

United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3419

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SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket No. 98-1871
	:	
EASTHAVEN MASONRY, INC.,	:	
	:	
Respondent.	:	

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***ORDER GRANTING PETITION FOR INTERLOCUTORY REVIEW AND REMAND***

Easthaven Masonry, Inc. (Easthaven) requested E-Z Trial proceedings in this case as provided for in Commission Rules 200-211, 29 C.F.R. §§ 2200.200-211. The Secretary objected. The Chief Administrative Law Judge denied the request because “under the particular circumstances of this case . . . E-Z Trial would be inappropriate.”

Easthaven has filed a petition for interlocutory review, to which the Secretary has not responded, objecting to the Chief Judge’s order and noting that it has not received any prior citations. After reviewing the record, we grant the petition inasmuch as it appears that the Chief Judge’s action was not warranted based on the present record.

The Secretary’s ground for objection to the request is simply that she “believes that the issues in this matter will require some discovery.” The Commission notes that, on its face, this would not be a sufficient ground for denying a request in a case such as this one which appears to be otherwise appropriate for E-Z Trial. We also note that the rules allow limited discovery in E-Z

Trial cases with the permission of the judge. Commission Rule 208, 29 C.F.R. § 2200.208 (“Discovery, including requests for admissions, will only be allowed under the conditions and time limits set by the Judge.”). *See also* Commission Rule 200(a)(4), 29 C.F.R. § 2200.200(a)(4). Without more than is on this record, we are unable to agree that E-Z Trial is not appropriate. Moreover, interlocutory review is appropriate here as the Commission would not be able to accord Easthaven redress at a later point in the proceedings, i.e., once the case has been tried pursuant to the conventional rather than E-Z Trial procedure.

Accordingly, we grant Easthaven’s petition for interlocutory review and remand this case for further proceedings consistent with this opinion.

So ordered.

Date: February 3, 1999

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/s/

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Stuart E. Weisberg  
Chairman

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/s/

\_\_\_\_\_  
Thomasina V. Rogers  
Commissioner

98-1871

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Counsel for Regional Trial Litigation  
Office of the Solicitor, U.S. DOL  
Room S4004  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

William E. Everheart, Acting Regional Solicitor  
Beverlei E. Colston, Attorney  
Office of the Solicitor, U.S. DOL  
Suite 501  
525 S. Griffin Street  
Dallas, TX 75202

Pete Binion  
Director of Occupational  
Health and Safety  
Easthave, Inc.  
8723 Easthaven  
Houston, TX 77075

January 7, 1998

Mr. Ray H. Darling  
Executive Secretary  
Occupational Safety and Health Review Commission  
One Lafayette Centre  
1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, DC 20036-3419

Dear Sir,

After our phone conversation earlier this week I contacted the office of the solicitor in Dallas and relayed the information concerning Easthaven Masonry. Ms. Beverlei Colston is the law clerk handling the case and is out of the office until Monday. The secretary has placed the file on her desk for review on Monday.

In addition, I would like for you to consider the petition for discretionary review as a petition for interlocutory review of the Judges decision to deny E-Z Trial in the case of

Secretary of Labor     Complainant

v. OSHA Docket No. 98-1871

Easthaven Masonry     Respondent  
8723 Easthaven  
Houston, TX 77075

### **Statement Of Portions OF The Decision And Order To Which Exception Is Taken**

Easthaven Masonry takes exception to that portion of the Decision and Order denying the request for E-Z Trial.

### **Statement Of Reasons For Which Exceptions ARE Taken**

1. Neither Easthaven Masonry or its ownership has received prior OSHA citations and believes it should be considered for E-Z Trial consideration.
2. The scaffold cited under 29 CFR 1926.451 (e)(1), (f)(7) and (g)(1) was in the process of being dismantled. The employee observed climbing down the scaffold had been directly ordered not to work or climb on the scaffold and was in direct violation of Easthaven Masonry company orders and not a willful violation by Easthaven Masonry.

For the reasons cited herein, Easthaven Masonry hereby submits that the Occupational Safety and Health Review Commission should direct review of the Decision and Order of the Administrative Law Judge.

Respectfully,

/s/

Pete Binion  
Safety Director

cc: Ms. Beverlei Colston  
Office of the Solicitor  
525 S. Griffin Street, Suite 501  
Dallas, TX 75202

Judge Irving Sommer  
OSHRC  
One Lafayette Centre  
1120 20<sup>th</sup> Str. N.W. 9<sup>th</sup>  
Washington, DC 20036-3419