CONCLUSION

For all of the reasons stated herein, CFUR's Request for Hearing and Petition for Leave to Intervene dated August 11, 1988, should be granted.

Respectfully submitted,

RICHARD LEE GRIFFIN
Bar No. 08464400
600 North Main Street
Fort Worth, Texas 76106
(817(870-1401
ATTORNEY FOR PETITIONER

Certificate of Service

I hereby certify that copies of the foregoing document were mailed first class mail, postage prepaid, to the following parties on this 12th day of September, 1988.

Chairman, ASLB Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jack R. Newman
Newman & Holtzinger, P.C.
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036

Office of the Secretary
Attention: Docketing & Service Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven M. Kohn, Esq.
Michael D. Kohn, Esq.
Kohn & Associates
526 U Street, N.W.
Washington, D.C. 20001

AFFIDAVIT OF
Joseph J. Macktal, Jr.

Under the pains and penalties of perjury, I Joseph J. Macktal, hereby affirm that the following is true and correct:

1) My name is Joseph J. Macktal, Jr.

2) Between January 31, 1985 and January 2, 1986 I was employed as an Electrician and Electrical Foreman at the Comanche Peak Nuclear Construction site in Glenrose, Texas by Brown & Root, Inc. On January 2, 1986 I delivered to a Brown & Root general foreman, J. Rinddell. A true and correct copy is attached hereto as Exhibit 1. In retaliation for delivering this letter, my employment with Brown & Root was terminated.

3) While working at the Comanche Peak site I developed concerns about the following problems which I believe threatened the quality of the plant's construction, violated Nuclear Regulatory Commission (NRC) regulations, and/or threatened the public health and safety:

a) Contamination of stainless steel conduit.

b) Falsification of training sheets and travelers;

c) Improper accounting of documents and material;

d) Improper design, manufacture, and installation of electrical coduits, and safety related circuits (including Hilti bolts, and pipe supports);

e) Improper site modification of vendor supplied equipment.

4) I personally brought all of the above listed

allegations to the NRC Staff during a transcribed confidential conference and during a confidential on-site inspection of the Comanche Peak site. Nonetheless, the NRC failed to adequately address these concerns. I therefore believe that these concerns continue to pose an unnecessary health and safety risk.

5) In addition, I have concerns that were not raised with the NRC staff or Licensing Board due to the restrictive terms of a secret settlement agreement entered into between Texas Utilities and my attorneys, Billie Garde and Tony Roisman. These concerns include:

a) The use of Kapton wiring and termination kits (including the design and installation of electrical penetrations);

b) SAFETEAM's identification of confidential whistleblowers and the harassment and intimidation of employees who brought safety concerns to management and/or SAFETEAM;

c) The ultra-vulnerability of key safety systems;

d) Design problems related to back-up safety systems;

e) Improper attempts to silence witnesses and surpress information before the NRC;

f) SAFETEAM's participation in and cover-up of safety concerns.

6) After bringing safety concerns to SAFETEAM, I was demoted and continually haressed and intimidated by

management, culminating in a constructive discharge on January 2, 1986.

7) On Febuary 3, 1986 I filed a complaint under Section 210 of the Energy Reorganization Act against Brown & Root and Texas Utilities with the Department of Labor, known as 86-ERA-23. I was represented in 86-ERA-23 by Billie P. Garde, Anthony Z. Roisman, Government Accountability Project (GAP) and Trial Lawyers for Public Justice (TLPJ). They also stated to me that they would be representing me before the NRC Licensing Board in matters related to Comanche Peak and before the Texas Employment Commission (TEC) hearing regarding unemployment compensation (upon information and belief this agreement is contained in a signed representation agreement). In violation of their expass agreement to represent me before the TEC, both Mr. Roisman and Ms. Garde failed to prepare for and attend the hearing.

8) In early February, 1986, I was told by Ms. Garde and Mrs. Ellis on a number of occasions that I would be called as a CASE witness before the ASLB.

9) In 1986 I made a series of confidential transcribed safety disclosures to members of the NRC staff. I did not feel that the NRC staff properly addressed the safety concerns I raised at that time and felt that they would not do so anytime thereafter. I wanted to testify before the ASLB about my safety concerns because I came to believe that I had to bypass the NRC Staff bureaucracy and go directly to the ASLB if my concerns were to be adequately resolved.

10) In 1986 I made a series of transcribed confidential safety disclosures to NRC Staff. I believe that NRC Staff

failed to properly address the concerns I raised at that time nor any time thereafter.

11) I was told by CASE and its attorneys that if my concerns were to be adequately resolved they would have to be raised before the ASLB.

12) On November 18, 1986 I was in Dallas Texas to participate in the Department of Labor hearing on my case. Two attorneys were present to represent me, Anthony Roisman, and Billie Garde.

13) On this day my attorneys, along with legal representatives of Brown & Root and the DOL Administrative Law Judge Vivian Murray met for a pre-hearing conference.

14) During the pre-trial conference which was held in chambers outside of my presence, I felt as though my case was being tried in a back room without the testimony of witnesses or myself. On several occasions both sides came out of conference to obtain documents and evidence and then return to the back room. This back room "conference" continued throughout the entire day. When I stated that I wanted to attend the "conference," Ms. Garde vehemently objected and flatly refused to allow me to attend.

15) During the course of the conference both Billie Garde and Tony Roisman indicated to me that:

a) Brown & Root's final settlement offer was $35,000.00;

b) If I did not accept the settlement offer of $35,000.00, I would have to pay GAP $12,000.00 before they could proceed with the hearing; and

c) If I did not accept the settlement and I did not come up with the $12,000, they would withdraw as counsel (as they had already done in my unemployment hearing). At that time both Ms. Garde and Mr. Roisman knew I was unemployed and indigent. To the best of my recollection, the terms of representation expressly stated that expenses were not due and payable until after the case was settled. Yet, Billie Garde and Tony Roisman were demanding money to continue with my case. GAP, TLPJ, Billie Garde, and Tony Roisman agreed to represent me knowing that I was unemployed and unable to afford an attorney.

