

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	
)	
Complainant)	
)	
v.)	Docket No. 08-1104
)	
IMPERIAL SUGAR COMPANY; and)	
IMPERIAL-SAVANNAH, L.P.,)	
)	
Respondents.)	
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RESPONDENTS' MOTION TO STAY PROCEEDINGS
AND REFER TO SETTLEMENT JUDGE

Pursuant to 29 C.F.R. §§ 2200.100(a), 2200.120(b) and other applicable law, Respondents Imperial Sugar Company and Imperial-Savannah, L.P. (collectively "Imperial") respectfully move for an order staying this matter and referring this matter to a settlement judge.

Imperial believes that, due to the timing of this motion, and in consideration of the litigation schedule in this case, a telephonic hearing among the parties and Judge to discuss this motion would be efficient and productive, and therefore Imperial requests that a telephonic hearing be scheduled at the earliest opportunity.

In support of its motion, Imperial states the following:

1. At issue in this matter are 124 citations, including 69 alleged "willful" citations. The proposed penalties at issue in this matter are \$5,062,000.00.
2. The hearing in this matter is set for May 18, 2010, and is expected to last three to four weeks. Fact discovery is set to close on December 23, 2009, and expert discovery is set to close on March 19, 2009.

3. On September 3, 2008, this matter was referred to a settlement judge. On October 30, 2008, the parties met for a settlement conference but were unable to settle this matter. By Order dated January 9, 2009, this matter was referred out of settlement proceedings for a hearing.

4. One of Imperial's main purposes in pursuing settlement in this matter is to avoid the continuing expense of defending this matter, and to better focus its resources on abatement of the citations at issue and improving its overall safety program.

5. Since the October 30, 2008 settlement conference, the parties have continued to engage in settlement discussions. Imperial represents that the parties have agreed upon all material terms of a settlement of this matter, including all amendments to the citations and an agreed-upon penalty.

6. The only items that have not been agreed to by the parties are nonadmissions language and abatement dates. Although the parties are making progress on the issue of abatement dates, they are far from resolution on the issue of nonadmissions language.

7. The current discovery schedule requires the parties to complete all outstanding fact discovery by December 23, 2009. Thus, the Complainant has scheduled 21 depositions of Imperial's current and former employees for the month of December. Imperial has scheduled nine depositions of Complainant's current and former employees for the month of December. The depositions will take place in Savannah, Georgia, Oak Ridge, Tennessee and Washington, DC. Imperial estimates that its cost of taking and defending these depositions will range from \$100,000.00 to \$200,000.00 in attorneys' fees and expenses. These depositions will also consume a substantial amount of the time of Imperial's employees at its Port Wentworth facility.

8. As noted, Imperial would prefer to devote its resources and the time of employees at Port Wentworth to more productive ventures, including improving its safety program and working on abating the citations, rather than continuing to litigate this matter.

9. Imperial is concerned that settlement negotiations between the parties are breaking down over what should be minor issues. Imperial believes that a mediation before a settlement judge would both quickly bring these matters to a resolution, and avoid the significant expense of the upcoming depositions and further litigation of this matter.

10. Imperial respectfully requests assignment for settlement purposes to a Review Commission judge based in Atlanta. Counsel for both parties are based in Atlanta, and Imperial believes that settlement meetings are more likely to be held sooner, and perhaps more often, if the settlement judge is also located in Atlanta.

11. Pursuant to 29 C.F.R. § 2200.40, Imperial states that its counsel has informed Complainant's counsel regarding its intent to file this motion, but that due to the timing of said notification, Complainant's counsel was unable to provide a response as to whether or not Complainant will object to this motion. Accordingly, Complainant has not consented to this motion. Due to the urgency of this matter, Imperial has elected to file this motion unilaterally.

Respectfully submitted this 25th day of November, 2009.

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ORDER STAYING PROCEEDING AND REFERRING TO SETTLEMENT JUDGE

Pursuant to 29 C.F. R. § 2200.120(b) and for good cause shown, discovery in this matter is hereby STAYED for a period of thirty (30) days and the matter will be referred to a settlement judge located in Atlanta, Georgia. Upon assignment of the judge, the parties are directed to promptly propose to the settlement judge available dates for a meeting for the purpose of discussing settlement and are directed to continue discussions regarding settlement in good faith.

SO ORDERED this ____ day of _____, 2009.

COVETTE ROONEY
U.S. OSHRC JUDGE

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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 RESPONDENTS' MOTION TO STAY PROCEEDING AND REFER TO SETTLEMENT JUDGE was served via electronic mail on November 25th, 2009 on the following counsel for Complainant:

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