

# The Energy Daily

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## Reich Decision Bans Nuclear Hush Money

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In a landmark whistleblower case, Labor Secretary Robert Reich has barred nuclear utilities or their contractors from negotiating "hush money" settlements to quiet employees who raise safety concerns.

Reich made the policy ruling in a decision favoring Joseph Macktal Jr., a former electrician at the Comanche Peak nuclear plant who contends he was wrongfully fired for raising safety concerns during construction of the Glen Rose, Texas, plant.

The case involved a deal between Macktal and Brown & Root, formerly the prime construction contractor at Comanche Peak, in which he was paid \$15,000 in exchange for agreeing to restrictions on his right to testify about the plant in other judicial proceedings. Macktal later challenged the settlement in a complaint filed with the Labor Department, saying his attorneys coerced him into signing the deal.

In his Oct. 13 decision, Reich ruled such so-called hush money deals were contrary to public policy because they "could give the impression to other whistleblowers that similar language may legitimately be included by employers in

future settlements, casting a doubt on a whistleblower's right to contact government agencies without any restriction." Reich also adopted a "prophylactic rule" against any future hush money agreements.

"The secretary of Labor's prophylactic rule condemning hush money settlements is a milestone in the struggle for whistleblower rights," said Stephen Kohn, Macktal's counsel. "Henceforth, any corporation that induces an employee to sign a restrictive settlement bears the risk of severe sanctions."

While barring hush money deals, Reich also ruled that Macktal could keep the money he received from Brown & Root, and he ordered that Macktal's original wrongful termination complaint be remanded for trial.

Reich's decision is significant in that other nuclear utilities have in the past signed at least 14 other hush money deals with whistleblowers. Those deals were disclosed after a Senate subcommittee on nuclear regulation investigated the Macktal case in May 1989 hearings.

The Macktal case dates back to 1985 when he brought safety concerns to a special in-house investigative team set up by Brown & Root to confidentially investigate whistleblower charges at Comanche Peak. Shortly after expressing his

concerns, Macktal said his confidentiality was breached and he was forced to resign.

In February 1986 Macktal filed a wrongful dismissal complaint with the Labor Department against Brown & Root and Texas Utilities Electric Corp., operator of the plant.

Macktal subsequently signed a settlement agreement in 1987 under which he was paid \$15,000 in exchange for agreeing to restrictions on his right to testify. Macktal then sought to void the agreement, saying his attorneys coerced him into signing the agreement because it also paid them \$20,000.

Macktal filed a complaint with the Labor Department in September 1988 challenging the legality of the hush money agreement. That resulted in a ruling by the department in November 1989 that voided the hush money provisions of the contract but otherwise upheld the settlement and dismissed Macktal's wrongful termination complaint.

However, in February 1991, the 5th Circuit Court of Appeals threw out that Labor Department ruling and sent the case back to the agency for further deliberations. In addition, the court authorized Reich to strike down the entire settlement if any provision was found to be illegal or in violation of public policy.