

US DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

PAUL SIMKUS,)	
)	
)	
Complainant,)	Case No.: 2012-SOX-00016
)	2014-AIR-0003, 2014-CFP-00002
v.)	
)	ALJ Pamela J. Lakes
UNITED AIRLINES, a wholly owned)	
subsidiary of UAL CORPORATION, a)	
Delaware corporation)	
)	
Respondent.)	
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)	

**COMPLAINANT’S MOTION IN OPPOSITION TO RESPONDENT’S MOTION FOR
PROTECTIVE ORDER TO PRECLUDE COMPLAINANT FROM CONTACTING
UNITED’S MANAGERIAL EMPLOYEES AND COMPLAINANT’S MOTION FOR
SANCTIONS AGAINST THE RESPONDENT**

I, Paul W. Simkus, the Complainant (or "Simkus"), by and through his own representation as a pro se litigant, and pursuant to 29 C.F.R. 18.15(a) and 18.6 respectfully submits the following Motion in opposition to Respondent’s motion for protective order precluding Complainant from contacting any United managerial employee regarding this matter or consolidated Case Nos. 2014-AIR-0003 and 2014-CFP-0002.

The Complainant moves this court to issue sanctions against the Respondent's counsel (Ada Dolph) for intentionally tampering with evidence related to this matter and because the Respondent's continued effort to distort the facts and deceive this court with false allegations against the Complainant represent unethical conduct from an officer of the court.

The Respondent's conduct is a violation of the rules of conduct established by the American Bar Association and is a direct violation of the Sarbanes Oxley Act the Respondents actions have been a violation of the Complainant's rights to a fair and due process without interference or delay additionally Respondent's motion to preclude the Complainant from communicating with United Airlines is interference with Complainants rights as an employee.

The Respondent's efforts to deceive this court and tribunal have no boundaries and to allow this conduct to continue is a violation of the rules pursuant to Sections 18.13 and 18.18 of the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, of Rules 26, 33 and pursuant to Rule 37(a) of the Federal Rules of Civil Procedure.

The Complainant denies all allegations made by the Respondent's counsel that the Complainant's email communications were made with the sole purpose to annoy and or harass United Airlines CEO (Jeff Smisek) or any other members of United Airlines management. These allegations are completely false, and although the Respondents counsel will never admit it the Respondent's motion may have more to do with protecting the United Airlines managerial employees and the United Airlines CEO (Jeff Smisek) from making any possible future claims of plausible deniability.

In effort to present the short email history of the Complainants communications sent to United Airlines along with a "true and accurate" copy of the original attachments the

Complainant has put together a separate document which lists the Complainant's emails and corresponding exhibits.

Your honor due to OALJ fax restrictions for number of pages allowed to be sent the Complainant has placed in a FedEx envelope Complainant's motion with the documented history of Complainant's emails and exhibits which will be attached with a copy of this same motion this document is promised to be delivered to the court by FedEx delivery by Tuesday September 16, 2014.

1. June 26, 2014 Complainant sent an email to Respondents counsel and carbon copied that email to the United Airlines CEO (Jeff Smisek) and his department manager (Bob Hetherington) at O'Hare Airport. See exhibit (1) this email included an attachment which was an image of a United Airlines memo for the Complainant's Asbestos Awareness Training also attached was a copy of the Complainant's Amended SOX Complaint. See exhibit (2). The Respondent's counsel never provides these attachments to the court with their motion filed on August 25, 2014.
2. June 27, 2014 Respondent's counsel sends Complainant an email and letter by US Mail that he is prohibited from contacting United Airlines. Respondent's letter was sent to harass, intimidate and bully the Complainant into submission the Complainant alleges that the Respondent's very conduct is an act of retaliation and harassment. The Respondents counsel has embarked on a campaign to silence the Complainant about communicating any information related to these proceedings or about United's serious asbestos issues at the former United Airlines (WHQ) World Headquarters by

suggesting that he is prohibited from contacting any United Airlines managerial employees. See exhibit (3).