16) After considerable pressure I agreed to settle my case for $35,000. I understood that the $35,000 settlement offer to be two separate agreements between Brown & Root and myself. The first settlement would be for $15,000 to be paid to me, and that a second settlement would be paid to GAP in the amount of $20,000.00 to cover "expenses" after the case was resolved.

17) I was informed by my attorneys that the Judge had ordered the parties to execute the settlement within 30 days.

18) Brown & Root's attorneys did not attempt to execute the settlement within 30 days. On or about December 26, 1986, I informed Billie Garde that I no longer wished to settle my case and that I wanted to proceed with the trial.

19) On or about December 26th and 29th, 1986, I was:

a) informed by my attorneys for a second time I had to pay $12,000.00 if I did not accept a settlement

HM

Ms. Garde and Mr. Roisman were negotiating;

b) told that if I did not accept the terms of the settlement (which I had not even seen) I would be sued for breach of contract, would face serious financial burdens for the rest of my life, and that I would be billed by GAP for $12,000.00. Ms. Garde and Mr. Roisman also warned that Brown & Root would sue me for refusing to sign the settlement and that they would not represent me if such a suit occurred.

20) Nonetheless, I directed my attorneys to stop further settlement negotiations and prepare for trial. My attorneys refused to follow this instruction.

21) On December 26, 1986, I spoke over the telephone with Billie Garde. The following are verifiable exerpts of a telephone conversation between Ms. garde and myself:

Joseph J. Macktal: I am not committed to any kind of a settlement whatsoever...I'm going to the papers Tuesday (and) blowing this whole thing wide open...There is no settlement...

Billie P. Garde: You don't have that option anymore. There is a settlement.

Macktal: No there isn't. I ain't signing...I don't want a settlement...I don't want you to sign any kind of a settlement agreement.

Garde: Then you better be prepared to pay GAP the expense of...,

Macktal: Whatever it takes...I'm not settling with them...I'm gonna expose the whole thing in the paper.

JJM

Garde: And that's worth $15,000.00?

Macktal: Yep, that's worth it.

Garde: I think you're making an absolutely insane decision...[T]hey're gonna sue you for breach of settlement...and that'll mean you're gonna have to get lawyers.

Macktal: Let them sue me...

* * *

Macktal: I'm not breaching the settlement agreement. There was no settlement agreement...They did not complete the 30 day period...it's moot, its moot, it no longer exists.

Garde: You don't have that option.

* * *

Garde: I'm your lawyer, I know what I'm talking about. You can not do this. You don't have the financial ability to do this because you don't have the ability to pay us.... I'm going to have to have Tony call you...

Macktal: I don't care.

Garde: We've invested the expense of $12,000.00 (and) that's a lot to us. We couldn't meet pay role last week. Everything is waiting to get this settlement money in order to make bill payments...You can't afford to absorb that kind of a bill...This is $12,000.00.

* * *

Macktal: I have made arrangments to pick up the transcript [of my confidential deposition I gave to the NRC] from the NRC. The papers can't publish anything until the trail but the transcript [I can make] public information

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now --

Garde: (Interrupting) You're not going to have any lawyers.

* * *

Macktal: They breached the contract; I don't want, the deals off. I'm going through with it because they breached the contract and as far as I'm concerned I want to go to trial. If they don't want to go to trial --

Garde: (Interrupting) There isn't going to be a trial.

* * *

Macktal: The settlement agreement as far as I'm concerned is dead. Nothing happened and its over...

* * *

22) On December 29, 1986, I received a call from Tony Roisman. At that time I told Mr. Roisman that I wanted to go forward with the trial and terminate settlement negotiations. I stated to Mr. Roisman that: "At this point I'm not agreeing to any kind of settlement. Bring it back to where it was. I want to go to trial."

23) During this December 29th conversation with Mr. Roisman I told him that I had contacted some reporters and that I chose to expose the entire situation to the press. Mr. Roisman then told me that I did not need to tell the press anything now because "the reporters who are covering the licensing hearings" would also "cover the same issues" when my information was reported to the Licensing board, and that my case was not "a speech issue."

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24) During this December 29th conversation I was also told if I did not sign the settlement and chose to expose the situation then the following would occur:

> "You realize that will put you in a deep financial bind...they'll hold a judgment over you, they will pursue you to the ends of the earth and if you are successful in smearing them in the press as you would like to do, they will pursue you to the ends of the earth. So wherever you go to work they'll have a judgment against you of $15,000, $20,000, $30,000 or $100,000 and they'll garnish your wages on earth any place you get a job. They'll destroy your credit...and at some point you'll have to pay a lot of money at the end they will have won even bigger than today...because they're bigger they can beat up on you and because your smaller your not able to fight back..."

25) I then stated to Mr. Roisman that I still wanted to "go to trial." I emphatically ended the conversation with Mr. Roisman stating that the settlement was off and that I decided and demanded to go to trial.

26) I was misled and signed the settlement under duress. I did not want to settle the case, but I thought I had no option. A copy of the "Settlement Agreement" and a signed general release is attached hereto as Exhibit 2. Paragraph 3 of the Settlement Agreement prohibited me from voluntarily appearing as a witness before the Atomic Safety and Licensing Board or the NRC. It also prohibited attorneys for CASE (GAP, TLPJ, Ms. Garde and Mr. Roisman) from calling me as a witness for CASE or otherwise inducing

any other attorney, party, agency or tribunal to call me as a witness. It also required me to take all "reasonable" steps which Brown & Root instructed me to take so that I cannot appear as a compulsory witness. Essentially the settlement agreement silenced me from appearing before the NRC with additional safety concerns.

27) On May 11, 1987, the Secretary of Labor issued an Order in case 86-ERA-23 requiring the parties to submit a copy of the confidential settlement agreement. (A true and exact copy of this Order is attached as Exhibit 3).

28) Evidently my copy of the Order was mailed to me c/o Ms. Garde and GAP. See a copy of a signed return-receipt included in Exhibit 3. A copy of the Order was never forwarded to me and I did not learn that such an order was issued until August of 1988. I was unaware that the Secretary had requested me to provide a copy of the settlement agreement to the Secretary or that I was in breach of the Secretary's Order.

