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IN THE UNITED STATES DEPARTMENT OF LABOR

IN THE MATTER OF

LAWRENCE MEADOWS,

 Complainant,

 vs.

AMERICAN AIRLINES, INC.,

 Respondent.

**COMPLAINT FOR VIOLATION OF
WHISTLEBLOWER PROTECTION
UNDER THE SARBANES-OXLEY ACT
(18 U.S.C. § 1514A, *et seq.*)**

Case No. 2013-SOX-16
Judge Lee J. Romero, Jr.

Complainant Lawrence Meadows (“Meadows”), through counsel, complaints of respondent American Airlines, Inc. (“American”), and as claims for relief alleges as follows:

INTRODUCTION

1. This is an individual action brought by Meadows against his former employer, American, for violation of The Sarbanes-Oxley Act of 2002, known as the Corporate and Criminal Fraud Accountability Act, P.L. 107-204 at 18 U.S.C. § 1414A, *et seq.*, (“SOX”), and

the regulations promulgated thereunder at 29 C.R.R. Part 1980, which are employee protective provisions.

2. Meadows is a disabled pilot who was terminated by American in retaliation for reporting to company management actual and suspected fraud involving American's improper termination of pilot disability benefits funded by American's pension plans, as well as the gross underfunding of American's pension plans for disabled pilots.

BACKGROUND FACTS

3. Meadows was hired by American as a pilot on October 3, 1991.

4. After hiring Meadows, American assigned him to the American Pilot System Seniority List (the "List"), he became a participant in the Pilot Retirement Benefit Program (the "Program") sponsored by American, and he began accruing Credited Service under the Program.

5. Over eleven years later, in April of 2003, Meadows became unable to work due to sudden and progressive [REDACTED]. Thus, Meadows began using his accrued sick leave pay.

6. Meadows sought [REDACTED] treatment in August of 2003 which required monthly [REDACTED]

7. In or about June of 2004, having exhausted his accrued sick leave, Meadows applied for long term disability benefits under the Program.

8. American approved Meadows' application with a commencement date of May 17, 2004, on the basis that Meadows was unable to perform his duties as a cockpit crew member.

9. The Program defines a disability as “an illness or injury verified through a qualified medical authority that prevents a pilot from continuing to work as a pilot for the Company.”

10. American relied upon its Corporate Medical Director, Dr. Thomas Bettes (Dr. Bettes”), to verify Meadow’s disability status.

11. Dr. Bettes diagnosed Meadows with [REDACTED] [REDACTED]
[REDACTED]

12. Under the Program, Meadows was entitled to receive monthly disability benefits until such time that he was able to obtain Federal Aviation Administration (“FAA”) medical re-certification.

13. From May 17, 2004, based upon Meadows’ previous five years average yearly earnings of \$136,400.00, American began paying Meadows disability benefits in the amount of \$6,000.00 per month.

14. Additionally, as part of Dr. Bettes’ verification of Meadows’ disability application, American also approved Meadows to retain all non-revenue travel benefits.

15. During the next three and a half years, Meadows satisfied the Program requirements and continuously received monthly disability benefits including continuous medical care and treatment for his disability.

16. Throughout that period of time, in accordance with the Program requirements, Meadows’ [REDACTED] care providers regularly provided American’s medical department with updates regarding Meadows’ condition.

17. From May 17, 2004 through December 2007, Meadows made two unsuccessful attempts to [REDACTED] for the purpose of obtaining FAA medical recertification to perform pilot duties for American.

18. During that same period of time, from 2004 through 2007, American's defined benefit pension plans, including the Program, were grossly under-funded.

19. American's annual SEC 10K Report shows substantial pension funding obligations ranging from \$2.1 billion to \$2.5 billion.

20. This report also acknowledged American's understanding that due to substantial pension funding obligations, it would need access to additional funding and that the inability of American to obtain additional funding would have a material negative impact on the ability of American to sustain its operations over the long-term.

21. As early as December 2007, American's medical department's internal records deemed Meadows to have a diagnosis code of [REDACTED] as defined by [REDACTED]

[REDACTED] This diagnosis was significantly worse and more disabling than Meadows' original diagnosis [REDACTED]

23. On December 26, 2007, notwithstanding American's knowledge that Mr. Meadows' condition was worsening, Dr. Bettes terminated Meadows' disability benefits, without requesting any additional documentation or testing to verify Meadows' disability claim.

24. Prior to terminating Meadows' disability benefits, Dr. Bettes failed to perform a Fitness for Duty Physical Evaluation of Meadows as required by the Collective Bargaining

Agreement (“CBA”) between American and Meadows’ pilots’ union, the Allied Pilots Association (“APA”).

25. Unbeknownst to Meadows, from the date that he was first placed on disability status by American, his situation was tracked under a cost savings program administered by American’s Chief Nurse and overseen by Dr. Bettes.

26. The cost savings program, titled Pilot Disability Nurse Case Management Cost Savings (“Cost Savings Program”), tracked disabled pilots on spreadsheets and detailed reports generated by a senior budget analyst in American’s human resources department.

27. The Cost Savings Program was designed and implemented as a result of American’s severe deficiencies in its pension funding obligations as noted in its SEC 10K Report.

28. As part of the Cost Savings Program, American’s medical department also created monthly tables summarizing all Pilot Long Term Disability Cases (“PLTD Cases”) in which the status of all PLTD Cases was summarized and individual PLTD Cases were labeled and coded based on the duration and severity of the cost of American's obligation to pay benefits.

29. American tracked 84 disabled pilots on a spreadsheet titled “PBAC Case Disposition” and Meadows was one of just five pilots who was assigned a “Cost Savings.”

