



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.

NUPRECON, LP,

Respondent.

OSHRC Docket No. 08-1037

BRIEFING NOTICE

The Commission requests that the parties brief the following issues:

- (1) Did the judge err in finding that 29 C.F.R. § 1926.501(b)(1) applied to Respondent's Bobcat operator while he was on his equipment on the third floor in the area adjacent to the unprotected edge? In briefing this issue the parties are asked to discuss the definition of "walking/working surface" set forth at 29 C.F.R. § 1926.500(b) and OSHA Standard Interpretation Letter #20070417-7634, Fall Protection Requirements for Employees on Construction Equipment (Mar. 16, 2009). The parties are also asked to discuss whether the cited standard's specific abatement measures would have protected the Bobcat operator from driving off the edge.
- (2) If the judge erred, did the Secretary prove that any of the Respondent's employees, including the Bobcat operator, were otherwise exposed to the fall hazard?
- (3) Did the judge err in finding that the "Respondent failed to implement one of the three acceptable methods of fall protection" under the cited standard, particularly with respect to the installation and/or use of an alleged personal fall protection system?

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 93.¹ 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 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: 3/29/2010

/s/_____
Ray H. Darling, Jr.
Executive Secretary

¹ 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.