Mr. Britton viewed C-27, Crown’s DVD of its rig-up of Rig No. 3 at Crown’s yard, and he explained what it showed. The mast was raised from the carrier platform by a hydraulic cylinder. While this was taking place, a person was standing on the carrier platform, under the mast. He stated that anything underneath the mast was under the suspended load. A second person was sitting in the middle of the rig floor. That person, once the mast was raised and tilted 3 degrees over vertical, proceeded to pin into place the two derrick legs of the mast that were on the rig floor. This person was also in the zone of danger. The scope-up of the mast began while that person was still pinning the legs. Once the scope-up was completed, the down-scoping took place. A person then appeared on the floor, to unpin the legs of the mast. That person stayed near the driller’s controls as the mast was lowered. At the end of C-27, a person appeared on the carrier platform as the mast was almost down on the carrier. Mr. Britton said no one should have been under the mast while it was being raised from or lowered onto the carrier, as the hydraulic cylinder could have failed, causing the mast to fall. The person under the

mast should have been raising the mast from the controls on the far side of the mast leg. (Tr. 305-25; C-27, frame 833).

Mr. Britton also stated that only two workers should be “anywhere around the rig floor” during the raising of the mast, or while it was being scoped up or down. This is because the ram could fail, fall and strike workers on the rig floor. One of these two workers was the person operating the controls on the far side of the mast. The other was the driller having to be at the controls controlling the block when scoping up. He conceded that someone had to be on the rig floor to pin and then unpin the legs, but he noted that the scope-up should not have been done while the pinning was still being done. Mr. Britton agreed that it is almost impossible to predict the direction equipment would fall in the event of mast failure. He further conceded that while he would expect Crown, the rig's manufacturer, to follow the industry standard, the employees in C-27 were not doing so. Mr. Britton stated that Crown should have followed the industry standard even though there was no equipment on the mast other than guy lines. He also stated that he planned to discuss C-27 with Stewart, which he described as a top company, and inform it that what its workers had been doing on the C-27 video was unsafe and in violation of the industry standards that he identified earlier in his testimony. He agreed that the industry standards applied to pulling rigs, and not Rig No. 3. (Tr. 322-26, 342, 385-400; C-44).

Mr. Britton discussed the “Grey Wolf Safety Manual,” revised July, 2000, Basic Safety Rule No. 14, that states that “Employees should never position themselves under a suspended load. (Taglines should be used to position and control loads.)” He noted that it said nothing about being on the rig floor, under the mast, or in the derrick. (Tr. 327; C-2). He also noted that he did not think that Gray Wolf has any telescoping rigs, although they may have had some originally. Similarly, Mr. Britton stated that the “Safety Manual,” Exxon Company U.S.A. Production

Department, December, 1994, said nothing about being under a mast or being off the rig floor in the manual's personnel precaution section. (Tr. 330-33; C-3). He also said that Nabors Safety Manual, Item 17 (revised February, 1998), did not address the raising or lowering of a rig. (Tr. 332-333; C-4, 22). Likewise, he said that the Pool Safety & Training Policies & Procedures, General Safety Section, page 3 (effective March 1, 1994), made no reference to rigging up or rigging down a telescoping rig. (Tr. 334; C-5).

Mr. Britton testified that it was proper for crew members to be on a rig floor underneath blocks, rigs and suspended loads, including casing pipes, provided the derrick was already fully rigged up correctly. (Tr. 348-352). He further testified that it was his opinion that only limited personnel were allowed in or under the mast during the raising or lowering of the mast. (Tr. 361). He stated that there was no OSHA regulation telling companies how to raise and lower rigs. He believed that there was no specific OSHA regulation that applied directly to the oil and gas business. (Tr. 361-62). Mr. Britton opined that Mr. Chavarria was beneath the mast in the area where the top of the mast was over the center of the hole and directly below the block at the time of the accident during the raising and lowering operation. (Tr. 377; C-44). From his review of the photographs and testimony, he opined that Mr. Chavarria was hit by the cylinder, the blocks, or the cables. (Tr. 383-84). He also opined that the block, cables and cylinder (as part of the mast arrangement) were suspended loads. (Tr. 384). He agreed with the Secretary's counsel that it was his experience, based upon background, education, training and the materials entered into evidence, that the oil field industry is well aware and recognizes that employees are exposed to struck-by hazards on the drill floor during rig-up operations on a telescoping rig. (Tr. 404, 409).

