

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 12 April 2010**

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Case No.: 2009-STA-00006

In the Matter of:

RAY GRAHAM,  
DOC No. 306384

Complainant,

v.

ASPLUNDH TREE EXPERT COMPANY,  
Respondent.

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**Order Approving Settlement**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003), and the implementing regulations at 29 C.F.R. Part 1978. On March 23, 2010, filed a request for approval of a settlement agreement. Pursuant to Section 31105(b)(2)(C) of the Act: “before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary’s findings: “if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board. . . . or the ALJ” 29 C.F.R. §1978.11 l(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. Tankersly v. Triple Crown Services, Inc., 1992- STA-8 (Secy Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.*

I have carefully reviewed the terms of the agreement. I note that it encompasses the settlement of matters arising under both STAA and other statutes. Paragraph 8 A. of the Agreement further provides that the settlement is governed by the laws of the State of Florida. Consistent with the Secretary’s decision in Phillips v. Citizens Assoc. for Sound Energy, 91 ERA 25 (Nov. 4, 1991), Paragraph 8 A must be limited to the claims other than the STAA claims the Agreement settles. It should not, therefore, be construed as a provision limiting the authority of the Secretary or the United States District Court to take such action with respect to this matter as they may deem appropriate under Surface Transportation Act or the regulations promulgated and published by the Department of Labor to implement the Act. *See also*, Milewski v. Kansas Gas and Electric Co., Case No. 85-ERA-0021, (Secretary’s Order Approving Settlement Agreement and Dismissing Complaint, June 23, 1990), slip op. at 2.

In all other respects, I have determined that settlement constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Therefore:

ORDER

IT IS ORDERED that the settlement be, and it hereby is, approved, and;

IT IS FURTHER ORDERED that this matter be, and it hereby is dismissed, with prejudice.

**A**

Stuart A. Levin  
Administrative Law Judge

**NOTICE OF REVIEW:** The administrative law judge's Recommended Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Settlement, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.