



Express

Tel. No. (901) 434-6286

Fax No. (901) 434-9271

January 15, 2015

Via Email and FedEx Delivery

Lee Seham
Seham, Seham, Meltz & Petersen, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

**Re: Mark Estabrook v. Federal Express Corporation
Case No. 2014-AIR-00022
FedEx No. 60-14499**

Dear Counsel:

This letter is in response to your earlier correspondence regard Federal Express Corporations' responses to your discovery requests. I apologize for the lengthy delay in getting this response to you. For the reasons set forth herein, FedEx believes its responses were adequate.

Requests for Admissions

RFA6: The Request has been fully and adequately answered. FedEx is unaware of the existence of any tape recording of the telephone call in question, or of any "policy of taping and retaining teleconferences with its pilots." FedEx has no recording of the conversation in question to review. If you have a recording of the telephone call in question, please produce a copy (as requested in FedEx's discovery requests) and FedEx will review the recording with Captain Fisher, as appropriate.

RFA 8 – 11: FedEx reiterates that it denies the requests as written. FedEx admits Complainant raised safety-related issues associated with the industry's package tracking systems. FedEx also admits Complainant express concern that terrorist groups could use tracking information in carrying out terrorist attacks. FedEx also admits Complainant suggested FedEx ask the Federal Department of Homeland Security to order airlines to cease making tracking information available on-line.

FedEx denies, however, that Complainant used the precise language and terminology set forth in the requests for admission, which is what FedEx was asked to admit. For instance, FedEx does not admit that Complainant said FedEx's "practice of providing up-to-date package tracking information facilitated and maximized the criminal destruction of cargo, aircraft and human lives by granting terrorists the ability to carefully select the time of detonation," as set forth in Request No. 9. Likewise, FedEx does not admit that Complainant said FedEx's "practice of providing up-to-date package tracking information had the result of encouraging terrorists to view the Respondent as a particularly effective means of utilizing explosive, incendiary and other destructive devices by placing in the terrorists' hands the ability to select the most optimum timing for detonation," as set forth in Request No. 10. Consequently, FedEx's denials of the requests "as written" is entirely appropriate. Further, FedEx has specifically referred Complainant to the notes of Todd Ondra (located at FDX 4 – 000060 – 64) for a summary of the conversation.

RFA13: FedEx has properly responded to this request, as it is without knowledge or information regarding the truth of the request. As an initial matter, whether or not Complainant held a position with the FedEx Pilots Association (FPA) at some undefined time between 1996 and 2002 is totally irrelevant to this cause, and there has never been any allegation or suggestion that Complainant's involvement or noninvolvement with the FPA had any bearing on this case whatsoever. Additionally, the FPA was an organization that was separate and distinct from FedEx, and FedEx has no obligation to determine what position, if any, Complainant held with that organization.

Interrogatories

INT3 and INT4: FedEx has properly responded to these requests as, at this point, it has not decided whom it will call as witnesses. As noted, FedEx will supplement these responses as required. Further, FedEx reserves the right to call any witness identified by either party.

INT7: Complainant was placed on NOQ status on or about August 5, 2013 to facilitate scheduling the meeting he had requested as soon as practical, and Complainant expressed his understanding of this. As is clear from his notes (FDX 4 – 000060 – 64), Todd Ondra questioned whether Complainant was fit to fly based upon his observations during the meeting. Based upon Ondra's concerns, FedEx exercised its rights under Section 15.D. of the collective bargaining agreement and referred Complainant to the aeromedical advisor for evaluation. Pending the results of the aeromedical advisor's evaluation, Complainant was placed on NOQ status.

Requests for Documents

Req1: FedEx will not produce any documents withheld on the basis of attorney-client privilege or the work product doctrine. Your contention that the production of Todd Ondra's notes,

marked as personal and confidential (documents Bates labeled FDX 4 – 000060 – 64) constitutes waiver of any and all privilege related to the entire process is misplaced. First, Mr. Ondra is not an attorney for FedEx. As noted in response to Interrogatory No. 1, Mr. Ondra is a Managing Director of Aviation and Regional Security. He was not working in any capacity as an attorney during Complainant's interview. Further, the documents you have identified are not attorney-client communications or attorney work product. They are simply Mr. Ondra's handwritten notes and his typewritten summary of the meeting. Although Mr. Ondra marked them as personal and confidential, this does not impute attorney-client privilege and/or work product protection to the documents. Thus, they were produced. Their production is wholly insufficient to waive applicable privileges to communications and other documents prepared by company attorneys in relation to this matter.

Additionally, your characterization of Mr. Tice's role in this matter is incorrect and unsupported by the record. Mr. Tice, a company attorney, attended the meeting Complainant requested and, in the course of that meeting, asked Complainant whether he was "Mayday Mark." Documentation related to that involvement has been produced. While he was involved in the process, he was not "actively involved in the investigation of the Complainant's physical and mental health status" nor did he "play[] a leading role in the interrogation of the Complainant." The record simply contains no evidence of this. His mere participation in the meeting is wholly insufficient to waive any and all privileges and protections to any and all legal advice Mr. Tice may have provided the company.

