

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

DOBSON COLLINS,

Case No.: 96-1104-CIV-(GOLD)

Plaintiff,

v.

**NIGHT BOX  
FILED**

FLAGSHIP AIRLINES, INC.,  
a Delaware Corporation,

JUN 29 1998 *JC*

Defendant.

CARLOS JUENKE  
CLERK, USDC / SDFL / MIA

MEMORANDUM OF LAW IN  
OPPOSITION TO THE SUMMARY JUDGMENT

**1. Preliminary Statement**

Plaintiff herein submits this memorandum of law in opposition to defendant's motion for summary judgment.

**2. Plaintiff's Counterstatement to Defendant's Factual Statement.**

The plaintiff's affidavit is attached hereto as Exhibit "1" which should be deemed expressly incorporated herein.

Plaintiff commenced his employment with defendants in December 1989, at their aircraft maintenance facility. Plaintiff was hired as a mechanic to perform maintenance work at the defendants' facility. However, he did not receive promotions commensurate with his experience and performance. Plaintiff believes the defendants' failure to promote him was racially motivated because of the complete lack of African Americans in supervisory positions. Plaintiff filed charges of discrimination with the U.S. Equal Employment Opportunity Commission's Miami

*53 k*

Office, alleging racial discrimination in the defendant's failure to promote plaintiff.

In July 1992, plaintiff entered into a negotiated settlement that resulted in his promotion and an award of back pay. In exchange for plaintiff's agreement not to sue American-Eagle, the company agreed to:

Affirm and confirm that the charging party Mr. Collins has been upgraded to Tech Level (I) as of June 1991, and his rate of pay adjusted to its equivalent in accordance with established policies. (Exhibit "A")

American Eagle also agreed:

a. not to retaliate against Mr. Collins "in future consideration of transfers, promotions, and other terms and conditions of employment because of these proceedings," *id.* at paragraph 3.B;

b. not to discriminate or retaliate against any person by virtue of the person's opposition to any unlawful, discriminatory practice under Title VII of the Civil Rights Act of 1964, as amended, "filing of a charge, giving testimony or assistance, or otherwise participating in an investigation, proceeding, or hearing pursuant to Title VII, *id.* at paragraph 3.C; and

c. "to re-emphasize its EEO policy to all of its Maintenance employees, particularly, to those who perform in a supervisory or lead capacity, limited to respondent's Miami facility," *id.* at paragraph 3.D (emphasis added).

Subsequently, in April 1993, plaintiff was accused by his supervisor of insubordination regarding a work assignment he had been given in the Bahamas. The allegations against plaintiff were not true. Roughly three weeks later, in May 1993, plaintiff's supervisor gave him a choice: Plaintiff could either accept termination of his employment, or sign a "Letter of Commitment" in which he acknowledged his "performance problem" and agreed to

termination of his employment, or sign a "Letter of Commitment" in which he acknowledged his "performance problem" and agreed to correct immediately the problem, with the understanding that plaintiff could be discharged without further warning. Fearing the loss of his job, plaintiff signed the letter under protest, noting on the letter that he disputed that plaintiff had a "performance problem" and denying the letter's purported waiver of any grievance or claim he may have against the company.

Based on that series of events, plaintiff then filed another charge of discrimination, alleging that he was being discriminated against because he is black, and that American Eagle had taken retaliatory action against plaintiff based on the prior charges. This charge was again resolved in March 1994, and plaintiff withdrew the charge.

The following month, in April 1994, plaintiff's supervisor, Noel Franz, docked him for an hour of overtime pay one day when he stated that plaintiff had violated the defendants' overtime "policy" by arriving an hour early for a shift and claiming overtime pay for that hour. Another non-black employee who had done the same thing as plaintiff that day was paid overtime, as other employees consistently had been in the past until plaintiff had filed his EEOC charge.

In May 5-6, 1994, were very busy. More aircrafts than usual arrived at the facility with mechanical problems that needed to be corrected. On typical days at the end of their shifts, the technicians enter into a computer various information related to necessary repairs and parts on the aircraft that they serviced. However, on May 5-6, 1994, few if any of the technicians had time

to do so and were not authorized to work overtime to do so. They instead entered the information into the computers on the following morning.

Because the technicians failed to enter the required information in the computer before the end of their shifts, Mr. Franz placed "Quality Assurance, Notifications of Non-Compliance" in the technicians personnel files. However, when white employees, Dick Osos, Craig Underhill and Jamie Neno, complained to Mr. Franz, he removed the notifications from their files, but when plaintiff complained, he left the quality assurance notification in plaintiff's file.

Subsequently, plaintiff was authorized to work overtime on May 12, 1994. When plaintiff arrived for his shift, Mr. Franz instructed him to research with respect to each airplane listed in the facility's computer every possible defect that he could find with the airplanes' systems and provide replacement part numbers for all of those airplanes, a huge and tedious task. However, none of the aircraft in the computer was physically available to plaintiff at the facility to determine whether possible defects appearing in the computer were accurate. To plaintiff's knowledge no one had ever previously been assigned the same task.

When plaintiff asked Mr. Franz why he had been given him that task, Mr. Franz responded that it was because plaintiff had received the "non-compliance" write-ups on May 5-6, 1994. Plaintiff then indicated that he thought he was unfairly being singled out. Mr. Franz then clocked plaintiff out and told him to go home because he complained too much about the company to the EEOC. That same day (May 12, 1994) plaintiff filed another charge

part the basis of plaintiff's claim in this lawsuit. (Emphasis added)

On or about the morning of October 15, 1994, plaintiff reported to work to begin his shift. Hanging from the mechanic's trailer was a noose with the words "To Hang Dobson" written on it. A co-worker, Henry Cruz, who saw the noose told plaintiff that Mr. Franz had told him that the noose was to hang plaintiff.<sup>1</sup> Plaintiff understood the rope to symbolize a lynching and was very upset by it because of its obvious symbolic reference. In fact, the ropw incident affected plaintiff personally to the point that he was extremely upset.

Sometime after that, another black co-worker of plaintiff Oswald Russell, found in the facility an overexposed Polaroid picture with a black background on which was written, "In the ramp at 10:00 P.M., Dobson and Ozzy." On the black background were smiling faces that had been painted on the Polaroid picture with white typewriter correction fluid. This also was extremely upsetting to plaintiff and compounded his personal feeling concerning the implication of a lynching.

On November 30, 1994, plaintiff went to Mr. Franz's office to review his personnel file. While plaintiff was reviewing his file, plaintiff was taking notes on a personal document on the back of a bank statement that plaintiff had in his possession. When Mr. Franz observed plaintiff he asked him to see the document. Plaintiff explained that it was a personal document, not a file document, and that plaintiff would prefer for him not to read the

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<sup>1</sup> This incidents were brought to the attention of defendant during a December 7, 1994 meeting. (Exhibit "4")

document. Plaintiff displayed the document so that Mr. Franz could clearly see that it was not a company document but a bank statement. The bank statement was clearly visible to Mr. Franz.

Unsatisfied, Mr. Franz became upset and demanded to read the document and screamed at plaintiff that he was going to fire him. Plaintiff refused and began to walk away from Mr. Franz, fearing physical harm. Plaintiff reached the stairs leading down from the office, and Mr. Franz pushed plaintiff from behind. Plaintiff injured his left hip in the fall down stairs and sought medical treatment for his injury and then filed a workers' compensation claim.

On or about December 12, 1994, plaintiff was informed by letter from Mr. Franz that he had been terminated for insubordination. The termination letter stated that plaintiff have failed to turn over a document from his personnel file that Mr. Franz had accused him of removing on November 30, 1994. The termination letter also stated that plaintiff breached his previous "Letter of Commitment" that plaintiff had signed in May 1993. Subsequent to plaintiff's termination, Mr. Franz approach co-workers Lazaro Lopez, Carlos Gonzalez, and Juan Coadra, and others asked them to make statements against plaintiff and his work performance. Some refused, stating that he had treated plaintiff discriminatory, but others complied. Prior to plaintiff's termination, Mr. Franz had also approached co-workers and asked them for incriminating written statements or information concerning him.

