



**Issue Date: 04 May 2011**

**Case No.: 2010-SOX-52**

**In the Matter of**

**TROY J. JORDAN,**  
**Complainant,**

**v.**

**NATIONAL INSTRUMENTS CORPORATION,**  
**Respondent.**

## **SETTLEMENT AND DISMISSAL**

### **PROCEDURAL BACKGROUND**

This matter involves a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (the Act)<sup>1</sup> and regulations promulgated pursuant thereto<sup>2</sup> brought by Complainant against Respondent. Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) on 18 Mar 10 alleging that Respondent had terminated his employment in violation of the Act. The OSHA investigation resulted in a report on 14 Jul 10 that dismissed the complaint. On 12 Aug 10, Complainant filed his objections to the report and requested a hearing before an administrative law judge. Following a conference call with the parties' counsel, on 24 Aug 10, I issued a notice of hearing setting the case for 21 Mar 11 and directing Complainant to file an amended complaint specifying each protected activity and each adverse action. Complainant filed his complaint on 10 Sep 10. Respondent filed its answer and a motion to dismiss on the pleadings on 24 Sep 10. Complainant filed a reply and on 1 Dec 10, I denied the motion. Following the completion of discovery, Respondent filed a motion for summary decision on 7 Mar 11. Complainant filed a motion to strike and answer on 25 Mar 11 and Respondent filed a reply on 6 Apr 11. Before I issued a decision on the motion, the parties informed me they had reached a settlement. However, the initial settlement they filed had the cash amount redacted.

In a subsequent conference call with counsel for both sides, I explained that I was required to review the settlement and could not do so if the amount paid to Complainant was not disclosed. They expressed their mutual desire to seal the agreement and prevent third parties from obtaining it. I responded that the ultimate decision on the disclosure of any or all of the exhibits or other filings in the record is an agency responsibility, subject in large part to

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<sup>1</sup> 18 U.S.C. § 1514A(2011).

<sup>2</sup> 29 C.F.R. Part 1980(2011).

the Freedom of Information Act.<sup>3</sup> Therefore, sealing is subject to review by the Agency in terms of an APA/FOIA analysis and any order by an ALJ to seal a settlement agreement serves only as notice to the agency official ultimately responsible for releasing records under FOIA that the parties had a significance interest to non-disclosure. Given that significant limitation, I grant the motion “to seal.”

## **ORDER**

A stipulation having been entered into by and between Complainant Troy J. Jordan and respondent National Instruments Corporation and the Court being fully advised of the premises:

Now, therefore, it is hereby **GRANTED** that all claims against Respondent National Instruments Corporation in the above action be and hereby are dismissed with prejudice and with each party to bear its own costs and attorneys’ fees.

**SO ORDERED** this 4<sup>th</sup> day of April, 2011, at Covington, Louisiana.

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**PATRICK M. ROSENOW**  
**Administrative Law Judge**

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<sup>3</sup> See 29 CFR Part 70 implementing 5 USC §552. 5 USC §522(a)(2)(A) states in pertinent part that “Each agency, in accordance with published rules, shall make available for public inspection and copying final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.” 5 USC§522(b)(6) states in pertinent part that “This section does not apply to matters that are personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See also 29 CFR §18.43 which states that ALJ proceedings shall be open to the public except in unusual circumstances.