



**Issue Date: 25 May 2010**

Case No.: 2010-SOX-00027

In the Matter of

WINCHESTER LEWIS,  
Complainant,

v.

WALT DISNEY WORLD,  
Respondent.

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR  
SUMMARY DECISION**

This proceeding arises under the Sarbanes-Oxley Act (hereinafter "the Act" or "SOX"), which was signed into law on July 30, 2002. This law includes an employee protection provision that protects employees who blow the whistle on violations of U.S. Security and Exchange Commission rules and regulations and other laws relating to preventing fraud against shareholders. Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, P.L. No. 107-204. Section 806 is codified as 18 U.S.C. § 1514A. Implementing regulations are at 29 C.F.R. Part 1980.

**PROCEDURAL HISTORY**

On July 15, 2008, Complainant, Winchester Lewis, filed his SOX complaint with the Occupational Safety and Health Administration ("OSHA") of the United States Department of Labor.<sup>1</sup> On January 20, 2010, after conducting an investigation, OSHA's regional administrator issued a determination advising the parties that she found the complaint to be untimely because it had not been filed within 90 days of the alleged adverse employment action. Accordingly, she dismissed the complaint. Thereafter, on February 25, 2010, Complainant filed a request for a de novo hearing with the Office of Administrative Law Judges, U.S. Department of Labor. On

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<sup>1</sup> Although the Complainant had filed earlier complaints with OSHA regarding asbestos contamination and a Section 11(c) retaliation violation, those filings did not allege a SOX complaint. On July 15, 2008, the Complainant sent a fax to OSHA that alleged a fraud was committed on Disney World's shareholders. Accordingly, July 15, 2008, is the first date that the Complainant's allegations can be construed as a SOX complaint.

April 23, 2010, Respondent filed this Motion for Summary Decision. On April 23, 2010, and April 30, 2010, Complainant filed responses to the Motion for Summary Decision.

## **SUMMARY OF THE EVIDENCE<sup>2</sup>**

### **Confidential Settlement Agreement between Disney World and Mr. Lewis (EX F)**

Both Respondent and Complainant have submitted an eight (8) page Confidential Settlement Agreement with Waiver and Release of Claims of Winchester Lewis (“Agreement”), which was signed by Mr. Lewis on April 8, 2009 and signed by Disney on April 17, 2009. In relevant part, the Agreement states the following:

This Settlement Agreement with Waiver and Release of Claims (“Agreement”) covers all understandings between Winchester Lewis (hereinafter “Employee”) and Walt Disney Parks and Resorts U.S., Inc. d/b/a/ Walt Disney World Co., it’s related, affiliated and subsidiary companies, (hereinafter “Employer”) relating to Employee’s resignation from employment with the Employer.

1. In consideration for execution of this Agreement, employer agrees to pay and Employee agrees to accept the sums of monies to be paid as set forth below . . . and Employee hereby . . . releases . . . Employer . . . of and from, any and all claims and demands, past, present or future, known or unknown . . . from the beginning of the world to the execution of this Agreement. . . . The Release by Employee of Employer includes, but is not limited to:

...

B. Any and all claims growing out of, resulting from, related to, or connected in any way to Employee’s relationship and/or employment, and the termination/separation thereof, with Employer and any Releases, including but not limited to any and all claims for . . . retaliation, . . . whistle-blowing . . . .

### **General Release of All Claims (EX G)**

On April 8, 2008, the parties also both signed a General Release of All Claims (“General Release”). This General Release was executed contemporaneously with the Settlement Agreement and Release for his worker’s compensation claim under F.S. 440.20(11)(c)(2001), for which the Complainant received \$75,000. (EX H) In relevant part, the General Release states the following:

[T]he undersigned does hereby irrevocably and unconditionally release Walt Disney Parks and Resorts U.S., Inc. d/b/a Walt Disney World Co., . . . from any and all claims, whether asserted or not asserted by the undersigned, or any

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<sup>2</sup> The following abbreviations will be used in this Decision: EX – Respondent Exhibit; CX – Complainant Exhibit.

nature whatsoever, including . . . any other federal or state statute or common law relating to employer-employee rights and responsibilities . . . .

