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 14 **UNITED STATES DISTRICT COURT**  
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 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17  
 18 **SAN FRANCISCO DIVISION**

17 BEVERLY KANAWI and SALVADOR  
 AQUINO, as representatives of a class of  
 18 similarly situated person, and on behalf of the  
 Plan,

19 *Plaintiffs,*

20 v.

21 BECHTEL CORPORATION, THE BECHTEL  
 22 TRUST AND THRIFT PLAN COMMITTEE,  
 PEGGI KNOX, and FREMONT  
 23 INVESTMENT ADVISORS,

24 *Defendants.*

Case No. C 06-05566 CRB (EDL)

**FINDINGS AND ORDER VACATING  
 PRIOR ORDER, PRELIMINARILY  
 APPROVING PROPOSED  
 SETTLEMENT, AMENDING CLASS  
 DEFINITION FOR SETTLEMENT  
 PURPOSES, APPROVING FORM AND  
 DISSEMINATION OF CLASS NOTICE,  
 ESTABLISHING A QUALIFIED  
 SETTLEMENT FUND AND SETTING  
 DATE FOR HEARING ON FINAL  
 APPROVAL OF SETTLEMENT**

Hon. Charles R. Breyer

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 28 **FINDINGS AND ORDER VACATING PRIOR ORDER, PRELIMINARILY APPROVING PROPOSED  
 SETTLEMENT, AMENDING CLASS DEFINITION FOR SETTLEMENT PURPOSES, APPORVING FORM  
 AND DISSEMINATION OF CLASS NOTICE, ESTABLISHING A QUALIFIED SETTLEMENT FUND AND  
 SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**



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within the scope of clause (b), his/her immediate family members, beneficiaries, alternate payees or attorneys-in-fact.

2. **Appointment of Class Representatives and Class Counsel:** The Court continues the appointment of the Class Representatives to represent the Settlement Class, and Schlichter, Bogard & Denton LLP as Class Counsel pursuant to Fed. R. Civ. P. 23(e) and (g).

3. **Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds that:

- A. the proposed settlement resulted from extensive arm’s-length negotiations;
- B. the Settlement Agreement was executed only after Class Counsel had conducted very substantial pre-settlement motion practice, taken extensive depositions, prepared a voluminous summary judgment motion with attachments, and responded to comprehensive separate motions for summary judgment by Defendants;
- C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable and adequate; and
- D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

4. **Fairness Hearing:** A hearing is scheduled for February 18, 2011 (the “Fairness Hearing”) to determine, among other things:

- A. Whether the Settlement Agreement should be approved as fair, reasonable and adequate;
- B. Whether the notice, publication notice and notice methodology was performed fairly as directed by this Court;
- C. Whether the motion for attorneys’ fees and costs to be filed by Class Counsel should be approved;
- D. Whether the motion for compensation to Class Representatives should be approved; and

1 E. Whether the Administrative Expenses specified in the Settlement Agreement and  
2 requested by the parties should be approved for payment from the Settlement  
3 Fund.

4 5. **Establishment of Qualified Settlement Fund:** A common fund is agreed to by  
5 the parties in the Settlement Agreement and is hereby established and shall be known as the  
6 *Kanawi v. Bechtel Corporation* Litigation Settlement Fund (the “Settlement Fund”). The  
7 Settlement Fund shall be a “qualified settlement fund” within the meaning of Treas. Regs.  
8 Section 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The  
9 Settlement Fund shall consist of \$18,500,000 and any interest earned thereon. The Settlement  
10 Fund shall be administered as follows:

11 A. The Settlement Fund is established exclusively for the purposes of: (a) making  
12 distributions to Class Representatives and Settlement Class Members as specified  
13 in the Settlement Agreement; (b) making payments for all settlement  
14 administration costs and costs of notice, including payments of all Administrative  
15 Expenses specified in the Settlement Agreement; (c) making payments of all  
16 Attorneys’ Fees and Costs to Class Counsel and Compensation to Class  
17 Representatives as awarded by the Court in this action; and (d) paying  
18 employment, withholding, income and other applicable taxes, all in accordance  
19 with the terms of the Settlement Agreement and this Order. Other than the  
20 payment of Administrative Expenses or as otherwise expressly provided in the  
21 Settlement Agreement, no distribution shall be made from the Settlement Fund  
22 until after the Settlement Effective Date.