As a result of filing of charges, the defendants, through base manager Noel Franz and others, took retaliatory actions against plaintiff that the defendants did not take against white

employees, including docking plaintiff overtime pay; "papering" plaintiff's personnel file with notices of policy "infractions" not enforced against whites and with written statements against him solicited by Mr. Franz from other employees under explicit or implicit threat of termination; hanging a noose from the mechanic's trailer with plaintiff's name on it; shoving plaintiff down a stairway; and ultimately terminating plaintiff.

The defendants unlawfully retaliated against plaintiff because he opposed the defendants' unlawful, discriminatory employment practices by inter alia, filing EEOC charges, because they did not promote African-Americans.

Put simply, the defendants unlawfully created a hostile work environment and discharged plaintiff based upon his race and his opposition to their unlawful employment practices.

In addition, there have been numerous other incidents which have given rise to other black employees claiming that Mr. Franz has discriminated against them based upon race. For example, Oswald Russell, Anthony Lee, Oran Camejo and Charles Mclech have all filed EEOC charges claiming Noel Franz has discriminated against them on the basis of race. (Exhibit "2")

Also attached as Exhibit "3" are two statements prepared by Jesus Sanchez. One can glean the second longer statement contains a lot more detail such as Mr. Franz following plaintiff to the bathroom which did not occur according to anyone which is why a second a shorter and more credible statement was written by Mr. Sanchez to support the termination.

**ARGUMENT**

**POINT I**

**DEFENDANT HAS THE BURDEN  
OF SHOWING THAT THERE ARE NO  
GENUINE MATERIAL ISSUES OF FACT**

In connection with a motion for summary judgment, the Court's function is to determine whether a material factual issue exists, not to resolve any existing factual issues. United States v. Diebold Inc., 369 U.S. 654 (1962). A court may grant summary judgment under Fed.R.Civ.P. 56(c) only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Where, as here, the nonmovant bears the ultimate burden to prove at trial that the defendant discriminated against plaintiff, he may defeat the summary judgment motion by procuring sufficient specific facts to establish that there is a genuine issue of material fact for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Also, the party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact. Weinberger v. Hynson, 412 U.S. 609 (1973). In addition, in ruling on a motion for summary judgment, a court must resolve all ambiguities and draw all reasonable inferences in favor of the party defending against the motion. Welch v. Celotex Corp. 951 F2d 1235, 1237 (11 Cir. 1992) Hoffman v. Allied Corp. 912 F2d 1379 (11th Cir. 1990), Eastway Construction Corp. v. City of New York, 762 F.2d 243, 249 (2d Cir. 1985), cert. denied. In assessing whether the movant has met this burden, the district court must review the evidence and all factual inferences drawn therefrom, in the light most favorable to the non-moving party.

Welch v. Celotex Corp., 951 F2d 1235, 1237 (11 Cir. 1992); Rollins v. TechSouth, Inc., 951 F2d 1525, 1528 (11th Cir. 1987). If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exists genuine issues of material facts. Matsushita Electric Industrial Co. v. Zenith Radio Corp. 475 U.S. 574, 586-87, 106 S.Ct. 1328, 1355-56, 89 L.Ed. 2d 538 (1986); Clark v. Coats & Clark, Inc. 929 F2d 604, 608 (11th Cir. 1991).

Applicable substantive law will identify those facts that are material. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed. 2d 202 (1986). Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant. For factual issues to be considered genuine, they must have a real basis in the record. Matsushita, 475 U.S. at 586-87, 106 S. Ct., at 1355-56. It is not part of the court's function, when deciding a motion for summary judgment to decide issues of material fact, but determine whether such issues exist to be tried. Anderson, 477 U.S. at 249, 106 S.Ct. at 2135. The court must avoid weighing conflicting evidence or making credibility determinations. Id., at 255, 106 S.Ct. at 2513- Instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor". Where a reasonable fact finder may "draw more than one inference from the facts, and the inference creates a general issue of material fact, then the court should refuse to grant summary judgment." Barfield v. Briertonm, 883 F2d 923, 933-34 (11th Cir.1989) (citation omitted).

Courts have recognized that in discrimination cases, an employer's true motivations are particularly difficult to ascertain, see United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 716, 103 S.Ct. 1478, 1482, 75 L.Ed.2d 403 (1983) (acknowledging that discrimination cases present difficult issues for the trier of fact, as "there will seldom be 'eye witness' testimony as to the employer's mental processes"), thereby making such factual determinations generally unsuitable for disposition at the summary judgment stage. Lowe v. City of Monrovia 775 F.2d 998, 1009 (9th Cir.1985).

## POINT II

### **STANDARD OF REVIEW AND ANALYSIS OF THE SUBSTANTIVE CLAIMS (UNDER TITLE VII)**

**McDonnell Douglas Corp. v. Green,  
411 U.S. 792, 93 S.Ct. 1817, 37 L.Ed.2D  
668 (1973) Is Controlling Herein**

#### **1. Introduction**

In addressing itself to the "critical issue" before it in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1871, 36 L.Ed.2d 668 (1973), Justice Powell, writing for the court stated:

The critical issue before us concerns the order and allocation of proof in private, non-class actions challenging employment discrimination. The language of Title VII makes plain the purpose of Congress to assure equality of employment opportunity and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens. Id. at 411 U.S. 800.

In the instant case, the plaintiff, is pursuing an individual non-class action suit challenging employment discrimination. Unlike McDonnell Douglas, which addressed itself to the refusal of that private corporate institution to rehire a black

person, the plaintiff herein challenges the actions of the defendant party in terminating him from his position of employment.

In Texas Department of Community Affairs v. Burdines, 450 U.S. 248, 252-253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981) (quoting McDonnell Douglas), the court stated in relevant part:

First, the plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, non-discriminatory reason for the employee's rejection." . . . Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

## **2. Plaintiff's Burden**

In McDonnell Douglas Corp. v. Green, supra, at 411 U.S. 792, the Supreme Court enunciated a three-prong allocation of proof requirement in the context of a private, non-class action challenging employment discrimination. It held:

The complaint in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (v) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

The burden then must shift to the employer to articulate some legitimate, non-discriminatory reason for the employer's rejection . . . but the inquiry must not end there.

While Title VII does not, without more, compel, rehiring of respondent, neither does it permit petitioner to use respondent's conduct

as a pretext for the sort of discrimination prohibited by Section 703(a)-(1). On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext. Especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the "stall-in" were nevertheless retained or rehired. Petitioner may justifiably refuse to rehire one who has engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races. Other evidence that may be relevant to any showing of pretext includes facts as to the petitioner's treatment of respondent during his prior term of employment; petitioner's reaction, if any, to respondent's legitimate civil rights activities; and petitioner's general policy and practice with respect to minority employment. On the latter point, statistics as to petitioner's employment policy and practice may be helpful to a determination of whether petitioner's refusal to rehire respondent in this case conformed to a general pattern of discrimination against blacks. Jones v. Lee Way Motor Freight, Inc., 431 F.2d 245 (CA10 1970); Blumrosen, Strangers in Paradise; Griggs v. Duke Power Co. and the Concept of Employment Discrimination, 71 Mich.L.Rev. 59, 91-94 (1972). In short, on the retrial respondent must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a cover up for a racial discrimination decision. (Footnote omitted).

See McDonnell Douglas Corp. v. Green, *supra*, at 411 U.S. 903, 804-805. This three prong test has been applied or acknowledged in many cases since its initial pronouncement. See, among others: Furnco Construction Corp. v. Waters, 438 U.S. 567, 577, S.Ct. 2943, 2949, 57 L.Ed.2d 957 (1978); Teamsters v. United States, 431 U.S. 324, 358, 97 S.Ct. 1843, 1886, 52 L.Ed.2d 396 (1977); Franks v. Bowman Transportation Co., 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976); Texas Dept. of Community Affairs

v. Burdine, 450 U.S. 248,, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981); Dister v. Continental Group Inc., 859 F.2d 1108 (2d Cir. 1988); Meiri v. Daçon, 759 F.2d 959 (2d Cir. 1983).

