

U.S. Department of Labor

Office of the Solicitor
61 Forsyth Street SW
Atlanta, Georgia 30303



September 13, 2010

Mr. Ray H. Darling, Jr.
Executive Secretary
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, N.W., Room 980
Washington, DC 20036-3419

10-1705

Re: Secretary of Labor v. Sea World of Florida, LLC
OSHRC Docket No. _____; Region IV
Inspection No. 314336850
SOL Case No. 10-09014

Dear Mr. Darling:

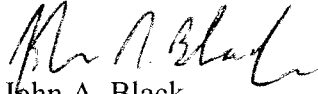
Enclosed are the originals and one copy each of a Complaint and a Notice of Answer Requirement.

Please file the originals and return to us the conformed copies. **In our opinion, this case is not appropriate for simplified proceedings as it involves a fatality.**

You will note from the Certificate of Service that copies of these documents have been served on the attorney for the Respondent.

Very truly yours,

Stanley E. Keen
Regional Solicitor

By: 
John A. Black
Senior Trial Attorney

Enclosures

cc: Carla J. Gunnin, Esquire
Constangy Brooks & Smith, LLP
230 Peachtree Street, NW
Suite 2400
Atlanta, GA 30303-1557

IMPORTANT NOTICE

You are hereby notified that you must plead or otherwise answer this Complaint, either denying or admitting each allegation, within 20 days of your receipt of the Complaint attached hereto. Failure to do so may result in dismissal of your notice of contest. See Rule 34, Rules of Procedure, Occupational Safety and Health Review Commission.

Prior to the assignment of a case to Judge, the answer and all subsequent pleadings should be filed with the Executive Secretary, Occupational Safety and Health Review Commission, One Lafayette Centre, 1120 20th Street, N.W., Room 980, Washington, DC 20036-3419. Subsequent to the assignment of the case to a Judge, and before the issuance of a decision, all pleadings should be filed with the Judge at the address given in the notice informing of such assignment. See Rule 8(a), Rules of Procedure, Occupational Safety and Health Review Commission.

The Complainant, Secretary of Labor, may be served by addressing Mr. Stanley E. Keen, Regional Solicitor, U. S. Department of Labor, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Room 7T10, Atlanta, GA 30303.

If the Respondent is to be represented in this proceeding by an attorney or other representative, the attached Designation of Representative/Notice of Appearance form should be completed and sent to the Regional Solicitor at the aforementioned address.

U.S. Department of Labor

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61 Forsyth Street SW
Atlanta, Georgia 30303



Re: Secretary of Labor v. Sea World of Florida, LLC
OSHRC Docket No. _____; Region IV
Inspection No. 314336850
SOL Case No. 10-09014

DESIGNATION OF REPRESENTATIVE

I hereby certify that _____, whose appearance is noted below, is authorized to act as my representative in the above-captioned matter, to discuss all facts and information related thereto; to negotiate settlement; and to accept service of pleadings and other legal process on my behalf.

Name (Print): _____ Date: _____

Title: _____
Signature

Employer/Organization: _____
Nature of Organization: _____
Address: _____

Telephone: () - Ext. _____

NOTICE OF APPEARANCE

The undersigned hereby enters appearance as representative of _____ in the above-captioned matter.

Name (Print): _____ Date: _____

Title: _____
Signature

Employer/Organization: _____
Nature of Organization: _____
Address: _____

Telephone: () - Ext. _____

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	OSHRC DOCKET NO.
)	
Complainant,)	<u>REGION IV</u>
)	
v.)	Inspection No.
)	314336850
SEA WORLD OF FLORIDA, LLC,)	
)	
Respondent.)	<u>COMPLAINT</u>

This action is brought to affirm the Citations and Notifications of Penalty issued under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq., hereinafter the Act, for violations of § 5(a) of the Act and the Safety and Health Regulations promulgated thereunder.

I

Jurisdiction of this action is conferred upon the Commission by § 10(c) of the Act.

II

Respondent, Sea World of Florida, LLC, is an employer engaged in a business affecting commerce within the meaning of § 3(5) of the Act.

III

The principal place of business of Respondent is at 6600 Sea Harbor Drive, Orlando, Florida, where it was engaged in business as an amusement park as of the dates of the alleged violations.

IV

The violations occurred on or about February 24, 2010 through August 23, 2010, at 7007 Sea Harbor Drive, Orlando, Florida (hereinafter "workplace").

V

As a result of an inspection at said workplace by an authorized representative of the Complainant, Respondent was issued three Citations and Notifications of Penalty pursuant to § 9(a) of the Act.

VI

The Citations and Notifications of Penalty, a copy of which is attached hereto and made a part hereof as Exhibits A, B and C consisting of one page each identify and describe the specific violations alleged, the corresponding abatement dates fixed, and the penalties proposed.