29) In or about June, 1987, I called Billie Garde to obtain documents. At that time she told me that my settlement was pending before the Secretary of Labor and that the Secretary had requested some more information about the settlement. I was not informed that the Secretary had issued an Order and requested to see a copy of the settlement agreement itself.

30) After speaking with Ms. Garde, but not knowing that the Secretary had requested to see a copy of the settlement, I sent by first class mail a pro se motion to

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the Secretary requesting that the settlement be set aside. (A true and correct copy of this motion is attached as Exhibit 4).

31) I wrote the attached motion out of desperation because I had been forced into signing the settlement against my will. I mailed the motion in an attempt to gain justice and expose additional safety concerns that I was prohibited from exposing under the terms of the secret settlement agreement.

32) I mailed the attached motion without the advice of Mr. Roisman and Ms. Garde or any other counsel. I did so because I believed that Ms. Garde and Mr. Rosiman would not act to overturn the oppressive terms of the settlement agreement and I sent the motion so I could be allowed to contact intervenors and the NRC with additional safety concerns.

This affidavit, consists of eleven pages and is hereby executed by my hand this

9 day of Sept, 1988.

Joseph J. Macktal Jr.
Joseph J. Macktal, Jr.

04/MAK

EXHIBIT 1

ATCH 9

JACK RUNDELL
ELECT G.F. SAFEGAURD II

RE; COUNSEL REPORT DATED 1-2-85

ON 9/19/85 I REQUESTED FROM MANAGEMENT A COPY OF THE CURRENT ATTENDANCE POLICY. MY REQUEST WENT UNANSWERED, BUT I WAS TOLD THAT 3 UNEXCUSED ABSENCE IN A 30 DAY PERIOD COULD BE CAUSE FOR DISPLINARY ACTION A EXCUSED ABSENCE WAS DEFINED AS ANYTHI THAT WAS BEYOND THE EMPLOYEES CONTROL, (SICKNESS, WEATHER, DEATH IN FAMILY ETC.)

DUE TO THE FACT THAT MANAGEMENT DENIED MY REQUEST AND THE OBSERVANCE OF THE FOLLOWING EMPLOYEES ATTENDANCE;

JACK	FULLMER
GLEN	ANDERSON
BILL	HAUSSER
JAMES	HAUSSER
PAT	ADAMS
ROB	? FY-85

I ACCEPTED WHAT I WAS TOLD AS BEING THE ATTENDANCE POLICY.

UPON REVIEW OF MY OWN ATTENDANCE RECORD IT APPEARS TO FALL WELL WITHIN THE GUIDELINES PRESENTED TO ME ON 9/19/85 THEREFORE I VIEW THIS COUNSELING REPORT

AS NOTHING MORE THAN ANOTHER ATTEMPT BY BROWN & ROOT MANAGEMENT TO HARRASS ME, BECAUSE I REVEALED CONDITIONS THAT COULD EFFECT THE SAFE OPERATION AND SHUT DOWN OF CPSES UNIT II. IN THE PAST 90 DAYS SINCE REPORTING THESE CONDITIONS, I HAVE SUFFERRED THE FOLLOWING.

1. DEMOTION
2. HARRASSMENT
3. RECIEPT OF FITICIOUS SAFETY VIOLATION
4. LOSS OF TOOLS, PERSONEL PROPERTY
5. DENIED PAYCHECK
6. DENIED EMERGENCY PHONE CALL
7. DISCRIMINATED AGAINST.

MY PLAN OF ACTION IS AS FOLLOWS;

A. FILE A COMPLAINT WITH TEC IN ACCORDANCE WITH NRC REGULATION 10 CFR PART 2.

B. FILE A COMPLAINT WITH NRC PERTAINING TO "HARRASSMENT"

C. FILE A NON-COMPLIANCE COMPLAINT WITH NRC CONCERNING THE SAFE OPERATION OF CPSES.

D. REPORT TO DEPT OF LABOR NON-COMPLIANCE OF BROWN & ROOTS AFFIRMATIVE ACTION PLAN.

E. OBTAIN LEGAL COUNSEL AND PURSUE ANY LITIGATION THAT MIGHT BE APPROPRIATE.

F. IN A EFFORT TO PRESERVE MY MENTAL HEALTH AND AVOID ANY FURTHER HARRASSMENT. I WISH TO BE RELIEVED OF MY DUTIES UNTILL THE TEC, NRLS, NRC CAN RESOLVE THESE MATTERS

JOE MACATAL - FZ-29
9/

EXHIBIT 2

Orig. file (marked confidential for AER only)

STRICTLY CONFIDENTIAL

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

JOSEPH MACKTAL, Complainant, v. BROWN & ROOT, INC., Respondent.	Case No. 86-ERA-23

SETTLEMENT AGREEMENT

WHEREAS Mr. Macktal's employment with Brown & Root, Inc. ("Brown & Root") terminated on January 2, 1986;

WHEREAS Mr. Macktal has instituted the above-captioned action against Brown & Root before the United States Department of Labor alleging that his termination violated Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 ("Section 210");

WHEREAS the dispute between Mr. Macktal and Brown & Root has been amicably resolved and Mr. Macktal now desires to withdraw his complaint against Brown & Root, without admission of liability by Brown & Root, Texas Utilities Company and/or the other owners of Comanche Peak Steam Electric Station ("Comanche Peak"), or the SAFETEAM program, or the attorneys, related

companies, successors, assigns, officers, directors, managers, agents, and employees of the aforementioned companies, organizations and programs (all of which entities and individuals are hereinafter collectively referred to as "the Comanche Peak companies, organizations, programs and individuals");

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1) This Settlement Agreement does not amount to, and shall not be construed as, an admission of liability or wrongdoing on the part of any of the Comanche Peak companies, organizations, programs or individuals as defined above. Moreover, this Settlement Agreement does not amount to, and shall not be construed as, an admission by Mr. Macktal concerning the merits of this action.

2) Mr. Macktal shall execute a general release (attached hereto as Exhibit A) of all the Comanche Peak companies, organizations, programs and individuals as defined above from any and all liability arising out of or relating to Mr. Macktal's employment with Brown & Root, the termination of his employment on January 2, 1986, or his resignation from his position with Brown & Root.