30. Meadows had no knowledge of the Cost Savings Program until this information was disclosed pursuant to his discovery requests in ERISA litigation, which was filed over three years after Meadows’ disability benefits were terminated.

31. On December 27, 2007, the day after he terminated Meadows' disability benefits, Dr. Bettes unilaterally changed Meadows' status to Unpaid Sick Leave of Absence ("USLOA").

32. Dr. Bettes took this action despite the fact that Meadows never called in sick and had no illness other than his disability.

33. On January 26, 2008, Meadows inadvertently learned that his disability benefits had been terminated when he received a letter from American's human resources department demanding a refund of Meadows' December 2007 disability payment.

34. Immediately upon learning of American's termination of his disability benefits, Meadows filed an administrative appeal to American's Pension Benefits Administration Committee (the "Committee") in accordance with the Program's administrative claim appeals procedures.

35. In his appeal, Meadows complained that American did not properly follow protocol as contained in Supplement F of the CBA which mandates that the verification of a disability shall be established by the Corporate Medical Director through claim procedures set up by American and the APA.

█ On March 5, 2008, to support his administrative appeal of the improper termination of his disability benefits, Meadows underwent a █

█

█ who formally diagnosed Meadows as suffering from █

█

37. This [REDACTED] was further supported by the APA's FAA aeromedical expert, Dr. Keith Martin, of Aviation Medical Advisory Services, who opined that Meadows was "prohibited from exercising the privileges of an Airman's Medical Certificate under the provisions of Part 67 of the Federal Air Regulations (FAR) for his current diagnosis and treatment." Based on Meadows' medical status and medical history, Dr. Martin indicated that he expected Meadows' disqualification to be long term.

38. Those diagnoses were provided to American's Pension Benefits Administration Committee (the "Committee") as part of Meadows' administrative appeal.

39. Supplement F of the CBA requires that "[a]ny disputes as to clinical validity of claim or as to the continuation of disability defects, once commenced shall be referred to a mutually agreed to clinical source, whose findings regarding the nature and extent of the condition shall be final and binding upon the parties."

40. Acting through its Manager of Benefits Compliance, Deborah Jameson, American researched and selected Western Medical Evaluators ("WME"), which was a non-clinical administrative third party medical billing service, to determine the clinical validity of Meadows' disability claim based only upon a "peer review" or forensic medical chart review and evaluation of Meadows' condition rather than an actual physical examination and testing.

41. On May 27, 2008, Dr. Mork S Moeller of WME performed a peer review based on Meadows' medical records on or after December 26, 2007.

42. In his review, Dr. Moeller recorded the fact that Meadows had been in [REDACTED] almost continuously since 2003, and that discontinuation of those medications has led to “relapses.”

43. Further, Dr. Moeller noted that [REDACTED] prevented Meadows from holding an FAA Airman’s Medical Certificate and therefore disabled him from flying.

[REDACTED] Irrespective of those facts and contrary to the findings of Nurse Ross, Dr. Culbertson, and Dr. Martin, in his peer review Dr. Moeller states that due to insufficient testing and evaluations of Meadows, the evidence does not reflect objective findings [REDACTED]

45. Dr. Karen M. Grant, WME’s Senior Aeromedical Examiner, concurred with Dr. Moeller’s peer review.

46. Based upon WME’s peer review, on June 10, 2008, the Committee issued final denial of Meadows disability benefits.

47. Over three years later, Meadows discovered that WME was not a clinical source, but was instead a small workers-compensation claims processor that worked for companies and insurers.

48. WME promised to pay its sub-contracted doctors 120% of the normal exam fee to return claimants to full functional capacity, and remediate the claimants’ disability claims.

49. WME’s history during the period of Meadows’ peer review was riddled with fraud.

50. The medical license of WME's principal and Corporate Medical Director, Dr. Howard Douglas, had been revoked by the Texas Medical Board for "dishonorable, and unprofessional conduct likely to defraud or deceive public in the future."

51. After two years, and a \$10,000.00 sanction Dr. Howard's license was reinstated, but two times thereafter the Texas State Medical Board suspended WME's Corporate Medical Director's license for medical record violations.

52. In July of 2008, WME was sued by a former client, Capital Funding, for "perpetrating two separate and distinct fraudulent schemes," which consisted of acts of medical claim fraud, and billing fraud committed from January 2007 through July 2008, during the precise time-frame the Committee used WME to review Meadows' disability claim.

53. Significantly, Capital Funding accused WME of engaging "in two separate and distinct fraudulent schemes involving false claims forms, and altered claim forms."

54. In that case, former WME employees testified that WME paid doctors 120% of their normal exam fee to wrongfully deny claimants benefits, that WME's principal directed employees to perform illegal acts, and that WME's principal would not wait on doctors to complete evaluation reports, and instead would create and sign the evaluation reports herself.

55. In response to discovery requests by Meadows in the ERISA litigation to WME, Dr. Moeller and Dr. Grant were unable to produce any medical records that they relied upon in conducting their peer review of Meadows' case.

56. During June 2008, Meadows was one of the last five pilots who had their disability claims reviewed by WME, all of which were denied by the Committee on the basis of WME's peer reviews.

57. In August 2008, WME was permanently shut down by the Texas State Insurance Board and WME's principals were charged with felony workers compensation claim and billing fraud.

58. These same five pilots were listed in the Cost Savings Program and each pilot had a specific "cost savings" amount listed on the Pension Benefits Administration Committee Case Disposition Spreadsheet.

59. Eventually, in the Fall of 2009, APA hired national ERISA counsel who initially targeted American's flawed third-party independent medical review process as being inadequate and a not being a "clinical source" as required by Supplement F of the CBA.

