



**Issue Date: 08 April 2008**

CASE NO.: 2008-SOX-20

In the Matter of

JOHN TROTTER,  
Complainant

v.

JOHNSON DIVERSEY, INC.,  
Respondent

### **ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT**

This action involves a complaint under the employee protection provisions of the Corporate and Criminal Fraud and Accountability Act, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, *et seq.* (“Sarbanes-Oxley,” “SOX,” or “Act” (enacted July 30, 2002) and the implementing regulations at 29 C.F.R. Part 1980. A hearing was scheduled, on May 13 through May 15, 2008, in Milwaukee, WI. On March 31, 2008, the parties submitted a Joint Motion to Dismiss Complainant’s Complaint With Prejudice and attached settlement agreement (hereinafter “Agreement”).

The SOX regulations address settlements. 29 C.F.R. section 1980.111(d)(2) states:

At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge. . . . A copy of the settlement will be filed with the administrative law judge . . .

A settlement approved by the administrative law judge shall constitute the final order of the Secretary and may be enforced pursuant to section 1980.113 (Federal District Court). 29 C.F.R. section 1980.111(e).

I have carefully reviewed the terms of the Agreement. It encompasses settlement terms addressing matters arising under the Act, state law, complaints before the United States Equal Employment Opportunity Commission (“EEOC”), and, other federal statutes. My authority extends only to approving matters properly before the Office of Administrative Law Judges, i.e., the SOX case. While the Agreement purports to apply state law, and Federal law where applicable, to its construction, I may not construe it as limiting the authority of the Secretary of

Labor or my authority, as appropriate under the Act or regulations issued by the U.S. Department of Labor, implementing 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).

It has been held in a number of cases with respect to confidentiality of settlement agreements that the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (1988) (“FOIA”), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, 92-SWD-2 and 93-STA-15 (ARB 1998). The records in this case are agency records which must be made available for public inspection and copying under the FOIA. However, the Respondent will be provided a pre-disclosure notification giving it the opportunity to challenge any such potential disclosure. The Agreement itself is not appended and will be separately maintained and marked “PREDISCLURE NOTIFICATION MATERIALS.”

I find no reason why the Agreement should not be approved and the complaint dismissed. It appears to be in compliance with the law and not against public policy. It appears to be fair, adequate, and reasonable. The parties are both represented by counsel and have been advised concerning the Agreement by the same. This Order shall have the same force and effect as one made after a full hearing on the merits.

#### ORDER

Wherefore, it is ordered that:

1. The Settlement Agreement is APPROVED;
2. The complaint is DISMISSED WITH PREJUDICE;
3. The scheduled hearing is CANCELLED; and,
4. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION”, under 20 C.F.R. section 70.26, and shall be afforded the protections thereunder.

**A**

RICHARD A. MORGAN  
Administrative Law Judge