One is not always required to show one is replaced but simply must show that sufficient evidence has been presented to conclude that race or retaliation was a factor in the employer's decision. Montana v. First Federal Savings of Rochester, 869 F.2d 100 (2d Cir. 1989); Hazelhorn v. Kennecot Corp., 710 F.2d 76, 81 (2d Cir. 1983); Stanojeo v. Ebasco Services Inc., 643 F.2d 914, 920-921 (2d Cir. 1981). In other words, one need only show that the termination or work environment occurred under circumstances giving rise to an inference of discrimination. Pena v. Brattleboro Retreat, 702 F.2d 322, 324 (2d Cir. 1983).

**i. STANDARD UNDER RETALIATION**

The defendant has violated the law if the defendant retaliated against a person because he has opposed any practice made an unlawful employment practice by this title (the "opposition" clause); or participated in any manner in an investigation, proceeding, or hearing under this title." (the "participation" clause).

The opposition clause prohibits adverse action against an individual who has opposed employment practices made unlawful by Title VII. The test is whether the employee had complained about conduct that if true would constitute a violation of Title VII. Hartson v. Gainesville Sun Publishing, 9 F3d 913 (11th Cir. 1993), Gordon v. City of Atmore, 996 F2d 1155 (11th Cir. 1993); Parker v. Baltimore & B.R.R. Co., 652 F.2d 1012 (D.C. Cir. 1981); Nonteiro v. Poole Silver Co., 615 F.2d (1st Cir. 1980). See also, Payne v.

McLemore's Wholesale and Retail Stores, 654 F.2d 1130 (5th Cir. 1981).

To establish a case concerning discharge based upon retaliation, the plaintiff must convince you, by a preponderance of the evidence, of each of the following four elements:

1. That plaintiff complained about protected activity under Title VII;
2. That the employer took adverse action;
3. A causal link exists between the plaintiff's protected activity and the adverse action taken by the employer;

Hartson v. Gainsville Son Publishing, 9 F.3d 913 (11th Cir. 1993), Gordon v. City of Atmore, 996 F.2d 1155 (11th Cir. 1993); Cosgrove v. Sear Roebuck & CO., 9 F.3d 1033, 1039 (2nd Cir. 1993); Parker v. Baltimore & B.R.R. Co., 652 F.2d 1012 (D.C. Cir. 1981); Nonteiro v. Poole Silver Co., 615 F.2d (1st Cir. 1980). See also, Payne v. McLemore's Wholesale and Retail Stores, 654 F.2d 1130 (5th Cir. 1981).

The burden then shifts to the employer to articulate a legitimate, specific, nondiscriminatory reason for the adverse action taken.

3. **Defendant's Burden**

a. **Degree of Proof**

While the plaintiff has the ultimate burden of persuasion to prove the alleged discrimination, see Texas Dept. of Cons. Affairs v. Burdine, 450 U.S. 2489, 253, 101 S.Ct. 1089, 1981), nevertheless the defendant party is required to satisfy an intermediate burden of rebutting a prima facie case of discrimination as established by the plaintiff pursuant to and under the guidelines

mandated, described and otherwise set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, S.Ct. 1817, 63 L.Ed.2d 668 (1973).<sup>2</sup>

Furthermore, while at first blush it would appear that Burdine, supra, requires only that a defendant articulate a legitimate reason to rebut a non-discriminatory justification in response to the prima facie case, such is not precisely the obligation of the rebutting party.

In that regard, the Burdine Court requires something other than mere articulation of a non-race based justification. It requires that the "defendant's explanation (articulation) of its legitimate reasons must be clear and reasonably specific." Burdine, supra, at 450 U.S. 258, 67 L. Ed. at 2d 218 (emphasis added).

Explaining the reason for requiring something more than a bland articulation of legitimate, non-discriminatory justification and requiring, instead, clear and specific justification.<sup>3</sup>

This obligation arises both from the necessity of rebutting the inference of discrimination arising from the prima facie case and from the requirement that the plaintiff be afforded "a full and fair opportunity" to demonstrate pretext...

Plaintiff's position that something more than a bland articulation of justification/non-discriminatory reasons is

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<sup>2</sup> See; National v. Winn-Dixie Stores, Inc., 570 F.Supp. 1473, 1474 (D.C. Ga. 1983), where the Court noted that McDonnell Douglas, Burdine and progeny sharpen "the court's focus on the elusive elements of discriminatory intent..."

<sup>3</sup> See; Burdine, supra, at 450 U.S. 255, 67 L.Ed. 2d 216, where the Court noted that in order for the defendant to accomplish (satisfy) his burden,

the defendant must clearly set forth through the introduction of admissible evidence, the reasons for the plaintiff's rejection.

necessary is supported by an analysis of pre-Burdine precedent and reflects the Supreme Court's inclusion of the language set forth in Burdine (that is, the use of the terms "clear" and "specific"). Meiri v. Dacon, 759 F.2d 959 (2d Cir. 1983).

**4. Plaintiff's Burden or Proving Pretext**

Once the defendant has articulated a legitimate criterion in a clear and specific manner then the burden shifts to the plaintiff to prove pretext.

Burdine clearly stated that in addition to directly proving a discriminatory motive, a plaintiff may prevail upon showing that the employer's given legitimate reason is unworthy of credence, that is, that the reason supplied was not the true reason for the unfavorable employment decision. Burdine, supra, 450 U.S. 972; Dister v. Continental Group Inc., 859 F.2d 1108, 1113 (2d Cir. 1988). The reason is that employers generally act for a reason and thus those who can demonstrate no legitimate reason for acting more likely than not acted for a discriminatory reason. Therefore, when the employer's non-discriminatory reason is shown to be unworthy of belief, and thus was not the real cause for the termination, the employer has in substance failed to articulate a valid explanation for discharging an employee and has placed its credibility into question. Dister v. Continental Group, supra.

In Harrington v. Gainesville Sun Publishing Co., 9 F3d 913 (11th Cir. 1993) this Court reversed the District Court and held that a plaintiff's burden at summary judgment is met by introducing evidence that could form the basis for a finding of facts which taken in the light most favorable to the non-moving party could allow a jury to find that the plaintiff has established pretext.

In other words, the employer's proffered explanations is not credible or is unworthy of credence. The appellant can also show that a discriminatory or retaliatory reason likely motivated the employer in its employment decision. See also Batey v. Stone, 24 F3d 1330 (11th Cir. 1994) indicating that if a genuine factual dispute exists as to the preferred reason, summary judgement is inappropriate.

In Howard v. BP Oil Co., 32 F3d 520 (11th Cir. 1994) held that appellant's burden on summary judgement is merely creating a factual issue as to the truthfulness of the defendant's proffered explanation. See also Cooper-Houston v. Southern Railway Co., 37 F3d 603 (11th Cir. 1994).

**STANDARDS REGARDING A HOSTILE WORK ENVIRONMENT.**

It should be noted that the courts which have examined the theory of hostile work environment in the context of Title VII have not proceeded using the analysis outline in Mcdonald Douglas, supra, but has found that an employer violates Title VII by creating or condoning an environment at the work place which is considered an abusive work environment.

In Harris v. Forklift Systems Inc., 114 S. Ct. 367 (1993), the court pronounced that a discriminatory abusive work environment, even one that does not seriously affect an employee's psychological well being, can and often will detract from one's job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, the fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of race offends Title VII's broad rule of work place equality. The Court

concluded after examining all of the circumstances (such as the frequency of the conduct, its severity, whether its humiliating, whether it interferes with the employees performance) that so long as the environment would reasonably be perceived and is perceived as hostile or abusive, then there is no need for it also to be psychologically injurious. Also see Locastro v. East Syracuse-Minoa Cent. School District, 830 F. Supp. 133 (N.D.N.Y. 1993). Cf. West v. Philadelphia Elec. Co., 45 F.3d Cir. 744,755-56 (3rd Cir. 1995) (holding that allegations concerning nooses, Ku Klux Klan "Christmas card", voodoo doll, and harassing conversations established racially hostile work environment); Butler v. Coral Volkswagen, Inc., 629 F. Supp. 1034 (S.D. Fla. 1986) (holding that racially hostile work environment existed where black employee faced constant racial epithets; discriminatory work assignments; managers participated in or tolerated harassment, and failed to remedy serious adverse conditions).

