NO. 20-55

In The

SUPREME COURT OF THE UNITED STATES

WILLIAM A. ANDERSON,

Petitioner,

v.

AMERICAN GENERAL INSURANCE,
d/b/a AIG LIFE AND RETIREMENT

Respondent.

ON PETITON FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

This court has held that concerning punitive damages, in cases where the employer was found to have acted with actual malice or reckless indifference to the plaintiff's federally protected rights and was high up on the corporate hierarchy, that once those criteria were established, the employer may assert a good faith defense to vicarious liability for punitive damages where the employment decisions of managerial agents were contrary to the employer's good faith efforts to comply with Title VII. Similarly, Federal Circuit Courts have held the same in recent years. Their Reasoning is straightforward and clearly defined.

Officers of the court have an obligation to promote justice and are held to a higher standard of legal and ethical obligations. In the spirit of due process, this court has held that an officer of the court has an ethical duty of due diligence to investigate the allegation of fabricated or false evidence prior to making a ruling based upon that evidence, magnified when given notice of the potential falsification, and also an opportunity to respond to the evidence presented identifying the falsification.

This court has held concerning contract law that, at the least, 3 basic elements must exist – Offer, Acceptance, and Consideration. This court has also held, as a general rule, that a court will construe ambiguous contracts terms against the drafter of the agreement. Minus ambiguity, an officer of the court is held to a higher standard of legal and ethical obligation to follow the agreement upon which they entered into agreement with between all parties.

The questions presented are:

1. Is it a violation for an Arbitrator to assert a defense on behalf of a defendant of which the defendant did not request or present on their own behalf?

2. Once identified as false evidence "prior" to ruling, does a ruling officer of the court violate due process or commit judicial misconduct by ruling on an issue utilizing that false evidence that was non-existent?

3. Whether an officer of the court violates a contractual agreement when they switch from agreed upon terms between all parties to a term that creates a detriment to one party?

PARTIES TO PROCEEDINGS AND RELATED CASES

The petitioner is William Anderson. The respondents are AIG Life and Retirement.

Related cases are:

- Anderson v. AIG, In Arbitration, Interim Award entered Dec. 5, 2018, Final Award entered Jan. 22, 2019
- Anderson v. AIG, No. 4:17-CV-117, U. S. Federal Court for the Southern District of Georgia. Judgment entered Mar. 19, 2019
- Anderson v. AIG, No.19-11478-GG, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered Feb. 19, 2020

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued its opinion affirming the decision of the United States District Court for the Southern District of Georgia on February 19, 2020, App 1. The Petitioner did not receive an answer to his Petition for a Hearing. The jurisdiction of this Court is invoked under 28.U.S.C 1254(1).

STATUTORY PROVISION INVOLVED

The Federal Arbitration Act, 9 U.S.C. § 10(a)

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

STATEMENT OF THE CASE

The Supreme Court, the Circuits, nor the Federal courts are split concerning the first established precedent that for the issue of punitive damages to reach the jury in a section 1981 case, the plaintiff must come forward with *substantial evidence* that *the employer* acted with actual malice or reckless indifference to his federally protected rights." *Miller v. Kenworth of Dothan,* Inc., 277 F.3d 1269, 1280 (11th Cir. 2002) (citing *Kolstad v. Am. Dental Ass'n,* 527 U.S. 526, 536–37, 119 S. Ct. 2118, 2125–26, 144 L. Ed. 2d 494 (1999)) (emphasis added). "Malice means an intent to harm and recklessness means serious disregard for the consequences of one's actions." *Ash v. Tyson Foods,* Inc., 664 F.3d 883, 900 (11th Cir. 2011).

Secondly, there is no split concerning that [P]unitive damages will ordinarily not be assessed against employers with only constructive knowledge of harassment." *Miller*, 277 F.3d at 1280 (quotation marks omitted). Instead, punitive damages are available only if "the discriminating employee was high up the corporate hierarchy or ... higher management countenanced or approved his behavior." Id. (alteration and quotation marks omitted).

And thirdly, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good-faith efforts to comply with Title VII." *Kolstad*, 119 S. Ct. at 2129(quotation marks omitted). The *Kolstad*, 527 U.S. 526 decision thus created an affirmative defense which "requires an employer to establish both that it had an antidiscrimination policy and made good faith effort to enforce it." *Zimmermann v.*

Associates First Capital Corp., 251 F.3d 376, 385 (2d Cir. 2001); see also Miller, 277 F.3d 1269, 277 F.3dat 1280("[T]he Supreme Court has held that employers may assert a good faith defense to vicarious liability for punitive damages where the employment decisions of managerial agents ... are contrary to the employer's good-faith efforts to comply with Title VII.") (quotation marks omitted).