3) Mr. Macktal's representatives in the above-captioned action, Mr. Anthony Z. Roisman and Ms. Billie P. Garde (including Trial Lawyers for Public Justice and the Govern-

ment Accountability Project, the organizations of which Mr. Roisman and Ms. Garde, respectively, are a part and through which they came to represent Mr. Mac 1), hereby agree that they will not call Mr. Macktal as a witness or join Mr. Macktal as a party in any administrative or judicial proceeding in which either Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project, or any combination of them are now, or in the future may be, counsel or parties opposing any of the Comanche Peak companies, organizations, programs or individuals as defined above; nor will Mr. Roisman, Ms. Garde or their respective organizations do anything to suggest or otherwise to induce any other attorney, party, administrative agency, or administrative or judicial tribunal to call Mr. Macktal as a witness or to join Mr. Macktal as a party in such a proceeding. Further, Mr. Macktal hereby agrees that he will not voluntarily appear as a witness or a party in any such proceeding; and Mr. Macktal further agrees that if served with compulsory process seeking to compel his appearance or joinder in such a proceeding, he will immediately notify the undersigned representative of Brown & Root, or his successor, in writing and thereafter take all reasonable steps, including any such reasonable steps as may be suggested by the representatives of Brown & Root, to resist such compulsory process.

4) On the date of the execution of this Settlement Agreement, Ms. Garde shall file with the presiding Administrative Law Judge a joint motion to dismiss with prejudice the above-captioned case. Copies of the joint motion filed and the cover letter by which the joint motion is transmitted to the presiding Administrative Law Judge shall be served on the undersigned representative of Brown & Root by first class mail on the same date as the filing.

5) Within three (3) business days of receipt by Brown & Root of the duly executed General Release described above in paragraph 2 of this Settlement Agreement and written notice of the filing of the joint motion to dismiss as described above in paragraph 4 of this Settlement Agreement, Brown & Root shall send to Ms. Garde a check in the amount of $35,000.00 and payable jointly to Mr. Macktal and to Ms. Garde. Said amount shall be held in escrow by Ms. Garde until such time as Brown & Root either receives an Order from the presiding Administrative Law Judge dismissing the above-captioned case with prejudice, or is otherwise notified by the office of the presiding Administrative Law Judge that such an Order has been signed and entered. Written notice of release of said monies or any portion thereof from escrow shall be sent by first class mail by Ms. Garde to the undersigned representative of Brown & Root on the same day that such release occurs.

6) Within five (5) business days of receipt by Brown & Root of an Order from the presiding Administrative Law Judge dismissing the above-captioned case with prejudice, Brown & Root will remove from Mr. Macktal's personnel file his three-page memorandum of January 3, 1986, and the assignment termination sheet (the "pink sheet"), and both documents shall be placed with Brown & Root's litigation files. A new assignment termination sheet will be placed in Mr. Macktal's personnel file which will indicate only that Mr. Macktal quit or resigned his position with Brown & Root for personal reasons; and Mr. Macktal's personnel file, including the substituted assignment termination sheet, will be sealed. Further, in response to inquiries and unless otherwise authorized by Mr. Macktal or compelled by law or compulsory process, Brown & Root will provide no information about Mr. Macktal or his employment at Brown & Root other than the dates of his employment, the job titles in which he was employed (journeyman electrician and electrical foreman), and the rate of pay that Mr. Macktal received during the term of his employment. In the event that Brown & Root should conclude that it is compelled by law or compulsory process to reveal further information about Mr. Macktal to any person or entity other than a federal, state or local taxing authority, Brown & Root will

notify Mr. Macktal or Ms. Garde of the legal compulsion or compulsory process and invite him to interpose an objection to such disclosure with the party or entity seeking disclosure or with, if appropriate, the agency responsible for the administration of the law or regulation giving rise to the legal compulsion. Notwithstanding any other provision of this Agreement, Brown & Root is not in any way obliged to conceal or resist disclosure of any information about Mr. Macktal to a federal, state or local taxing authority that Brown & Root deems itself obligated to reveal, whether by virtue of compulsory process or otherwise, and notice to Mr. Macktal of any such revelations shall not be required.

7) Within ten (10) business days of receipt by Brown & Root of an Order of the presiding Administrative Law Judge dismissing the above-captioned action with prejudice, Brown & Root will send to Ms. Garde a letter, addressed to Mr. Macktal and in the form attached hereto as Exhibit B, setting forth the dates of Mr. Macktal's employment, the job titles in which he was employed, and the rate of pay that he was receiving on the date on which he left the employ of Brown & Root.

8) Mr. Macktal and his representatives, Anthony Z. Roisman, and Ms. Billie Garde (including Trial Lawyers for Public Justice and the Government Accountability Project, the

organizations of which Mr. Roisman and Ms. Garde, respectively, are a part and through which they came to represent Mr. Macktal), agree that the terms of this Agreement shall be confidential. Mr. Macktal agrees that he will not in any way disclose the terms of this Agreement to any person, except as specifically provided below. Should Mr. Macktal disclose the terms of this Agreement to any person prior to January 1, 1995, such disclosure shall be deemed a material breach of this Settlement Agreement, relieving Brown & Root of any and all obligations running to Mr. Macktal under the Agreement and creating in Brown & Root the right to bring an action for the recovery of all sums paid under this Agreement, plus interest and reasonable attorney fees. For purposes of this promise of confidentiality, Mr. Macktal, Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice, the Government Accountability Project and Brown & Root agree as follows:

a. "Disclosure" of the terms of this Agreement means any verbal or written communication describing the terms of this Agreement, including the use of such adjectives as "generous," "large," and "substantial," or words of description to similar effect, and includes making this Agreement or a copy of any portion thereof available to any person or entity;

b. Disclosure of the terms of this Agreement by Anthony Z. Roisman and/or by Billie Garde and/or by Trial Lawyers for Public Justice and/or the Government Accountability Project to any person shall be considered to be a breach of Mr.