#### POINT IV

##### **THERE ARE SUBSTANTIAL MATERIAL ISSUES OF FACT IN DISPUTE**

In reviewing the granting of summary judgment, the Court must view the evidence in a light most favorable to the appellant Sweat v. Miller Brewing Company, 708 F2d 655 (11th Cir. 1983).

A review of the facts reflects that at a minimum there are issues of fact that cannot be resolved on a Summary Judgment.

There are numerous factual issues regarding a hostile work environment and disparate treatment.

At the outset, approximately four other black individuals have filed EEOC charges against the same supervisor. (Exhibit "2")

Second, there is a clear factual dispute regarding the circumstances of plaintiff's termination and whether it was used as a pretext to terminate plaintiff because of his long standing opposition to the discriminatory practices of defendant.

Third, there are circumstances regarding the rope and picture and the symbolic implication it has to a black individual and the statement that was made to a co-worker by Mr. Franz, that it was going to be used to hang plaintiff.

Fourth, the statements of Juan Quadra, a co-worker regarding the issue of noncompliance reports and the fact that plaintiff was singled out.

The unreasonable assignment by Mr. Franz and the direct admission by him that it was done in retaliation for his EEOC activity also presents a factual issue. Plaintiff respectfully submits that when viewing the evidence in a light most favorable to plaintiff, there is a material factual dispute which preclude summary judgment.

**CONCLUSION**

For the foregoing reasons, plaintiff respectfully requests that Defendant's Motion be denied.

Dated: Fort Lauderdale, Florida  
~~January 26~~, 1998  
JUNE 29

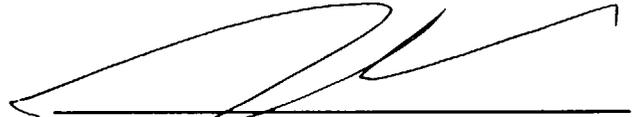
Respectfully submitted,



STEWART LEE KARLIN  
Florida Bar No. 0961159  
400 Southeast Eighth Street  
Fort Lauderdale, Florida 33316  
(954) 462-1201

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the deposition notices were furnished by Fax and U.S. Mail to: Alex Sun, Esq. and Terence G. Connor, Morgan Lewis & Bockius LLP, 5300 First Union Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131-2339, on this 29th day of June, 1998.



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STEWART LEE KARLIN  
Florida Bar No. 0961159  
400 Southeast Eighth Street  
Fort Lauderdale, Florida 33316  
(954) 462-1201

**E X H I B I T " 1 "**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

DOBSON COLLINS,

Case No.: 96-1104-CIV-(GOLD)

Plaintiff,

v.

AFFIDAVIT

FLAGSHIP AIRLINES, INC.,  
a Delaware Corporation,

Defendant.

\_\_\_\_\_/

BEFORE ME, the undersigned authority, personally appeared  
ROBERT MCMANUS duly sworn, deposes and says:

1. I am the plaintiff in the above captioned matter and  
as such am personally familiar with the facts and circumstances set  
forth below.

2. I commenced my employment with defendants in  
December 1989 at their aircraft maintenance facility. I was hired  
as a mechanic to perform maintenance work at the defendants'  
facility over the next few years, however, I did not receive  
promotions commensurate with my experience and performance. I  
believed the defendants' failure to promote me was racially  
motivated because of the complete lack of African Americans in  
supervisory positions. I filed charges of discrimination with the  
U.S. Equal Employment Opportunity Commission's Miami Office,  
alleging racial discrimination in the defendant's failure to  
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\_\_\_\_\_  
<sup>1</sup> Pursuant to Local Rule 7.5 plaintiff's response to  
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Affirm and confirm that the charging party Mr. Collins has been upgraded to Tech Level (I) as of June 1991, and his rate of pay adjusted to its equivalent in accordance with established policies. (Exhibit "A")

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a. not to retaliate against Mr. Collins "in future consideration of transfers, promotions, and other terms and conditions of employment because of these proceedings," *id.* at paragraph 3.B;

b. not to discriminate or retaliate against any person by virtue of the person's opposition to any unlawful, discriminatory practice under Title VII of the Civil Rights Act of 1964, as amended, "filing of a charge, giving testimony or assistance, or otherwise participating in an investigation, proceeding, or hearing pursuant to Title VII, *id.* at paragraph 3.C; and

c. "to re-emphasize its EEO policy to all of its Maintenance employees, particularly, to those who perform in a supervisory or lead capacity, limited to respondent's Miami facility," *id.* at paragraph 3.D (emphasis added).

5. Subsequently, in April 1993, I was accused by my supervisor of insubordination regarding a work assignment I had been given in the Bahamas. The allegations against me were not true. Roughly three weeks later, in May 1993, my supervisor gave me a choice: I could either accept termination of my employment, or sign a "Letter of Commitment" in which I acknowledged my "performance problem" and agreed to correct immediately the problem, with the understanding that I could be discharged without

further warning. Fearing the loss of my job, I signed the letter under protest, nothing on the letter that I disputed that I had a "performance problem" and denying the letter's purported waiver of any grievance or claim I may have against the company. (See Exhibit "B")

6. Based on that series of events, I then filed another charge of discrimination, alleging that I was being discriminated against because I am black, and that American Eagle had taken retaliatory action against me based on the prior charges. This charge was again resolved in March 1994, and I withdrew the charge.

7. The following month, in April 1994, my supervisor, Noel Franz, docked me for an hour of overtime pay one day when he stated that I had violated the defendants' overtime "policy" by arriving an hour early for a shift and claiming overtime pay for that hour. Another non-black employee who had done the same thing as myself that day was paid overtime, as other employees consistently had been in the past until I had filed my EEOC charge.

8. In May 5-6, 1994, was very busy. More aircrafts than usual arrived at the facility with mechanical problems that needed to be corrected. On typical days at the end of their shifts, the technicians enter into a computer various information related to necessary repairs and parts on the aircraft that they serviced. However, on May 5-6, 1994, few if any of the technicians had time to do so and were not authorized to work overtime to do so. They instead entered the information into the computers on the following morning.

information in the computer before the end of their shifts, Mr. Franz placed "Quality Assurance, Notifications of Non-Compliance" in the technicians personnel files. However, when white employees, Dick Osos, Craig Underhill and Jamie Neno, complained to Mr. Franz, he removed the notifications from their files, but when I complained, he left the quality assurance notification in my file. (Exhibit "H")

10. Subsequently, I was authorized to work overtime on May 12, 1994. When I arrived for my shift, Mr. Franz instructed me to research with respect to each airplane listed in the facility's computer every possible defect that he could find with the airplanes' systems and provide replacement part numbers for all of those airplanes, a huge and tedious task. However, none of the aircraft in the computer was physically available to me at the facility to determine whether possible defects appearing in the computer were accurate. To my knowledge no one had ever previously been assigned the same task.

11. When I asked Mr. Franz why he had been given me that task, Mr. Franz responded that it was because I had received the "non-compliance" write-ups on May 5-6, 1994. I then indicated that I thought I was unfairly being singled out. Mr. Franz then clocked me out and told me to go home because I complained too much about the company to the EEOC. (Emphasis added)

12. That same day (May 12, 1994) I filed another charge of discrimination with the Miami Office of the EEOC that forms in part the basis of my claim in this lawsuit. (Exhibit "C")

13. On or about the morning of October 15, 1994, I reported to work to begin my shift. Hanging from the mechanic's trailer was a noose with the words "To Hang Dobson" written on it. A co-worker, Henry Cruz, who saw the noose told me that Mr. Franz had told him that the noose was to hang me. (Exhibit "D") I understood the rope to symbolize a lynching and was very upset by it because of its obvious symbolic reference. In fact, the rope incident affected me personally to the point that I was extremely upset.

14. Sometime after that, another black co-worker of mine Oswald Russell, found in the facility an overexposed Polaroid picture with a black background on which was written, "In the ramp at 10:00 P.M., Dobson and Ozzy." On the black background were smiling faces that had been painted on the Polaroid picture with white typewriter correction fluid. (Exhibit "E") This was also extremely upsetting, compounded my personal feeling concerning the rope.

