



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.

K.M. DAVIS CONTRACTING CO., INC.,

Respondent.

OSHRC Docket No. 20-1437

### **BRIEFING NOTICE**

The parties are requested to brief the following issues with respect to Citation 1, Items 2 and 3:

- (1) Did the judge err in finding that the Secretary failed to establish constructive knowledge of the alleged violative conditions?
- (2) If so, did Respondent establish the affirmative defense of unpreventable employee misconduct?

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.<sup>1</sup> 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 writing within the applicable time for filing briefs, and shall serve a copy on all

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<sup>1</sup> 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.

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:

/s/ \_\_\_\_\_  
John X. Cervený  
Executive Secretary