

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**San Francisco, CA**

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**Issue Date: 15 June 2023**

**CASE NO.: 2023-STA-00020**

*In the Matter of:*

**JERRY TREADWELL,**  
*Complainant,*

v.

**KISSACK WATER AND OIL SERVICES, INC. and  
BROKEN LINK CONSTRUCTION, LLC,**  
*Respondents.*

**DECISION AND ORDER DENYING MOTION TO SEAL,  
APPROVING SETTLEMENT WITH KISSACK,  
AND DISMISSING CASE WITH PREJUDICE**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105, and the regulations published at 29 C.F.R. Part 1978. Attorney J. Kirk McGill of Hall Estill represents Complainant. Attorney Debra Wendtland of Wendtland & Wendtland, LLP represent Respondent Kissack Water and Oil Services, Inc. This order pertains only to the matter involving Complainant and Kissack Water and Oil Services, Inc.<sup>1</sup>

**Background Information**

On June 9, 2023, Complainant and Respondent Kissack Water and Oil Services, Inc. filed a proposed Settlement Agreement, a Request for Approval of Settlement Agreement and Motion to Seal Settlement Agreement In Part, and a redacted copy of the Settlement Agreement.<sup>2</sup> The Settlement Agreement resolved all issues in this matter between those two parties. *See* 29 C.F.R. § 1978.111(d)(2).

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<sup>1</sup> The matter involving Broken Link Construction resolved and was dismissed by order dated June 6, 2023, following approval of a settlement agreement.

<sup>2</sup> All three documents were submitted confidentially and have been stored confidentially pending this ruling.

## Motion to Seal

Complainant and Respondent Kissack Water and Oil Services, Inc. moved to file the unredacted Settlement Agreement under seal, arguing that the Settlement Agreement contains information where the interest of the parties in maintaining the confidentiality of the information outweighed the public interest. *See* 29 C.F.R. § 18.85(b) (sealing the record). The redacted version of the Settlement Agreement redacted only Paragraphs C, D, E, and F of the recitals. The parties agreed the information should be sealed but did not explain the significance of those paragraphs or why those paragraphs should be redacted and sealed. Instead, the parties argued in a conclusory manner only that their interest in maintaining the confidentiality of the information outweighs the public interest. *See* 29 C.F.R. § 18.85(b)(1) (a party seeking to seal part of the record “must propose the fewest redactions possible that will protect the interest offered as the basis for the motion”).

OALJ proceedings are presumed to be open to the public, and OALJ files, including the submissions of the parties and this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act (FOIA), unless an exemption applies. *See* 29 CFR 18.81; 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). FOIA exemptions are determined at the time of the release of information is requested, and not at the time of the filing of the agreement. *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 2 (ARB July 22, 2013). Department of Labor regulations set out the procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. *See* 29 C.F.R. Part 70.

When a judge seals material in the record, Section 18.85(b)(2) requires the judge to “state findings and explain why the reasons to seal adjudicatory records outweigh the presumption of public access.” *See also Furlong-Newberry v. Exotic Metals Forming Corp.*, ARB No. 2022-0017, ALJ No. 2019-TSC-00001, slip op. at 26 (ARB Nov. 9, 2022) (judge must identify compelling reasons supported by factual findings that outweigh strong public policy favoring disclosure). The parties filed a redacted version for the public file pursuant to Section 18.85 of this Office’s rules. Having reviewed the redactions, I do not find sufficient information warranting sealing the information. The parties did not explain why the information should be sealed, and the redacted portions do not appear to involve confidential financial information or other information that is usually and customarily kept from public disclosure, or that on its face outweighs the presumption of public access to the filings. *See Furlong-Newberry*, slip op. at 26 (party seeking to seal judicial records must “specify facts that causally connect the documents at hand to sufficiently compelling reasons” to seal materials). Therefore, the motion to seal the unredacted version of the Settlement Agreement is denied. The Settlement Agreement, the Request for Approval of Settlement Agreement and Motion to Seal Settlement Agreement In Part, and the redacted copy of the Settlement Agreement will all be made part of the public file. A

Although the parties did not reference FOIA in the motion to seal, I construe the filing of the motion to seal and the reference to “confidential” information to mean the parties object to any disclosure under FOIA. *See* 5 U.S.C. § 552(b)(4) (protecting against disclosure of “trade secrets and commercial or financial information obtained from a person and privileged or confidential”). When a party designates information as potentially covered by FOIA Exemption 4, Department of Labor regulations at 29 C.F.R. § 70.26(c) and Executive Order 12600 provide that the party is entitled to pre-disclosure notice of a FOIA request for information. I will include with this order a notice to the Department of Labor FOIA officer that, in the event the Settlement Agreement is the subject of a FOIA request, the parties request pre-disclosure notification under 29 C.F.R. § 70.26.

### **Settlement Agreement**

I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case. *Mann v. Schwan’s Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 4 (ARB Dec. 31, 2008).

The Settlement Agreement provides that it shall be governed by the laws of the State of Wyoming. This provision does not limit the authority of the Secretary of Labor or any federal court regarding any issue arising under STAA, which authority shall be governed in all respects by the laws and regulations of the United States. *Muenzberg v. APL Maritime, LTD.*, ARB No. 2021-0070, ALJ No. 2018-SPA-00001, slip op. at 3 (ARB May 13, 2022).

The Settlement Agreement is appropriate in form and substance and details the respective duties and obligations of the parties pursuant to the agreement. As construed, and after considering the terms of the Settlement Agreement, I find that the terms and conditions are fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexo Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010). The terms and conditions of the Settlement Agreement are adopted and incorporated by reference into this Decision and Order. The Settlement Agreement is hereby approved.

The Settlement Agreement is the final order of the Secretary and may be enforced pursuant to 29 C.F.R. § 1978.111(e) and 29 C.F.R. 1978.113.

The complaint as to Kissack Water and Oil Services, Inc., is dismissed with prejudice. All dates are vacated.

NOTICE TO DOL FOIA OFFICER: In the event the Settlement Agreement is the subject of a FOIA request, the parties request notice and an opportunity to object to disclosure under FOIA per 29 C.F.R. § 70.26.

SO ORDERED.

RICHARD M. CLARK  
Administrative Law Judge