



**Issue Date: 19 October 2012**

Case No.: **2012-PSI-00001**

*In the Matter of:*

MICHAEL R. KLINK,  
Complainant

v.

BECHTEL OIL, GAS & CHEMICALS, INC.,  
Respondent

**DECISION AND ORDER APPROVING SETTLEMENT**

This case arose under the Pipeline Safety Improvement Act of 2002 (“PSIA”),<sup>1</sup> which provides whistleblower protections to pipeline employees for engaging in certain protected activities. On October 16, 2012, the parties submitted a “Joint Motion for Approval of Settlement, Dismissal with Prejudice, and Confidential Treatment of the Settlement Agreement,” a “Proposed Order Approving Settlement,” and a signed Confidential Settlement Agreement and General Release (“Settlement Agreement”), which resolves all issues raised in the Complaint, for review and approval by the undersigned administrative law judge. The Motion and attached Settlement Agreement are incorporated herein by reference, without in any way affecting the confidential designation of the Settlement Agreement as described below.

My review of the Settlement Agreement is limited to a determination of whether its terms are fair, adequate and reasonable under the PSIA. *See Poulos v. Ambassador Fuel Oil Co.*, No. 91-ERA-25, slip op. at 2 (Sec’y of Labor, Nov. 4, 1991). The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to public interest.

Paragraph 13 of the Settlement Agreement provides that the Settlement Agreement shall be governed and construed under the laws of the State of Texas. This choice of law provision is construed as not limiting the authority of the Secretary of Labor or any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens Ass’n for Sound Energy*, No. 91-ERA-25, slip. op. at 2 (Sec’y of Labor, Nov. 4, 1991).

Because the Office of Administrative Law Judges is a government agency, and this is a public proceeding, the parties’ submissions in this case, including the Settlement Agreement, become a part of the record in this case, and are subject to the Freedom of Information Act

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<sup>1</sup> 49 U.S.C. § 60129 (2011). Implementing regulations are found at 29 C.F.R. Part 1981 (2012).

(“FOIA”).<sup>2</sup> FOIA requires agencies to disclose requested records unless they are exempt from disclosure under FOIA. *See, e.g., Fish v. H and R Transfer*, ARB No. 01-071, ALJ Case No. 2000-STA-56, slip op. at 2 (ARB April 30, 2003). Paragraph 8 of the Settlement Agreement provides that both parties will keep the existence and terms of the Settlement Agreement confidential, with certain specified exceptions. In both the Settlement Agreement and Motion, the parties have stipulated to the confidential nature of the Settlement Agreement, asserting that the Settlement Agreement is exempt from disclosure under FOIA pursuant to FOIA Exemptions 4 and 6.<sup>3</sup> Accordingly, to protect the parties from improper disclosure of this confidential information, to the furthest extent permitted by law, the Settlement Agreement will be sealed in a separate envelope and identified as being “CONFIDENTIAL COMMERCIAL INFORMATION,” pursuant to 29 C.F.R. § 70.26(b). The sealed envelope will also be identified as being “PERSONAL PRIVATE INFORMATION,” indicating that it may contain information exempt from FOIA pursuant to Exemption 6.

After careful consideration of the Settlement Agreement, I find that the terms and conditions are acceptable. Moreover, I find the terms of the agreement to be fair, adequate, and reasonable under the PSIA, and that the terms adequately protect Mr. Klink. Furthermore, I believe it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case, and I therefore approve the Settlement Agreement.

Accordingly, IT IS HEREBY ORDERED that the Settlement Agreement, as construed in this Order, is APPROVED, and the complaint which comprises OALJ Case No. 2012-PSI-1 is DISMISSED WITH PREJUDICE. In accordance with the regulations, the settlement constitutes the final order of the Secretary of Labor and may be enforced under 29 C.F.R. § 1981.113 (2012).

**IT IS FURTHER ORDERED that the Settlement Agreement is to be kept under seal and designated as “PERSONAL PRIVATE INFORMATION,” and “CONFIDENTIAL COMMERCIAL INFORMATION” under 29 C.F.R. § 70.26, and shall be afforded the protections thereunder.**

Alice M. Craft  
Administrative Law Judge

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<sup>2</sup> 5 U.S.C. § 552 (2011).

<sup>3</sup> 5 U.S.C. § 552(b)(4) & (b)(6).