

# ALSTON & BIRD LLP

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October 6, 2008

***Via Certified Mail,  
Return Receipt Requested***

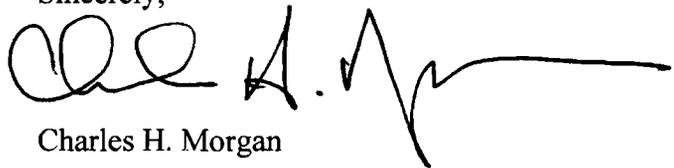
The Hon. Dennis L. Phillips  
Judge  
Occupational Safety and Health Review Commission  
One Lafayette Center  
1120 20th Street, NW -- 9th Floor  
Washington, DC 20036-3419

Re: *Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.,  
OSHRC Docket No. 08-1104*

Dear Judge Phillips:

Enclosed for filing in the above-referenced matter are the originals and one copy each of the Answer and Defenses of Respondents and Respondents' Disclosure of Corporate Parents, Subsidiaries, and Affiliates. I would appreciate it if your office could have the copies stamped as received and returned to me via the enclosed self-addressed, stamped envelope. Thank you.

Sincerely,



Charles H. Morgan

CHM:chm  
Enclosures

cc: Stanley E. Keen, Esq.  
Sharon D. Calhoun, Esq.  
Karen E. Mock, Esq. (w/encl.)  
Christopher D. Helms, Esq.

LEGAL02/30982498v1

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, )  
 )  
 Complainant, )  
 )  
 v. ) OSHRC Docket No. 08-1104  
 )  
 IMPERIAL SUGAR COMPANY and )  
 IMPERIAL-SAVANNAH, L.P., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

**ANSWER AND DEFENSES OF RESPONDENTS**

Respondents Imperial Sugar Company and Imperial-Savannah, L.P.  
respectfully answer the Complaint in this action as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

Compliance with certain of the standards cited is infeasible and/or  
impossible.

**THIRD DEFENSE**

Respondents took steps that were reasonable under the circumstances and  
made in good faith to protect employees against any alleged hazards.

FOURTH DEFENSE

The following standards are void for vagueness under the United States Constitution, and the constitutions of the State of Georgia and State of Texas: Section 5(a)(1), referencing ANSI B30.16-1973, NFPA 61 2008 & 2002, and NFPA 70; 29 C.F.R. § 1910.22(a)(1) and (2); and 29 C.F.R. § 1910.307(c).

FIFTH DEFENSE

To the extent any violations occurred, Respondents did not know and with the exercise of reasonable diligence, could not have known, of the existence or extent of the hazards and/or violations alleged.

SIXTH DEFENSE

To the extent any violations occurred, they were the result of isolated and unpreventable employee misconduct.

SEVENTH DEFENSE

Respondents respond to the introductory paragraph of the Complaint by denying that they violated the Occupational Safety and Health Act of 1972, *as amended* (“the Act”), or the safety and health regulations promulgated pursuant to the Act, and further respond to the enumerated paragraphs as follows:

I.

Respondents admit that jurisdiction of this action is conferred upon the Occupational Safety and Health Review Commission by § 10(c) of the Act.

II.

Respondents admit that Imperial-Savannah, L.P. is an employer engaged in a business affecting commerce within the meaning of § 3(5) of the Act. Except as expressly admitted herein, Respondents deny the allegations set forth in Paragraph II of the Complaint.

III.

Respondents admit that the principal place of business of Respondents is 8016 Highway 90A, Sugar Land, Texas 77478. Respondents further admit that Imperial-Savannah, L.P. is engaged in the business of sugar refining. Except as expressly admitted herein, Respondents deny the allegations set forth in Paragraph III of the Complaint.

IV.

Respondents deny the allegations set forth in Paragraph IV of the Complaint.

V.

Respondents admit that Complainant issued three Citations and Notifications of Penalty after an inspection of the worksite at 201 Oxnard Drive, Port

Wentworth, Georgia 31407. Except as expressly admitted herein, Respondents deny the allegations set forth in Paragraph V of the Complaint.

VI.

Respondents admit that the Citations and Notifications of Penalty, copies of which are attached to the Complaint as Exhibits A, B, and C describe alleged violations, specify an abatement date, and set forth a proposed penalty for the alleged violations. Except as expressly admitted, Respondents deny the allegations in Paragraph VI of the Complaint and expressly deny that they violated the Act or any safety and health regulations promulgated pursuant to the Act.

VII.

