



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.

AEROSPACE TESTING ALLIANCE,

Respondent.

OSHRC Docket No. 16-1167

**BRIEFING NOTICE**

The Commission requests that the parties brief the following issues:

- (1) Whether the judge erred in finding that the hold-down piston guards do not comply with 29 C.F.R. § 1910.212(a)(1).
- (2) Whether the judge erred in finding that employee exposure to the hazard was established. In addressing this issue, the parties are requested to discuss:
  - a. Did the judge err in failing to address whether the Secretary established actual exposure? *See Phoenix Roofing, Inc.*, 17 BNA OSHC 1076, 1079 (No. 90-2148, 1995) (“Exposure to a violative condition may be established by showing actual exposure or that access to the hazard was reasonably predictable.”) If so, did the presence of the injured employee’s hand under the hold-down piston establish actual exposure to the cited hazard?
  - b. Even if actual exposure was shown, does the Secretary meet his burden of proof or is the Secretary required under the circumstances present here to prove that exposure was “reasonably predictable”? *See Rockwell International Corp.*, 9 BNA OSHC 1092, 1097-1098 (No. 12470, 1980) (“The mere fact that it was not impossible for an employee to insert his hands under the ram of a machine does not itself prove that the point of operations exposes him to injury.”). If so, was reasonable predictability established?
- (3) Whether the judge erred in finding that Respondent had knowledge of the violative conditions. In addressing this issue, the parties are requested to discuss

whether Respondent, with the exercise of reasonable diligence, could have known of the alleged violative conditions.

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 that does not intend to file a brief must notify the Commission in writing setting forth the reason therefor 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: November 20, 2017

/s/

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John X. Cervený

Executive Secretary

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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, 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.