This case is unique. The Eleventh Circuit Court of Appeals erroneously affirmed the denial of Petitioner William A. Anderson's Motion to Vacate the Arbitrator before the Southern District of Georgia Federal Court based on misconduct when Arbitrator Patricia Renovitch violated Supreme Court guidance to create a bias to protect an employer from punitive damages and to escape from other claims against the employer. 9 U.S.C § 10(a)(3)(4).

The Eleventh Circuit Court of Appeals mistakenly contended concerning Petitioner's case on this point:

> In federal litigation, courts enforce a number of rules and principles that prevent parties from raising arguments too late. See, e.g., In re Egidi, 571 F.3d 1156, 1163 (11th Cir. 2009) ("Arguments not properly presented in a party's initial brief or raised for the first time in the reply brief are deemed waived."); *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) ("A motion for reconsideration cannot be used to . . . raise argument or present evidence that could have been raised prior to the entry of judgment."). Those same principles may be properly applied in an arbitration proceeding where there are fewer procedural protections than in federal court. See, *Rosensweig v. Morgan Stanley & Co., Inc.*, 494 F.3d 1328, 1333 (11th Cir. 2007). The refusal to consider Anderson's belated argument was not misbehavior.

Barring the court's view of the Plaintiff's explanation of what spoliation may have shown, the Eleventh Circuit's position fails because an officer of the court was not presented evidence nor received a new argument that could have been raised

prior to the entry of judgment. Unlike Wilchombe who submitted his Request for Reconsideration "after" a grant of summary judgment and raised two "new" arguments, Anderson submitted his Request for Reconsideration "before" the Final Award was issued. Anderson pointed out to an officer of the court that (1) false non-existent evidence was being used that had not been presented by either side, (2) establishing that she was violating the law by giving the employer a defense of which they had not put forth, (3) addressing her using a non-discriminatory reason for a decision against a claim (which was against her documented contractual agreement), and (4) pointing out evidence that she disregarded that "was" part of the record. All of which was a bias to the detriment of the Plaintiff and a bias to the advantage of the Defendant. 9 U.S.C § 10(a)(3)(4).

Defendant petitioned to block the Plaintiff's Request for Consideration and the American Arbitration Association's investigation determined that it was proper, as the Final Award had not been established, and that is why this case is unique. An officer of the court issued an Interim award which highlighted her misconduct and afforded a Plaintiff to stare down and address blatant bias, prejudice, and misconduct against his side before the gavel struck, this illumination revealed an affront to due process and is at the heart of all submitted questions before this court. As an officer of the court held to a higher standard of legal and ethical obligations, once made aware of judicial violations "prior" to a final ruling and that officer goes on to display a negligent and blatant disregard of those violations, is an Arbitrator relieved of the very broad protection stemming from absolution from

error of fact and also protection from other judicial violations such as due process?

In this case, Thomas Gallo, a managerial agent high on the hierarchy answering directly to the Regional Vice President of the company was found guilty of racial discrimination with reckless indifference to Petitioner's federally protected rights under both Section 1981 and Title VII. Gallo was over offices in two different states and supervised multiple managers.

At this point, according to Supreme Court guidelines, an employer may avoid punitive damages by the following instructions:

The Instructions for race Discrimination Claims Under 42 U.S.C. § 1981 in Section 6.4.2 Punitive damages starting on Line 29 state:

"[For use where the defendant-employer raises a jury question on good-faith attempt to comply with the law:

> But even if you make a finding that there has been an act of discrimination with malice or reckless disregard of [plaintiff's] federal rights, you cannot award punitive damages if [defendant-employer] proves by a preponderance of evidence that it made a good-faith attempt to comply with the law, by adopting policies and procedures designed to prevent unlawful discrimination such as that suffered by [plaintiff].]"

A. FACTUAL BACKGROUND

In this case, the Arbitrator arbitrarily made the decision not to grant punitive damages even though the record was clearly devoid of evidence concerning any attempt by the employer to mention, let alone produce any anti-discriminatory records, defend the company, or show any such actions that could be deemed an attempt at a good-faith defense. Instead, the Arbitrator attempted to rely on a determination that three (3) people did not know what Mr. Gallo was doing.

