

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 29 December 2014

ALJ NO.: 2014-PSI-00001

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JOSEPH ESPOSITO  
*Complainant*

v.

GREENLEAF BIOFUELS, LLC  
*Respondent*

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**DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT AND  
DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under the Pipeline Safety Improvement Act of 2002 (“PSIA”), which provides whistleblower protections to pipeline employees for engaging in certain protected activities. 49 U.S.C. § 60129. On December 22, 2014, the parties jointly submitted the following documents: (1) “Motion to Seal and Keep Confidential; (2) “Motion To Approve Settlement Agreement;” and (3) “Confidential Settlement and Release Agreement” (hereinafter “Settlement Agreement”).

In reviewing the Settlement Agreement, I must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the PSIA whistleblower provisions. I find that the Settlement Agreement complies with the standard required and it is APPROVED pursuant to 29 C.F.R. § 1981.111(d)(2), subject to my comments below.

Considering the Motion to Seal and Keep Confidential, the Respondent has asserted its pre-disclosure notification rights in accordance with 29 C.F.R. § 70.26, and the copy of the Settlement Agreement therefore is being maintained in a separate envelope and identified as being confidential commercial information pursuant to the parties’ request. *See Duffy v. United Commercial Bank*, 2007-SOX-00063 (Oct. 23, 2007). In this regard, I find that the Settlement

Agreement contains financial information and business information that is privileged or confidential within the meaning of 29 C.F.R. §70.2(j), as well as personal information relating to the Complainant.

With regard to confidentiality of the Settlement Agreement, the parties are advised that notwithstanding the confidential nature of the Settlement Agreement, all of their filings, including the Settlement Agreement, are part of the record in this case and may be subject to disclosure under the Freedom of Information Act (“FOIA”), 5 U.S.C.A. § 552 *et seq.* The Administrative Review Board has noted that:

If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine *at the time a request is made* whether to exercise its discretion to claim the exemption and withhold the document. If no exemption is applicable, the document would have to be disclosed.

*Seater v. S. Cal. Edison Co.*, USDOL/OALJ Reporter (PDF), ARB No. 97-072, ALJ No. 1995-ERA-00013 at 2 (ARB March 27, 1997) (emphasis added). Should disclosure be requested, the parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

The parties have also requested that access to the Settlement Agreement be restricted by the undersigned under 29 C.F.R. § 18.56 (Restricted Access). I find good cause for such restricted access and the Settlement Agreement will be so maintained under that authority in the sealed envelope. *See* 29 C.F.R. §§ 18.56 & 70.26. *See Sharp v. The Home Depot, Inc.*, ALJ No. 2006-SOX-00129, 2008 DOLSOX LEXIS 4, at \*3 (ALJ Jan. 16, 2008).

Paragraph 17 contains a choice of law provision naming the State of Connecticut as the law which shall govern interpretation of the Settlement Agreement, without regard to the conflict of law provisions thereof. The choice of law provision shall be construed as not limiting the authority of the Secretary of Labor or any federal court. *See Phillips v. Citizens Ass’n for Sound Energy*, Case No. 1991-ERA-00025, slip op. at 2 (Sec’y Nov. 4, 1991). Additionally, there are provisions in the Settlement Agreement that go beyond the PSIA, like the issues surrounding the Complainant’s pending state law claims. I note that my authority over settlement agreements is limited to the statutes that are within my jurisdiction as defined by the applicable statute. Therefore, I approve only the terms of the Agreement pertaining to Esposito’s current PSIA case, 2014-SOX-00001. *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-7 (ARB Jan. 31, 2011).

Upon consideration of the Settlement Agreement and the record in this proceeding, I find that the terms and conditions are fair, adequate, and reasonable under the PSIA. The terms adequately protect Mr. Esposito and it is in the public interest to approve the Settlement Agreement as a basis for administrative disposition of this case. Accordingly, it is **ORDERED** that:

- (1) The Motion to Seal and Keep Confidential is **GRANTED**;
- (2) The Motion to Approve Settlement Agreement is **GRANTED**;
- (3) The Settlement Agreement is **APPROVED**;
- (4) The Settlement Agreement shall be designated as confidential subject to the procedures requiring disclosure under FOIA; and
- (5) The Complaint of Joseph Esposito is **DISMISSED WITH PREJUDICE**.

**SO ORDERED.**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts