



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.

FREIGHTCAR AMERICA, INC.,

Respondent.

OSHRC Docket No. 18-0970

**BRIEFING NOTICE**

The parties are requested to brief the following issues presented in Respondent's petition for discretionary review:

- (1) Did the judge err in concluding that FreightCar America, Inc. was properly cited as an employer responsible for the alleged violation? In answering this question, the parties shall address which test—including the “single employer” test—should be applied. *See S. Scrap Materials Co.*, 23 BNA OSHC 1596, 1627 (No. 94-3393, 2011) (“[T]he factors relevant to determining whether separate entities are regarded as a single employer include whether they share a common worksite, are interrelated and integrated with respect to operations and safety and health matters, and share a common president, management, supervision, or ownership.”).
- (2) Did the judge err in concluding that application of the general duty clause, 29 U.S.C. § 654(a)(1), to the alleged hazard was not preempted by 29 C.F.R. § 1910.28(b)(6)(i)?
- (3) Did the judge err in concluding that the citation gave fair notice of the alleged hazard?
- (4) Did the judge err in concluding that the employer had knowledge of the hazardous condition?

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 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 4, 2019

/s/ \_\_\_\_\_  
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, 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.