3. On June 30, 2014 Respondents counsel (Ada Dolph) also sent a copy of the June 27, 2014 letter to Complainant's attorney (Mike Smith) in hopes that Mike Smith will advise his client to cease and desist in making communications with United when the information Complainant sent to United had nothing to do whatsoever with Complainant's ADA lawsuit against United Airlines. See exhibit (4).
4. On June 30, 2014 the Complainant forwarded Respondent's June 27, 2014 email and letter to the United Airlines CEO (Jeff Smisek) to show Jeff Smisek that Ms. Dolph was interfering with the Complainant's right as an employee to communicate with United and the CEO in accordance with Smiseks' own open door policy. Complainant believed that Ms. Dolph was not communicating important legal information with their own client United Airlines, the Complainant was concerned about the enormous magnitude and liability for United Airlines and its shareholders over the allegations alleged in the Complainant's Amended SOX complaint. See exhibit (5).
5. On July 3, 2014 Complainant sent an email to CEO (Jeff Smisek) with attachments which were PDF copies of this courts last Order issued on August 8, 2014 and a PDF copy of the Complainant's subpoena submitted to the court for asbestos records. The Complainant included a copy of his (AHERA) Asbestos Hazard Emergency Response Act certification accredited by the EPA and the (IDPH) Illinois Department of Public Health. The Complainant believes that the CEO needed to read these documents especially because the Respondent's counsel has still today has not turned over the relevant asbestos records which is in defiance of the courts order. See exhibits (6).

6. On July 3, 2014 the Respondent sent another email to the Complainant wherein the Respondents counsel (Ada Dolph) again makes the same ridiculous allegation that Complainants communications with United's CEO (Smisek) over current health and safety related asbestos issues at WHQ and/or the magnitude of asbestos litigation or worse the possibility of class-action asbestos claims arising out of United's liabilities for negligence are somehow misconduct and/or are prohibited. See exhibit (7).
7. On July 4, 2014 the Complainant forwarded a copy of the Respondent's July 3, 2014 email to United Airlines CEO Jeff Smisek because the Respondent's concerted effort to bully the Complainant into silence by threatening Complainant that they will seek sanctions or monetary fines is in itself an effort to further intimidate a pro se litigant the Respondent's conduct is an obstruction of justice and should carry consequences. See exhibit (8).
8. On July 12, 2014 the Complainant sent an email to Respondent's counsel (Ada Dolph) which was also copied and sent to the United Airlines CEO (Jeff Smisek), this email included an attachment which was a clear JPEG image of a Disaster Recovery Report posted on the Internet and published by Managed Response Inc. (MRI) who was the company who performed the disaster clean-up after the fire at the United Airlines World Headquarters on or about August of 1999. The MRI report listed a bullet point of challenges that MRI faced during the clean-up. The first bullet point is the most serious issue of all it read: "Asbestos spread throughout the building". **See exhibit (9).**
9. The Complainant's July 12, 2014 to United Airlines CEO (Jeff Smisek) email is extremely important to these proceedings because the Complainant was present and at

work during the morning of this fire which was caused due to negligence of United's Facilities & Maintenance Manager to oversee the contractor's work during this long and serious health sensitive asbestos abatement project.

This email is very important to these proceedings because the smoke and asbestos debris also spread throughout the WHQ 2-story (South) building's ventilation system which was never cleaned or reported to OSHA, the EPA, or in any of United's periodic filings submitted by UAL's outside accountants. This was more than just a major asbestos release episode this was a monumental asbestos release episode that has gone unreported and never addressed properly for remediation represents a liability of such great magnitude that my previous attorney(s) have all said these asbestos violations could bankrupt United Airlines. This monumental asbestos release episode was never disclosed to the SEC or to any of United Airlines shareholders or investors as is required in accordance with GAAP and SEC, PCAOB, FASB disclosure requirement.