**Testimony of Walter Smith**

Mr. Smith has worked in oil drilling since 1972. He has been a drilling manager with Big Dog for almost five years. He supervises approximately 750 employees. He testified that in his opinion, the policies of the various companies that Mr. Britton discussed were directed at pulling or servicing units, and not drilling units. He further testified that to his knowledge Rig No. 3 was bought as a rotary drilling rig. He explained the difference. A pulling unit has a work floor mounted on the unit itself that stays on the carrier at all times. When the unit is scoped up the floor is laid down, and that floor, usually 6 or 8 feet square, is the work floor. A drilling unit has a substructure that is designed as a totally separate piece. The substructure, holding the rotary table area and the racking floor, is rated to support a certain amount of weight. The mast of a drilling unit is transported to the work site on a carrier. The substructure is transported to the site separately on a hauling or rig-up truck. Mr. Smith stated that the written materials referenced by Mr. Britton were directed at pulling units, and not drilling rigs. (Tr. 418-25).

Mr. Smith described the two previous failures of Rig No. 3. In the first, the flat piece of iron attached to the bottom of the ram had corroded and it gave way while the rig was being raised, causing the ram to fail and bend. In December 2006, Crown completely repaired and redid the mast and recertified it, at a cost of \$529,232.70. Crown recertified that Rig No. 3 was repaired to specifications and, in Mr. Smith's words, that it could "handle what it was originally designed to handle." In the second, the operator attempted to pull an 8 3/4 IB into the rotating head with only a 7 7/8ths opening, which damaged the top legs of the top part of the mast. At the time, Rig No. 3 was already rigged up and was not engaged in raising or lowering the mast. The damaged mast did not fall below. In June 2007, Crown put a "brand new" mast, which included a new ram, on the rig, and again recertified the rig, at a cost of \$212,234.50. The new mast was heavier and could pull more weight during raising and lowering. Mr. Smith described the new

derrick as a 250,000 pound test pull derrick. Mr. Smith chose the heavier mast to avoid a similar incident in the future and to add a larger margin of safety to the rig. No one was injured in either incident, and no changes were made in where employees were positioned on the floor during rig-up. (Tr. 425-32; 441-42, 457-58, 469-70; R-14, R-15).

Mr. Smith observed the video of Crown's test of Rig No. 3 at the hearing. He said that rig-up was "naked," as there was no equipment such as the block and drilling lines suspended from the mast, but he considered the top part of the mast to be part of the load. He also said Big Dog tested the rig in its yard after Crown delivered the rig. The test involved scoping up Rig No. 3 half way. The yard was too close to the airport to scope it up to its full height, which cannot be done without advance notice to and permission from the airport. The scope-up in the yard was done with as many lines on the mast as possible, but there was no equipment like the block or counterweights on the mast. After the test, Big Dog took the rig to the site. Mr. Smith was not present at the time, but he knew the crew had scoped up the mast to its full height the day before the accident. That scope-up included all of the equipment that was on the mast at the time of the accident, except for the 200 to 300 pounds added to the counterweight buckets just before the accident occurred. (Tr. 432-33, 458-60).

During cross-examination, Mr. Smith agreed, after reviewing a photograph of Mr. Chavarria's body, that he did not know where Mr. Chavarria was standing at the time he was killed. He stated that he was familiar with API standards and practices to some extent. He testified that he was not familiar with any API standards that addressed where personnel should or should not be standing on platforms during rig-up. Mr. Smith also stated that he was unaware that Mr. Steele had said that the block came down and caught Mr. Chavarria on the right side.

Mr. Smith estimated that the rig floor of Rig No. 3 was 18-20 feet wide and 15-18 feet long. (Tr. 419, 443, 447-51).

Mr. Smith said he believed that all personnel needed to be safe and clear of any hazards and in their proper position before a mast or derrick was raised. He also said there were always potential hazards up on the rig floor and that he and Big Dog had been aware of the hazards of falling equipment before the accident. In his view, the driller and tool pusher both needed to be up on the rig floor for scope-up, and both were in a potential danger zone. He believed it was necessary to have the driller on the floor of Rig No. 3 for scope-up and indicated the job could not have been done as effectively from the ground. Mr. Smith stated that Big Dog had not revised its policy as to where the driller was located. That policy was for the driller to be on the far corner on the "off side" of the racking board, which was not right in front of the mast. In that position, the driller could see both tool pushers, communicate with everyone, and watch the mast. Mr. Smith noted that if Mr. Chavarria had been where he was shown in the photos, he had been in the wrong place and in harm's way. He stated that Mr. Chavarria was supposed to be further back from where his body was shown in photographs and not out in the middle of the work floor. (Tr. 439, 456-57, 460-65; C-39, p. 254).

