

Andrea Twitchell

---

2384 W. Via Di Silvio  
Tucson, AZ 85741  
817-938-5220

April 9, 2018

Honorable Judge Steven P. Logan  
U.S. District Court  
District of Arizona-Phoenix  
Sandra Day O'Conner U.S. Courthouse  
401 W. Washington Street, Ste 130, SPC 1  
Phoenix, AZ 85003-2118

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
APR 10 2018	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY <u>  mj  </u>	DEPUTY

Via: FedEx 7804 4914 2865

Re: Case No. 17-CV-04059-SPL

Honorable Judge Logan:

I am writing to express my strong opposition to the Joint Motion for Entry of Amended Consent Decree ("Amended Consent Decree"). In support thereof the following five arguments are offered:

- (1) The Party's Joint Motion for Entry of Amended Consent Decree should be denied because it does not correct the deficiencies of the original Consent Decree previously submitted which was not approved by the bankruptcy Court.**

American's submission of the Amended Consent Decree as a proposal that corrects deficiencies of the original Consent Decree is disingenuous. American's new proposal changes semantics and attempts to mislead the Court into thinking that it has now properly included pilots in the settlement but in reality pilots are still excluded. In hope of deceiving the Court into believing it has made corrections, American relies heavily on the Court's lack of knowledge of critical information pertaining to the supposed corrections.

Previously, American sought to completely exclude pilots from the Employee List of potentially aggrieved individuals who were found by the EEOC to have been discriminated against. This act constitutes further discrimination against an already discriminated against group of employees. This was pointed out to the Court. American comes now and is makes a pretense of having corrected the deficiency of excluding

pilots by a mere change in semantics.

The Parties now seek to have the court approve an Amended Consent Decree that still excludes pilots. The Amended Consent Decree, while removing the explicit language from the original Consent Decree (at ¶ 22.(c)) excluding pilots of American and Envoy from the Employee List, again seeks to exclude most, if not all, potentially aggrieved American pilots and possibly Envoy pilots by adding the underlined language in ¶22.b.ii. which excludes “those individuals reviewed by the Medical Review Board (MRB), exclusively for purposes of obtaining disability benefits” [ECF No. 10].

This play on words attempts to lead the court into believing that the Parties have now included the pilots. This is misleading for two reasons.

- (A) It is still unlawful to discriminate against an entire group of employees (“those individuals reviewed by the Medical Review Board”); it is still unlawful to discriminate against those with a disability and/or a history of disability, and this is exactly what the Parties are requesting the Court allow them to do.
- (B) American presumes that the Court does not know that the revised language in the Amended Consent Decree defines the same group of pilot employees discriminatorily excluded in the original Consent Decree.

American’s new criteria of excluding only “those individuals reviewed by the Medical Review Board (MRB), exclusively for purposes of obtaining disability benefits” [ECF No. 10] applies to every pilot on Long Term Disability leave who was discriminated against by wrongful termination in violation of both the American’s with Disabilities Act and the Collective Bargaining Agreement, and/or who were either not offered, or were denied, a Reasonable Accommodation and/or reassignment. Although not appearing personally before the Review Board, every such pilot was reviewed. Thus, the Amended Consent Decree potentially excludes every such pilot. This blanket exclusion of an entire group of employees should not be permitted.

**(2) American should not be allowed to benefit from willfully and improperly setting the stage for minimal opposition.**

American declares to the court that three pilots have objected, the unspoken implication being that “only three” pilots have objected. The obvious goal is for the court to believe that there is only minimal opposition from the pilot group to the both the Consent Decree and the Amended Consent Decree.

This outcome was crafted, designed and executed by American specifically to ensure minimal opposition. In reality they were hoping for no opposition. American failed to

notify the affected pilot employees of the proceedings and of their right to object. Obviously, if the affected employees are not aware of the proceedings, they will not object.

The three pilots who have objected learned of the proceedings only through an EEOC press release about the settlement agreement, and this at the eleventh hour providing little opportunity for opposition.