60. Ultimately the APA was successful in ensuring its pilots would receive a proper clinical review by the Mayo Clinic of Rochester, Minnesota.

61. Meadows was never offered the opportunity for a review by the Mayo Clinic.

62. On June 19, 2008, Dr. Bettes sent an email to Meadows' supervisor Miami Base Chief Pilot, Captain Robert Raleigh, stating that "[i]n Meadows' case, he probably does not have a current FAA medical certificate, and it would probably take some months before he could obtain one even if he were so motivated. Probably the best suggestion would be to place him on unpaid sick or a few months (3-6), restrict his non-rev travel (although there is no strict medical

reason for doing so), and consider some sort of disciplinary action if he has not made progress to that end.”

63. On August 8, 2008, despite his knowledge that Meadows was unable to hold FAA medical certification and was in fact on unpaid sick leave status as approved by Dr. Bettes, Captain Raleigh sent Meadows a certified letter stating “you are on an unapproved leave of absence from your position as pilot with American beginning on August 6, 2008. You cannot remain on an unapproved leave, so it is imperative that you make arrangements to return to work.”

64. On September 8, 2008, in response to Captain Raleigh’s letter, Meadows underwent an FAA Airman’s First Class Flight Physical in an attempt to become medically re-certified to perform his duties as a pilot.

65. However, because Meadows [REDACTED] the examining doctor could not approve Meadows for an FAA Airman’s First Class Medical certificate and instead deferred Meadows’ application to FAA Headquarters for further review.

66. On September 28, 2008, due to Meadows’ [REDACTED] [REDACTED], FAA Headquarter sent a certified letter denying Meadows an FAA Airman’s Medical Certificate, which is required to perform the duties of a pilot.

67. Meadows provided the FAA’s denial letter to his Chief Pilot and supervisor at American as notice of his condition.

68. Notwithstanding that notice, American did not reinstate Meadows' disability benefits. Nor did it terminate Mr. Meadows' employment. Meadows was left on unpaid sick leave status.

69. On July 1, 2010, Meadows was forced to retain ERISA counsel and filed an ERISA Complaint against American in the U.S. District Court for the Southern District of Florida.

70. During discovery in that case, Meadows learned for the first time of American's Cost Savings Program.

71. Further, Meadows learned that American required its medical directors to make every effort to reduce the cost for pilots in disabled status, while maintaining policies that required medical directors to give objective opinions as to any medical disability of American's pilots.

72. Meadows obtained deposition testimony from key individuals in American's medical department and human resources department, including Nurse Jeannie Spoon and human resources senior budgeting analyst Susan Roberson, who admitted that the Cost Savings Program was administered by the American medical department in conjunction with American's human resources department in an effort to report on and determine each disabled pilot who was targeted for premature benefit termination based solely on the actual cost of said benefits, which were tabulated in dollars as "cost savings" to American.

73. Nurse Spoon tracked the cost savings data on spreadsheets she compiled.

74. Documentation from Nurse Spoon to Roberson indicates that the spreadsheets were used to calculate cost savings using two dates—the benefit termination date and the estimated return to work date of the disabled American pilots.

75. The calculation located in the column titled “Estimated Nurse Case Management Savings” adds up monthly benefits that would have been paid by American for that time period had the pilot’s claim not been terminated.

76. These estimated cost savings resulted in a book reduction of American’s disability costs which was reported by American on its pension plan funding obligation, and which were then used by American to artificially inflate and overstate American’s corporate earnings.

**PROTECTED ACTIVITY IN WHICH MEADOWS’ ENGAGED AND
RESULTING ADVERSE EMPLOYMENT ACTION TAKEN BY AMERICAN**

77. On April 22, 2011, Mr. Meadows filed a Rule 59 Motion for Altered Judgment in the his ERISA case citing newly discovered evidence of actual financial conflicts of interest based on the deposition testimony of American employees regarding their involvement in Cost Savings Program and American’s use of a fraudulent third-party Independent Medical Reviewer (WME) to facilitate the program.

78. Counsel for American received that pleading and became aware of the claims contained therein.

79. On April 25, 2011, American filed a motion in an attempt to force Meadows to pay \$1,182.80 in legal costs, and a second motion on May 23, 2011 for \$52,680.20 in attorneys’ fees allegedly incurred by American as a result of the ERISA discovery conducted by Meadows in connection with which Meadows discovered the Cost Savings Program.

80. On June 15, 2011, Meadows sent a certified letter to Dr. Bettes in which he demanded a Fitness for Duty Physical Examination and Return to Work Clearance in accordance with Section 20 of the CBA.

81. Meadows also requested that his status be changed from the improperly assigned status of Unpaid Sick Leave of Absence, as approved by Dr. Bettes, to the appropriate status of Paid Withhold (Full Pay) awaiting training.

82. On July 5, 2011, as part of a mediation related to an appeal to the United States Court of Appeals for the Eleventh Circuit in the ERISA litigation, Meadows counsel filed a twelve-page Mediation Statement in which he discussed in detail American's grossly underfunded pension plans and how the cost savings program was a fraudulent scheme by American to deceive its investors.

83. In particular, Meadows' counsel wrote that the American medical department callously made its pilot disability benefits termination decisions based on the cost savings calculated using net present and future valuation, a highly structured, secretive and elaborate cost tracking system.

84. Meadows's counsel further described the presence of fraud, procedural irregularities, and unprofessional conduct of corrupt claims reviewer WME which was knowingly relied upon by American to consistently deny pilot's disability benefits without a clinical review of the pilots' records.