15. On November 30, 1994, I went to Mr. Franz's office to review my personnel file. While I was reviewing my file, I was taking notes on a personal document on the back of a bank statement that I had in my possession. When Mr. Franz observed me he asked me to see the document. I explained that it was a personal document, not a file document, and that I would prefer for him not to read the document. I displayed the document so that Mr. Franz could clearly see that it was not a company document but a bank statement. The bank statement was clearly visible to Mr. Franz.

16. Unsatisfied, Mr. Franz became upset and demanded to read the document and screamed at me that he was going to fire me. I refused and began to walk away from Mr. Franz, fearing physical harm. I reached the stairs leading down from the office, and Mr. Franz pushed me from behind. I injured my left hip in the fall down stairs. I sought medical treatment for my injury and filed a workers' compensation claim.

17. On or about December 12, 1994, I was informed by letter from Mr. Franz that I had been terminated for insubordination. The termination letter stated that I have failed to turn over a document from my personnel file that Mr. Franz had accused me of removing on November 30, 1994. The termination letter also stated that I breached his previous "Letter of Commitment" that I had signed in May 1993. (Exhibit "D" copy of termination letter).

18. Subsequent to my termination, Mr. Franz approach co-workers Lazaro Lopez, Carlos Gonzalez, and Juan Coadra, and others asked them to make statements against me and my work performance. Some refused, stating that he had treated me discriminatory, but others complied. Prior to my termination, Mr. Franz had also approached co-workers and asked them for incriminating written statements or information concerning me. (Exhibit "G")

19. As a result of filing of charges, the defendants, through base manager Noel Franz and others, took retaliatory actions against me that the defendants did not take against white

employees, including docking me overtime pay; "papering" my personnel file with notices of policy "infractions" not enforced against whites and with written statements against me solicited by Mr. Franz from other employees under explicit or implicit threat of termination; hanging a noose from the mechanic's trailer with my name on it; shoving me down a stairway; and ultimately terminating me.

20. The defendants unlawfully retaliated against me because I opposed the defendants' unlawful, discriminatory employment practices by inter alia, filing EEOC charges, because they did not promote African-Americans.

21. Put simply, the defendants unlawfully created a hostile work environment and discharged me based on my race and my opposition to their unlawful employment practices.



---

DOBSON COLLINS

JUN-29-98 TUE 03:08 PM

MAX NO. 462 462 3161

F UWA/UV

STATE OF GEORGIA )  
COUNTY OF DeKalb ) ss. )

On this 29<sup>th</sup> day of June, 1998, before me, the undersigned Notary Public of the State of Georgia, personally appeared DOBSON COLLINS who \_\_\_\_\_ is personally known or  has produced proper identification, being by me first duly sworn, deposes and says that he executed the foregoing Affidavit and that the facts are true and correct to the best of his knowledge and belief.

*DOBSON COLLINS*  
DOBSON COLLINS

*Priscilla Taylor*  
NOTARY PUBLIC, STATE OF  
GEORGIA AT LARGE

(Seal)

*Priscilla Taylor*  
Printed Name of Notary

Notary Public, DeKalb County, Georgia  
My Commission Expires September 18, 2001

**E X H I B I T " 2 "**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

OSWALD S. RUSSELL,

Plaintiff,

98-377

CIV-MOORE

v.

COMPLAINT AND JURY DEMAND

AMERICAN AIRLINES, INC.  
AMERICAN EAGLE AIRLINES INC.,  
and FLAGSHIP AIRLINES, INC.,

Defendant.

MAGISTRATE  
JOHNSON

FILED  
98 FEB 23 PM 5:50  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

I. INTRODUCTORY STATEMENT

1. Plaintiff, OSWALD S. RUSSELL, African-American, seeks redress for discrimination on account of his race (black) and retaliation suffered by him in violation of laws of the United States in his capacity as an employee of AMERICAN EAGLE AIRLINES, FLAGSHIP AIRLINES INC. and AMERICAN AIRLINES, (hereinafter referred to as defendant).

II. JURISDICTION

2. This action is brought and jurisdiction lies pursuant to 28 U.S.C. 1331, 1343, and 1334, this being a suit based upon the Civil Rights Act of 1964, (Title VII), 42 U.S.C. 2000 et. seq. and 42 U.S.C. 1981. Jurisdiction is invoked pursuant to U.S.C. 2000e (f) (5) under Title VII and 42 U.S.C. 1343. This action is commenced within ninety days of receipt of the notice of right to sue letter conferring jurisdiction on this court.

III. PARTIES

3. Plaintiff OSWALD RUSSELL, was employed by defendant

and is an employee within the meaning of Title VII of the Civil Rights Act of 1964.

4. Defendant employs over twenty employees and is employer within the meaning of Title VII.

IV. FACTUAL STATEMENT

5. Plaintiff was hired as a mechanic in May, 1992.

6. Due to plaintiff's outstanding performance, he was promoted to crew chief in September, 1993.

7. Subsequently, plaintiff was demoted in December, 1993 by Edgar Cerezo (hispanic) and replaced by Luis Nevara (hispanic).

8. However, plaintiff was advised in the Fall, 1993, by Mr. Cerezo that he was "doing a good job".

9. Upon information and belief, defendant has a policy that requires an employee be placed on notice if his performance is so deficient as to result in a demotion or a termination.

10. Plaintiff was never advised that his performance was in any way deficient prior to the demotion.

11. As a result of the foregoing conduct, plaintiff filed an EEOC charge (Charge No. 150-94-1497) claiming discrimination due to race.

12. Since the filing of plaintiff's EEOC charge, he has been discriminated (race) and retaliated against which caused his termination to wit:

a. terminated for conduct that similarly situated non-black employees were not even disciplined for;

- b. warned for conduct that similarly situated younger caucasian employees were not even disciplined for;
- c. terminated for pretextual reasons;
- d. denied promotional opportunity based upon race, and retaliation;
- e. racially hostile atmosphere;
- f. disciplinary action was not uniform;
- g. other discriminatory conduct;

7. Plaintiff believes that the evidence adduced in the investigation and hearing of her complaint, together with such additional evidence as he will develop through discovery and present at trial herein, shows and will show that the defendants have intentionally discriminated against plaintiff and defendant's termination of plaintiff was due to plaintiff's race, color and retaliation.

13. In doing the acts complained of, defendants acted intentionally and maliciously, and were guilty of wanton and willful disregard of the rights and feelings of plaintiff.

14. There is no adequate remedy at law.

15. Based upon the foregoing, the plaintiff will likely succeed on the merits at trial.

16. The injunction will not harm the public interest but on the contrary is in the public interest to prevent a continuing harm to the public, and particularly to African-Americans.

**FIRST CLAIM FOR RELIEF**

17. Plaintiff realleges paragraphs 1, through 16, with

the same force and effect as if again fully stated.

18. Plaintiff has the right to equal contractual benefits as is enjoyed by Caucasian citizens. This right is secured to plaintiff by section 1981 of Title 42 of the United States Code.

19. Defendants denied plaintiff a contractual benefit (continued employment) for the sole reason that plaintiff is black.

20. This refusal deprives plaintiff of his right to make and enforce contracts and receive the full and equal benefit of all laws and proceedings for the security of persons and property, as guaranteed by Section 1981 of Title 42 of the United States Code.

**VI. SECOND CLAIM OF RELIEF**

21. Plaintiff herewith reallege and incorporates by reference paragraphs "1" through "20" of this complaint.

22. As a result of the actions and inactions of the defendants, plaintiff has been deprived of his equal employment opportunities in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000e et. seq.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests that this Court issue and Order and enter a Judgment:

1. Declaring that the actions and inactions of the defendants, as complained of herein, intentionally deprived plaintiff of his rights because of his race, and in retaliation for opposing discriminating practices of defendant and have denied him equal opportunity employment rights;

2. Permanently enjoining the defendants from engaging in the practices complained of herein, or in any other discriminatory practices and seeking reinstatement to the position plaintiff should be in but for defendants' discriminatory conduct;

3. Granting compensatory damages for time missed from work, including back wages, pension benefits and other benefits, according to proof;

4. Granting compensatory damages for injuries and accompanying pain and suffering, emotional distress, embarrassment and humiliation.