**Dr. David Keisari, M.D. at Orlando Behavioral Healthcare**

On May 3, 2010, Complainant submitted a fax that contained two letters from Dr. David Keisari. The first letter was dated February 5, 2007, and the second letter was undated. The letters state the following regarding Complainant's medical condition:

Letter One

The [Complainant] is unable to work and is being placed on Medical Leave of Absence beginning 2/5/2007 through 2/16/2007, at which time you will receive a Notice Return to Work or a request for an extension of leave.

Letter Two

Mr. Lewis again came in for a follow up appointment on April 27, 2007 and was seen this time by Dr. Hashimi in the South Orlando office and evaluated. He discussed his occupational problems with the doctor. No medication and no follow up appointment were ordered. This concludes medical interventions recorded with this patient.

**Letter from OSHA to Complainant dated July 18, 2007 (EX A)**

Both Complainant and Respondent submitted the following letter from OSHA. The letter states the following regarding the date of OSHA's inspection and the results of the inspection:

FINDINGS: On the evening of April 19, 2007, a Compliance Officer and Assistant Area Director from this office performed air monitoring and took bulk samples from several locations within Universe of Energy. We were accompanied by you, representatives for Disney and a representative from Halliwell who performed additional sampling for Disney. The monitoring was performed in areas of the Universe of Energy building you pointed out as areas of concern, to determine if employees were exposed to airborne asbestos fibers while performing various assigned duties. The results of our monitoring show that no asbestos fibers were detected in either the air samples or bulk samples. No violations noted.

**Letter to Mr. Lewis from OSHA dated November 13, 2008 (EX D)**

Both Complainant and Respondent submitted a letter dated November 13, 2008, from OSHA regarding the Complainant's Section 11(c) complaint. Although the letter addresses the Section 11(c) complaint, it also states the following regarding the Complainant's SOX complaint:

While your appeal was pending, you submitted supporting documentation consisting of two faxes, dated July 15, 2008, one of which alleges “fraud against shareholders.” OSHA’s Atlanta regional Office is responsible for investigating retaliation complaints in Florida. We have referred these faxes to the Atlanta Regional Office for consideration as a separate complaint.

**E-mail from Complainant dated December 29, 2009**

On April 27, 2010, via fax, the Complainant submitted an e-mail that he wrote on December 29, 2009, which described the events that took place while he was working for Walt Disney in 2007. Mr. Lewis first stated that he worked for Walt Disney for 18 years, starting at the Magic Kingdom in 1988. He further stated that he worked at Epcot from 1994 until 2007.

Next, Mr. Lewis stated that in January 2007, he told Ray, Disney’s environmental person, about asbestos on the property. However, he stated that since the guests were exposed to the asbestos while riding on the Universe of Energy ride, he decided to report the exposure to OSHA. The same week he reported the asbestos to OSHA, Mr. Lewis stated that he was contacted by Human Relations, was placed on medical leave for being “unfit for duty”, and was sent to a psychologist.

Mr. Lewis explained that after he reported the matter to OSHA, he continued to be harassed by Disney. He also stated that he believed it may cost a billion dollars to clean up the asbestos at Disney, and that shareholders have been misled from 1978 to the present. Therefore, when Disney reported that it did not use asbestos, Mr. Lewis stated that he requested an inspection in person.

The day of the inspection, Mr. Lewis stated that he was sent to the psychologist again. He stated that he thought that Disney sent him to the psychologist so that he would miss the inspection. Still, Mr. Lewis was able to attend the inspection and he stated that while he waited for the results he was shuffled between the OSHA office and Risk Management at Disney. Finally, he stated that it took three months to get the results back and that he disagreed with the results when they came.

At this point, Mr. Lewis explained that he tried to transfer departments, but that Disney would not let other managers hire him. He stated that Disney would only allow him to work in places that were not good for his knees; therefore, he was forced to resign.