85. This mediation brief was provided to counsel for American.

86. Next on July 12, 2011, Meadows' counsel sent an e-mail to American's counsel Grace Mora, with respect to the upcoming 11th Circuit Mediation in Miami, Florida, wherein he asserted that, "American Airlines decided to attack the pilots on disability, and hire a suspicious company to assist with American's plot to deny as many benefits as possible to help with the [disability] plan being grossly underfunded." That email went on to say "I'm confident that once you understand the claims we are preparing to bring outside of this limited ERISA appeal, you will understand why it is necessary for your client to attend in person."

87. Then on July 18, 2011, during the mediation, Meadows' counsel informed American's counsel that Meadows intended to bring additional causes of action and complaints against American including, but not limited to, fraud, violations of securities laws related to improper earning as a result of American's improper handling of the Program as it pertains to disability claims.

88. Shortly thereafter, Meadows received a certified letter from Scott Hansen, Director of Flight Administration at American, dated August 5, 2011, threatening to terminate Meadows on October 7, 2011, unless he either: (a) obtained FAA Medical Certification and returned to duty as a pilot; or (b) permanently resigned his pilot seniority number and accepted a reasonable accommodation outside of his pilot collective bargaining unit.

89. Hansen did not explain that this permanent loss of Meadows' pilot seniority number would also terminate his participation in the Program and, more importantly, would prevent Meadows from ever returning to his original job as a pilot.

90. Hansen provided this letter with full knowledge of Dr. Bettes' assessment that Meadows would not ever be able to obtain his FAA Medical Certification.

91. In his letter, Hansen also stated that Meadows had exceeded American's five-year maximum sick leave policy and, therefore, that Meadows would be administratively terminated from American and his employment with American would end.

92. Hansen did not acknowledge that Meadows had already been on a disability and sick leave for a combined eight and a half years, well beyond the five-year mark of American's maximum sick leave policy, which could have ended several years before in May 2008.

93. In addition to oral conversations with Hansen, on August 19, 2011, Meadows sent a letter to Hansen and to Captain Raleigh informing them that American had acted improperly with respect to the denial of his disability benefits and that American violated SOX by placing Meadows in an improper employment status and by threatening to terminate Meadows's employment.

94. Meadows again requested reasonable accommodations to include a non-flying pilot position within his bargaining unit, such as a simulator X-Type Check Airman, so that he could retain his seniority number and benefits under the Program.

95. American's Reasonable Accommodation Policy requires a pilot to obtain a First Class Medical Clearance Certificate from the FAA. If he is unable to do so, the pilot may request a reasonable accommodation that can include work in another craft or class. Additionally, he can return to work in a suitable different position. However, under the policy, when the term of a sick leave of absence expires, and a pilot does not receive FAA clearance

101. Based on the Mayo Clinic Report, Meadows submitted a new disability claim package for his continued disability, which included 302 pages of supporting documents relating to the new found evidence of the Cost Savings Program scheme and the flawed WME peer review of his former disability claim.

102. On September 30, 2011, Meadows provided his new disability claim and a detailed cover letter to Hansen and to Meadows' ultimate superior, Chief Pilot Captain John Hale, American's Vice President of Flight, in which Meadows stated that he is a protected employee under the whistleblower provisions of SOX and that any action to terminate his employment or revoke his seniority number would be deemed retaliation.

103. On or about October 5, 2011, Meadows' appeal before the Eleventh Circuit Court of Appeals was scheduled for oral argument on March 19, 2012.

104. On October 7, 2011, Hansen sent Meadows an email informing him that he would not be terminated on that date as originally threatened and that American had extended his unpaid sick leave of absence until October 21, 2011.

105. After Meadows' filed his SOX complaint, and despite the fact that Meadows had made a request for reasonable accommodations as requested by Hansen, American terminated Meadows' employment on October 24, 2011, consistent with its earlier threat to do so.

FIRST CLAIM FOR RELIEF

(Violation of Sarbanes-Oxley Act—18 U.S.C. § 1514A)

106. Meadows incorporates the preceding paragraphs of this Complaint.

107. Meadows is an employee, and American is an employer, within the meaning of SOX, Public Law 107-204; 18 U.S.C. § 1514A. *See* 29 C.F.R. 1980.101 (2011).

108. Section 806 of SOX provides:

No company . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee . . . because of any lawful act done by the employee—

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of . . . [18 U.S.C. § 1348 (securities fraud)], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders . . . when the information or assistance is provided to . . . a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of . . . [18 U.S.C. § 1348 (securities fraud)], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

18 U.S.C. § 1514A (2009).

109. To establish a prima facie case of retaliation under Section 806 of SOX, a whistleblower must show by a preponderance of the evidence that (1) he engaged in protected activity, (2) his employer knew about his protected activity, (3) he suffered an unfavorable personnel action, and (4) the circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action. 29 C.F.R. § 1980.104(b)(1) (2011); *Sylvester v. Parexel Int'l LLC*, ARB No. 07-123, ALJ Nos. 2007-SOX-039, 2007-SOX-042, slip op. at 9-10 (ARB May 25, 2011).

A. Meadows Engaged in Protected Activity.

110. From 2004 through 2006, pursuant to its annual SEC 10K Report, American understood that due to substantial pension funding obligations, it would need access to additional

funding and that the inability of American to obtain additional funding would have a material negative impact on the ability of American to sustain its operations over the long-term.

111. In an effort to reduce its pension funding obligations, during that same period of time American implemented a secret Cost Savings Program which fraudulently targeted American's pilots on disability status, including Meadows.

112. Through his ERISA litigation, Meadows first discovered information leading to his reasonable belief that through its Cost Savings Program American was fraudulently denying disabled pilots their disability pension plan benefits based upon a cost savings determination rather than basing its disability determination on whether the pilot was actually disabled.