Req6: FedEx reiterates and incorporates by reference its objections set forth in its original response to Request No. 6. Based upon the additional information provided in your letter, FedEx has located three additional telephone calls related to the Laredo incidents. Copies of these calls are included on the attached CD.

Req7: FedEx reiterates and restates the objections raised in its original response. As an initial matter, the existence or non-existence of documents related to knowledge of terrorist organizations targeting the operations of cargo aircraft operators is irrelevant to whether Complainant raised security-related concerns in the August 9, 2013 meeting. Complainant's concerns are either objectively related to security issues or they are not. They do not become security-related based upon the existence of documents sought in Request No. 7. Further, to the extent any such information exists, it is highly confidential and/or proprietary and would not be produced absent a showing of relevance and entry of an appropriate protective order.

Req8: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 8, copies of responsive documents include those Bates labeled FDX 4 – 000020 – 23 and FED 4 – 000049 – 59.

Req10: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 10, copies of responsive documents include those Bates labeled FDX 4 – 000024 – 48.

Req11: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 11, copies of responsive documents include those identified as responsive to Request No. 10, Bates labeled FDX 4 – 000024 – 48.

Req12: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 12, copies of responsive documents include those identified as responsive to Request No. 10, Bates labeled FDX 4 – 000024 – 48.

Req13: In response to your request that FedEx identify specific documents responsive to Request No. 13, copies of responsive documents include those identified as responsive to Request No. 10, Bates labeled FDX 4 – 000024 – 48.

Req14: FedEx's objections are proper. Responsive non-privileged documents have been produced.

Req15: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 15, copies of responsive documents include those Bates labeled FDX 3 – 000022, 35 and 37; and FDX 4 – 000126, 128-129, 149-150, 171-181 and 222.

Req16: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 16, copies of responsive documents include those Bates labeled FDX 4 – 000352 - 353.

Req17: FedEx's objections to Request No. 17 are proper and are reiterated herein. As an initial matter, the Request is ridiculously overbroad and unduly burdensome in that it seeks "any correspondence or communication" from January 2008 to the present that references Auburn Calloway in any manner. The Request places no appropriate restrictions or limitations that would suggest the information sought is somehow related to this case. Moreover, the mere fact that Complainant said he had heard rumors that Auburn Calloway had converted to Islam and might be sharing information with al-Qaida is wholly insufficient to put all communications that reference Auburn Calloway over the past six years at issue in this case. Your letter fails to indicate how any such correspondence may be relevant to your client's claim of retaliation, or how failure to produce such information somehow constitutes waiver of FedEx's position with respect to Complainant. FedEx will not produce the requested information, nor does FedEx waive any of its arguments or positions with respect to Complainant.

Req18: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 18, copies of responsive documents include those Bates labeled FDX 4 – 000060, 63, 233, 281, 329, 336-351, and 356-358.

Req19: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 19, copies of responsive documents include those Bates labeled FDX 4 – 000021, 23, 49, 72 and 90-91.

Req20: FedEx's objections are proper. In response to your request that FedEx identify specific documents responsive to Request No. 20, copies of responsive documents include those Bates labeled FDX 4 – 000060 – 64, 71-72 and 95.

Req22: With respect to Request for Admission No. 6, FedEx did not rely on any documents in denying the request. With respect to Request No. 7, FedEx did not rely on any documents in denying the request. With respect to Request Nos. 8 – 11, see documents Bates labeled FDX 4 – 000060 – 64. With respect to Request No. 16, see documents Bates labeled FDX 4 – 000065 – 70, 74 – 79 and 83.

Req23: FedEx's objections are proper, as these documents are not relevant to the claims at issue and are not likely to lead to the discovery of admissible evidence. FedEx has produced the responsive documents that appear in Complainant's personnel file. FedEx will search for other responsive documents and will produce any additional responsive documents it discovers.

Req25: FedEx's objections are proper. After reasonable inquiry, FedEx has been unable to confirm that Complainant held a position of Security Chairman with the FedEx Pilots Association from 2001 to 2002, Complainant's contention that he did notwithstanding. Complainant is, of course, free to produce documentation establishing his position and his alleged correspondence on the issues identified in Request No. 25. FedEx, however, contends that any such information and/or documentation is irrelevant.

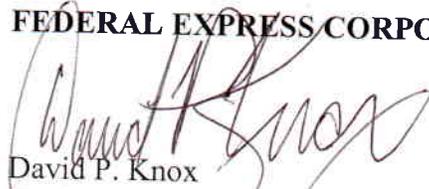
Req27: FedEx has supplemented its response with respect to recorded conversations in April 2013 (See Req6 above). FedEx reiterates that it is unaware of any documents, recordings or EIS related to any call between Complainant and Capt. Fisher on August 9, 2013.

Lee Seham
January 15, 2015
Page 6

Req29: FedEx's objections are proper. Any documents related to any meeting Complainant may have had with someone in 2002 have absolutely no bearing on or relevance to the claims involved in this matter. Absent a more precise description of the documents sought and an explanation of their supposed relevance, FedEx will not conduct any further investigation related to these documents, if any.

Sincerely,

FEDERAL EXPRESS CORPORATION



David P. Knox
Senior Counsel/Legal/Litigation

DPK/lhb1090316
Encls.