***The Secretary Has Met the First and Third Elements of her Burden of Proof***

The first element the Secretary must show is that an activity or condition in the employer's workplace presented a hazard to employees. Respondent asserts the Secretary's citation does not even identify a condition or practice. I disagree. The citation alleges that "employees were exposed to 'struck-by' hazards on the drill floor during 'rig-up' operations on a telescoping drilling rig." The evidence in this case shows that as the mast was being scoped up, the ram failed and Mr. Chavarria was struck by the ram, block, or cables, or a combination

thereof. Mr. Ruth testified that although he did not see what happened, he saw the ram to the left side of Mr. Chavarria and the block to his right immediately after the accident. He also testified he had no reason to believe the ram did not strike Mr. Chavarria and that it was a “possibility” the block also struck him. (Tr. 165-66). Mr. Steele’s statement, taken July 20, 2007, indicates he saw the block hit Mr. Chavarria on one side and the ram hit his other side. (C-34, p. 112). Mr. Britton opined the ram or the block, or even cabling, had hit Mr. Chavarria. (Tr. 383). The hazardous condition, therefore, was Mr. Chavarria’s exposure to being struck by equipment as he stood on the rig’s floor while the mast was being scoped up. The citation does not identify the specific items that struck or could have struck Mr. Chavarria. However, I find that the citation sufficiently describes the hazard. The Secretary has thus shown the first element. She has also shown the third element that the hazard was causing or likely to cause death or serious physical harm. This is so in view of Mr. Chavarria’s fatal accident and the certainty that heavy equipment, like the ram and block, striking employees would cause death or serious physical harm.

***The Secretary Has Not Met the Second Element of Her Burden of Proof***

The second element is whether Respondent or its industry recognized that the condition or activity was hazardous.

1. Big Dog did not recognize at the time of the accident that having an employee standing on the racking board during scope-up operations was hazardous.

The parties agree that Mr. Chavarria was standing on the racking board, the part of the rig floor farthest from the mast, at the time of the accident. S. Brief, p. 3; R. Brief, p. 4. *See also* R-24A. They disagree whether Big Dog recognized Mr. Chavarria’s location as a hazard. Mr. Ruth testified Mr. Chavarria was about mid-center on the racking board. He indicated he himself had stood in that location “hundreds of times” during scope-up operations when he was a driller for other companies. He also indicated that being in that location was standard procedure and how

he and others in the industry were taught. (Tr. 77-78, 103-06, 118). Upon viewing the photographs at C-28, Nos. 64 and 49, Mr. Ruth disagreed that Mr. Chavarria's feet were "just a few feet" from the mast legs. He said the driller's console, where Mr. Steele was, was 8 to 10 feet from Mr. Chavarria. (Tr. 71-72, 163-67). Mr. Ruth also identified, on C-43, where Mr. Chavarria was, where the drill floor and rotary table area were, and where the block was. He said Mr. Chavarria was not "under the mast," as that refers to the 3-foot space between the mast and the drill floor where the rotary table area is. (Tr. 118-19, 136-38). He also said that, at the time of the accident, he did not believe that someone working around the racking board area would be exposed to being hit by materials suspended above should the mast fail. Prior to the accident, he did not believe that it was dangerous to have someone on the racking board during the scope-up process. Mr. Ruth had never seen a similar accident before. (Tr. 78-79, 84, 103, 153, 163). Mr. Ruth stated that there is still an employee on the racking board for scope-up on telescoping rigs. (Tr. 153-55, 162).

Mr. Sanchez testified that, before the accident, he and Big Dog recognized that drilling rig moves were among the most hazardous tasks the employees performed and that all personnel were to be completely and safely clear before a derrick or mast was raised. However, he also testified he had never before heard of an accident like the one involving Mr. Chavarria and it had not occurred to him such an accident could happen. (Tr. 179-82).

Mr. Smith testified there were always potential hazards on the rig floor and that he and Big Dog knew of the hazards of falling equipment before the accident. He also testified he believed that all personnel needed to be safe and clear of any hazards before a mast or derrick was raised. However, in his view, both the driller and tool pusher had to be up on the floor and both were in a potential danger zone. (Tr. 456, 460-65).