Macktal's promise of confidentiality, with the same effect as if Mr. Macktal himself had made the disclosure;

c. Brown & Root shall not consider discussion of the terms of this Agreement between and among Mr. Macktal, Mr. Roisman, and Ms. Garde to be a breach of Mr. Macktal's promise of confidentiality;

d. Mr. Macktal warrants that neither he nor Mr. Roisman nor Ms. Garde have disclosed the terms of this Agreement as verbally discussed between representatives of Mr. Macktal and Brown & Root after 12:00 noon, November 18, 1986, but before execution of this Agreement. Brown & Root shall consider any such disclosure during that period to be a breach of Mr. Macktal's promise of confidentiality;

e. Brown & Root shall not consider Mr. Macktal, Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project to have breached Mr. Macktal's promise of confidentiality if any of them is required to disclose the terms of this Agreement under compulsion of legal process, provided that when such disclosure is requested, the party to whom the request is made shall promptly give notice of such request to Brown & Root and withhold disclosure until Brown & Root has had a reasonable opportunity to object or, if Brown & Root does not object, until Brown & Root provides Mr. Macktal, Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project with written consent to disclosure. Brown & Root's consent to disclosure on any occasion does not represent its consent to future requests for disclosure under compulsion of legal process. Brown & Root shall not consider an objection by Mr. Macktal, Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project or their representatives to a request for disclosure under compulsion of legal process by reference to Mr. Macktal's promise of confidentiality to be a breach of that promise;

9) This Agreement shall be binding upon and inure to the benefit of the parties, their respective agents, representatives, attorneys, successors, and assigns, and as to Mr. Macktal, his heirs, executors, administrators, and personal representatives.

STRICTLY CONFIDENTIAL

The foregoing provides the entire AGREEMENT between the parties and this AGREEMENT cannot be modified except by written stipulation signed by each of the parties hereto.

Billie Pirner Garde

Billie Pirner Garde for
Joseph Macktal, the
Government Accountability
Project, and herself

Anthony J. Roisman

Anthony J. Roisman for
Joseph Macktal, Trial Lawyers
for Public Justice, and
himself

Richard K. Walker

Richard K. Walker for
Brown and Root, Inc.

This 2nd day of January, 1987.

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

JOSEPH MACKTAL, Complainant, v. BROWN & ROOT, INC., Respondent.	Case No. 86-ERA-23

GENERAL RELEASE

In connection with the Settlement Agreement executed on behalf of myself and by a representative of Brown & Root, Inc. ("Brown & Root") on January 2, 1987 and in consideration for the promises made therein, I, Joseph Macktal, do hereby release and forever discharge Brown & Root, Texas Utilities Company and the other owners of the Comanche Peak Steam Electric Station ("Comanche Peak"), the SAFETEAM program, and their respective attorneys, related companies, successors, assigns, officers, directors, managers, agents, and employees from any and all liability arising out of my employment with Brown & Root, the termination of my employment on January 3, 1986, my resignation from my position with Brown & Root, or any other claims or choses in action I might have, whether known or unknown, that accrued or were inchoate as of the date hereof.

I understand that this GENERAL RELEASE resolves any claims raised in the complaint I filed with the Department of Labor on February 3, 1986, together with any and all claims that I might have asserted in any suit, cause of action, charge of discrimination, or claims against Brown & Root, Texas Utilities Company and/or the other owners of Comanche Peak, the SAFETEAM program and all representatives of the management of those companies, organizations and programs.

I further agree that this GENERAL RELEASE shall be binding on the undersigned, my agents, attorneys, representatives, executors, personal representatives, heirs, successors, and assigns.

I hereby acknowledge that I have read this GENERAL RELEASE, discussed it with my attorney(s), and that I fully understand the terms, nature, and effect of the GENERAL RELEASE, and have voluntarily and knowingly executed the GENERAL RELEASE.

This 7 day of January, 1987.

Joseph Macktal

Joseph Macktal

EXHIBIT 3

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: May 11, 1987
CASE NO.: 86-ERA-23

IN THE MATTER OF

JOSEPH MACKTAL,

COMPLAINANT,

v.

BROWN & ROOT, INC.,

RESPONDENT,

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

This proceeding arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C § 5851 (1982), and implementing regulations at 29 C.F.R. Part 24 (1986).

This case is before me on the recommended Order of Administrative Law Judge (ALJ) Vivian Schreter Murray issued on January 6, 1987. The order states that the parties to this action have jointly moved, pursuant to 29 C.F.R. § 18.39(b), for dismissal of this action with prejudice. Section 24.6 of 29 C.F.R. authorizes the administrative law judge to issue a recommended decision after the termination of the proceeding. The recommended decision is to be forwarded to the Secretary of Labor for approval and a final order.

The record reflects that considerable discovery was conducted in this case prior to the hearing which apparently was

scheduled in November of 1986. Correspondence in the record from Complainant's counsel dated December 10, 1986, refers to "agreements of last month." Thus it appears that some agreement between the parties underlies the joint motion to dismiss, although no settlement agreement, stipulation or similar document has been included in the record submitted to the Secretary.

Although it is not necessary that the settlement agreement be made part of my final order, without an opportunity to review the agreement I cannot determine if the terms of the settlement are fair, adequate and reasonable, the usual standard for approval of a settlement agreement. Johnson v. Transco Products, Case No. 85-ERA-7, slip op. at 1, August 8. 1985. Compare Young v. Hake, Case No. 83-ERA-11, slip op., January 18, 1985 ("fair and equitable"); Eggers v. Cincinnati Drum Services, Inc., Case No. 84-TSC-2, slip op. of ALJ, March 6, 1984 ("reasonable and proper and that a dismissal is not against the public interest"), approved by the Secretary, June 5, 1984; and Chan Van Vo v. Carolina Power & Light Company, Case No. 85-ERA-3, slip op. April 12, 1985 ("equitable"). Where a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purpose of Section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violatins. McGavock v. Elbar, Inc., Case No. 86-STA-5,

Secretary's Order, at 2, November 25, 1986.

Therefore, if the parties desire to resolve this matter by mutual agreement, within 30 days from receipt of this order they should submit the settlement agreement for my review, signed by both parties, including Complainant individually and setting forth all the terms and conditions agreed to.