113. That information reasonably led Mr. Meadows to believe that American was fraudulently representing to its shareholders that American's estimation in dollars of the cost savings of future anticipated disability benefit terminations was an actual cost savings as to American's pension plan financial obligations, even though those disabled pilots, including Meadows, had not yet been terminated by American.

114. As a result, American was artificially inflating and overstating its corporate earnings to its shareholders.

115. In furtherance of those fraudulent actions, Meadows discovered that American required its medical directors to make every effort to reduce the cost for pilots in disabled status and deny claims, while maintaining policies that required medical directors to give objective opinions as to any medical disability of American's pilots.

116. Moreover, Meadows discovered that when a targeted disabled pilot appealed the decision of American's medical director denying a disability claim, American hired WME, a company rife with fraud and notorious for overpaying its doctors to deny disability claims, to conduct superficial peer reviews of disability claims all in an effort to support its costs savings program and ensure the denial of American's pilot's disability claims on appeal to the Committee.

117. In that way, American attempted to validate its misrepresentation regarding pension plan cost savings to its shareholders thereby committing SEC violations as well as committing corporate fraud by wrongfully denying pilots their disability benefits. *See Sylvester*, ARB No. 07-123, slip op. at 19-21 (in addition to a complaint of shareholder or investor fraud, a complaint of corporate fraud may also constitute SOX protected activity).

118. Meadows engaged in protected activity by disclosing those perceived violations to American as follows (*See id.* at 16 (holding that a complainant is not required to prove that their disclosure implicated an actual violation of law—only that the whistleblower reasonably believed that a violation of law occurred or was about to occur.); *see e.g. Melendez v. Exxon Chems.*, ARB No. 96-051, ALJ No. 1993-ERA-006, slip op. at 21 (ARB July 14, 2000) (“It is also well established that the protection afforded whistleblowers who raise concerns regarding statutory violations is contingent on meeting the aforementioned ‘reasonable belief’ standard rather than proving that actual violations have occurred.”); *Crosby v. Hughes Aircraft Co.*, 1985-TSC-002, slip op. at 14 (Sec’y Aug. 17, 1993) (required is reasonable belief that the employer “was violating or about to violate the environmental acts”); *accord Yellow Freight Sys., Inc. v.*

Martin, 954 F.2d 353, 357 (6th Cir. 1992) (protection under Surface Transportation Assistance Act not dependent upon whether complainant proves a safety violation):

a. Through a Rule 59 Motion for Altered Judgment in his ERISA case provided to American's legal counsel on April 22, 2011, Meadows placed American on notice of Cost Savings Program and of American's use of a fraudulent third-party Independent Medical Reviewer (WME) to facilitate the Cost Savings Program;

b. On July 5, 2011, Meadows provided American's legal counsel with a Mediation Statement as part of a mediation related to an appeal to the United States Court of Appeals for the Eleventh Circuit in the ERISA litigation, in which he discussed in detail American's grossly underfunded pension plans and how the cost savings program was a fraudulent scheme by American to deceive its investors;

c. On July 18, 2011, during the mediation, Meadows' counsel informed American's counsel that Meadows intended to bring additional causes of action and complaints against American including, but not limited to, fraud, violations of securities laws related to improper earnings as a result of American's improper handling of the Program as it pertains to disability claims;

d. On August 19, 2011, Meadows sent a certified letter to his supervisor, Captain Raleigh and to Hansen, informing them that American had acted improperly with respect to the denial of his disability benefits and that American violated SOX by placing Meadows in an improper employment status and by threatening to terminate Meadows's employment;

e. On August 31, 2011, Meadows sent a certified letter to Hansen and Captain Raleigh again asserting violations by American pertaining to the Cost Savings Program and indicating Meadows' intention of reporting those violations to the Department of Labor; and

f. On September 12, 2011, Meadows filed a SOX "Whistleblower" Complaint with OSHA's Atlanta, Georgia office, alleging that American artificially inflated its earnings created by the Cost Savings Program.

119. Meadows had a reasonable belief that he was disclosing a violation of relevant law. *See Sylvester*, ARB No. 07-123, slip op. at 19 (holding that the "critical focus" when determining whether an employee engaged in protected activity under Section 806 is "whether the employee reported conduct that he or she *reasonably believes* constituted a violation of" section 806, "not whether that information 'definitively and specifically' described" such a violation); *see e.g. Melendez*, ARB No. 96-051, slip op. at 28; *see also, Brown v. Wilson Trucking Corp.*, ARB No. 96-164, ALJ No. 1994-STA-054, slip op. at 2 (ARB Oct. 25, 1996)(citing *Yellow Freight Sys., Inc. v. Reich*, 38 F.3d 76, 82 (2d Cir. 1994)).

120. Meadows actually believed that American's implementation and use of its secret Cost Savings Program was being applied by American to fraudulently deprive disabled pilots of their disability benefits, and to fraudulently inflate and overstate American's corporate earnings to its shareholders, which fraud was perpetrated by American in an effort to overcome its known and grievous pension plan payment obligations. *See Sylvester*, ARB No. 07-123, slip op. at 14 ("To satisfy the subjective component of the "reasonable belief" test, the employee must actually have believed that the conduct he complained of constituted a violation of relevant law."); *Harp*

v. Charter Commc'ns, 558 F.3d 722, 723 (7th Cir. 2009); *see e.g. Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 1002 (9th Cir. 2009) (“[T]he legislative history of Sarbanes-Oxley makes clear that its protections were ‘intended to include all good faith and reasonable reporting of fraud, and there should be no presumption that reporting is otherwise.’”) (Citations omitted); *Day v. Staples, Inc.*, 555 F.3d 42, 54 n.10 (1st Cir. 2009) (“Subjective reasonableness requires that the employee ‘actually believed the conduct complained of constituted a violation of pertinent law.’”) (quoting *Welch v. Chao*, 536 F.3d 269, 277 n.4 (4th Cir. 2008)).