Respondents admit the allegations in Paragraph VII of the Complaint.

VIII.

Respondents deny the allegations set forth in Paragraph VIII of the Complaint.

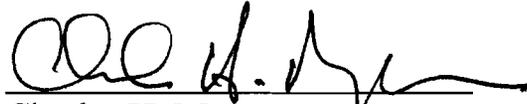
IX.

Except as heretofore expressly admitted, Respondents deny each and every allegation set forth in the Complaint and Citations.

WHEREFORE, having fully answered the Complaint, Respondents pray that the Complaint, the Citations, the proposed penalties, and the proposed abatement

demands each be dismissed in their entirety and that all fees and costs be assessed against the Complainant.

Respectfully submitted, this 6<sup>th</sup> day of October, 2008.



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Attorneys for Respondents Imperial  
Sugar Company and Imperial-  
Savannah, L.P.

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

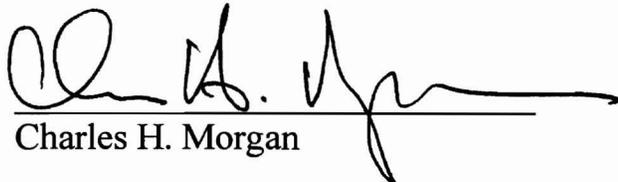
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 IMPERIAL SUGAR COMPANY and )  
 IMPERIAL-SAVANNAH, L.P., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

This is to certify that I have this date served a copy of the within and foregoing ANSWER AND DEFENSES by certified U.S. Mail, return receipt requested with adequate postage affixed thereon, addressed as follows:

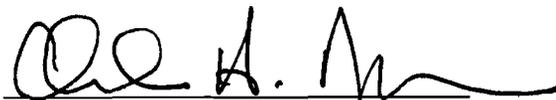
Stanley E. Keen, Esq.  
Sharon D. Calhoun, Esq.  
Karen E. Mock, Esq.  
Christopher D. Helms, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
61 Forsyth Street S.W.  
Room 7T10  
Atlanta, Georgia 30303

This 6<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Charles H. Morgan



Respectfully submitted, this 6<sup>th</sup> day of October, 2008.



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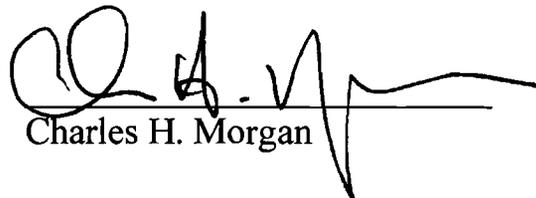
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IMPERIAL SUGAR COMPANY and )  
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)  
Respondents. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a true and correct copy of this DISCLOSURE OF CORPORATE PARENTS, SUBSIDIARIES, AND AFFILIATES by certified U.S. Mail, return receipt requested with adequate postage affixed thereon, addressed as follows:

Stanley E. Keen, Esq.  
Sharon D. Calhoun, Esq.  
Karen E. Mock, Esq.  
Christopher D. Helms, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
61 Forsyth Street S.W.  
Room 7T10  
Atlanta, Georgia 30303

This 6<sup>th</sup> day of October, 2008.

  
Charles H. Morgan

**UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

Secretary of Labor,	)	
	)	IN MANDATORY SETTLEMENT
Complainant,	)	PROCEEDING
	)	
v.	)	OSHRC Docket No. 08-1104
	)	
Imperial Sugar Company;	)	
Imperial-Savannah, L.P.,	)	
	)	
Respondents.	)	
	)	

**DISCOVERY SCHEDULING ORDER**

A Mandatory Settlement Conference is scheduled to convene pursuant to 29 C.F.R. § 120(d) on October 30, 2008 at Atlanta, Georgia. Pursuant to Commission Rule of Procedure 120, 29 C.F.R. § 2200.120(b)(2)(ii), all discovery otherwise authorized by 29 C.F.R. §§ 2200.53 – 2200.56 and/or the Federal Rules of Civil Procedure is suspended from the date of this order through October 15, 2008.

Accordingly, no depositions shall be noticed or taken and no interrogatories, request for admissions, and/or requests for production of documents shall be served or answered during the discovery suspension period.

Notwithstanding the above, the parties may agree to informally exchange or disclose information, documents, and materials during the discovery suspension period that may aid the settlement of the case.

SO ORDERED.

  
The Honorable Dennis L. Phillips  
U.S. OSHRC Judge

Dated: **SEP 23 2008**  
Washington, D.C.