SO ORDERED.

William E. Brock

Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Joseph Macktal v. Brown & Root, Inc.,

Case No. : 86-ERA-23

Document : ORDER TO SUBMIT SETTLEMENT AGREEMENT

A copy of the above-referenced document was sent to the following persons on MAY 11 1987.

Patricia Gomillion

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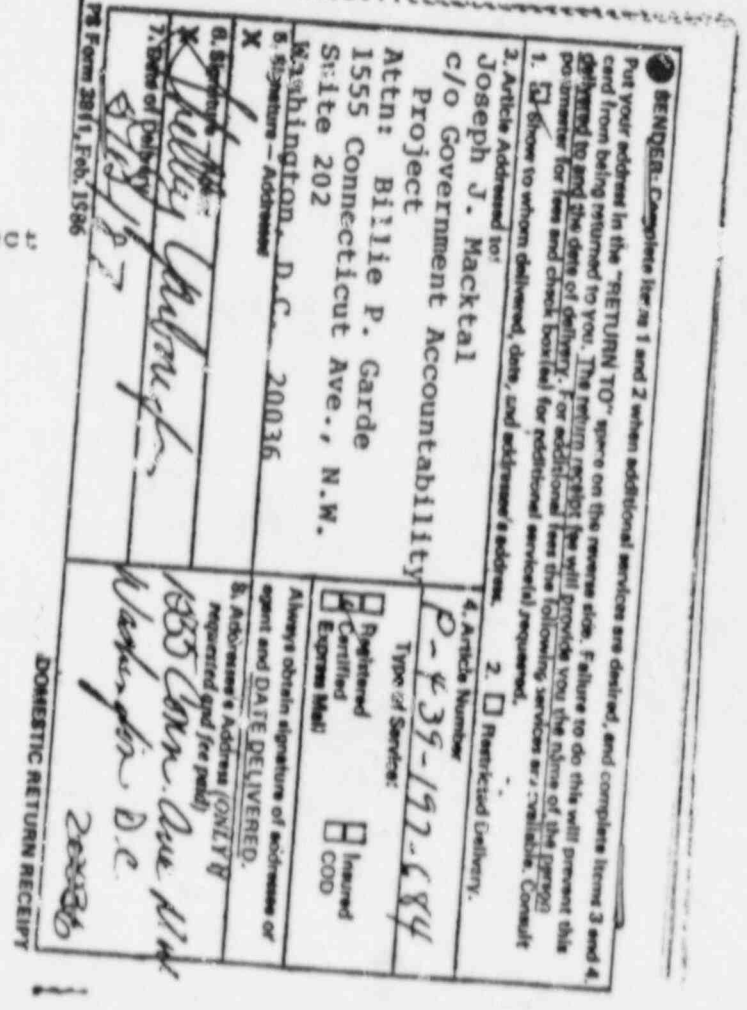

UNITED STATES OF AMERICA
BEFORE THE U.S. DEPARTMENT OF LABOR

JOSEPH MACKTAL
Complainant,

v. case No. 86-ERA-23

BROWN & ROOT, INC.,
Respondent.

COMPLAINANT REQUEST FOR HEARING

WHEREAS Mr. Macktal has instituted the above-captioned action against Brown & Root before the United States Department of labor alleging that his termination violated Section 210 of the Energy Reorganization Act of 1974, 42 U.S.C. S 5851 ("Section 210");

WHEREAS Mr. Macktal on December 26, 1986 instructed his attorney not to consummate the pending settlement agreement, and to proceed with the hearing. On January 7, 1987 Mr. Macktal was threatened, and forced to sign a general release under duress.

NOW, THEREFORE, Mr. Macktal ask the Secretary of Labor to review the December 26, 1986 conversation between Mr, Macktal, and his attorney to determine if Mr. Macktal was threatened, and forced to sign under duress.

NOW THEREFORE Mr. Macktal prays that the United States of America Secretary of Labor will overturn the presiding Administrative Law Judge's order to dismiss with prejudice the above captioned case, and proceed with the hearing so justice may prevail.

Respectfully submitted
Joseph J. Macktal
Joseph J. Macktal
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Dated June 12, 1987

EXHIBIT 4

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UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF LABOR

JOSEPH J. MACKTAL, Complainant, vs. BROWN & ROOT, INC., AND TEXAS UTILITIES, Respondents.	86-ERA-23

MOTION FOR EXPEDITED CONSIDERATION
OR FOR EMERGENCY PARTIAL ORDER

Complainant Joseph Macktal hereby requests an expedited order concerning the enforceability of Paragraph 3 of the January 2, 1987 Settlement Agreement entered into between attorneys for Texas Utilities, Brown & Root and Mr. Macktal (hereinafter "Settlement").

Paragraph 3 of the Settlement is null and void as a matter of law and public policy as it prohibits Mr. Macktal from the "reporting of safety violations" to the NRC in direct opposition to the "purpose of Section 5851." Macktal v.Brown & Root, Inc., 86-ERA-23, Order to Submit Settlement Agreement, dated May 11, 1987.

Mr. Macktal fears that he will be subjected to a breach of contract suit or other forms of liability and discrimination if he "violates" the Settlement. More importantly, an immediate nullification of paragraph 3 will facilitate Mr. Macktal's disclosure of heretofore undisclosed safety violations Mr. Macktal observed while

employed at the Comanche Peak facility.

The illegal nature of paragraph 3 of the Settlement is set forth in detail in the accompanying brief, entitled Complainant's Request to the Secretary of Labor to Disapprove Settlement and Remand for Further Proceedings.

WHEREFORE, in consideration of this motion and the accompanying brief, Complainant respectfully requests the Secretary of Labor to strike paragraph 3 of the Settlement Agreement within ten days of the filing of this pleading.