Based on C-43, R-24A and Mr. Ruth's testimony, I find that the block was not "right above" Mr. Chavarria's work area, as the Secretary suggests. S. Brief, p. 3. Rather, in view of the evidence, the block was basically above the rotary table area, and beyond that was the racking board, where Mr. Chavarria was. *See* C-43; R-24A. I also find that Big Dog did not recognize that having the driller where Mr. Chavarria was located during scope-up operations was hazardous before the accident. Mr. Ruth's testimony made this clear, and I found him a credible and convincing witness. I also found Mr. Sanchez a credible witness. He and Mr. Ruth both indicated they knew of no similar accidents before the one in this case and had not believed such an accident could have happened. Mr. Sanchez did testify that he and Big Dog recognized that rig moves were hazardous and that all persons must be completely and safely clear before a derrick or mast is raised during drilling rig moves. These provisions are in Big Dog's safety policy. *See* C-39, p. 254. However, as I read the provisions, they are not specific enough to show that Big Dog recognized, before the accident, that Mr. Chavarria's location on the racking floor during Rig No. 3's scope-up was dangerous. This is especially so in light of Mr. Ruth's testimony.

Mr. Ruth was adamant that Mr. Chavarria's feet were not "just a few feet" from the mast legs. He also said the driller's console, where Mr. Steele was, was 8 to 10 feet from Mr. Chavarria. (Tr. 71, 163-67). I have already found Mr. Ruth to be a credible witness, and no one testified specifically how far Mr. Chavarria was from the mast when the accident occurred. I find Mr. Ruth's testimony to be the most reliable evidence regarding the location of Mr. Chavarria due to his familiarity with Rig No. 3 and his viewing the scene right after the accident took place. This finding supports my conclusion that Big Dog did not recognize Mr. Chavarria's location on the racking board to be a hazard.

2. The Secretary did not prove that the industry recognized that having an employee on the racking board during scope-up operations was hazardous.

Turning to industry recognition of the cited hazard, Mr. Britton, the Secretary's expert, testified there was "no question in [his] mind" that the industry recognized that employees working up on the rig floor where Mr. Chavarria was were exposed to the hazard of being struck by equipment during scope-up. (Tr. 289). His opinion was based on his experience and the numerous industry manuals he discussed. However, Mr. Britton's opinion does not hold up under scrutiny. He said Rig No. 3 was a small pulling or well servicing unit that had been converted to a drilling unit by the addition of a completely separate drill floor. He also said that such a unit before modification had a small floor that was attached to and part of the carrier. While it had a separate drill floor after it was converted, the word "carrier" still included the separate drill floor. (Tr. 260-70). Even assuming Rig No. 3 was a converted well servicing unit, I do not agree. First, Mr. Britton provided no persuasive reasons for concluding that for a converted rig, the word "carrier" included the separate drill floor and racking board. Second, the Pool and Key manuals, discussed *supra*, essentially prohibit persons being on the carrier or under the mast or derrick as it is raised or lowered. (C-6, p. 32, C-11, p. 6-39). Third, the Schramm manual, also discussed *supra*, requires all persons to the rear and sides of the mast or derrick to be cleared before it is raised or lowered. (C-9). Taken together, these manuals indicate the industry prohibits being on or to the sides or back of the carrier when a mast or derrick is being raised. These three manuals do not prohibit employees from standing mid-center on the racking board during scope-up operations involving telescoping rigs. Mr. Britton admitted the Schramm manual did not say to clear persons from the front of the carrier. (Tr. 341-42). He also admitted that Rig No. 3 was a drilling rig and that some of the manuals he relied on applied to servicing rigs. (Tr. 307, 326). His opinion, that the word "carrier" used in the manuals included a separate floor like the one on

Rig No. 3, is rejected. Stated another way, the above provisions in the Pool, Key and Schramm manuals do not apply to the accident in this case.

Mr. Britton also opined that excerpts from the manuals prohibiting being under loads were relevant to this case. One of these, from the PETEX manual noted *supra*, states:

Never walk or stand under anything being lifted. Use tag lines to guide a load. When loads are being hoisted there is always the possibility that a line may slip or break; objects may fall from above; and, broken lines can whip about dangerously.