**STATEMENT OF FACTS**

Complainant worked at Epcot for Walt Disney from 1994 to 2007. In late January 2007, Complainant filed a safety complaint with OSHA alleging that employees working at the Universe of Energy ride were exposed to asbestos. The Complainant was placed on Medical Leave of Absence from 2/5/2007 through 2/16/2007. On April 19, 2007, the Complainant accompanied OSHA while a Compliance Officer and Assistant Area Director performed air monitoring and took bulk samples from several locations within Universe of Energy. On April 27, 2007, Complainant attended a follow-up appointment with a psychologist. The psychologist

noted that no medications or follow-up appointments were ordered. Complainant alleges that he was placed on medical leave and was sent to the psychologist in retaliation for reporting the asbestos at the Universe of Energy ride. Complainant further alleges that he was not allowed to transfer departments, and therefore, was forced to resign.

In November 2008, OSHA sent a letter to the Complainant stating that his fax dated July 15, 2008, alleged “fraud against shareholders,” which could be construed as a SOX violation. Therefore, the faxes were sent to the Atlanta offices in order to process this SOX complaint. On April 8, 2009, Complainant signed a settlement agreement with Disney regarding his resignation from Walt Disney World. The agreement, entitled Confidential Settlement Agreement with Waiver and Release of Claimant of Winchester Lewis (“Agreement”), contained a release of liability for claims against Disney involving the Complainant’s resignation, including claims for retaliation and whistleblowing.

## **SUMMARY OF THE ARGUMENTS**

### **Respondent’s Motion for Summary Decision**

In this matter, Respondent asserts that it is entitled to summary decision because there are no genuine issues of material fact, the Complainant’s whistleblower complaint was untimely filed with OSHA, and Complainant signed a General Release of All Claims against Disney. First, the Respondent explains that the Complainant filed his SOX complaint on July 15, 2008, over a year after the alleged adverse employment actions. Therefore, the Respondent, citing 18 U.S.C. § 1514A(b)(2)(D), states that the Complainant cannot prevail under the statute of limitations provided by SOX. Second, the Respondent states that individuals can release claims under Sarbanes-Oxley. The Respondent further explains that, when signing the General Release, the Complainant was represented by counsel and received consideration for the agreement. Therefore, the Respondent concludes that the release is fully enforceable and bars the Complainant from bringing the SOX claim.

### **Complainant’s Objection to Motion for Summary Decision**

In response, Complainant argues that the complaint was not untimely filed with OSHA for three reasons. First, Complainant argues that his fax to OSHA on July 15, 2008, was not his first fax, but rather was his fourth fax. Therefore, Complainant argues that his previous correspondence make his SOX complaint timely. Second, Complainant argues that Disney’s violations were continuous, and therefore, the ninety (90) day statute of limitations did not begin to run. Complainant explains that Disney has made no attempt to bring the company in compliance with the law regarding the use of asbestos or its financial matters and fraud on the stockholders; therefore, the Complainant argues that the statute of limitations does not apply until Disney fixes the problems. Lastly, Complainant argues that Disney used delay tactics in bad faith in order to allow the statute of limitations to expire. Complainant explains that Disney delayed his claim by falsely telling him he would be transferred to another department. Therefore, Complainant argues that when a company is in anyway working to some resolution, real or false, and that resolution delays action, the statute of limitations should be extended.

In addition, Complainant argues that the general release does not bar him from litigating his SOX claim against Disney. He states that the general release was part of a pre-agreement draft which he never agreed to. In support of his argument he states that the pages of the General Release are not paginated or initialed. Instead, he argues that he only agreed to eight pages within the Confidential Settlement Agreement with Waiver and Release of Claims of Winchester Lewis.

## **DISCUSSION**

### **Summary Decision**

In ruling on a motion for summary decision, an administrative law judge may grant the motion if the “pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact.” 29 C.F.R. § 18.40(d). A fact is material and precludes granting summary decision if proof of the fact “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is ‘genuine’ . . . if the evidence is such that a reasonable [finder of fact] could return a verdict for the non-moving party.” *Id.*

Initially, the party moving for summary decision has the burden of showing that there are no genuine issues of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). This burden may be discharged by demonstrating that the nonmovant cannot make a showing sufficient to establish an essential element of the case. *Id.* at 325. Thereafter, the burden shifts to the nonmovant who must “set forth specific facts showing that there is a genuine issue of fact for the hearing.” *See* 29 C.F.R. § 18.40(c). The opposing party may not rest upon mere allegations or denials. *Id.* In determining whether there is a genuine issue of fact for the hearing, the judge shall view “all the evidence and factual inferences in the light most favorable” to the nonmovant. *See Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 99-107, ALJ No. 99-STA-21, slip op. at 6 (ARB Nov. 20, 1999) (citing *Adickes v. Kress & Co.*, 398 U.S. 144, 158-9 (1969)). If there are no genuine issues of material fact, then the moving party is entitled to judgment as a matter of law. *See Dawkins v. Shell Chemical, LP*, 2005-SOX-41, slip op at 2 (ALJ May 16, 2005).

