



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

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**SECRETARY OF LABOR,** :

**Complainant,** :

**v** : **OSHRC DOCKET NO. 08-1104**

:

**IMPERIAL SUGAR COMPANY and**  
**IMPERIAL-SAVANNAH, L.P.,**  
**Respondents.** :

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**NOTICE OF HEARING, SCHEDULING ORDER  
AND SPECIAL NOTICES**

The parties are hereby notified that the hearing in this matter is scheduled to commence at **9:30 a.m., on Tuesday, May 18, 2010, in Savannah, GA. The hearing will continue uninterrupted (except for weekends and legal holidays) until its conclusion. Counsel for the parties estimate that the hearing will require 3-4 weeks.** Having considered the recommendations of the parties as to scheduling matters, IT IS ORDERED THAT:

A. Discovery, including fact witness depositions, shall be completed in such a manner as to be completed on or before **Friday, November 27, 2009**<sup>1</sup>. All expert discovery, including depositions, shall be completed no later than **Friday, January 29, 2010.**

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<sup>1</sup> "Completed" means "propounded and answered." **Counsel must resolve all discovery disputes or bring them to the undersigned's attention in a timely manner so as to allow sufficient time for the completion of discovery within the time set.** The conduct of any discovery which would require a later due date shall be permitted only on the order of the administrative law judge or by filed stipulation of the parties, and only in cases that will not be delayed for trial thereby. The parties should be aware that a stipulation to the extension of time for discovery anticipates no discovery disputes and, therefore, the administrative law judge will not hear discovery disputes arising during any such extensions.

B. Motions to amend pleadings shall be filed in such a manner as to be received by all parties and the administrative law judge no later than **Friday, December 18, 2009** . Responses shall be filed on or before **Monday, January 4, 2010** .

C. Dispositive pre-trial motions, including *motions in limine*, shall be filed in such a manner as to be received by all parties and the administrative law judge no later than **Monday, February 15, 2010**. Responses to pre-trial motions shall be filed in such a manner as to be received by all parties and the administrative law judge no later than **Monday, March 1, 2010**.

D. Motions in Limine - Motions shall be filed and served no later than **Monday, April 12, 2010**. Responses thereto shall be filed and served no later than **Monday, April 26, 2010**.

E. Daubert Motions - Motions challenging the qualifications of experts shall be filed and served no later than **Monday, April 12, 2010**. Responses thereto shall be filed and served no later than **Monday, April 26, 2010** .

#### **Periodic Status Reports**

Counsel are to report in writing every 60 days from the date of this order the progress of discovery until its completion.

#### **FINAL PRETRIAL PROCEDURES**

Pre-hearing Disclosures - the parties shall file and exchange pre-hearing disclosures pursuant to Fed . R. Civ. P. 26(a) (3) no later than **Thursday, April 1, 2010**. No later than **Friday, April 9, 2010**, a party shall file and exchange Fed.R. Civ. P. 26 (a)(3) objections, any objections to the use of a deposition designated by another party, and any deposition counter-designations under Fed R. Civ. P. 32(a)(4).

#### **Required Pretrial Conference Between Parties**

A. It is the responsibility of counsel for all parties to meet together or to confer by telephone no later than **Monday, May 3, 2010**, in a good faith effort to:

1. discuss the possibility of settlement;
2. stipulate to as many facts or issues as possible;
3. examine, mark and stipulate to the admissibility of as many as possible of the exhibits to be offered by any party at trial;
4. exchange the names and addresses of all witnesses and presently identifiable rebuttal

witnesses; and

5. prepare a pretrial statement in accordance with section *B.* of this Order.

*B.* The joint prehearing statement shall be filed in such a manner so as to be received by the administrative law judge no later than **Tuesday, May 4, 2010**<sup>2</sup> and shall contain:

1. a list of all exhibits to be offered into evidence with notations of all objections thereto; **and a certification by counsel that all exhibits have been exchanged**; subject objection shall describe with particularity the ground and authority for the objection;

2. a list of deposition testimony, including videotaped depositions, to be offered during a party's case-in-chief (with citations to the page and line number), including the opposing party's counter designations.

3. a list of all witnesses, and presently identifiable rebuttal witnesses, who may be called at the hearing;

4. a list of all expert witnesses including, as to each such expert witness, a written report prepared and signed by the witness ;

5. a concise statement of those facts which are admitted and will require no proof at the hearing, together with any reservations directed to such admissions;

6. a concise statement of applicable principles of law on which there is agreement;

7. a concise statement of those issues of fact which remain to be litigated (without incorporation by reference to prior pleadings or memoranda.);<sup>3</sup>

8. a concise statement of those issues of law which remain to be litigated (without incorporation by reference to prior pleadings or memoranda);<sup>4</sup>

9. a concise statement of any disagreement as to the application of the Federal Rules of Evidence or the Commission Rules of Procedure;

10. a list of all motions or other matters which require action by the administrative law

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<sup>2</sup> Prehearing statements should also be emailed to the undersigned at [judgecr@oshrc.gov](mailto:judgecr@oshrc.gov).