23 B. Within the time period set forth in the Settlement Agreement Defendants shall  
24 cause \$18,500,000 to be deposited into the Settlement Fund.

25 C. The Settlement Fund shall be a single qualified settlement fund within the  
26 meaning of Treas. Reg. Section 1.468B-1, et seq. Any Defendant that has  
27 transferred money into the Settlement Fund shall timely furnish a statement to the

1 Settlement Administrator that complies with Treas. Reg. § 1.468B-3(e)(2) (a  
2 “§1.468B-3 Statement”), which may be a combined statement under Treas. Reg.  
3 §1.468B-3(e)(2)(ii), and shall attach a copy of the statement to its federal income  
4 tax return filed for any taxable year in which such Defendant makes a transfer to  
5 the Settlement Fund.

6 D. Defendants shall have no withholding, reporting or tax reporting responsibilities  
7 with regard to the Settlement Fund or its distribution, except as otherwise  
8 specifically identified herein. Moreover, Defendants shall have no liability,  
9 obligation, or responsibility for administration of the Settlement Fund or the  
10 disbursement of any monies from the Settlement Fund except for: (1) their  
11 obligation to cause the Gross Settlement Amount to be paid no later than the date  
12 specified in the Settlement Agreement; and (2) their agreement to cooperate in  
13 providing information that is necessary for settlement administration set forth in  
14 the Settlement Agreement.

15 E. The oversight of the Qualified Settlement Fund shall be the responsibility of the  
16 Settlement Administrator. The status and powers of the Settlement Administrator  
17 shall be as defined in the Settlement Agreement.

18 F. The Gross Settlement Amount caused to be paid by Defendants into the  
19 Settlement Fund pursuant to the Settlement Agreement, and all income generated  
20 by that Amount, shall be in *custodia legis* and immune from attachment,  
21 execution, assignment, hypothecation, transfer or similar process by any person.  
22 Upon the Settlement Effective Date, the Settlement Fund is irrevocable during its  
23 term and Defendants have divested themselves of all right, title or interest,  
24 whether legal or equitable, in the Settlement Fund, if any; provided, however, in  
25 the event the Settlement Agreement is not approved by the Court or the  
26 Settlement set forth in the Settlement Agreement is terminated or fails to become  
27 effective in accordance with its terms (or, if following approval by this Court,

1 such approval is reversed or modified), the Parties shall be restored to their  
2 respective positions in this Case as though the Settling Parties never executed the  
3 Settlement Agreement; the terms and provisions of the Settlement Agreement and  
4 this Order shall be void and have no force and effect and shall not be used in this  
5 Case or in any proceeding for any purpose; and the Settlement Fund and income  
6 earned thereon shall immediately be returned to the entity that funded the  
7 Settlement Fund.

8 G. The Settlement Administrator may make disbursements out of the Settlement  
9 Fund only in accordance with the Settlement Agreement, this Order or any  
10 additional Orders issued by the Court.

11 H. The Settlement Fund shall expire after the Settlement Administrator distributes  
12 all of the assets of the Settlement Fund in accordance with the Settlement  
13 Agreement, provided, however, that the Settlement Fund shall not terminate until  
14 its liability for any and all government fees, fines, taxes, charges, and excise taxes  
15 of any kind, including income taxes, and any interest, penalties or additions to  
16 such amounts, are, in the Settlement Administrator's sole discretion, finally  
17 determined and all such amounts have been paid by the Settlement Fund.

18 I. The Settlement Fund shall be used to make payments to Settlement Class  
19 Members under the Plan of Allocation set forth in the Settlement Agreement.  
20 Individual payments to Settlement Class Members will be subject to tax  
21 withholding as required by law and as described in the Class Notice and its  
22 attachments. In addition, all Court-approved Class Representatives'  
23 Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of  
24 Class Counsel shall be paid from the Settlement Fund.

25 J. The Court and the Settlement Administrator recognize that there will be tax  
26 payments and withholding and reporting requirements in connection with the  
27 administration of the Settlement Fund. The Settlement Administrator shall,

1 pursuant to the Settlement Agreement, (a) determine, withhold, and pay over to  
2 the appropriate taxing authorities any taxes due with respect to any distribution  
3 from the Settlement Fund and shall make and file with the appropriate taxing  
4 authorities any reports or returns due with respect to any distributions from the  
5 Settlement Fund. The Settlement Administrator also shall determine and pay any  
6 income taxes owing with respect to the income earned by the Settlement Fund.  
7 Additionally, the Settlement Administrator shall file returns and reports with the  
8 appropriate taxing authorities with respect to the payment and withholding of  
9 taxes.