In this case, the Complainant has alleged that the Respondent retaliated against him for reporting Disney’s asbestos use to OSHA, and that these adverse employment actions eventually forced him to resign. The parties agree that these alleged retaliations occurred in 2007. The parties also agree that the Complainant sent a fax to OSHA on July 15, 2008, which claimed that Disney’s asbestos use created a “fraud on shareholders.” Furthermore, although the parties disagree on whether the General Release is enforceable, the parties agree that the Settlement Agreement is enforceable. Therefore, after reviewing this evidence in the light most favorable to Complainant, the nonmoving party, I find that the Respondent has met its burden of proving that there are no genuine issues of material fact. Accordingly, I find that it is appropriate to issue a Decision and Order on Summary Decision.

## Timeliness

Respondent asserts that it is entitled to summary decision because the Complainant's whistleblower complaint was untimely filed with OSHA and because there are no genuine issues of material fact regarding the timeliness of the claim. Under the Sarbanes-Oxley Act, the regulations state the following regarding the amount of time for filing a complaint:

Within 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

29 C.F.R. 1980.103(d). Accordingly, the 90-day filing period begins to run when the employer makes and reasonably communicates the discriminatory adverse employment decision to the employee. In other words, the claim accrual or statute of limitation runs from the date an employee receives "final, definitive, and unequivocal notice" of an adverse employment decision and not from the date at which the consequences of the act become painful. *English v. Whitfield*, 858 F.2d 957, 961 (4th Cir. 1988) (citing *College v. Ricks*, 449 U.S. 250 (1980); *Sneed v. Radio One, Inc.*, ARB No. 07-072, ALJ No. 2007-SOX-18, slip op. at 2 (ARB Aug. 28, 2008); *Halpern v. XL Capital, Ltd.*, ARB No. 04-120, ALJ No. 2004-SOX-054, slip op. at 3 (ARB Aug. 31, 2005); *Jenkins v. U.S. Envtl. Prot. Agency*, ARB No. 98-146, ALJ No. 1988-SWD-002, slip op. at 13 (ARB Feb. 28, 2003). "Final" and "definitive" notice denotes communication that is decisive or conclusive and "unequivocal" notice means communication that is not ambiguous. *Swenk v. Exelon Generation Co. LLC*, ARB No. 04-028, ALJ No. 2003-ERA-00030, slip op. at 4 (ARB April 28, 2005) (citing *Larry v. The Detroit Edison Co.*, 86-ERA-32, slip op. at 9-10 (Sec'y June 28, 1991)).

In this case, the Complainant alleges that he was placed on medical leave from February 5, 2007 through February 16, 2007, and was sent to a psychologist for evaluation, the last appointment occurring on April 27, 2007, in retaliation for reporting the asbestos at the Universe of Energy ride. Complainant further alleges that he was not allowed to transfer departments, and therefore, was constructively discharged when he was forced to resign in 2007. Based on these allegations, the Complainant's last allegation of an adverse employment action was his forced resignation, or constructive discharge; therefore, the Complainant's resignation is the last possible date that the statute of limitations could begin to run from. Accordingly, in order for the Complainant's claim to be timely, he must have filed his SOX complaint with OSHA within 90 days of his resignation.

Here, the parties agree that the Complainant stopped working for Disney in 2007, but the exact date of the Complainant's resignation is not in the record. Therefore, in viewing the evidence in light most favorable to the non-moving party, I will use December 31, 2007, as the date of the Complainant's resignation and the start of the ninety (90) day limitation period. Based on this date, the end of March 2008 is the last possible date that the Complainant could have filed the SOX complaint in order for it to be considered timely. Accordingly, when the

Complainant filed his SOX complaint over ninety (90) days later, on July 15, 2008, the complaint was untimely.