The Complainant personally witnessed asbestos debris fall from the ceiling registers onto employees' heads and onto employees desktops during the 10 years the Complainant worked in the United Airlines Facilities & Maintenance department. The Respondent's counsel has intentionally not provided any of this information with the court when Respondent filed their August 25, 2014 Motion. **See exhibit (9).**

10. On July 12, 2014 the Complainant sent an email to Respondent's counsel (Ada Dolph), (Sarah Eber) and copied the United Airlines CEO (Jeff Smisek). This email had a JPEG image attached which was a picture of an asbestos release episode that was taken by the Complainant after it was assigned to the Complainant as a work

daily order during the time complainant was still working under the (WHQFM) World Headquarters Facilities & Maintenance Department of United Airlines. This single asbestos release episode was just one of the many countless asbestos release episodes that were ignored by United Airlines management that was repeatedly mishandled and not properly cleaned up by qualified employees trained to remove asbestos at WHQ or otherwise. **See exhibit (10).**

11. On July 12, 2014 the very next morning the Complainant received an email from a Mr. George Hujo (Director of System Building Maintenance & Facilities for United Airlines) asking the Complainant for his assistance to help identify the location of this asbestos release hazard so that United Airlines could rectify the problem. The CEO of United Airlines found the Complainant's email about the United Airlines WHQ asbestos problem to be such a concern that the CEO immediately forwarded the Complainant's email (with attached image) of the asbestos release hazard at WHQ to the Director of the System Building Maintenance & Facilities department of United Airlines. The Respondent's allegations of the Complainant harassing or annoying United Airlines is just not true in fact it's solid evidence which shows that United's counsel (Ada Dolph) has fabricated allegations to attack the Complainant's character and credibility and to further deceive this court. **See exhibit (11).**

12. On July 14, 2014 the Complainant sent an email to Respondents counsel (Ada Dolph) because Ms. Dolph would not come to the phone to discuss a resolution to the Complainant's requests for discovery related to the asbestos records even after Complainant had Ms. Dolph paged. Ms. Dolph would not engage the Complainant in

good faith to resolve the long outstanding discovery issues that still continue to remain even today. **See exhibit (12).**

13. On July 16, 2014 the Complainant sent a copy and/or forwarded a copy of the Complainant's July 14, 2014 email to CEO Smisek and to Mr. D. Rowland who is the managing partner of Seyfarth Shaw LLP because Ms. Dolph has not been operating in good faith or in the interest of the United Airlines their investors and shareholders, the Complainant (a shareholder) found Respondent's misconduct inappropriate and uncooperative, the Complainant's actions were warranted. See exhibit (12).
14. On July 30, 2014 the Complainant sent a PDF copy of the courts most recent order title "Post Conference Order" and a PDF copy of the Complainant's Amended SOX Complaint filed with this court (OALJ). **See exhibit (12).**
15. On August 8, 2014 the Complainant sent an email titled "billions in damages" with a PDF copy of the transcripts (pages 265-268) from the Respondents deposition taken of the Complainant to Respondents counsel (A. Dolph) and copied CEO Smisek and managing partner D. Rowland of Seyfarth Shaw LLP in Chicago. **See exhibit (13).**
16. On August 10, 2014 the Complainant sent an email with 2 specific images to Respondents counsel (Ada Dolph) copies were also sent to United's CEO (Jeff Smisek) and the managing partner of Seyfarth Shaw LLP (D. Rowland). The image was of a DANGER sign that United Airlines posted on the basement level of the United Airlines World Headquarters Facility at 1200 East Algonquin Road in Elk Grove Township Illinois 60007. This is an image of an Asbestos Danger Sign that has been improperly posted because it was intentionally placed inside a room already known to have numerous asbestos containing materials and was subject to numerous

undocumented asbestos release incidents, this mechanical room is otherwise known as Machine Room #1. This sign reads: **DANGER-Contains Asbestos Fibers Avoid Creating Dust Cancer and Lung Disease Hazard Avoid Breathing Airborne Asbestos Fibers.** See exhibit (14).

