



**Issue Date: 28 May 2014**

CASE No.: 2013-FRS-00027

In the Matter of

**GARY CICCERO,**  
Complainant,

v.

**CSX TRANSPORTATION, INC.,**  
Respondent.

**DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This complaint arises under the Federal Rail Safety Act, 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (Aug. 3, 2007). On April 11, 2014, this Office received from counsel for the Respondent a fully executed Settlement and Final Release of All Claims (Settlement) between the Complainant, Gary Ciccerio, and the Respondent, CSX Transportation, Inc., for my review. An issue arose concerning an attorney lien being asserted by the law firm of Cahill & Perry, Inc., which is not a party to this claim, based upon its previous representation of the Complainant. On May 16, 2014, this Office received from counsel for the Respondent a fully executed Addendum to the Settlement and Final Release resolving the issue of the attorney lien among the parties. As with the Settlement itself, the parties requested that the Addendum remain confidential.<sup>1</sup> Both the Settlement and the Addendum are before me for approval.

The Settlement resolves the controversy arising from the complaint of Gary Ciccerio against CSX Transportation, Inc. This Settlement is signed by the Complainant, as well as counsel for the Complainant and counsel for the Respondent. The Settlement provides that the

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<sup>1</sup> The parties have agreed that the terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2001). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predisclosure notification if a FOIA request is received seeking release of that information. Accordingly, the Settlement in this matter will be placed in an envelope marked "PREDISCLURE NOTIFICATION MATERIALS." Consequently, before any information in this file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. See 29 C.F.R. § 70.26 (2001). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

Complainant will release the Respondent from claims arising from “injuries and/or damages” resulting from an incident on June 10, 2011, under the FRSA as well as various other laws. This Order, however, is limited to whether the terms of the Settlement are a fair, adequate and reasonable settlement of the Complainant’s allegations that the Respondent violated the FRSA. As was stated in *Poulos v. Ambassador Fuel Oil Co. Inc.*, Case No. 86-CAA-1, Sec. Order, (Nov. 2, 1987):

The Secretary’s authority over the settlement agreement is limited to such statutes as are within [the Secretary’s] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. 86-CAA-2, Secretary’s Order Approving Settlement, issued July 29, 1987; *Chase v. Buncomb County, N.C.*, Case No. 85-SWD-4, Secretary’s Order on Remand, issued November 3, 1986.

I have therefore limited my review of the Settlement to determining whether the terms thereof are a fair, adequate and reasonable settlement of the Complainant’s allegation that the Respondent had violated the FRSA.

Section 20109(d)(2)(A) of the FRSA states that the procedures for actions arising under the FRSA shall be governed by the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century [hereinafter AIR 21(h)], 49 U.S.C. § 42121. 29 C.F.R. § 1982.111(d)(1) states that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge. Any settlement approved by the administrative law judge becomes the final order of the Secretary. 29 C.F.R. § 1982.111(e).

The Settlement provides that the Respondent shall make a payment to the Complainant of the amount agreed upon. The parties represent that the compensation terms are fair and reasonable in relation to the claim. The Settlement also provides that Complainant will release any and all claims against the Respondent arising out of his employment with the Respondent, and accordingly, the Complainant’s claims will be dismissed with prejudice.

The parties agree to keep the terms and conditions of the Settlement confidential, to the extent permitted by law. However, notwithstanding the parties’ agreement, the parties’ submissions, including the Settlement and Addendum, become part of the record of the case and may be subject to disclosure under the Freedom of Information Act, 5 U.S.C. section 552, *et seq.* (FOIA). FOIA requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. The records in this case are agency records which must be made available for public inspection and copying under FOIA. If a FOIA request is made for the Settlement, the U.S. Department of Labor will have to respond and decide whether to exercise its discretion to claim any applicable exemption.<sup>2</sup>

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<sup>2</sup> See n. 1, *supra*.

Having been advised of the settlement terms and having reviewed the Settlement, noting that the parties are represented by counsel, I find the terms of the Settlement to be fair, adequate, reasonable, and not contrary to public policy. Language in the Settlement, however, that describes the terms of the settlement as complete and states that there “are no written or oral understandings of agreements, directly or indirectly connected with this Settlement and Final Release” must be read with the understanding that the parties have subsequently submitted an Addendum to the Settlement and Final Release to clarify matters regarding attorney fees and the attorney lien being asserted by Cahill & Perry, P.C. The Addendum specifically states that “[t]o the extent that the Addendum may contradict or conflict with any of the terms and conditions of the attached Final Settlement and Release, it is expressly understood and agreed that the terms of this Addendum shall take precedence and supersede the attached Final Settlement and Release.”

Upon my approval, the parties shall implement the terms of the Settlement as stated in the Settlement, as well as the terms of the Addendum. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits. Again, it is noted that my authority only extends to approving settlement of the Complainant’s claim against the Respondent under the FRSA.

Accordingly,

**IT IS HEREBY ORDERED** that the Settlement and Final Release filed on April 11, 2014, and the Addendum to the Settlement and Final Release filed on May 16, 2014, are **APPROVED**, and thereby become the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113. The parties, furthermore, waive any further procedural steps before this forum, as well as any rights to challenge or contest the validity of this Order entered in accordance with the Settlement and Final Release and the Addendum to the Settlement and Final Release.

**IT FURTHER ORDERED** that the complaint filed in this matter is **DISMISSED WITH PREJUDICE**, and that counsel for the Complainant is allowed to withdraw as counsel of record following completion of his professional duties necessary to implementing the Settlement on behalf of his client.

**SO ORDERED.**

JOHN P. SELLERS, III  
Administrative Law Judge