<sup>3</sup> Note: A mere restatement of the general elements to be proven will be deemed to be insufficient.

<sup>4</sup> See Note 2, above.

judge;

11. an estimate of time each counsel anticipates will be needed to present its case; and  
12. the signatures, telephone phone numbers, and email addresses of counsel for all parties.

13. A statement on the presentation software to be used by each party during trial, if any, and whether each party is able to receive and use digital files of presentation materials prepared by the other.

## **SPECIAL NOTICES**

### *A. Motions*

1. All motions must state the basis of the request, identify authority in support of the request and be accompanied by an **order** prepared for the administrative law judge's signature.

2. Motions for extensions of time, motions for continuances of any kind, motions seeking to limit or compel discovery, and motions seeking to expand or limit the calling of witnesses or the introduction of evidence, will not be entertained unless accompanied by moving counsel's certification that the parties have discussed the matter and that there is either no objection to the motion or that the parties have made a good faith effort to settle the matter and have been unable to do so. Said motion must be made sufficiently prior to the due date to allow time for the Court to consider it.

3. Motions which do not meet the requirements of A.1 and A.2, above, may be summarily denied. The Court will ignore correspondence from counsel that should properly be the subject of motion practice.

***B. Witnesses may not be permitted to testify and exhibits may not be accepted into evidence unless they have been identified in a timely pre-hearing exchange. At the commencement of the hearing all documents and exhibits exchanged by the parties together with an index and placed in a tabbed three-ring binder shall be submitted to the undersigned. Furthermore, each party shall provide the court reporter with an original or copy of each exhibit he/she introduces and is admitted into the record.***

*C. The Complainant and Respondent must disclose the names, organizational affiliations and subject matter areas of expertise of its expert witnesses, if any, no later than **Friday, October***

**16, 2009.** This disclosure shall be accompanied by a report for each expert which shall be completed and delivered to opposing counsel no later than **Friday, October 16, 2009.** This written report shall be a report prepared and signed by the expert witness, and shall contain a complete statement of all opinions to be expressed at trial and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years; and a statement of compensation to be paid for the study and testimony in the case.

*D.* The Complainant and Respondent must disclose the names, organizational affiliations and subject matter areas of expertise of its rebuttal expert witnesses, if any, no later than **Friday, October 30, 2009.** A report (see above at *C*) must be produced for each rebuttal expert and shall be completed and delivered to opposing counsel no later than **Friday, October 30, 2009.**

*E.* All parties must comply literally with all parts of the above order. Failure to do so may result in appropriate sanctions including dismissal of claim or defense.

*F.* The appearance of counsel on any pleading is deemed to be the appearance of every member of counsel's law firm and such appearance requires the presence of either the attorney who filed the pleading or a member of his/her law firm at the hearing on the matter.

*G.* **Documentary exhibits shall have each page numbered serially and identified as "Docket No. \_\_\_\_, Exhibit No. \_\_\_\_, page \_\_ of \_\_ pages."**

*H* Any party desiring to use a videotape or CD/DVD at the hearing shall be responsible for having appropriate playback equipment and a competent operator at the hearing. **An edited videotape or CD/DVD, capable of continuous playback and purged of unnecessary portions must be prepared by the offering party. A copy of the edited tape and an accompanying log shall be made available to other parties at least 10 days before the commencement of the hearing. The parties are further advised that any portion of a videotape containing an audio component, such as employee interviews or other conversations, which a party intends to introduce into the record, must be fully transcribed and exchanged with other parties at least**

**10 days before the commencement of the hearing.** In addition, the unedited original tape(s) shall be available at the hearing.

Each videotape used at a hearing must be accompanied by a log containing references to counter numbers which identify each segment to be shown at the hearing in terms of the elapsed real time from the beginning of the unedited tape(s) from which the segment was taken.

#### **POST-TRIAL BRIEFS**

Post-trial briefs should include a Table of Contents, Stipulations, Factual Background and Findings of Fact with citation references to the official transcript, Argument, Table of Authorities, and Conclusion. An original and a copy double spaced shall be submitted along with a CD diskette in a format compatible with WordPerfect 10 (or lower version); or emailed to the undersigned at [judgecr@oshrc.gov](mailto:judgecr@oshrc.gov).

NOTE: The Commissions Rules of Procedure permit filing and service of pleadings and documents by **electronic means**. The pertinent rules are Rule 7(c), 29 C.F.R. § 2200.7(c) (Service and notice - How accomplished) and Rule 8(g), 29 C.F.R. § 2200.8(g) (Filing - Electronic filing). **The parties are to determine whether they will electronically file and serve**, and then consult the agency website at [http://www.oshrc.gov/publications/instructions\\_elec\\_filing.html](http://www.oshrc.gov/publications/instructions_elec_filing.html) for instructions for electronic filing.

Dated: February 10, 2009

/s/ Covette Rooney

COVETTE ROONEY

Judge, OSHRC