10 K. The Settlement Administrator, in its discretion, may request expedited review and  
11 decision by the IRS or the applicable state or local taxing authorities, with regard  
12 to the correctness of the returns filed for the Settlement Fund and shall establish  
13 reserves to assure the availability of sufficient funds to meet the obligations of the  
14 Settlement Fund itself and the Settlement Administrator as fiduciaries of the  
15 Settlement Fund. Reserves may be established for taxes on the Settlement Fund  
16 income or on distributions.

17 L. The Settlement Administrator and Defendants shall provide to and exchange with  
18 each other such information as is required under the Settlement Agreement.

19 M. The Settlement Administrator shall have all the necessary powers, and take all  
20 necessary ministerial steps, to effectuate the terms of the Settlement Agreement,  
21 including the payment of all distributions. Such powers include receiving and  
22 processing information from Former Participants pertaining to their claims and  
23 investing, allocating, and distributing the Settlement Fund, and in general  
24 supervising the administration of the Settlement Agreement in accordance with its  
25 terms and this Order.

26 N. The Settlement Administrator shall keep detailed and accurate accounts of all  
27 investments, receipts, disbursements and other transactions of the Settlement

1 Fund. All accounts, books and records relating to the Settlement Fund shall be  
2 open for reasonable inspection by such persons or entities as the Court orders.  
3 Included in the Settlement Administrator's records shall be complete information  
4 regarding actions taken with respect to the award of any payments to any person;  
5 the nature and status of any payment from the Settlement Fund and other  
6 information which the Settlement Administrator considers relevant to showing  
7 that the Settlement Fund is being administered, and awards are being made, in  
8 accordance with the purposes of the Settlement Agreement, this Order, and any  
9 future orders of the Court.

10 O. The Settlement Administrator may establish protective conditions concerning the  
11 disclosure of information maintained by the Settlement Administrator if  
12 publication of such information would violate any law, including rights to  
13 privacy. Any person entitled to such information that is denied access to the  
14 Settlement Fund's records may submit a request to the Court for such  
15 information. However, the Settlement Administrator shall supply such  
16 information to any claimant as may be reasonably necessary to allow him or her  
17 to accurately determine his or her federal, state and local tax liabilities. Such  
18 information shall be supplied in the form and manner prescribed by relevant law.

19 P. This Order shall be binding on any successor Settlement Administrator. The  
20 successor Settlement Administrator(s) shall have, without further act on the part  
21 of anyone, all the duties, powers, functions, immunities, and discretion granted to  
22 the original Settlement Administrator. Any Settlement Administrator who is  
23 replaced (by reason other than death) shall execute all instruments, and do all  
24 acts, that may be necessary or that may be ordered or requested in writing by the  
25 Court or by any successor Settlement Administrator, to transfer administrative  
26 powers over the Settlement Fund to the successor Settlement Administrator. The  
27 appointment of a successor Settlement Administrator, if any, shall not under any

1 circumstances require any Defendant to make any further payment of any nature  
2 into the Settlement Fund or otherwise.

3 6. **Class Notice:** The Settling Parties have presented to the Court a proposed form  
4 of Class Notice and proposed form of Publication Notice, which are appended hereto as Exhibits  
5 1 and 2, respectively. The Court finds that these forms and the website referenced in the Class  
6 Notice fairly and adequately:

- 7 A. Describe the terms and effect of the Settlement Agreement and of the Settlement;
- 8 B. Notify the Settlement Class concerning the proposed Plan of Allocation;
- 9 C. Notify the Settlement Class that Class Counsel will seek compensation from the  
10 Settlement Fund for the Class Representatives and for Attorneys' Fees and Costs;
- 11 D. Notify the Settlement Class that Administrative Expenses related to the  
12 implementation of the Settlement will be paid from the Settlement Fund;
- 13 E. Give notice to the Settlement Class of the time and place of the Fairness Hearing;  
14 and
- 15 F. Describe how the recipients of the Class Notice may object to any of the relief  
16 requested.

