

**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
COVINGTON DISTRICT OFFICE**

**Issue Date: 11 January 2024**

*In the Matter of:*

**MARIA S. TAPSCOTT,**  
Complainant,

v.

**B&B TRANSPORT, INC.,**  
*Respondents,*

**CASE NO.: 2023-STA-00039**

**OSHA NO.: 301011005**

**CHRISTINE HILLEREN-WILKINS**  
Administrative Law Judge

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**DECISION AND ORDER APPROVING SETTLEMENT,  
DISMISSING COMPLAINT WITH PREJUDICE, AND GRANTING JOINT REQUEST FOR  
SEALING**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978 (“STAA” or “the Act”). On December 18, 2023, Complainant filed an *Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice* and the corresponding *Confidential Settlement Agreement and General Release* (“Settlement Agreement”), therein requesting that the Court approve the Parties’ Settlement Agreement and dismiss these proceedings with prejudice.<sup>1</sup> On January 3, 2024, the Parties also filed a *Joint Motion to Seal Settlement Agreement* requesting that portions of the Agreement related to specific settlement terms remain confidential and sealed from public view, given that the assurance of confidentiality was a material inducement for Respondents’ entry into the Settlement Agreement.<sup>2</sup>

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<sup>1</sup> 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 ALJ. 29 C.F.R. § 1978.111(d)(2).

<sup>2</sup> *Joint Motion to Seal Settlement Agreement*, p. 1.

## Discussion

The Parties' Settlement Agreement contains a release of claims including matters potentially arising under laws other than STAA. The undersigned's authority over settlement agreements is limited to the statutes within the jurisdiction of the Office of Administrative Law Judges, and the undersigned has thus restricted the review of the Settlement Agreement in question to ascertaining whether its terms fairly, adequately, and reasonably settle the above-captioned STAA case.<sup>3</sup> After reviewing the Parties' Settlement Agreement, the undersigned finds that the terms appear to be fair, adequate, reasonable, and not contrary to the public interest.

The Parties have further requested to seal portions of their Settlement Agreement.<sup>4</sup> 29 C.F.R. § 18.85 sets forth a presumption of public access to materials filed with the Court and allows the judge to seal records in derogation of that presumption only after meeting certain conditions.<sup>5</sup> In order to keep an agreement confidential, the judge must state the findings explaining why the reasons to seal the agreement outweigh the presumption of public access.<sup>6</sup> Moreover, even should the judge issue an order sealing a portion of the records, the sealed records "remain subject to statutes and regulations pertaining to public access to agency records."<sup>7</sup>

After considering the facts of the case, the terms of the proposed Settlement Agreement, and the Parties' arguments in support thereof, the undersigned concludes that good reason exists to seal the proposed portion(s) of the Settlement Agreement related to the amount of settlement consideration<sup>8</sup> as confidential commercial information, given the Agreement's material condition that the settlement amount remain confidential. This notwithstanding, however, all of the Parties' submissions in this matter, including the Settlement Agreement, become part of the record of the case and thus are potentially subject to disclosure under the Freedom of Information Act ("FOIA").<sup>9</sup> If a FOIA request is made for the Settlement Agreement in this matter, the U.S. Department of Labor will determine whether to exercise its discretion to claim any applicable exemption. The Parties are entitled to pre-disclosure notification rights under 29 C.F.R. § 70.26 in the event of a FOIA request and review.

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<sup>3</sup> 29 C.F.R. §18.71; *Anderson v. Schering Corp.*, ARB No. 10-070, ALJ No. 2010-SOX-00007, slip op. at 3 (ARB Jan. 31, 2011); *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-00056, slip op. at 2 (ARB Apr. 30, 2003).

<sup>4</sup> The Parties' request to this effect is construed as an assertion of their pre-disclosure notification rights pursuant to 29 C.F.R. §70.26.

<sup>5</sup> 29 C.F.R. § 18.85(b). On motion of any interested person or the judge's own, the judge may order any material that is in the record to be sealed from public access. The motion must propose the fewest redactions possible that will protect the interest offered as the basis for the motion. A redacted copy or summary of any material sealed must be made part of the public record unless the necessary redactions would be so extensive that the public version would be meaningless, or making even a redacted version or summary available would defeat the reason the original is sealed. *Id.*

<sup>6</sup> See 29 C.F.R. § 18.85(b)(2); see also *Furlong-Newberry v. Exotic Metals Forming Co.*, ARB No. 22-0017, ALJ No. 2019-TSC-00001, slip op at \* 26-27 (ARB Nov. 9, 2022).

<sup>7</sup> 29 C.F.R. §18.85(b)(2).

<sup>8</sup> Designated by redaction within the Settlement Agreement copy entered into the CTS record on January 3, 2024.

<sup>9</sup> 5 U.S.C. § 552(a).

**ORDER**

The Parties' *Joint Motion to Seal Settlement Agreement* and Complainant's *Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice* are **GRANTED**, and the Parties' corresponding *Confidential Settlement Agreement and Release* filed on December 18, 2023 is **APPROVED**. The Complaint is **DISMISSED WITH PREJUDICE**.

Pursuant to 29 C.F.R. § 18.85(b), a redacted copy of the sealed Settlement Agreement has been made part of the public record within the OALJ Case Tracking System. The unredacted Settlement Agreement containing the confidential terms of payment has been sealed and marked with a Sealing Notice, and will remain confidential in a private OALJ electronic network file folder unless released as required by law. The unredacted Settlement Agreement should not be unsealed except by authorized appellate authorities or pursuant to a properly processed request under FOIA. If the Settlement Agreement document is the subject of a FOIA request, the individual processing the request and contemplating unsealing the Settlement Agreement shall apply the terms of this Order and ensure the Parties in this matter receive written notice of the intent to unseal and release this document as required by FOIA and 29 C.F.R. § 70.26.

**SO ORDERED** on January 11, 2024, at Covington, Louisiana.

**CHRISTINE HILLEREN-WILKINS**  
**Administrative Law Judge**