Still, the Complainant argues that his SOX complaint should be considered timely because he submitted four other faxes to OSHA before July 15, 2008. It is not disputed that the Complainant was in correspondence with OSHA since early 2007 regarding his reports of Disney's asbestos use. It is also undisputed that the Complainant informed OSHA of Disney's retaliatory employment actions. However, although the Complainant was in contact with OSHA, it was not until his July 15, 2008 fax that the Complainant argued that the asbestos use could amount to shareholder fraud. Therefore, July 15, 2008, is the earliest date that the Complainant made the necessary allegations for a SOX complaint. The Complainant does not argue that his earlier faxes discussed fraud allegations, nor has he submitted any of his earlier faxes showing a previous fraud allegation. Accordingly, I find that his previous faxes to OSHA, which did not allege the necessary violations for a SOX complaint, do not make his SOX complaint timely.

The Complainant also argues that the statute of limitations should be extended because Disney used delay tactics in bad faith in order to allow the statute of limitations to expire. Complainant explains that Disney delayed his claim by falsely telling him he would be transferred to another department. Therefore, Complainant concludes that when a company is in anyway working to some resolution, real or false, and that resolution delays action, the statute of limitations should be extended. This argument has no merit. Even if Disney did use delay tactics by offering the Complainant a transfer to another department, and even if the limitations period could be extended for this delay tactic, the statute of limitations would not be extended past December 31, 2007. I have previously found that the statute of limitations did not begin to run until the Complainant was forced to resign, and I have used December 31, 2007, as the date of his resignation. Disney refusal to transfer the Complainant to another department occurred prior to this date. Accordingly, the statute of limitations would not be extended past the date of Complainant's resignation and the SOX complaint would still be untimely.

Lastly, Complainant argues that the statute of limitations should not apply in this case because Disney's asbestos use and fraud against its shareholders are continuous violations that have not been resolved. This argument misunderstands the statute of limitations for a SOX complaint. Although a sufficient SOX complaint must include an allegation of shareholder fraud, when the statute of limitations begins to run is not dependent on the shareholder fraud. Rather, when the statute of limitations begins to run depends on when a respondent retaliates against a complainant for exposing the shareholder fraud. Accordingly, continuous violations of shareholder fraud do not extend the statute of limitations.

Still, although the Complainant did not timely file a SOX complaint with OSHA or the Secretary of Labor, the limitations period is not jurisdictional and therefore is subject to equitable tolling. *Moldauer v. Canandaigua Wine Co.*, ARB No. 04-022, ALJ No. 2003-SOX-026, slip op. at 5 (ARB Dec. 30, 2005). Accordingly, I must consider whether existing circumstances would warrant equitable tolling of the deadline for filing a SOX complaint. Equitable tolling has been found to be appropriate in three situations: (1) [when] the defendant has actively misled the plaintiff respecting the cause of action, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has raised the

precise statutory claim in issue but has mistakenly done so in the wrong forum. *Moldauer*, slip op. at 5 (citing *Sch. Dist. of the City of Allentown v. Marshall*, 657 F.2d 16, 18-20 (3d Cir. 1981)). The Complainant, Mr. Lewis, bears the burden of justifying the application of equitable tolling principles. *Moldauer*, slip op. at 5; see also *Levi v. Anheuser Busch Co., Inc.*, ARB No. 06-102, 07-020 , 08-006, ALJ No. 2006-SOX-00037, 108, 055., slip op. at 12 (ARB April 30, 2008).

In this case, none of the equitable tolling principles apply. The Complainant has not argued that he was actively misled by the Respondent respecting his SOX complaint. Also, the Complainant has also not claimed or shown that he was in some extraordinary way prevented from filing his SOX complaint with OSHA. Finally, the Complainant has not claimed or shown that he mistakenly raised the precise statutory claim in the wrong forum. Accordingly, I find that the Complainant's cause of action is not subject to equitable tolling; therefore, I find that the SOX claim was untimely filed on July 15, 2008, and the complaint should be dismissed.

