

**U.S. Department of Labor**

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**Issue Date: 13 June 2005**

Case No.: 2005-SOX-0018

In the Matter of

SCOTT D. BAHR

Complainant

v.

MERCURY MARINE and BRUNSWICK CORPORATION

Respondent

**ORDER APPROVING SETTLEMENT and  
DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provision of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (Public Law 107-204), 18 U.S.C. § 1514A (hereinafter the Act), as implemented by 29 C.F.R. Part 1980.

Pursuant to a Notice of Hearing, dated January 27, 2005, I set a hearing date of April 18, 2005, in Chicago, Illinois. By letter sent by facsimile on April 15, 2005, the parties advised that they had reached a settlement and on April 21, 2005, I continued the hearing to allow for submission of the executed settlement agreement. On May 31, 2005, the parties to this proceeding submitted a Confidential Settlement Agreement and General Release (hereinafter the "Settlement Agreement").

The terms of the Settlement Agreement have been carefully reviewed. The Settlement Agreement encompasses the settlement of matters arising under both the Act and state statutes. Paragraph 16 of the Agreement further provides that the Settlement Agreement is "construed and interpreted in accordance with laws of the State of Illinois without regard to the conflict of law provisions of any state." Consistent with the Secretary's decision in *Phillips v. Citizens Assoc. for Sound Energy*, 91-ERA-25 (Nov. 4, 1991), I interpret Paragraph 16 as limited to the state claims the Settlement Agreement settles. Paragraph 16 is not 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 that they deem appropriate under the Act or the regulations promulgated and published by the Department of Labor to implement the Act. See *Milewski v. Kansas Gas and Electric Co.*, Case No. 85-ERA-0021, Sec. Order Approving Settlement Agreement and Dismissing Complaint (June 23, 1990).

Furthermore, the parties request that the Settlement Agreement remain confidential pursuant to 29 C.F.R. § 70.26. This confidentiality provision does not run afoul of the requirements of law. *See generally, Connecticut Light & Power Co. v. Secretary of the U.S. Department of Labor*, 85 F. 3d 89 (2<sup>nd</sup> Cir. 1996); *Bragg v. Houston Lighting & Power Co.* 1994-ERA-38 (Sec’y June 19, 1995). To effectuate such confidentiality, I have sealed the Settlement Agreement. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. The Administrative Review Board noted:

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. Southern California Edison Co.*, 1995-ERA-13 (ARB March 27, 1997).

The parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26.

#### FINDINGS OF FACT

Under review of Settlement Agreement, I make the following findings:

1. The Settlement Agreement is fair, adequate, and reasonable on its face;
2. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits; and,
3. The Settlement Agreement is the entire and only settlement agreement between the parties arising from the factual circumstances that formed the basis for the claims under the Act.

#### ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The Settlement Agreement is APPROVED, and the parties shall comply with the terms thereof;
2. This complaint is DISMISSED WITH PREJUDICE;
3. The terms of the Settlement Agreement shall not be disclosed by any party, either specifically or generally, pursuant to 29 C.F.R. § 70.26; and

4. The hearing previously scheduled for April 18, 2005, in Chicago, Illinois, and continued, is hereby CANCELLED.

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JOSEPH E. KANE  
Administrative Law Judge