5. Granting punitive damages in amount to be determined by the trier of fact;

6. Granting plaintiff costs and disbursements of this action, including a reasonable attorney's fee, and such other and further relief as this Court may find appropriate.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES  
HEREIN TRIABLE BY RIGHT TO A JURY.

Dated: Fort Lauderdale, Florida  
February 23, 1998



STEWART LEE KARLIN  
Attorney for Plaintiff  
400 Southeast Eighth Street  
Fort Lauderdale, Florida 33316  
(954) 462-1201  
Florida Bar No. 961159

**E X H I B I T " 3 "**

FEOC 150941497

Metro Dade Equal Opportunity Board and EEOC  
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) Mr. Oswald S. Russell HOME TELEPHONE (Include Area Code) (305) 621-6502

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH  
4792 N.W. 195TH TERRACE, CAROL CITY, FL 33055 08/01/47

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)  
AMERICAN EAGLE - AMERICAN AIRLINES Cat D (501 +) (305) 526-1975

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY  
5700 N.W. 36TH STREET, P.O. BOX 592237, MIAMI SPRINGS, FL 33122 025

NAME TELEPHONE NUMBER (Include Area Code)  
EDGAR CEREZO - AMERICAN EAGLE (305) 526-1975

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY  
5700 N.W. 36TH ST. - BOX 592237 - MIAMI, FL 33122

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE  
 RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN EARLIEST LATEST  
 RETALIATION  AGE  DISABILITY  OTHER (Specify) 12/06/93 12/06/93  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

- 1.+On December 6, 1993, I was demoted from my position of Crew Chief and was replaced by a Puerto Rican who is less qualified than me.
- 2.+The manager told me I was demoted because I was not qualified for the position.
3. I believe that I was discriminated against because of my race, Black, and national origin, Jamaican, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures. NOTARY - (When necessary for State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. SIGNATURE OF COMPLAINANT  
*Oswald Russell*  
Date Charging Party (Signature) SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

**AFFIDAVIT**

I, Oswald S. Russell being first duly sworn upon my oath affirm and hereby say:  
(Name)

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 46 years of age, my gender is Male and my racial identity is Black.  
(sex) (race)

I reside at 4792 N.W. 195TH TERRACE  
(Number/Street)

City of CAROL CITY, County of DADE

State of FL, Zip Code 33055

My telephone number is (including area code) (305) 621-6502

My statement concerns AMERICAN EAGLE - AMERICAN AIRLINES which is  
(Name of Union/Company/Agency)

located at 5700 N.W. 36TH STREET, P.O. BOX 592237  
(Number/Street)

in MIAMI SPRINGS FL 33122  
(City) (State) (Zip)

My job classification is (if applicable) \_\_\_\_\_  
(job title)

My immediate supervisor is (if applicable) \_\_\_\_\_  
(Name) (job title)

My name is Oswald Russell. I have been working for American Eagle since May of 1991. I was hired as a mechanic. American Eagle belongs to Flagship Airlines, Inc., P.O. Box 5922376, Miami, FL 33122, and it operates under the banner of American Airlines or AMR. At the end of September 1993, I was promoted to a crew chief position. On December 6, 1993, I was demoted from the crew chief position by the manager, Edgar Cerezo and replaced by a Luis Nevara, a Puerto Rican.

I was told the reason why I was demoted was because I was not qualified for the position which is in violation of the Union Contract.

OSR Page 1 of 2  
(initials)

AFFIDAVIT (cont.)

I have read and had an opportunity to correct this Affidavit consisting of 2 handwritten   
typed  pages and swear that these facts are true and correct to the best of my knowledge and belief.

*Arnold Lund*

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ .

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.  EEOC 150942924

Metro Dade Equal Opportunity Board and EEOC  
State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) Mr. Anthony L. Lee HOME TELEPHONE (Include Area Code) (305) 652-2163

STREET ADDRESS POST OFFICE BOX 69 - 5103, MIAMI, FL 33269 CITY, STATE AND ZIP CODE DATE OF BIRTH 01/07/59

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME AMERICAN EAGLE AIRLINES NUMBER OF EMPLOYEES, MEMBERS Cat D (501 +) TELEPHONE (Include Area Code) (305) 526-1975

STREET ADDRESS POST OFFICE BOX 996370, MIAMI, FL 33299-6370 CITY, STATE AND ZIP CODE COUNTY 025

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))  
 RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  OTHER (Specify)  
 DATE DISCRIMINATION TOOK PLACE  
 EARLIEST 05/13/94 LATEST 05/17/94  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

- On 5/13/94, I was suspended and, on 5/17/94, I was terminated from my job, as a Crew Chief. I am Black.
- Mr. Noel Franz (Supervisor) indicated that I was suspended and terminated for punching the time card of another employee.
- I believe that I have been discriminated against because of my race, in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)  
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT  
[Signature]  
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Date 6/15/94 Charging Party (Signature)

STATE OF FLORIDA

CASE LEE VS AMERICAN EAGLE

CITY/COUNTY OF MIAMI/DADE

CASE NUMBER 150942924

AFFIDAVIT

I, Anthony L. Lee (Name) being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 35 years of age, my gender is Male (sex) and my racial identity is Black (race).

I reside at POST OFFICE BOX 69 - 5103 (Number/Street)

City of MIAMI, County of DADE

State of FL, Zip Code 33269

My telephone number is (including area code) (305) 652-2163

My statement concerns AMERICAN EAGLE AIRLINES (Name of Union/Company/Agency) which is

located at POST OFFICE BOX 996370 (Number/Street)

in MIAMI (City) FL (State) 33299-6370 (Zip)

My job classification is (if applicable) Aircraft Mechanic (Lead) (job title)

My immediate supervisor is (if applicable) Harold Allen, Supervisor (Name) (job title)

- 1. I believe that I have been discriminated against because of my race (Black) with respect to my being suspended and terminated. (Title VV)
2. American Eagle is a subsidiary of American Airlines and serves to "feed" passengers to American Airline's major routes. There are at least 15 branches of American Eagle, nationally. At my former work location, there were about 200 employees of which 118 were Aircraft Mechanics. I held the position of Lead Mechanic and instructed 8-9 Mechanics. There were five Black Mechanics. Harold Allen was my Supervisor, but Noel Franz was the Supervisor who suspended and terminated me.
3. I was hired, on 3/5/90, as a Mechanic and promoted to Lead Mechanic, in 1/93. In 1985, I started working for Eastern Airlines, as a Ramp Service Agent. While still working for Eastern, I attended aviation schools for aviation Mechanic training and Eastern upgraded me to a Mechanic. After Eastern, I did contract aviation work before being hired by American Eagle.
4. There were no performance evaluations after the six months probationary period.

CITY/COUNTY OF MIAMI/DADE

CASE NUMBER 150942924

AFFIDAVIT (cont.)

5. I have one write-up from Mr. Franz for following the directions of another Supervisor (performance) and I have heard that he has written me up for another incident of alleged poor performance. My attendance record in 1993 was above average.

6a. I was suspended and terminated for allegedly punching another employee's time card even after the employee testified that I had not and after several other employees gave similar testimony. Lead Mechanic Ralph Peres (White), to Mr. Franz' knowledge, often punched time cards for other employees, but received no discipline.

6b. Mr. Franz has exhibited open bias against Black employees and, me especially. He has made numerous statements and jokes before me and in the presence of my White co-workers who have warned me to be careful of him because he wanted to terminate me. In fact, the other Black employees were having the same problems with Mr. Franz that I had. An incident involving Mr. Franz and Dobson Collin (Black) resulted in a backpay and promotion settlement in Mr. Collin's favor. 6c. There is a written policy against punching other employees' time cards, but it is not strictly followed.

6d. See 6a.

6e. None

6f. See witnesses' statements.

7. Class Allegation: race (Black): Ozzie Russell, Dobson Collins, Alex Medina, Oren Camejo.

I have read and had an opportunity to correct this Affidavit consisting of \_\_\_\_\_ handwritten  typed  pages and swear that these facts are true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

This form is affected by the Privacy Act of 1974; See Privacy-Act Statement before completing this form.