### **Settlement Agreement and Release of Liability**

In the alternative, the Respondent argues that the Complainant is barred from bringing this suit because he signed a General Release of All Claims ("General Release") when he settled an unrelated worker's compensation claim. The Complainant states that the General Release was part of a pre-agreement that he disagreed with and that he would not sign the agreement until the General Release was removed. Still, although the Complainant claims that he did not agree to the General Release, this document is signed and dated by the Complainant. Furthermore, the Complainant was represented by an attorney during the execution of the agreement, received sufficient consideration for the agreement in the amount of \$75,000 and the agreement is in accordance with F.S. 440.20(11)(c)(2001).<sup>3</sup>

In addition, although the General Release does not specifically mention federal whistleblower complaints, the General Release states that the Respondent releases Disney from "all claims." Furthermore, "numerous other decisions also stand for the proposition that an employee who enters into a general release that releases 'all claims' against an employer also releases claims that are not specifically mentioned." *Moldauer*, slip op. at 17 (concurring opinion) (citing *Shaw v. Sacramento*, 250 F.3d 1289, 1293 (9th Cir. 2001); *Fair v. International Flavors & Fragrances, Inc.*, 905 F.2d 1114 (7th Cir. 1990) *Runyan v. National Cash Register Corp.*, 787 F.2d 1039 (6th Cir.1986); *Nail v. Brazoria County Drainage Dist. No. 4*, 992 F. Supp. 921 (S.D. Tex. 1998); *Baba v. Warren Mgmt. Consultants, Inc.*, 882 F. Supp. 339, 344 (S.D.N.Y. 1995)). Accordingly, I find that the General Release is valid and bars the claimant from bringing the current SOX claim.

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<sup>3</sup> F.S. 440.20(11)(c)(2001) states the following regarding settlements in worker's compensation claims:

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant.

Moreover, in addition to the General Release, the parties both agree that the Confidential Settlement Agreement with Waiver and Release of Claimant of Winchester Lewis (“Agreement”), was agreed to and signed by both parties. This Agreement covered all understandings between the Respondent and Complainant regarding the Complainant’s resignation from Disney. Furthermore, the Agreement specifically releases the Employer from “claims or rights under state and federal whistle-blower legislation.”

Generally, waivers and releases of liability are valid when the release language is “lawful and unambiguous,” and the decision to enter into the agreement is “knowing and voluntary.” *See Moldauer*, slip op. at 16-18. In this regard, the Agreement includes the following language:

11. The parties understand and agree that they:

- (a) Have had a reasonable time within which to consider this Agreement before executing it;
- (b) Have carefully read and fully understand all of the provisions of this Agreement;
- (c) Are, through this Agreement, releasing each other from any and all claims they may have against each other relating to Employee’s employment with Employer.
- (d) Knowingly and voluntarily agree to all of the terms set forth in this Agreement;
- (e) Knowingly and voluntarily intend to be legally bound by same;
- (f) Were advised to consider the terms of this Agreement with counsel, and have consulted with their counsel prior to executing this Agreement, and
- (g) Are duly authorized and have fully authority to execute this Agreement.

12. Employee understands and acknowledges that (a) by signing this Agreement Employee is waiving any rights Employee may presently have, including, but not limited to those under the ADEA; (b) Employee has been given a reasonable and sufficient time to review and consider this Agreement prior to signing it; and (c) Employee has had the opportunity to discuss this Agreement with counsel of his choice. Employee certifies that Employee is allowed twenty-one (21) days to consider this Agreement before signing it. Employee also understands that during the seven (7) days after Employee signs this Agreement, Employee may revoke this Agreement by providing written notice of revocation . . . .

This Agreement is unambiguous and clearly states that the Respondent is released from all federal whistleblower claims, which includes the current SOX complaint. The Complainant was represented by an attorney during the execution of this Agreement, and signed the Agreement knowingly and voluntarily. Accordingly, I find that this release of liability also bars the Complainant from proceeding in with this SOX complaint.

## ORDER

For the reasons stated in the foregoing discussion, Respondent's Motion for Summary Decision is **GRANTED**.

**IT IS FURTHER ORDERED THAT THIS COMPLAINT IS DISMISSED.**

**A**

Daniel A. Sarno, Jr.  
Administrative Law Judge

DAS/bdb  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).