121. Because Meadows’ belief that American was committing fraud was reasonable under the circumstances, even if Meadows’ belief was mistaken, Meadow’s reporting of American’s secret Cost Savings Program nonetheless constitutes a protected activity. *See Sylvester*, ARB No. 07-123, slip op. at 16; *Halloum v. Intel Corp.*, ARB No. 04-068, ALJ No. 2003-SOX-007, slip op. at 6 (ARB Jan. 31, 2006).

122. Meadows obtained his education as a pilot from Embry-Riddle Aeronautical University and through the U.S. Air Force. His Seventeen years of training and experience in flight was gained both through the military and his work for American. *See Sylvester*, ARB No. 07-123, slip op. at 15 (The second element of the “reasonable belief” standard, the objective component, “is evaluated based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.”) (citing *Harp*, 558 F.3d at 723).

123. Meadows is not a lawyer, legal expert, medical doctor, nurse or budget analyst. *See c.f. Parexel Int'l Corp. v. Feliciano*, 2008 WL 5467609 (E.D. Pa. 2008), (employee’s

reliance upon the employer's representations were reasonable in light of the complainant's limited education, noting that had the complainant been, for example, a legal expert, a higher standard might be appropriate); *see also Sequeira v. KB Home*, 2009 WL 6567043, at 10 (S.D. TX. 2009) ("The statute does not require, as Defendants suggest, that the whistleblower have a specific expertise.")

124. The facts pertaining to American's secret Cost Savings Program establish the elements of fraud, as follows:

a. American misrepresented to its pilots, including Meadows, that consistent with the requirements of the CBA, its medical director would objectively evaluate any pilot claims of disability;

b. American misrepresented to its pilots, including Meadows, that upon an appeal of the American's medical director's disability determination, the Committee would obtain an independent validation of the medical director's disability determination through examination and testing of the pilot by a legitimate clinical source;

c. American's statements were materially false, and in reality American made determinations of pilot disability based upon the data it formulated under American's secret Cost Savings Program, which was aligned with American's attempts to reduce its significant pension plan obligations;

d. American made its misrepresentations knowing that they were false, or with reckless disregard of their truth or falsity, and with the intent that American's pilots, including Meadows, would rely upon those misrepresentations;

- e. American's pilots, including Meadows, relied upon American's misrepresentations in seeking disability benefits;
- f. Additionally, through the use of projected estimations pertaining to American's Cost Savings Program, American misrepresented to its shareholders that various disabled pilots' benefits, including Meadows benefits, had been terminated;
- g. American's statements were materially false, and in reality those disability benefits had not yet been terminated;
- h. American made its misrepresentations knowing that they were false, or with reckless disregard of their truth or falsity, and with the intent that American's shareholders would rely upon those misrepresentations as a sign of American's decreased pension obligations and its increased profitability; and
- i. American's shareholders relied upon American's misrepresentations through their sustained and renewed investments in American.

125. Although American's conduct related to its secret Cost Savings Program satisfies the elements of fraud, Meadows may need not prove the elements of fraud to establish that Meadows' report of American's fraud constituted a protected activity. *See Sylvester*, ARB No. 07-123, slip op. at 22 (“[A] complainant can engage in protected activity under Section 806 even if he or she fails to allege or prove materiality, scienter, reliance, economic loss, or loss causation.”). A showing of the potential to commit fraud is sufficient under the circumstances. *Id.* *See also Menendez v. Haliburton*, ARB Nos. 09-002, 09-003, ALJ No. 2007-SOX-005 slip op. at 13-14 (ARB Sep. 13, 2011) (whistleblowers are protected under SOX even when they are

mistaken about the nature of their complaints); *Passaic Valley Sewerage Comm'rs v. U.S. Dept. of Labor*, 992 F.2d 474, 479 (3rd Cir. 1993) (An employee's non-frivolous complaint does not have to withstand internal or external review to merit Section 806 protection because that standard would fail to protect employees who bring to light perceived misconduct.).

B. American was Aware of Meadows' Protected Activity.

126. SOX requires that Meadows provide his information pertaining the fraudulent Cost Savings Program to “a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct)[.]” *See* 18 U.S.C. § 1514A(1) (2009).

127. Alternatively, SOX requires Meadows to file or cause to be filed a proceeding filed (with any knowledge of American) relating to an alleged violation of securities fraud, or any provision of Federal law relating to fraud against shareholders. *See* 18 U.S.C. § 1514A(2) (2009).

128. As is indicated above, from April 22, 2011 through September 12, 2011, Meadows provided various notices to American of his information pertaining to its corporate and shareholder fraud.

129. Specifically, Meadows notified legal counsel for American in April 2011 and at mediation in July 2011. Legal counsel represented American and therefore qualifies as a person working for American that has both the legal knowledge and authority to investigate misconduct within American.

130. In August 2011 Meadows sent certified letters to his supervisor Captain Raleigh and to Hansen (the American supervisor who ultimately terminated Meadows) alerting them of Meadows' knowledge of the Cost Savings Program and of his intention to report that fraudulent scheme to the Department of Labor.

131. Both Hansen and Captain Raleigh qualified as a persons working for American who have both supervisory authority over Meadows, as well as a duty to investigate, discover or terminate American's Cost Savings Program misconduct.