Comes now American before this Court attempting to benefit from the advantage gained from their willful failure to notify those who would or might object.

It would be a great miscarriage of justice, and a dishonor to the Court, to allow American to benefit from their duplicitous conduct, or to gain advantage therefrom.

**(3) American should not be allowed to pay EEOC fines, penalties, or settlement amounts from the Disputed Claims reserve.**

Allowing payment of the EEOC settlement amounts from the Disputed Claims Reserve (“DCR”) would allow an inappropriate disbursement from the Disputed Claims Reserves. The DCR exists for the settlement of debts of the Debtors from legitimate business dealings. The Debtors should not be allowed to use the DCR to pay penalties, fines or settlement amounts owed due to widespread, systematic, and willful violations of the ADA and Title VII of the Civil Rights Act of 1964, as amended, neither of which are the result of legitimate business dealings. The granting of use of the DCR to pay penalties, fines or settlement amounts will result in a reduction in the funds available for the settlement of legitimate debts from business dealings. Ultimately this will result in incremental reductions in payment amounts to creditors who have also suffered harm and loss at the hands of the Debtors.

Further, the DCR is designated for the settlement of pre-petition disputed claims. The time period of American’s discriminatory conduct extends well beyond the petition date.

**(4) American should not be granted impunity from EEOC prosecution for the period between the end of the EEOC investigation period (August 2015) to the effective date.**

The Amended Consent Decree provides that American is immune from additional EEOC prosecution for violations for the period from the end of the investigation period to the Effective Date – which has not yet occurred. It is known that violations at American are continuing to the present day.

Thus, this immunity constitutes yet another potential injustice against employees in

favor of American. The EEOC's mandate is to protect employees from discrimination---always, not just most of the time or sometimes.

It is incomprehensible that (1) the EEOC would willingly agree to turn a blind eye to further discrimination for such an extended period of time. This provision gives American, who has already demonstrated its willingness to discriminate against employees broadly and systemically, to discriminate further for several years, with impunity. It basically constitutes a reward for the current inadequate settlement. The 9.8 million settlement is but a slap on the hand given the magnitude and duration of the violations committed by American. Further, given that American seeks to pay the settlement from the disputed claims reserve, rather than from corporate accounts, this constitutes a free pass for American.

Ultimately, the employees are being sold out by the EEOC in direct violation of its mandate.

The Court is asked not to endorse and allow this proposed injustice to become reality.

**(5) The EEOC should be severely sanctioned for abandoning its mandate.**

It is indisputable that the EEOC should be sanctioned for the blatant abandonment of its statutorily mandated responsibility to protect all employees from discrimination in accordance with Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.

In the case at bar, the EEOC willfully disregards its mandated obligations to employees in two major ways. (1) The exclusion from protection and settlement of an entire group of employees who were previously identified by the EEOC as having suffered discrimination by American; and (2) consenting to impunity for American for any discriminatory acts for an extended period of several years, essentially giving American carte blanche for continuing discriminatory conduct.

Human behavior is not random. The question arises: Who at the EEOC, received what from American, to induce consent to such egregious terms that violate the very mandate of the EEOC at the expense of those the EEOC is mandated to protect and for the benefit of the offender?

It is recognized that sanctioning the EEOC is not the purview of this Court. However, it is in this Court's power to prevent the gross miscarriage of justice proposed by the Party's Amended Consent Decree. Because the Parties successfully misled the Arizona court (in the original Consent Decree) about the exclusion of pilots, the Arizona District Court failed in its duty to uphold justice and require the EEOC to uphold its mandate to protect all employees from discrimination, including pilots.

The Amended Consent Decree contains almost the identical exclusion of pilots, worded differently. The Court now has another opportunity to prevent the miscarriage of justice which occurred with the granting of the original Consent Decree.

Formal objections to the Party's Amended Consent Decree have also been filed. It is humbly and respectfully requested that this Court, deny the Joint Motion for Entry of Amended Consent Decree.

Thank you for your consideration.

Sincerely,

  
Andrea Twitchell