17. On August 25, 2014 the Respondents filed a motion with exhibits attached to their Motion for a Protective Order to Preclude the Complainant from contacting United Airlines Managerial Employees and stated that the exhibits attached were “true and accurate” account of the record, however the Respondents have not only withheld other important exhibits attached to the emails sent by Complainant to United Airlines counsel and/or United’s CEO Jeff Smisek or otherwise but the Respondent’s counsel has actually tampered with evidence by altering the image which was done with the intention to deceive this court. See exhibit (15) and compare it to exhibit (14) which is a “true and accurate” copy of the image attached to the email sent to by the Complainant to United Airlines and the CEO Jeff Smisek on August 10, 2014.

18. On August 15, 2014 and on September 26, 2014 the Complainant sent two emails with attachments relating to the comments in the transcripts made by Ms. Ada Dolph which were similar comments made during a conversation between the Complainant and the Respondent’s former counsel “Steven J. Pearlman” and “Alexis Hawley” which included a discussion about the possibility of a settlement being made between United Airlines and the Complainant “Paul Simkus.” See exhibit (16).

Complainant states as follows:

BACKGROUND

1. On June 26, 2014 the Complainant sent an email to United's attorney Ada Dolph and Sara Eber, titled "United Airlines Asbestos Awareness Training, 2012-SOX-00016 Complainant; Simkus v United Airlines" the Complainant copied this email to United's Chief Executive Officer, Jeff Smisek and the Complainant's senior Manager at O' Hare International Airport because the Complainant has several reasons to believe that the Respondent's counsel has not been communicating true and accurate information to their client "United Airlines." See exhibit (1).
2. Second, when the Complainant contacted the United Airlines (ESC) Employee Service Center on March 2, 2011 to complain about retaliation after being placed on (EIS) Extended Illness Status the Complainant was advised by at least two members of the United Airlines Human Resources (ESC) Employee Service Center (Delores Kastel and Bernadette Padula) that the CEO "Jeff Smisek" has an open door communication policy and that any employee may contact Jeff Smisek by email and that Jeff Smisek responds to all emails from employees related to any workplace concerns related to safety and health but also employees complaints about retaliation and harassment. The information provided to the Complainant by the United Airlines ESC department was documented by the Complainant in an email to his former attorney.
3. Third, the information attached in the Complainant's email to United Airlines on June 26, 2014 was information that is relevant to the Complainant's "SOX" case this information included an exhibit that the court ordered Complainant to turn over to the Respondent in the courts last Order issued on August 8, 2014. A snapshot of an asbestos training record.

4. The exhibit attached to the June 26, 2014 email to CEO Smisek was a picture of a United Airlines training memo with the Complainant's name on it this document was provided to United Airlines to assist the Respondent's counsel in identifying the time period that the Complainant participated in the United Airlines "Asbestos Awareness Training" class at Chicago's O'Hare Airport in 2009. See Exhibit (2)
5. This exhibit was sent to United Airlines to assist the Respondent's counsel in their search for a copy of the "Asbestos Test" only because the Respondent's counsel made claims during the last (un-transcribed) status hearing that there was no record kept on this subject dating back to 2009, however this exhibit proved otherwise, sending a copy to United was done to move this process along in hopes of finding some finality over the Complainants long overdue requests for discovery and production of documents related to asbestos records.
6. The Respondent's counsel has once again attempted to deceive this court by not providing a "true and accurate" account of the record although Respondent's counsel signed a motion stating a "true and accurate" account of the record has been provided to the court however the Complainant's exhibits submitted with this motion show that the Respondent has not been truthful with the court.
7. The Respondent's counsel has intentionally withheld from their motion documents and images that were attached to the Complainant's emails sent to the United Airlines ((CEO) or "Chief Executive Officer") "Jeffrey Smisek" ("Smisek"), Respondent's counsel is so concerned about keeping any asbestos related documentation out of these proceedings and out of the court record and United's counsel will do whatever it takes to keep any asbestos related documents from being entered into the court record.

