

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

Issue Date: 11 October 2023

OALJ No.: 2022-SWD-00001
OSHA No.: 0-0160-21-009

In the Matter of:

WILLIAM MURRAY,
Complainant,

v.

COEUR D'ALENE CASINO
Respondent.

ORDER APPROVING SETTLEMENT AND SEALING SENSITIVE MATERIAL

This Solid Waste Disposal Act whistleblower matter was set for hearing on September 26, 2023 at the federal courthouse in Coeur d' Alene, ID.

On September 6, 2023, the parties participated in a confidential settlement judge proceeding, *see* 29 C.F.R. § 18.13, and reached a settlement. On October 10, 2023, the parties filed a final signed settlement agreement appended to a motion to approve the settlement and seal the redacted material. The final signed settlement is designated as containing commercial material in the attached motion, and the motion and redactions propose redacting solely the final monetary amount of the settlement. *See* 29 C.F.R. § 18.85 (“the fewest redactions possible that will protect the interest offered”); *see also Food Marketing Institute v. Argus Leader Media*, ___ U.S. ___, 139 S. Ct. 2356, 2361 (2019) (quoting 5 U.S.C. § 552(b)(4)); 29 C.F.R. § 70.26. Previously, the parties lodged a copy of the unredacted settlement agreement with this office, which I have compared to the final signed settlement agreement.

The parties’ signed settlement agreement resolves all issues pending for hearing in this matter. Pursuant to 29 C.F.R. § 18.85, which requires that I make findings in support of “compelling reasons” to seal even sensitive material in a case record, *see Furlong-Newberry vs. Exotic Metals Forming Co.*, ARB No. 2022-0017, OALJ No. 2019-TSC-00001, slip op. at 26 (ARB Nov. 9, 2022) (citing *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)), I find that the redacted portion of the settlement agreement contains sensitive and confidential commercial information, to wit, the monetary amount of the settlement between the parties. The redaction amounts to one line of a 4-page settlement agreement. Redaction of the amount of the settlement balances the parties’ interests in keeping this single detail confidential, so as to further the privacy interests of the parties, the interests of settlement through a confidential mediation process, and

finality in this case; with the public's interest in the operation of the administrative adjudicative system with respect to whistleblower case complainants and respondents. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (citing cases) (discussing reasons for public access to court records).

At any time after the filing of objections to the Assistant Secretary's findings, a SWDA case may be settled. The participating parties are encouraged to submit settlements for approval by the presiding administrative law judge. 29 C.F.R. § 24.111(a); *see also* 29 C.F.R. § 18.71(a).

The settlement agreement includes broad releases of liability under a long list of state and federal laws other than the SWDA. My authority over settlement agreements is limited to the statutes within my jurisdiction, and I have restricted my review of the settlement agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this case. *Mann v. Schwan's Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 3 (ARB Dec. 31, 2008). Accordingly, my approval extends only to the terms of the settlement agreement pertaining to Complainant's SWDA case.

I note for the record that the files maintained by this Office, including this settlement agreement, are subject to disclosure under the provisions of the Freedom of Information Act ("FOIA"), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2010-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. *See* 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ NO. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997).

As construed, and after carefully considering the terms of the settlement agreement, I find that the terms and conditions appear to be 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 incorporated by reference into this Decision and Order and are hereby adopted and approved. The parties are ordered to carry out the provisions of the settlement agreement.

It is ordered that the redacted portion of the settlement agreement are sealed as sensitive material under 29 C.F.R. § 18.85 based on the above findings. An electronic copy of the redacted settlement agreement shall be filed in the OALJ public filing system, appended to this Decision and Order. The electronic version of the unredacted settlement agreement shall be maintained in the designated OALJ non-public electronic system.

The parties having resolved all the issues pending for hearing, the case is now concluded. The case is closed.

SO ORDERED.

EVAN H. NORDBY
Administrative Law Judge