



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, DC 20036-3457

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SECRETARY OF LABOR,

Complainant,

v.

ASSOCIATED UNDERWATER SERVICES,

Respondent,

PILEDRIVERS LOCAL UNION,

Authorized Employee  
Representative.

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OSHRC Docket No. 07-1851

**BRIEFING NOTICE**

The issues that follow have been identified by the Review Commission as those of particular interest on review. The parties, however, are free to brief issues that are presented in the Petition(s) for Discretionary Review in addition to those enumerated below.

Did the judge err in vacating Citation 1, Item 1, which alleges a violation of 29 C.F.R. § 1910.421(d)(2) based on the failure of Associated Underwater Services to conduct a pre-dive assessment of “[s]urface and underwater conditions and hazards”? In answering this question, the parties are asked to address the relevance of (a) the underwater pile driving activities of General Construction Company; (b) the judge’s finding that the accident was unforeseeable; and (c) industry custom.

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 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: January 29, 2010

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/s/  
Ray H. Darling, Jr.  
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 the authorities 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.

07-1851

NOTICE IS GIVEN TO THE FOLLOWING:

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