FEPA  
 EEOC 150943801

Metro Dade Equal Opportunity Board and EEOC  
 State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) Mr. Oren P. Camejo HOME TELEPHONE (Include Area Code) (305) 825-3346

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH  
 14650 BULL RUN ROAD, APT. #130, MIAMI LAKES, FL 33014 06/29/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)  
 AMERICAN EAGLE, A.M.R. Cat A (15-100) (305) 526-1975

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY  
 5700 N.W. 36TH STREET, MIAMI, FL 33166 025

NAME TELEPHONE NUMBER (Include Area Code)  
 NOEL FRANZ - AMERICAN EAGLE (305) 526-1975

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY  
 5700 N.W. 36TH STREET - MIAMI, FL 33166

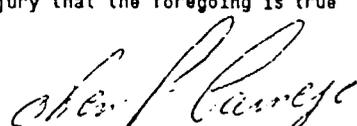
CAUSE OF DISCRIMINATION BASED ON (Check appropriate boxes) DATE DISCRIMINATION TOOK PLACE  
 RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN EARLIEST LATEST  
 RETALIATION  AGE  DISABILITY  OTHER (Specify) 06/24/94 06/24/94  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):  
 1. On June 24, 1994, I was demoted from my position of Lead Mechanic.  
 2. My supervisor, Noel Franz, told me that I was being demoted because my attendance was not up to speed and that was affecting my performance.  
 3. I believe that Respondent discriminated against me because of my race, Black, in violation of Title VII of the 1964 Civil Rights Act.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.  
 Date 8/17/94  
  
 Charging Party (Signature)

SIGNATURE OF COMPLAINANT  
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

STATE OF FLORIDA

CASE N. Camejo vs AMERICAN E

CITY/COUNTY OF MIAMI LAKES/DADE

CASE NUMBER 150943801

AFFIDAVIT

I, Oren P. Camejo being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 34 years of age, my gender is Male and my racial identity is Black

I reside at 14650 BULL RUN ROAD APT. #130

City of MIAMI LAKES, County of DADE

State of FL, Zip Code 33014

My telephone number is (305) 825-3346

My statement concerns AMERICAN EAGLE, A.M.R which is

located at 5700 N.W. 36TH STREET

in MIAMI FL 33166

My job classification is (If applicable)

My immediate supervisor is (If applicable)

My name is Oren Peter Camejo. I believe that American Eagle discriminated against me because of my race, Black. Respondent has about 100 employees. I have been working for Respondent for about 2 years 1/2 as a crew chief or lead mechanic. My performance was satisfactory. On June 24, 1994, my supervisor, Noel Franz, told me that my attendance records were not up to speed, and that my performance was being affected. Therefore, he has to demote me.

I believe Respondent discriminated against me because of my race, Black. Chris Muse, white crew chief mechanic, has an attendance problem also. Sometimes he missed days of work without calling. He is never reprimanded, and he is still working for Respondent. I never received any warnings.

Policy: To my knowledge, prior to demotion or termination, an employee received a verbal warning, then counselling and the third step the company gives you the option to shape up or be terminated.

Witnesses: Toni Lee, lead mechanic; Jim Melly, lead mechanic; Ozzie Russell, lead mechanic.

O.C. Page 1 of 10 (initials)

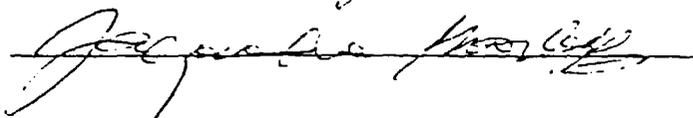
AFFIDAVIT (cont.)

I have read and had an opportunity to correct this Affidavit consisting of 2 handwritten   
typed  pages and swear that these facts are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_

Subscribed and sworn to before me

this 17 day of August 1996

  
\_\_\_\_\_

completing this form.  EEOC 150943930

Metro Dade Equal Opportunity Board and EEOC  
*State or local Agency, if any*

NAME (Indicate Mr., Ms., Mrs.) Mr. Charles McLean HOME TELEPHONE (Include Area Code) (305) 378-8639

STREET ADDRESS 14801 S.W. 156TH AVE., MIAMI, FL 33196 CITY, STATE AND ZIP CODE DATE OF BIRTH 06/04/60

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME AMERICAN EAGLE - AMERICAN AIRLINES NUMBER OF EMPLOYEES, MEMBERS Cat D (501 +) TELEPHONE (Include Area Code) (305) 526-1975

STREET ADDRESS 5700 N.W. 36TH STREET, P.O. BOX 592237, MIAMI SPRINGS, FL 33122 CITY, STATE AND ZIP CODE COUNTY 025

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE  
 RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN EARLIEST LATEST  
 RETALIATION  AGE  DISABILITY  OTHER (Specify) 08/06/94 08/06/94  
 CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

1. On August 6, 1994, I was demoted from my position as Avionics Technician to Aircraft Mechanic and took a cut in salary. Since that time I have been subjected to harassment by the above named employer.
2. I was told that the reason for my demotion was that my position had been eliminated.
3. I believe that I was discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, when I was demoted and subjected to harassment because of my race, Black, and my national origin, Jamaican.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)  
 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

Date 08/29/94 Charging Party (Signature) 

CITY/COUNTY OF MIAMI/DADE

CASE NUMBER 150943930

AFFIDAVIT

I, Charles McLean (Name) being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 34 years of age, my gender is Male (sex) and my racial identity is Black (race).

I reside at 14801 S.W. 156TH AVE. (Number/Street)

City of MIAMI, County of DADE

State of FL, Zip Code 33196

My telephone number is (including area code) (305) 378-8639

My statement concerns AMERICAN EAGLE - AMERICAN AIRLINES (Name of Union/Company/Agency) which is

located at 5700 N.W. 36TH STREET, P.O. BOX 592237 (Number/Street)

in MIAMI SPRINGS FL 33122 (City) (State) (Zip)

My job classification is (if applicable) Aircraft Mechanic (job title)

My immediate supervisor is (if applicable) Nick Revelous, Night Shift Supervisor (Name) (job title)

I believe that I was discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended, when I was demoted by the above named employer because of my race, Black, and my national origin, Jamaican.

Respondent, American Eagle, is a subsidiary of American Airlines, Inc. which employs well over 500 individuals. I work in the maintenance department as an aircraft mechanic.

I was hired by the Respondent in February of 1992, as an aircraft mechanic in Nashville, Tennessee. I transferred to Miami, Florida in February of 1994. In April of 1994 I was promoted to Avionics Technician. I never received any verbal or written reprimands during my employment with Respondent.

On August 6, 1994, Mr. Nick Revelous (Not sure of last name), Night Shift Supervisor (white American), told me that the company could not have me working as an Avionics Technician any longer. I asked him why. He said the position had been eliminated. He said I needed to talk to Noel Franz (white American), Day Shift Supervisor, to find out the reason. I went to the Transport Workers Union, of which I am a member,

ew (initials) Page 1 of 3

AFFIDAVIT (cont.)

and asked a union representative to go with me to speak to Noel Franz. When we spoke to Noel Franz he told us he did not know what was going on and we should talk to the Base Manager, Charles McDonnell (white American). Mr. McDonnell was not available so we decided to check my employment file to find out my employment status. My file was missing from the personnel file where all of the employee records are kept. I am still trying to get in touch with Mr. McDonnell.

Although I was not told directly, it is understood that if an employee is removed from the position of Avionics Technician he or she moves back to his or her previous position at a lower rate of pay unless otherwise stated. My previous position was Aircraft Mechanic. I was moved back to that position and I took a pay cut of \$0.75 per hour. I am still working in that position.

Although I was told my position had been eliminated, I noticed that Mr. Bill Scoggins (white American), Avionics Technician, was earning overtime pay performing the same duties I performed as an Avionics Technician. Mr. Scoggins is performing the duties that I used to perform an average of two days per week.