VII

On or about August 26, 2010, by a document dated August 23, 2010, the Complainant received notification, pursuant to § 10(c) of the Act, of Respondent's intention to contest the aforesaid Citations and Notifications of Penalty.

VIII

The penalties proposed, as set forth in Exhibits A, B and C are appropriate within the meaning of § 17(j) of the Act. The abatement dates fixed were and are reasonable.

WHEREFORE, cause having been shown, Complainant prays for an Order affirming the Citations and Notifications of Penalty, as aforesaid.

ADDRESS:

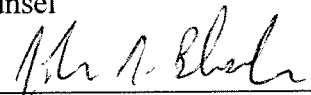
Office of the Solicitor
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Room 7T10
Atlanta, GA 30303

Telephone:
(404) 302-5450
(404) 302-5438 (FAX)

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

CHRISTOPHER D. HELMS
Counsel

By: 
JOHN A. BLACK
Senior Trial Attorney

Office of the Solicitor,
U. S. Department of Labor,
Attorneys for Complainant.

SOL Case No. 10-09014

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 314336850
Inspection Dates: 02/24/2010-08/23/2010
Issuance Date: 08/23/2010



Citation and Notification of Penalty

Company Name: Sea World of Florida LLC
Inspection Site: 7007 Sea Harbor Drive, Orlando, FL 32821

Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.23(d)(1)(iii): Flight(s) of stairs with 4 or more risers, less than 44 inches wide and having both sides open were not equipped with one standard stair railing on each side:

Instance a) Employees were exposed to a 10'3" fall hazard in that, a stairway railing system was not installed on the front side left bridge of the Believe stage in Shamu Stadium.

Instance b) Employees were exposed to a 10'3" fall hazard in that, a stairway railing system was not installed on the front side right bridge of the Believe stage in Shamu Stadium

ABATEMENT DOCUMENTATION REQUIRED

Date By Which Violation Must be Abated: 09/02/2010
Proposed Penalty: \$ 5000.00

EXHIBIT **A**

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Sea World of Florida LLC
Inspection Site: 7007 Sea Harbor Drive, Orlando, FL 32821

Citation 2 Item 1 Type of Violation: **Willful**

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: 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:

a) At the Shamu Stadium pools, animal trainers working with Tilikum, a killer whale with known aggressive tendencies and who was involved in the 1991 death of a whale trainer at a marine park in Vancouver, British Columbia, were exposed to struck-by and drowning hazards in that they were allowed unprotected contact with Tilikum while conducting "drywork" performances on pool ledges, slideouts and platforms, on or about 2/24/2010.

Among other methods, one feasible and acceptable means of abatement would be to not allow animal trainers to have any contact with Tilikum unless they are protected by a physical barrier.

b) At the Shamu Stadium pools, animal trainers working with killer whales other than Tilikum were exposed to struck-by and drowning hazards in that they were allowed to engage in "waterwork" and "drywork" performances with the killer whales without adequate protection, on or about 2/24/2010.

Among other methods, feasible and acceptable means of abatement would prohibit animal trainers from working with killer whales, including "waterwork" or "dry work", unless the trainers are protected through the use of physical barriers or through the use of decking systems, oxygen supply systems or other engineering or administrative controls that provide the same or a greater level of protection for the trainers.

ABATEMENT DOCUMENTATION REQUIRED

Date By Which Violation Must be Abated: 09/02/2010
Proposed Penalty: \$ 70000.00

EXHIBIT B



Citation and Notification of Penalty

Company Name: Sea World of Florida LLC
Inspection Site: 7007 Sea Harbor Drive, Orlando, FL 32821


Citation 3 Item 1 Type of Violation: **Other**

29 CFR 1910.305(j)(2)(v): Receptacle installed outdoors in a location protected from the weather or in other damp locations shall have an enclosure for the receptacle that is weatherproof when the receptacle is covered (attachment plug cap not inserted and receptacle covers closed).

a) At the Shamu Stadium, weather proof enclosures were missing from electrical receptacles located within the main Shamu Stadium, observed on or about 3/5/2010.

ABATEMENT DOCUMENTATION REQUIRED

Date By Which Violation Must be Abated: 09/25/2010
Proposed Penalty: \$ 0.00



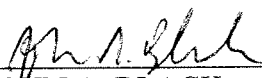
Leslie L. Grove III
Area Director

EXHIBIT C

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Notice of Answer Requirement were served this 13th day of September 2010, by mailing true copies thereof, by certified mail to:

Carla J. Gunnin, Esquire
Constangy Brooks & Smith, LLP
230 Peachtree Street, NW
Suite 2400
Atlanta, GA 30303-1557



JOHN A. BLACK
Senior Trial Attorney

SOL Case No. 10-09014