132. Just prior to his termination in October 24, 2011, on September 12, 2011, Meadows filed a SOX "Whistleblower" Complaint with OSHA's Atlanta, Georgia office, alleging that American artificially inflated its earnings created by the Cost Savings Program.

133. That complaint detailed the information pertaining to fraud committed by American through its Costs Savings Program.

134. Meadows provided that complaint to American.

C. Meadows Suffered Unfavorable Personnel Action Under Circumstances that Were Sufficient to Raise the Inference that the Protected Activity was a Contributing Factor in the Unfavorable Action.

135. From May 17, 2004 until December 27, 2007, Meadows obtained disability benefits from American.

136. On December 27, 2007, Dr. Bettes unilaterally changed Meadows' status to Unpaid Sick Leave of Absence ("USLOA").

137. Section 11(D)(1) of the CBA provides:

When leaves are granted on account of sickness or injury, a pilot shall retain and continue to accrue his seniority irrespective of whether or not he is able to

maintain his required certificates or ratings, until he is able to return to duty or is found to be unfit for such duty. A leave of absence for sickness or injury shall not commence until after a pilot has exhausted accrued sick leave credits provided under Section 10 of this Agreement. Such leave of absence for sickness or injury may not exceed a total continuous period of three (3) years unless extended by mutual consent of the Company and the Association, in which case it may not exceed a total continuous period of five (5) years. Length of service for pay purposes shall accrue during leaves granted because of injury on duty, and during the first ninety (90) days of any leave granted for sickness or injury sustained off duty.

138. Meadows remained in USLOA status for eight and a half years, well over the maximum five years permitted by the CBA.

139. Although American was aware of that fact and could have acted to terminate Meadows in May 2008 (the time the CBA five-year period ended), American chose not to do so.

140. Additionally, despite the fact that Meadows remained a thorn in American's side by hotly contesting American's disability decisions and by filing a costly ERISA action, American did not threaten Meadows with termination or terminate him until just after he reported his information about the fraudulent Cost Savings Program to American in April 2011.

141. Shortly after April 22, 2011, when Meadows first raised the issue of the fraudulent Cost Savings Program, American filed motions in the ERISA case in an attempt to force Meadows to pay \$1,182.80 in legal costs and \$52,680.20 in attorneys' fees allegedly incurred by American as a result of the ERISA discovery conducted by Meadows in which he discovered the fraudulent Cost Savings Program.

142. Just over two weeks after the ERISA mediation on July 18, 2011, in which Meadows threatened to raise fraud claims based on the Cost Savings Program, Hansen sent

Meadows a letter dated August 5, 2011, threatening termination if Meadows did not obtain his FAA Medical Certification and return to work or seek a reasonable accommodation.

143. Hansen wrote that letter knowing that Meadows could not qualify for his FAA Medical Certification.

144. Meadows various subsequent requests for reasonable accommodations were ignored by Hansen and by Captain Raleigh.

145. On August 19, 2011, Meadows sent a letter to Hansen and to Captain Raleigh informing them that American had acted improperly with respect to the denial of his disability benefits and that American violated SOX by placing Meadows in an improper employment status and by threatening to terminate Meadows's employment.

146. Then on September 12, 2011, Meadows filed a SOX "Whistleblower" Complaint with OSHA.

147. Less than a month after filing his SOX Whistleblower Complaint Meadows was terminated by American on October 24, 2011.

REQUESTED RELIEF

Mr. Meadows seeks a judgment against American as follows:

1. Meadows seeks an assignment within American to another position in his bargaining unit with full wages commensurate with his seniority status. Such a position could include an X-Type Check Airman (simulator only), Management Chief Pilot, or Flight Ops Technical. Additionally, Meadows requests full reinstatement of his benefit package, including active duty medical/dental, Pilot Pension Contributions, Non-Revenue Travel Benefits, and Vacation and Sick Leave. Meadows seeks to have his accrual years of Credited Service (LOS) reinstated. For purposes of calculation of his pilot pension plan "A" fund annuity, Meadows is entitled to reinstatement of the 3.35 years of LOS that American revoked upon Meadows' termination, and the continued accrual of LOS he would have received through normal retirement age of 65 years old. In the event that Meadows is reinstated with American, Meadows seeks the following monetary damages:

a. Meadows seeks an award of back pay under Pre-Bankruptcy Contract (2003 AA-APA Pilot CBA), at 767I CA pay rates From November 4, 2011 through December 2, 2012, which is calculated at 13 months x (\$168.19 per hour x 75 hours per month) = \$153,985.25, plus back pay under the new Bankruptcy Contract (2012 Settlement Agreement) at 737D CA pay rates From December 2, 2012 through June 10, 2013, which is calculated at 6 months x (\$167.68 per hour x 83 hours per month) = \$83,504.64 Therefore, Meadows is seeking total back pay of \$153,985.25 plus \$83,504.64, which is equal to \$237,489.89;

b. Meadows seeks reimbursement of 19 months lost active duty medical/dental insurance at the COBRA rate of 758.49 per month for medical and \$41.90 per month for Dental, or a total of \$800.39 per month. Additionally, Meadows seeks to be reinstated to the active duty medical and dental plans through his normal retirement age. Therefore, Meadows should be reimbursed at the rate of \$800.39 per month multiplied by 19 months, which totals \$15,207.41;