(C-10, DOL 108). Mr. Britton indicated these provisions showed industry recognition that Mr. Chavarria's location, under suspended loads, was hazardous. (Tr. 275). On cross-examination, however, he agreed these and similar provisions did not mention being on a rig floor, raising a mast or derrick, or rigging up or down. (Tr. 327-38). For example, C-2, C-3, and C-16 do not address workers being on the rig floor. (Tr. 357; C-2, C-3, C-16).

Mr. Britton also believed the manual provisions that prohibited being on or under the mast were relevant. (Tr. 275-80, 283-84). The record in this case shows Mr. Chavarria had not been "on" the mast. (Tr. 316, 356). Further, Mr. Ruth testified, as noted above, that "under the mast" refers to the 3-foot space between the mast legs and the drill floor. I have found Mr. Ruth a credible witness, and I find that Mr. Chavarria was not "under the mast" at the time of the accident. Based on the record, and particularly on Respondent's cross-examination, I conclude Mr. Britton's opinions are not supported by the manuals he discussed. (Tr. 314-16, 326-42, 354-60).

The most serious blow to Mr. Britton's opinion was C-27, the DVD showing Crown's rig-up of Rig No. 3 after the mast and ram were replaced in June 2007. Mr. Britton's testimony about C-27 is set out in full earlier in this decision. C-27 shows Crown had an individual up on the rig floor as the mast was being raised from the carrier, as the top part of the mast was being

scoped up, and as the mast was lowered back down onto the carrier. Mr. Britton testified that Crown, the rig's manufacturer, should have followed industry practice and not had anyone on the floor during these activities, except the person operating the scope-up controls. Mr. Britton admitted someone had to be up on the floor to pin the mast legs to the rig floor and to then unpin the legs before the mast was lowered back down to the carrier. He noted, however, that the scope-up shown in C-27 began while the person was still pinning the legs, which was improper. He also noted that the person who unpinned the legs stayed on the floor while the mast was being lowered, which was also improper. In addition, the person who appeared on the carrier as the mast was almost back in place should not have been there. Mr. Britton indicated he planned to discuss C-27 with Crown. (Tr. 305-26, 389-400).

In my view, C-27 thoroughly undermines Mr. Britton's opinion that no one should be on the rig floor during scope-up, except for persons essential to the operation, *i.e.*, those operating the controls on either side of the mast. That Crown, the rig's manufacturer, had an employee pinning the legs right under the mast at the same time scope-up was occurring convinces me, along with the other evidence in this case, that the industry did not recognize that Mr. Chavarria's location at the time of the accident was hazardous. For these reasons, and all of those stated *supra*, I conclude the Secretary has not met her burden of proving that Big Dog or its industry recognized the cited condition as a hazard.

***The Secretary Has Not Met the Fourth Element of Her Burden of Proof***

The fourth element the Secretary must prove is that there were feasible means to eliminate or materially reduce the hazard. The means of abatement set out in the citation is:

[to comply] with API Recommended Practice 54, Third Edition, April 1999, titled "Recommended Practice for Occupational Safety for Oil and Gas Drilling and Servicing Operations," which states in Section 9, Paragraph 9.2.9, "Only personnel required to carry out the operation shall be allowed in or under the mast

unless it is in the fully raised or lowered position. No one other than the operator should be allowed on the carrier platform in the derrick or under the mast until well servicing units are fully scoped, raised, or lowered.”

As Respondent notes, API Recommended Practice 54 (“R.P. 54”) has a definitions section that defines the terms “drilling rig” and “well servicing rig,” as follows:

**3.1.33 drilling rig:** Equipment and machinery assembled primarily for the purpose of drilling or boring a hole in the ground.

**3.1.111 well servicing rig:** Equipment and machinery assembled primarily for the purpose of any well work involving pulling or running tubulars or sucker rods, to include but not be limited to redrilling, completing, recompleting, workover and abandoning operations.

See C-1A, pp. 4, 7. As Respondent also notes, section 9, paragraph 9.2.9, of R.P. 54, by its own terms, applies only to “well servicing units.” R. Brief, p. 16. I agree. The citation sets out the terms of section 9, paragraph 9.2.9, verbatim. The fact that “well servicing units” are specified in the final sentence of paragraph 9.2.9 persuades me that paragraph applies to well servicing units and not drilling units. This is so even though section 9 applies generally to both drilling rigs and well servicing rigs, because the latter are specified in paragraph 9.2.9. See C-1A, pp. 4, 7, 16.

