

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 21 May 2008**

CASE NO.: 2007-SOX-00053

In the Matter of

**WALTER BAILEY,**  
Complainant,

v.

**UNITED AUTO GROUP, INC., n/k/a  
PENSKE AUTOMOTIVE GROUP, INC.,  
and WESTBURY SUPERSTORE, LTD.,  
d.b.a. WESTBURY TOYOTA,**  
Respondents.

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

This case arises out of a complaint of discrimination filed pursuant to the employee protection provisions of Public Law 107-204, Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A et seq. (“the Sarbanes-Oxley Act” or “the Act”) enacted on July 30, 2002. Section 806 of the Sarbanes-Oxley Act provides the right to bring a “civil action to protect against retaliation in fraud cases” to employees who “provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of [certain provisions of the Sarbanes-Oxley Act], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders...” 18 U.S.C. § 1514A(a)(1). The Sarbanes-Oxley Act extends such protection to employees of any company “with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781)[“SEA of 1934”] or that is required to file reports under Section 15 (d) of the Securities Exchange Act of 1934 (15 U.S.C. § 780(d)).” 18 U.S.C. § 1514A(a). The Secretary of the Department of Labor, through its agency The Occupational Safety and Health Administration (“Secretary”, hereinafter), is authorized by the Act to conduct investigations into complaints. Parties may appeal the findings of the Secretary to the United States Department of Labor’s Office of Administrative Law Judges (“OALJ”, hereinafter).

Walter Bailey (“Complainant”) filed a complaint of discrimination with OSHA against Respondents. After investigating Complainant’s allegations of violations of the Act by Respondents, OSHA dismissed the complaint. Complainant appealed that determination to ALJ. The case was assigned to me, and the parties reached a settlement of the dispute without a formal hearing. The parties submitted a fully executed settlement agreement.

I have reviewed the terms of the Agreement and note the parties’ confidentiality agreement. I find that the Agreement conforms with 29 C.F.R. § 70.26 and accept it in accordance with the confidentiality procedures set forth therein, in consideration of the request of the parties that the Agreement be exempted from production to third parties. Although the Department of Labor is responsible for making determinations regarding the application of Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and exemptions from disclosure, I find that the parties are entitled to pre-disclosure notice, as defined by 29 C.F.R. § 70.26.

### FINDINGS OF FACT

I make the following findings:

1. The 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 Agreement reflects the entire understanding between the parties and fully settles all controversies arising from the circumstances underlying the claims under the Act.

### ORDER

Accordingly, IT IS HEREBY ORDERED that:

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

A

Janice K. Bullard  
Administrative Law Judge

Cherry Hill, New Jersey