Respectfully submitted,

KOHN & ASSOCIATES

By: Stephen M. Kohn, Esq.
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UNITED STATES OF AMERICA
BEFORE THE SECRETARY OF LABOR

JOSEPH J. MACKTAL, Complainant, vs. BROWN & ROOT, INC., AND TEXAS UTILITIES, Respondents.	86-ERA-23

REQUEST TO THE SECRETARY OF LABOR NOT TO APPROVE THE SETTLEMENT AND FOR REMAND

Procedural History

On August 24, 1988 Mr. Joseph Macktal first learned of the Secretary of Labor's (SOL) May 11, 1988 Order to Submit Settlement Agreement. Since that date he and his attorneys have had an opportunity to review the brief submitted by Respondent Brown & Root on June 5, 1987 and the letter submitted by his former attorney Ms. Billie Garde on June 8, 1987.

As the Secretary of Labor did not stay his Order pursuant to the filings of Ms. Garde and Brown & Root, Mr. Macktal hereby submits, as exhibit 2 of his Affidavit, a copy of the settlement agreement. The settlement agreement in this case actually consists of two separate documents. The first is entitled "Settlement Agreement". This document was not signed by Mr. Macktal but was signed by his

attorneys, Ms. Garde and Mr. Anthony Z. Roisman. The second document, entitled "General Release" was signed by Mr. Macktal. The General Release states that the release was executed "in connection with the Settlement Agreement."

Facts

Facts relevant to this pleading are set forth in the attached Affidavit of Joseph J. Macktal, Jr.

Arguments

I. The Settlement Agreement is Null and Void on the Basis of Public Policy and Must Be Set Aside.

Paragraph 3 of the Settlement Agreement prohibits Mr. Macktal from "voluntarily appear[ing] as a witness or a party in any such proceeding..." including "any administrative or judicial proceeding in which either Mr. Roisman, Ms. Garde, Trial Lawyers for Public Justice or the Government Accountability Project, or any combination of them are now, or in the future may be, counsel or parties opposing any of the Comanche Peak Companies, organization, programs or individuals..." The settlement agreement defines "Comanche Peak Companies" to include all companies, employees or attorneys that are in any way involved with the construction of the Comanche Peak facility. (See Third "whereas" in the settlement agreement). Because Ms. Garde, Mr. Roisman, TLPJ and GAP represented the intervenor Citizens Association for Sound Energy (CASE) before the Atomic Safety and Licensing Board (ASLB) and most, if not all, Comanche Peak whistleblowers, the scope of the gag order is all-encompassing.

Not only was Mr. Macktal prohibited from voluntarily appearing as a witness before on-going NRC licensing hearings and on-going NRC staff investigations into Comanche Peak, if subpoenaed to testify Mr. Macktal would be obligated to work with Brown & Root's attorneys to "resist" compulsory processes. Likewise, Mr. Roisman, Ms. Garde, GAP, and TLPJ were prohibited from ever "inducing" or "suggesting" to the NRC, ASLB or other Section 210 complainants that Mr. Macktal be called as a witness. As such, paragraph 3 of the settlement created actual and potential hidden conflicts of interests between Ms. Garde, Mr. Roisman and their clients, including CASE and other individual Section 210 complainants.[1]

In short, the Settlement Agreement, at the time, essentially guaranteed that Mr. Macktal would never be able to testify before the NRC about problems he observed at Comanche Peak, including numerous unresolved safety concerns he had not as of yet had a chance to air with the NRC Staff of the ASLB. See, Aff., para. 3-5.

Paragraph 3 of the Settlement Agreement violated public policy and NRC regulations and this language must be

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1. Indeed, the ALJ in Hasan v. NPSI, 86-ERA-24, inferred that not going to "Safeteam" with safety concerns constituted bad faith on the part of the complainant after the complainant testified that "Safeteam" was untrustworthy and controlled by Texas Utilities management and that the identities of employee-whistleblowers were routinely leaked to Texas Utilities who then retaliated against those whistleblowers. When Mr. Hasan's counsel asked Ms. Garde (who at the time was co-counsel on the case) for the name of a witness to coroborate Mr. Hasan's statement that "Safeteam" could not be trusted, Ms. Garde did not, because she could not under the terms of the settlement, reveal the identity of Mr. Macktal.

stricken. Essentially, paragraph 3 represents a classic example of bargaining money for silence. Such agreements have historically been found to be impermissible by every court which has considered the issue. See, e.g., Franklin v. White, 493 N.E.2d 161, 165 (Ind. 1986) ("Contracts which unduly tend to influence the production or suppression of evidence are void."); Josephs v. Briant, 108 Ark 171, 157 S.W. 136, 140 (1913) ("A contract is void as against public policy by which one of the parties agrees to suppress or conceal, or enable another to suppress or conceal, testimony..."). Also see, 6A Corbin on Contracts, sec. 430, at page 380 (1962 ed.). Paragraph 3 of the Settlement Agreement is anathema to Section 210 and must be stricken in its entirety.

Unquestionably, Section 210 was was not passed to provide a legal shield to silence employee whistleblowers by tempting them with large sums of money if they agree to remain silent. Likewise, Section 210 was not passed to undermine the NRC's ability to receive safety allegations. Rather it was passed to "help assure" employee disclosure of health and safety violations to NRC and utility management (see, Senate Report 95-848, 1978 U.S. Code Cong. Ad. News 7303, 7304), and to make sure that the NRC's "channels of information" were not "dried up." Deford v. Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983).

In Rose v. Secretary of Labor, 800 F.2d 563, 565 (6th Cir. 1986), Justice Edwards wrote: "If employees are coerced and intimidated into remaining silent when they should speak

out, the results can be catastrophic." What could be more detrimental to the free flow of information to the NRC than a money-for-silence secret settlement between utility employees and attorneys for the utility? Clearly, no clause in any settlement which can be directly or indirectly interpreted to inhibit a potential witness from providing information to a government agency or court can be approved.

The contract also violates NRC regulations. For example, NRC regulations state that "the Commission will not permit any interference with communications between the Commission's representatives and employees of such organization." Vol. 47, Federal Register No. 135 at page 30453 (July 14, 1982). Offering money for silence is an extreme form of "interference" between the Commission and employee-whistleblowers.

II. The Secretary of Labor Must Refuse to Approve the Settlement

Unlike most other federal or state remedies, Section 210 of the Energy Reorganization Act statutorily establishes that the Secretary is a party to all settlements: "the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, [will] issue an order either providing the relief prescribed in subparagraph (B) [reinstatement, back pay, attorneys fees, etc.] or denying the complaint....The Secretary may not enter into a settlement terminating a proceeding on complaint without the participation and consent of the complainant." 42 U.S.C. sec. 5851 (b)(2)(A).