8. The Respondent's counsel in this instance has either tampered with evidence by altering images (evidence) that were originally attached in the emails sent by the Complainant to United Airlines, or completely withheld other asbestos related documents from their motion which were documents and images also attached to the emails sent by the Complainant to United Airlines from June 26, 2014 to present.
9. The Respondent's counsel (Ms. Ada Dolph) for ("United Airlines") has altered evidence (JPEG image of asbestos sign) which was submitted as exhibit (J) in the Respondents motion filed on August 25, 2014.
10. The Respondent's refusal to provide the Complainant with the requested asbestos records still in defiance of the courts August 8, 2014 Order to turn over all identified asbestos records and then to boldly alter evidence only further proves my case that United Airlines retaliated against the Complainant through their attorneys will do everything they can to conceal the fact that United Airlines has a serious asbestos problem at the former United Airlines World Headquarters Campus (1200 East Algonquin Road Elk Grove Township Illinois 60007), and for United Airlines and their represented counsel to go so far as to alter the Complainant's evidence shows just how serious the asbestos problem is for United Airlines.
11. The Respondent's counsel has made false allegations to the court that the Complainant's recent communications to United Airlines management including CEO "Smisek" constitute harassment and an annoyance, this again is not true because soon after the Complainant sent the June 26, 2014 email to United's CEO (Jeff Smisek), Mr. Smisek himself forwarded Complainant's email to the United Airlines System Building

Maintenance Director (George Hujo) who on July 12, 2014 sent an email to Complainant asking the Complainant for his help to address the asbestos issue.

12. The email received from George Hujo “Director of System Building Maintenance & Facilities for United Airlines” was in direct response to the Complainant’s email sent to CEO “Smisek” on June 26, 2014. Mr. Hujo did not make any allegation that the Complainant’s email was an annoyance or that the Complainants concerns about the asbestos release hazard constituted as an act of harassment, to the contrary, Mr. Hujo was so concerned that he wrote in his email the he wanted to follow up with an appropriate maintenance team to come to a solution to the asbestos issue and get it rectified. See email Exhibit (11).
13. The Respondent’s motion for a protective order to preclude the Complainant from making any further communication with United Airlines would not only be inappropriate but to grant the Respondent’s motion would prevent the Complainant from assisting the System Building Maintenance Director from responding to serious life threatening health related asbestos issues within a facility that is currently occupied by United Airlines employees.
14. The Respondent’s motion to preclude the Complainant from having any further communication with United Airlines management or with United’s CEO would jeopardize the health and safety of United Airlines employees, to grant the Respondent’s motion clearly would not be the best interest of United Airlines shareholders, especially when the Respondent’s motion was filed for illegitimate and false reasons.
15. The Respondent’s motion in this instance is completely unwarranted and to grant such an order to preclude the Complainant from communicating with United Airlines, the

employees of United Airlines, the shareholders of United Airlines, the media or any other party with a vested interest in the business of United Airlines about any non confidential information already in the Complainant's possession prior to the court imposed protective order would be inappropriate.

16. The information sent by the Complainant to United Airlines was not confidential information the information sent to United Airlines is related to the health, safety and welfare of United Airlines employees, including but not limited to the interests of the United Airlines shareholders.
17. The reasons proffered in the Respondent's motion to preclude the Complainant from any further communication with United Airlines during these proceedings represents a concerted effort to deceive this court into believing the Complainant's communication(s) with United Airlines has been made with the sole purpose to annoy, harass and or embarrass United Airlines, these allegations could not be further from the truth.
18. The Respondent's counsel has once again embarked on a campaign and effort deceive this court and make false allegations in effort to attack the Complainants character and credibility, even if it means altering evidence and/or by selectively deciding not to provide the court with a full and complete record of all the documents or images attached to the emails sent by the Complainant to United Airlines that are related to this matter.
19. The Complainant is still be an employee of United Airlines and a United Airlines shareholder, there is no law precluding an employee from sharing health (asbestos) related concerns with members of United Airlines management or the Chief Executive Officer (Jeff Smisek) of United Airlines.

