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Issue Date: 17 June 2009

CASE NO.: 2009-SOX-30

In the Matter of:

BRANDI S. BRUECKNER,
Complainant

v.

SINCLAIR BROADCAST GROUP,
Respondent

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

This proceeding arises under the employee protection provision of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. § 1514A, and its implementing regulations found at 29 C.F.R. Part 1980. A hearing was scheduled to begin on April 14, 2009. The parties agreed to participate in the voluntary mediated settlement procedures provided for at 29 C.F.R. § 18.9(e), and subsequently reached a settlement agreement. On May 22, 2009, the undersigned issued an Order Cancelling Hearing. On June 10, 2009, the Respondent, through counsel, filed a Joint Stipulation and Request for an Order of Dismissal along with an Agreement and General Release.

Twenty-nine C.F.R. § 1980.111(d)(2) provides in pertinent part:

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 29 C.F.R. § 1980.113. 29 C.F.R. § 1980.111(e).

The Agreement provides a general release of claims in paragraph 3 which encompasses settlement terms addressing matters arising under SOX, other federal statutes, and both state and local law. My authority extends only to approving matters properly before the Office of Administrative Law Judges, i.e., the SOX case. Therefore, I approve only the terms of the

agreement pertaining to the Complainant's SOX claim. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip. op. at 2 (Sec'y April 27, 1987).

Paragraph 6 of the Agreement provides that the terms of the Agreement and General Release are to be confidential and, aside from the Complainant's spouse, are to only be shared with legal counsel, tax advisors, or as necessary to assert legal rights and discharge legal obligations.

The records in this case are government agency records which must be made available for public inspection and copying under the Freedom of Information Act ("FOIA").¹ It has been held that with respect to confidentiality provisions in settlement agreements that FOIA requires federal agencies to disclose requested documents unless they are exempted from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, (ARB Mar. 31, 1998); *Gerald Fish v. H&R Transfer*, ARB Case No. 01-071, ALJ Case No. 00-STA-56 (ARB Apr. 30, 2003). However, each party will be provided with a pre-disclosure notification, giving it the opportunity to challenge any such potential disclosure. The Agreement itself is not appended, and the Agreement will be separately maintained and marked confidential.

I find that the terms of the "confidentiality" provision do not violate public policy in that they do not prohibit Complainant from communicating with appropriate government agencies. See e.g., *Bragg v. Houston Lighting & Power Co.*, Case No. 94-ERA-38 (Sec'y June 19, 1995); *Brown v. Holmes & Narver*, Case No. 90-ERA-26 (Sec'y May 11, 1994); *The Conn. Light & Power Corp. v. Sec'y of the U.S. Dep't of Labor*, Case No. 95-4094, 1996 U.S. App. LEXIS 12583 (2d. Cir. 1996); and, *Anderson v. Waste Mgmt of New Mexico*, Case No. 88-TSC-2, slip op. at 2 (Sec'y Dec. 18, 1990)(Secretary honored the parties' confidentiality agreement except where disclosure may be required by law).

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, reasonable, and voluntary. 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 parties' Stipulations are ACCEPTED;
2. The Settlement Agreement is APPROVED;
3. The complaint is DISMISSED WITH PREJUDICE; and,

¹ 5 U.S.C. § 552 (1988).

4. The Settlement Agreement is designated as “CONFIDENTIAL COMMERCIAL INFORMATION,” under 20 C.F.R. § 70.26, and shall be afforded the protections thereunder.

A

RICHARD A. MORGAN
Administrative Law Judge