

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

**RESPONDENTS' PROPOSED ORDER ON  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to the February 10, 2009 Notice of Hearing, Scheduling Order and Special Notices, attached is a proposed order regarding Respondents' Motion for Partial Summary Judgment, filed on January 27, 2009.

Respectfully submitted, this 26<sup>th</sup> day of February, 2009.

*/s/ Charles H. Morgan*  
Charles H. Morgan  
charlie.morgan@alston.com  
Matthew J. Gilligan  
matt.gilligan@alston.com  
Ashley D. Brightwell  
ashley.brightwell@alston.com  
Jeremy D. Tucker  
jeremy.tucker@alston.com  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
(404) 881-7000  
FAX: (404) 253-8757

Attorneys for Respondents

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	)	
	)	
Complainant	)	
	)	
v.	)	Docket No. 08-1104
	)	
IMPERIAL SUGAR COMPANY;	)	
IMPERIAL-SAVANNAH, L.P.	)	
	)	
Respondents.	)	
<hr style="width:45%; margin-left:0;"/>		

**ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT (Proposed)**

Respondents have filed a Motion for Partial Summary Judgment (the “Motion”) regarding allegations contained in two items of two of the citations at issue in this action. Complainant has filed a response to the Motion, and Respondent has filed a reply. After careful review of the parties’ submissions, I find that there are no disputed facts and that judgment as a matter of law is warranted. Thus, Respondent’s Motion is **GRANTED**.

1. Respondents’ Motion targets only the allegations related to bucket elevators contained in Item 5(b) of Citation 1 and Item 2(a) of Citation 2. The specific allegations at issue herein of those items are as follows:

Citation 1, Item 5(b):

South Packing House & Bosch Packing House - On or about 02/07/2008, inside legs (bucket elevators) used to convey granulated sugar were not equipped with bearing temperature, belt alignment, and vibration detection monitors at the head and tail pulleys to shut down equipment and/or notify the operator before the initiation of a fire and/or explosion, exposing employees to explosion and fire hazards.

Citation 2, Item 2(a):

South Packing House & Bosch Packing House - On or about 02/07/2008, bucket elevator legs ("legs") or portions of legs that were located inside were not

equipped with explosion relief venting to prevent secondary dust explosions and/or rupture of the elevator housing.

Both of these items allege that the bucket elevators Respondents used to convey sugar in the packaging areas at Respondents' refinery in Port Wentworth, Georgia posed a recognized hazard because they did not comply with standards set by the National Fire Protection Association ("NFPA") and, thus, that Respondents violated OSHA's general duty clause. Respondents' contend in their Motion that the bucket elevators at issue in these two citation items were exempt from any purported standard or requirement set out in the NFPA publications because they operated at a speed of less than 500 feet per minute. NFPA 61, which OSHA apparently relied upon to support the two citation items at issue, exempts from its provisions bucket elevators that operate at speeds less than 500 feet per minute. NFPA 61, §§ 7.4.1.10, 7.4.3.3 (2008 Ed.)

2. Respondents submitted with their Motion the Declaration of Dwayne Zeigler. Mr. Zeigler's declaration, and the exhibits to it, demonstrates that Respondents' bucket elevators used in its packaging operations were designed to operate and actually operated at speeds well below 500 feet per minute. Indeed, Mr. Zeigler testified that it was essential to Respondents' operations that sugar moved through the elevators at speeds no greater than 350 feet per minute. Complainant has produced no evidence to dispute Mr. Zeigler's testimony and the business records included with his Declaration that evidence the speed of Respondents' bucket elevators.

3. Because the evidence is undisputed that Respondents' bucket elevators were exempt from the NFPA provisions that form the basis for the allegations related to bucket elevators in the two citation items at issue, the allegations fail as a matter of law. Complainant cannot demonstrate that a recognized hazard existed, as required to establish a violation of the

---

<sup>1</sup> The provisions of the 2008 edition of NFPA 61 cited in this brief are identical to those in the 2002 edition.

general duty clause, given the specific exemption provided by NFPA 61. The NFPA provisions do not apply to Respondents' bucket elevators.

Accordingly, Respondent's Motion is **GRANTED** and summary judgment is entered in favor of Respondent, dismissing the allegations related to bucket elevators contained in Item 5(b) of Citation 1 and Item 2(a) of Citation 2. Complainant's claims related to bucket elevators in Item 5(b) of Citation 1 and Item 2(a) of Citation 2 are **DISMISSED WITH PREJUDICE**.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2009.

---

The Honorable Covette Rooney  
U.S. OSHRC Judge

Prepared By:

Charles H. Morgan  
charlie.morgan@alston.com  
Matthew J. Gilligan  
matt.gilligan@alston.com  
Ashley D. Brightwell  
ashley.brightwell@alston.com  
Jeremy D. Tucker  
jeremy.tucker@alston.com  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
(404) 881-7000  
FAX: (404) 253-8757

Attorneys for Respondents

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

**CERTIFICATE OF SERVICE**

I certify that all parties have consented that all papers required to be served in this action may be served and filed electronically. I further certify that a copy of the foregoing RESPONDENTS' PROPOSED ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT was electronically served on February 26, 2009 on the following counsel for Complainant:

Karen E. Mock  
Mock.Karen@dol.gov  
Angela F. Donaldson  
Donaldson.Angela@dol.gov  
Office of the Solicitor  
U.S. Department of Labor  
61 Forsyth Street S.W.  
Room 7T10  
Atlanta, Georgia 30303

/s/ Charles H. Morgan  
Charles H. Morgan  
Alston & Bird LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424  
charlie.morgan@alston.com