



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.

DEEP SOUTH CRANE & RIGGING CO.,

Respondent.

OSHRC Docket No. 09-0240

### BRIEFING NOTICE

The issues that follow have been identified by the Review Commission as of interest on review.

- (1) With respect to Citation 1, Item 1, Instance No. 3, did the judge err in affirming the violation? In discussing this issue, the parties are asked to address whether the record supports a finding that the employer gave specific instructions to the site supervisor to the effect the crane operator would need on-the-job-training or another qualified operator in the cab with him while raising and lowering the boom or otherwise moving the crane. If so, was the failure to follow any such instructions foreseeable? *W.G. Yates & Sons Constr. Co., Inc. v. Occupational Safety & Health Review Comm'n*, 459 F.3d 604 (5th Cir. 2006).
- (2) With respect to Citation 2, Item 1, did the judge err in affirming the violation?

The parties are advised that when the merits or characterization of an item are before the Commission for review, 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 who does not intend to file a brief must notify the

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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.

Commission in writing setting forth the reason therefore 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: 5/6/2010

/s/ \_\_\_\_\_  
Ray H. Darling, Jr.  
Executive Secretary