Only the SOL can authorize the settlement of a case.

Even if the SOL believes that a particular settlement is fair and just, a case cannot be settled without the consent of the complainant.

Complainant Joseph J. Macktal specifically requests that the SOL not approve the settlement agreement. Consequently, as a matter of law complainant is entitled to have the settlement set aside and the case remanded back to the ALJ for further proceedings.

Respondents incorrectly rely on FRCP 41 (a)(1)(i) to justify their position that the settlement agreement need not be provided to the Secretary. This reliance is misplaced. FRCP 41 (a)(1)(i) does not apply whenever a statute contains alternative provisions governing voluntary dismissal.

Voluntary dismissals under FRCP 41 (a)(1) are "expressly made subject to the provisions of any statute of the United States." 9 Wright and Miller, Federal Practice and Procedure Section 2363 (1971); FRCP 41 (a)(1). Thus the statutory language of Section 210 espresrly requires the Secretary's active involvement in approving settlement agreements. 42 U.S.C. sec. 5851 (b)(2)(A). It is therefore axiomatic that the Secretary would decline to enforce any aspect of a settlement agreement entered into between the parties that contradicts public policy and firmly established jurisprudence.

III. The SOL Should Not Approve the Settlement Because of Evidence of Fraud and Duress

Even if the SOL found paragraph 3 of the settlement agreement not to be null and void as a matter of law and public policy, the SOL still should not approve the settlement on the ground of fraud and duress.

Mr. Macktal's affidavit on its face is sufficient to warrant a remand to an ALJ with instructions to determine whether the settlement agreement is void ab initio on the basis of fraud and duress. See, Aff., at para. 14-26.

For example, after Mr. Macktal requested his attorneys to proceed with the case and halt settlement negotiations, he was told that a binding settlement already existed when it clearly did not. Aff., at para. 19-21. Mr. Macktal was told that should he terminate settlement negotiations he would be sued for breach of contract and he could be burdended by a judgment against him for as much as a $100,000.00 with the Utility "pursuing" him to the "ends of the earth" in an attempt to satisfy that judgment. Aff., at para. 24. More importantly, Mr. Macktal was told by his attorneys that before he could go to trial he would have to pay up front $12,000 to his pro bono counsel, a condition repugnant to the very terms of the signed retainer agreement running between client and counsel. Aff., at para. 15, 19 and 21.

The facts set forth in Mr. Macktal's affidavit are more than sufficient to warrant remand to an ALJ to determine whether fraud and duress render the settlement agreement void.

IV. SOL Precedent Requires That the Settlement Not Be Approved

In the Order to Submit Settlement Agreement the SOL reiterated a series of precedents in which the SOL held that settlement must be "fair, adequate and reasonable" and must not be against the public interest." Macktal v. Brown & Root, 86-ERA-23, slip op. of SOL at 2 (May 11, 1987). See also, Hoffman v. Fuel Economy Contracting, 87-ERA-33, slip op. of SOL at 2 (August 10, 1988); Moran v. Consilidated Edison of New York, Inc., 88-CAA-2, slip op. of SOL (June 20, 1988); Egenrieder v. Metropolitan Edison Co./GPU, 85-ERA-23, slip op. of SOL (April 11, 1988). Specifically, the SOL reasoned that "where a settlement is not fair and equitable to complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purpose of Section 5851, which is to encourage the reporting of safety violations..." Macktal, 86-ERA-23, slip op. of SOL at 2 (May 11, 1987).

For reasons stated herein and facts set forth in Mr. Macktal's affidavit, the settlement cannot, on its face, effectuate the purpose of Section 210, nor is it in the public interest. Clearly, a contract clause not to testify before the NRC absolutely contradicts the congressional purpose for the enactment of Section 210 ("to encourage reporting the safety violations"). Id. Likewise, given the pressure placed upon Mr. Macktal which forced him to sign the settlement, the agreement cannot be considered "fair, adequate and reasonable." Id.

The public policy implications of this case transcend

the specific facts of Mr. Macktal's allegations. Few employee whistleblowers understand the adverse economic ramifications of a retaliatory discharge. After a significant period of economic deprivation, the prospect of prolonged and costly litigation and the disruption of routine life, individual whistleblowers often see no alternative but settlement on almost any terms. If an employer is allowed to place "silence" on the bargining table, the result is predictable: it is only a matter of time until an employee succumbs. Public policy requires that such terms must never enter into settlement negotiations. Any agreement, explicit or implicit, that in any way prohibits a complainant from freely testifying or otherwise providing information to an appropriate government agency must be declaired null and void. Only by doing so, in the strongest possible terms, can the Secretary insure that the settlement process is not used to undermine the very purpose of environmental whistleblower legislation.

Once a "money for silence" settlement is effectuated, it is usually in the interest of both the complainant and respondent to keep those terms of settlement secret. The Macktal case represents the first known instance an employee was coerced against his will into signing such an agreement. Thus, Mr. Macktal is the first complainant willing to risk civil liability in order to challenge the unconscionable terms found in the attached settlement agreement. It is not "fair" or "reasonable" for a complainant to ever be placed in the position Mr. Macktal finds himself. Until the

Secretary strikes the settlement, Mr. Macktal must fear a counter suit. Mr. Roisman's warning that Mr. Macktal would be followed to "the ends of the earth" if he publically exposed his concerns should not be lightly taken, given Mr. Roisman's years of experience litigating against Texas Utilities and Brown & Root. Only the Secretary, by expidious nulification of the Macktal settlement, can adequately address this problem.

Conclusion

The settlement is not fair, equitable or reasonable. On the basis of the SOL's precedent alone the Settlement Agreement should not be approved. The case should be remanded to the ALJ with instruction that the parties be given a reasonable opportunity to re-settle the case on terms not violative of public policy; that if settlement is not reached, discovery be re-opened and the case should proceed to trial.

Respectfully submitted,

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September 9, 1988

04/15