As Respondent further notes, even if paragraph 9.2.9 does apply to Rig No. 3, the record shows that Big Dog complied with the terms of that paragraph. R. Brief, pp. 16-17. As set out *supra*, Mr. Ruth testified that no one should be on the carrier when the mast is raised to vertical because, if the hydraulic equipment fails, the mast can fall and injure someone. He also testified that no one should be in the rotary table area during scope-up because, if there is equipment failure, the block or ram can fall in that area. Mr. Ruth explained that the rotary table area is the 3-foot area between the legs of the mast and the drill floor and that that is the only part of the drilling rig that is actually under the mast. Mr. Ruth stated that if someone were to say that Mr. Chavarria was “under the mast” at the time of the accident, that person would be wrong. He also

stated that Mr. Chavarria was not on the carrier platform on the day of the accident. (Tr. 118-21, 136-41, 147, 168; C-28, No. 49, C-43, R24A). I have found Mr. Ruth a credible witness. On the basis of his testimony, I agree with Respondent that Big Dog was in compliance with the terms of both sentences contained in paragraph 9.2.9.

Although it is not necessary to reach this issue, I address whether Mr. Chavarria was a person “required to carry out the operation” such that he had to be up on the rig floor during scope-up on July 20, 2007. Mr. Ruth testified that Mr. Chavarria had to be on the racking board to watch the lines and to watch the mast as it went up, and to watch the stabilizer bars and the board as it folded out as the mast went up. He also had to be there to communicate with the tool pushers. Mr. Ruth said that although the driller’s job could be done from the ground, it would not be as effective. The driller has the best view of the mast, cables and lines from the racking board. If a cable or line gets caught, or if there is a problem with the mast, the driller is in the best position to see it and tell a tool pusher before the problem becomes a hazard. He also said it can be more dangerous to not have a driller up on the racking board. If a cable or line catches on something, it can have a slingshot effect and rip a board or equipment off the rig that can strike someone on the ground. Mr. Ruth stated that being on the ground is not necessarily safer than being on the racking board. When a mast failure occurs, there is no way to tell which way or where it will fall. The tool pusher on the controls or a rig hand in another area of the rig can just as easily be hit by the mast if it fails. (Tr. 92-99, 107-08, 132). Mr. Smith also believed it was necessary to have the driller on the floor for scope-up on Rig No. 3. He indicated the job could not have been done as effectively from the ground. (Tr. 460-62). *See also* R. Brief, pp. 18, 21-22. Based on the evidence of record, I conclude that Mr. Chavarria, in working on the racking board

of the rig floor during scope-up, was a person “required to carry out the operation” on July 20, 2007.

In reaching this conclusion, I have noted the Secretary’s contrary assertions. I have considered the Secretary’s arguments in this regard and find them unpersuasive. In particular, I have considered the Secretary’s implying that after the accident, Mr. Ruth no longer had anyone on the rig floor where Mr. Chavarria had been and that he now puts the driller on the ground and has successfully scoped up rigs like Rig No. 3 that way. S. Brief, pp. 19-20. However, as set out *supra*, Mr. Ruth’s testimony was that while no one stands now where Mr. Chavarria was at the time of the accident, Big Dog still has an employee on the racking board for scope-up. (Tr. 153-55, 162). Mr. Smith explained that Big Dog’s policy was for the driller to be on the racking board, but not right in front of the mast. (Tr. 462-64). Mr. Ruth’s testimony indicates that while he and others had discussed, after the accident, putting the driller on the ground for scope-up, the policy instead changed as to where the driller stood on the racking board. (Tr. 88, 153-55, 162).

For all of the foregoing reasons, I find that the Secretary has not demonstrated the fourth element of her burden of proof. Because the Secretary has not met two of the elements necessary to prove a violation of the general duty clause, the citation is vacated.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The foregoing decision constitutes my findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

#### **ORDER**

Based upon the foregoing findings of fact and conclusions of law, it is ordered that:

1. Serious Citation 1, Item 1, alleging a violation of section 5(a)(1) of the Act, is VACATED in its entirety.

/s/  
The Honorable Dennis L. Phillips  
U.S. OSHRC Judge

Dated: November 01, 2009  
Washington, D.C.<sup>1</sup>

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<sup>1</sup>

The carrier is the truck (mobile 18-wheeler), or moving device, that brings the rig to the site. (Tr. 109-10, 257-58).