17 The Settling Parties have proposed the following manner of communicating the notice to  
18 members of the Settlement Class, and the Court finds that such proposed manner is the best  
19 notice practicable under the circumstances, and directs that the Settlement Administrator shall:

- 20 i. By no later than 75 days before the Fairness Hearing, cause the Class  
21 Notice, with such non-substantive modifications thereto as may be agreed  
22 upon by the Settling Parties, to be mailed, by first-class mail, postage  
23 prepaid, to the last known address of each member of the Settlement Class  
24 who can be identified through commercially reasonable means.  
25 Defendants shall use their best efforts to cooperate with the Settlement  
26 Administrator by providing the information required under the Settlement  
27 Agreement, including names, addresses, and social security numbers of

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members of the Settlement Class to the extent they are reasonably available. Such information shall be used solely for the purpose of providing notice of this Settlement and as required for purposes of tax withholding and reporting, and for no other purpose;

ii. For any Class Notice returned as undeliverable, the Settlement Administrator shall utilize the provided social security number to attempt to determine the current address of the Person and shall mail notice to that address;

iii. By no later than 68 days before the Fairness Hearing, cause the Publication Notice to be published in one edition of the *USA Today*; and

iv. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

The Court directs Class Counsel to:

i. By no later than 75 days before the Fairness Hearing, cause the Class Notice to be published on the website identified in the Class Notice.

7. **Objections to Settlement:** Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and costs, or to any request for compensation for the Class Representatives may file an Objection. Objections must be filed as described herein. The objector must do the following: (A) file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (B) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and service on counsel are as follows:

1 Clerk of the Court  
United States District Courthouse  
2 450 Golden Gate Ave.  
San Francisco, CA 94102

3 Schlichter, Bogard & Denton  
4 Attn: Bechtel Corporation ERISA Settlement  
100 S. 4<sup>th</sup> Street, Ste. 900  
5 St. Louis, MO 63102

6 Morgan, Lewis & Bockius LLP  
D. Ward Kallstrom  
7 Jami Wintz McKeon  
One Market, Spear Street Tower  
8 San Francisco, CA 94105  
Tel. (415) 442-1000  
9 Facsimile: (415) 442-1001  
[dwkallstrom@morganlewis.com](mailto:dwkallstrom@morganlewis.com)  
10 [jmckeon@morganlewis.com](mailto:jmckeon@morganlewis.com)

11 Paul, Hastings, Janofsky & Walker, LLP  
Grace Carter  
12 55 Second Street, 24<sup>th</sup> Floor, San Francisco, CA 94014  
Tel: (415) 856-7015  
13 Fax: (415) 856-7115  
[gracecarter@paulhastings.com](mailto:gracecarter@paulhastings.com)  
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15 The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on  
16 the attorneys listed above and file it with the Court by no later than 30 days before the date of the  
17 Fairness Hearing. Any objection filed thereafter will not be considered. If an objector hires an  
18 attorney to represent him, her, or it for the purposes of making such objection pursuant to this  
19 paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it  
20 with the Court by no later than 30 days before the date of the Fairness Hearing. Failure to timely  
21 serve objections(s) on either the Court or Counsel shall constitute a waiver of the objection(s).  
22 Except by special order of the Court, any member of the Settlement Class or other Person who  
23 does not timely file and serve a written objection complying with the terms of this paragraph  
24 shall be deemed to have waived, and shall be foreclosed from raising, any objection to the  
25 Settlement, and any untimely objection shall be barred. Any party wishing to file a response to  
26 an objection must do so, and must serve the response on all parties, no later than 10 days before  
27 the Fairness Hearing.

28 FINDINGS AND ORDER VACATING PRIOR ORDER, PRELIMINARILY APPROVING PROPOSED  
SETTLEMENT, AMENDING CLASS DEFINITION FOR SETTLEMENT PURPOSES, APPROVING FORM  
AND DISSEMINATION OF CLASS NOTICE, ESTABLISHING A QUALIFIED SETTLEMENT FUND AND  
SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT



1 limited to, any objections by Defendants to class certification in the event that the Settlement  
2 Agreement is terminated.

3 13. **Continuance of Hearing:** The Court reserves the right to continue the Fairness  
4 Hearing without further written notice.

5 SO ORDERED THIS 29 day of October, 2010.

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8 JUDGE CHARLES R. BREYER

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