c. As a result of the bankruptcy Pilot Pension "A" fund annuity plan amounts were frozen effective November 1, 2012. Pilots' frozen annuity amounts were based on their Final Average Earnings (FAE), and LOS accrued as of the freeze date. The "A" fund annual annuity formula is: $\text{annual annuity} = 0.0125(\text{LOS}-1 \times \text{FAE})$. Meadows' FAE was previously calculated by American to be \$135,053.00. Upon Meadows' termination American revoked 3.35 years of Meadows' LOS and capped his LOS at 17.65 years. Thus, Meadows' current "A" fund annuity calculation based on Americans unilateral reduction of Meadows' LOS to only 17.65 years is, $0.0125(17.65-1 \times 136,053) = \$28,316.03$ per year. However, Meadows' (LOS) Years of Credited Service effective November 1, 2012 on the plan freeze should be 21 years. Thus, after reinstatement of Meadows' revoked LOS, his annual "A" fund annuity calculation should be $0.0125(21-1 \times 136,053) = \$34,013.25$ per year upon normal retirement. Normal retirement age for a pilot is 65, and the life expectancy of a U.S. male is 78 years, so Meadows should expect to receive at least $78-65 = 13$ years of his "A" fund annuity payments during retirement. Therefore, Meadows is entitled to the annual "A" fund annuity pension difference of \$34,013.25 less \$28,316.03 which equals \$ 5,697.22 per year multiplied by 13 years or \$74,063.86; and

d. Meadows seeks reimbursement for his lifetime Non-Revenue travel benefits consisting of 24 one-way flight passes annually. Each pass has a retail value of \$500. The total annual value of travel benefits is \$12,000.00 per year. From November 4, 2011 (the date that American shows that Meadows was terminated) through June 10, 2013 is one year and 187 days or 1.512 years of travel benefits. Therefore, Meadows is entitled back travel benefits of 1.521 years multiplied by \$12,000.00 per month, which equals \$18,252.00.

2. In the event that Meadows is not reinstated to a suitable position at American, Meadows seeks the following monetary damages:

a. Based upon the calculation of back pay identified in Section 1(a) above, Meadows seeks back pay from the date of Meadows' termination of November 4, 2011, through the date of the ALJ hearing of June 10, 2013, in the total amount of \$367,013.16;

b. Under the 2012 Pilot Contract, and based on Meadows current seniority, he is projected to hold at a minimum the position of 767I CA at pay rates of \$180.76 per hour multiplied by 83 hours per month multiplied by 12 months, which equals \$158,345.76 per year. Normal pilot retirement age is 65 years. Effective June 10, 2013, Meadows would have 14 years and 277 days or 14.759 years of active service remaining. Therefore, Meadows is entitled to 14.759 years multiplied by \$158,345.76 per year, which equals \$2,337,025.07;

c. Meadows is entitled to the value of active duty medical and dental benefits for himself, his wife and his daughter through Meadows' normal retirement age of 65 years old, which is 14.75 years valued at \$1,250.00 per month. Therefore, Meadows seeks forward

medical and dental benefits of 14.75 years multiplied by \$1,250.00 per month for 12 months, which equals \$221,250.00.

d. Effective November 1, 2012, the pilot "B" fund pension plan was also frozen, and individual accumulations are to be distributed to each pilot. In lieu of the Pre-bankruptcy "A" and "B" pilot pension, under 2012 AA Pilot's Contract, American has replaced the former plans with a monthly contribution of 14% of each pilots' gross pay, into the existing 401K plan. Thereafter on January 1, 2014, American's contribution increases to 16%. Thus, Meadows is entitled to new pension plan contributions at 14% from June 10, 2013 through January 1, 2014, or 214 days, or 0.586 years, which equals 14% times \$158,345.76 per year for 0.586 years, which equals \$12,997.37. In addition to that amount Meadows seeks his remaining active service of 14 years and 63days, which is calculated at 14.173 years of service at 16%. In other words, Meadows is entitled to 16% times \$158,345.76 for 14.173 years, which equals \$427,095.94. Thus, Meadows is entitled to total forward pension contributions of \$440,093.31; and

e. Meadows seeks his lifetime Non-Revenue travel benefits consisting of 24 one-way flight passes annually. Each pass has a retail value of \$500.00. The total annual value of travel benefits is \$12,000 year. As of the June 10, 2013 hearing date, Meadows is entitled to 14 years and 277 days, which is 14.759 years (to normal retirement age 65), plus 13 years more to the U.S. male life expectancy of 78 years of age, or 27.759 years of forward travel benefits. Thus, Meadows is entitled to the value his remaining lifetime travel benefits calculated at the rate of 27.58 years multiplied by \$12,000 per year, which equals \$330,960.00.

3. Meadows seeks damages against American for intentional infliction of emotional distress. As a result of American's retaliation, and termination of Meadows' employment as a pilot, he suffered significant exacerbation of his existing [REDACTED] illness. Shortly after he engaged in protected activity, one month after American threatened to terminate him Meadows was treated by the Mayo Clinic, which upgraded his diagnosis [REDACTED]
[REDACTED]
[REDACTED], recent FAA regulatory changes would have given Meadows the ability to obtain the FAA Airman's First Class Medical Certificate required to exercise the privileges of his Airline Transport Pilot Certificate, and resume his pilot duties at American. However, just two months after his termination, based on the Mayo Clinic [REDACTED] and aerospace medicine evaluation reports, FAA headquarters issued Meadows a Final Agency Denial, thereby permanently grounding him from being a pilot due to [REDACTED]
[REDACTED] The resultant loss of his status and prestige as an airline pilot has significantly and permanently damaged Meadows emotionally. Meadows is therefore entitled to emotional distress damages in an amount to be proven at the hearing.

4. Meadows seeks his reasonable attorneys' fee and costs of this action as well as any other remedies deemed appropriate by this Court.

DATED this _____ day of March, 2013.

WRONA LAW FIRM, P.C.

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