20. The Respondent's counsel (Ada Dolph) sent the Complainant a letter and an email which suggests that the Complainant is prohibited from contacting United's CEO (Jeff Smisek) due to some apparent "no contact rule", this is ridiculous because the "no contact rule" protects against a lawyer from taking advantage of a non represented litigant.
21. The Respondent's counsel (Ada Dolph) wants this court to believe that the Complainant a mechanic without any legal education has somehow taken advantage of the Chief Executive Officer of United Airlines (Jeff Smisek), this is ridiculous because United's CEO (Jeff Smisek) is a Harvard Law graduate.

ARGUMENT

Your honor the Respondent's efforts to deceive this court and tribunal have been repeated over and over for months the Respondent's conduct have no boundaries and to allow this type of conduct to continue is a clear violation to the rules pursuant to Sections 18.13 and 18.18 of the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, of Rules 26, 33 and pursuant to Rule 37(a) of the Federal Rules of Civil Procedure

The Complainant respectfully requests that this court deny the Respondent's motion and issue sanctions against the Respondent, without the court's enforcement United's counsel will continue to mislead and deceive this court by altering evidence spinning facts and distorting the truth, and to allow this sort of unethical conduct to go unaddressed and without consequences subverts the very rules of conduct for lawyers established by the American Bar Association, moreover it would be completely contradictory to the remedial purposes afforded to whistleblowers which Congress carved out in the very language of the Sarbanes Oxley statute itself.

The lawyers from the law firm of Seyfarth Shaw LLP are not exempt from following the ABA rules of conduct nor should any other lawyers corporate or otherwise be exempt from the governing language in the Sarbanes Oxley Act including the Office of Administrative Law Judges from the Rules of Practice and Procedure utilized by this court.

12. 29 C.F.R. 18.15(a) states that the administrative law judge may, upon motion by any party and for good cause shown, "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression . . ."

Your honor the Respondent's argument for this protective order is completely unwarranted because the record shows that it is the Complainant who is being bullied, harassed and oppressed and it is the Complainant's character that has now come under attack by the Respondent's counsel, the Respondent's false allegations are in itself an act of retaliation against the Complainant because the Complainant continues to request the asbestos records that the court already ordered the Respondent to produce so that these proceedings may move forward.

CONCLUSION

For these reasons, the Complainant respectfully requests that the Court issue sanctions against the Respondent for altering and/or tampering evidence and for unethical conduct of an officer of the court in violation of the American Bar Association including but not limited to violations of the Rules of Practice and Procedure for the OALJ utilized by this court and for violation of the Sarbanes Oxley Act (18 U.S.C. 1514A).

Pursuant to the employee protection provisions of Section 806 of the Corporate and Criminal Fraud and Accountability Act of 2002, Title VII of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1514A) ("Sarbanes-Oxley," "SOX," or "the Act") Section § 1107 states:

Whoever knowingly, with the intent to retaliate, takes any action to any person, including interference with lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission of any federal offense shall be fined under this title or imprisoned not more than 10 years, or both.

The Respondent's motion is a motion that denies the Complainant's right to communicate with his employer (United Airlines) and or the CEO, when all other employees are afforded this same right, (absent a SOX protected activity) this is the CEO's policy and it must apply equally to an employee on (EIS) Extended Illness Status.

The Respondent's allegations against the Complainant are in itself an act of retaliation because they are patently false and the exhibits submitted herein the Complainant's motion support this to be the true and accurate record.

WHEREFORE, for the foregoing reasons, the Complainant respectfully requests that ALJ Pamela J. Lakes grant the Complainant's motion to deny the Respondent's motion and issue sanctions against the Respondent and/or to issue a decision that it deems fair and just.

Dated: September 14, 2014

Respectfully Submitted,


Paul W. Simkus "pro se"

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CERTIFICATE OF SERVICE

The undersigned litigant certifies that a copy of the foregoing COMPLAINANT'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION FOR PROTECTIVE ORDER TO PRECLUDE THE COMPLAINANT FROM CONTACTING UNITED'S MANAGERIAL EMPLOYEES

On September 14, 2013 a copy
Was filed and faxed with the OALJ
Office of Administrative Law Judges
800 K. Street, NW, Suite 400-N
Washington, DC 20001-8002


Complainant Paul Simkus

And a faxed copy was also served upon:

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