Since my demotion I believe that my work is being scrutinized more closely than that of other employees. For example, about two weeks after the demotion I replaced fuel nozzels in an aircraft. One of the inspectors, Anthony (LNU) (Hispanic), said that the work was not properly done and ordered the work to be redone. However, the nozzels that were replaced on the other side by Carlos (LNU) (Hispanic), another Aircraft Mechanic, were replaced in exactly the same manner as mine but his work was not criticized. Now Nick Revelous has directed me to submit a report on the fuel nozzels. I have never heard of any other employee having to submit such a report.

My department consists of three black males from Jamaica (Dobson Collins, Ozzie Russel and myself). [Note: There was a fourth black man from Jamaica named Anthony Lee who was terminated about April of 1994.]

\*\* Text Continued on Attached Sheet(s) \*\*

I have read and had an opportunity to correct this Affidavit consisting of 3 handwritten  typed  pages and swear that these facts are true and correct to the best of my knowledge and belief.



Subscribed and sworn to before me  
this 24<sup>th</sup> day of August 1994.

Aug 29 15:09 1994 CP Initials EW Chg # 150943930, Attachment Page 1

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Equal Employment Opportunity Commission  
Affidavit, Additional Text  
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There is also one black male from Trinidad and Tobago (Oren Camejo), one black male from New York (Robert Gordon), and one black male from Guyana (Winston Williams). All of the other employees in the department are white Americans or hispanics. I believe that all of the black employees are treated less favorably than other employees, especially those from the Carribbean. Mr. Russell and Mr. Camejo have also been demoted and replaced by white Americans.

Aside from those individuals mentioned above I have no other witnesses.

ON November 30, 1994 at 16:45 I saw  
MR. Dobson Collins going down stairs and MR. Noel  
Franz following him MR. Collins went to the time clock  
and punched out his time card. While MR. Noel Franz  
asked him to please go upstairs to his office. He  
refused a few times until MR. Franz told him if he  
doesn't go upstairs that it would be a ground for  
dismissal because he wasn't following a directive.  
Then MR. Dobson Collins went to the bathroom and MR  
Franz followed him MR. Franz told him again to please  
go upstairs and MR. Collins refused to go upstairs MR  
Franz told him once again that because he wasn't  
following a directive he could be terminated then MR. Collins  
decided to go upstairs. MR. Noel Franz asked MR. Dobson  
Collins if he wanted a Union Rep. he said ok. So I,  
Jesus Sanchez, went upstairs with them to the conference  
office. MR. Noel Franz asked MR. Collins to show him the piece  
of paper that he had in his pocket. he refused saying that  
it was personal stuff. MR. Franz asked him again to please  
show him the piece of paper. Then he agreed to show  
MR. Franz the piece of paper. MR. Collins pulled out his  
pocket unfold it and cuarved it with his right hand.

MR Franz asked him to please give him the piece of paper so he can see what it has in it. MR Collins refused, saying that it was personal stuff. MR Collins fold it up back again and put it in his pocket. Then MR FRANZ said he needed to see what is in the paper MR Collins insisted again that the piece of paper was personal. MR Franz said he would not read the whole paper all he wanted to see what was in it. Then MR Collins pulled the piece of paper again out his pocket, unfold it and waived it again fold it up and put it in his pocket. MR Franz asked him to please go to his office. MR Dolson Collins did not want to go to the office he wanted to stay in the conference room. After while MR Collins decided to go and left.

Franz

On November 30, 1994 around 12:45. I was going towards the stock room when I saw MR. Dobson Collins going down stairs. When MR. Collins got half way of the stairs. MR Noel Franz open the door upstairs. From upstairs MR Franz told to MR Collins to please come upstairs to his office while coming downstairs, MR Franz kept repeating to please come up to his office. By the time MR Franz got down stair. MR Collins had already punched out his time card. MR. Collins did not want to go upstairs MR Franz told MR. Collins if he doesn't follow the directive it would be a ground for dismissal. Then MR. Collins decided to go upstairs. I, Jesus Sanchez, asked MR. Collins if he want me to go upstairs with him so he can be with an union Rep., he said ok., So we went upstairs. In the conference office MR Franz asked MR Collins to show him the paper MR Collins refused stating that the piece of paper was personal. After MR Collins was asked several times, he decided to leave and MR Franz did not follow him, I, Jesus Sanchez, never saw MR Franz nor

Collins having any kind of physical or  
verbal abuse or being hostile to each other.

J. S. Ly

**EXHIBIT " 4 "**

MORGAN, LEWIS & BOCKIUS

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TERENCE G. CONNOR  
DIAL DIRECT (305) 579-0316

January 9, 1995

Ira J. Kurzban, Esquire  
Kurzban, Kurzban & Weinger  
2650 S.W. 27th Avenue  
Miami, Florida 33133

Re: Flagship Miami: Anthony Lee, Dobson Collins, Oren  
Camejo, Oswald Russell and Charles McLean

Dear Ira:

I am sorry to have been longer than anticipated in getting back to you. However, the combination of urgent commitments at Flagship and of the holiday season have conspired to make full communications difficult to complete. Our inquiry last week also indicated that you were unavailable until Wednesday of this week. We do not want to wait any longer.

I am, of course, responding to your approach, made in our meeting of December 7, 1994 concerning the employees indicated above. In our meeting, you summarized certain incidents your clients have described to you, alerted us to the existence of discrimination charges filed by some of those clients and generally described an environment that your clients regard as racially hostile. Of particular concern is a length of rope, tied in a noose, that you produced for our view, and a polaroid photograph that appears to portray a black person in a negative manner.

Complicating my review of this matter is the fact that two of your clients, Messrs. Lee and Collins, have been discharged from employment and have initiated proceedings under the Railway Labor Act - governed Collective Bargaining Agreement. In addition, based on allegations of some of your clients, Flagship personnel officer, Cathy Janas, had completed a series of investigative interviews under the company's formal harassment policy (copy attached), in an effort to determine whether violations had occurred. She had not completed her evaluation or investigation at the time when I alerted her to your contact.

MORGAN, LEWIS & BOCKIUS

Ira J. Kurzban, Esq.  
January 9, 1995  
Page 2

We have conferred with Flagship, and we propose to proceed as follows.

Flagship will treat your contact as an expansion of the Janas investigation with certain particular modifications because of exigent circumstances. The company takes the suggestion that an African-American employee may have been the target of a "noose" incident very seriously, and we assume that no one would be callous enough to make such an accusation without sound basis.

However, Ms. Janas is at an advanced stage of pregnancy, and she is not currently able to travel. Therefore, she will be requesting that your clients, who have any new or additional information to provide to her, make arrangements to travel to her office in Nashville (on Flagship travel documents). Because of the nature of the matter, and because of your willingness to seek informal resolution, she will invite you to participate in her hearing with the caveat that counsel for Flagship will be present at meetings where witnesses or claimants' counsel is present.

As required by EEOC Guidelines and company policies, Flagship will continue to conclusion a thorough and objective investigation, and will take whatever action may be indicated by the results of this expanded investigation.

It is our intention that this occur expeditiously, and I would appreciate your contacting me so that we can obtain suitable dates for meetings in Nashville. To the extent that further interviews of Miami-based individuals may be required, they will either travel to Nashville under similar circumstances or Ms. Janas will arrange for a suitable delegate official to meet with those persons in Miami under her supervision.

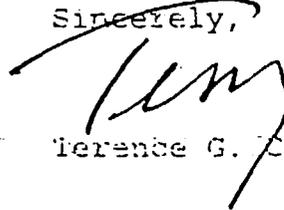
We appreciate your bringing this matter to our attention. I am confident that your clients will receive a thorough and objective investigation of their allegations. As it proceeds, we will ask that you and your clients refrain from any public discussion of these matters so that the investigation can proceed unimpaired to its appropriate conclusion.

MORGAN, LEWIS & BOCKIUS

Ira J. Kurzban, Esq.  
January 9, 1998  
Page 3

Of course, if you have any suggestions for moving this matter forward to an appropriate conclusion, we are prepared to discuss them with you. I look forward to your call.

Sincerely,



Terence G. Connor

TSC/sk

cc: Andrew M. Kofsky  
Michele Valdez  
Cathy Janas