Contradicting this was the Arbitrator's on wording in her Interim Award:

> Claimant put AIG on notice of the discriminatory SM promotion process (claim #1) in early 2013. This specific allegation is described in detail in the complaint Claimant filed with EEOC on February 13, 2013. AIG had the opportunity and ability to investigate and remedy the discriminatory promotion process to which black applicants were subject in 2012. AIG could have required the SM promotion process to be redone in a nondiscriminatory manner after Claimant filed this charge with EEOC. However, AIG took no action of record in 2013 to remedy the discriminatory 2012 SM promotion contest at its Savannah office.

What is most fatal to the pretextual reason the Arbitrator gave to protect AIG was the fact that she issued an Interim Award prior to her final ruling which afforded the Plaintiff an opportunity to point out multiple major misconduct actions before she issued her Final Award. Plaintiff filed a timely Request for Reconsideration prior to the Arbitrator cementing the misconduct with her Final Award ruling, an award she produced a month and a half after issuing her Interim Award. That request afforded her the opportunity to avoid that path of misconduct.

Even though it wasn't necessary, being that Mr. Gallo was high up on the managerial hierarchy, in the Request for Reconsideration, the Plaintiff pointed out the undisputed evidentiary facts of Regional Vice President Curtis Benton's participation in number manipulation to benefit the white comparator stating:

> Regardless of AIG's attempt to distance Regional Vice President Curtis Benton from the management contest, Curtis Benton is the one who had extensive knowledge of all competitors, to include their race, as he had been their RVP for over 7 years to include a period which included claimant's managerial tenure. Also, there are several evidential pieces that indicate just how Curtis Benton's involvement occurred. First and namely, Diane Hardwick's direct testimony that she was instructed to fax a big policy to the home office and that a call was given to Curtis Benton to have him push it through sometime during the contest period to aid Roy Watson in making his goal (Hardwick Tr. 331, 17-25, p. 332, 1-8). Thomas Gallo's email to Curtis

> Benton asking to extend the $500.00 additional weekly pay for Roy Watson and also mentioning what "we" have in underwriting being issued...). Wonda Gibson's trial testimony of hearing Curtis Benton saying how "he's" going to hit the button up there to get something pushed through (Gibson Tr. P 361, 1-3). Dale Morris' trial testimony of a RVP named Ron Callahan, who stepped down, but would often manipulate business by pushing it through or delaying its issue (Morris Tr. Pg 387, 11-15, pg 388, 1-4). Finally, claimant's 2013 EEOC statement where he mentions challenging Thomas Gallo on the contest that was created; only to be told that it was what Curtis Benton wanted. AIG has never challenged that statement from Claimant's EEOC file and based upon that and on the aforementioned evidence and testimonies, that indication of Curtis Benton wanting this contest and his involvement with the contest must hold true.

This is a violation of the Plaintiff's right to rely upon established Guidelines by the Supreme Court concerning punitive damages and sets a precedence that allows an officer of the court to enter a defense on behalf of a party of which they did not request, thereby creating a prejudiced bias to the detriment of the other party. 9 U.S.C § 10(a)(3)(4).

B. The Eleventh Circuit Court's Failure to Support Supreme Court Guidelines.

The Eleventh Circuit Court did not fully or correctly address the allegations concerning punitive damages by Petitioner William Anderson, the court stated:

> Anderson next contends that arbitrator Renovitch exceeded her powers, showed bias, and engaged in misconduct by asserting an affirmative defense to punitive damages on behalf of AIG when AIG itself had failed to do so. The factual premise of his contention is belied by the record. The arbitrator never asserted an affirmative defense to punitive damages on behalf of AIG. The denial of punitive damages was expressly based on Anderson's failure to prove that he was entitled to them, not on any affirmative defense.

Nothing further. That position defies judicial review to state that the factual premise of his contention is belied by the record. If reviewed, the factual record

shows an absolute compliance with the Supreme Court Guidance, employer found guilty of reckless disregard for federally protected rights, check; discriminating employee of managerial status and high up the corporate hierarchy, check; "employer" established a good-faith defense, "no check". According to Supreme Court guidelines, the employer would only have been found not liable for punitive damages if the "employer" had made good-faith efforts to comply with federal law through those written policies.

C. District Court's Contradicting Position on Supreme Court Guidelines.

The clear guidelines by the Supreme Court concerning awarding of punitive damages show why the District Court erred in its determination. The District court contended that:

> ""Plaintiff's argument fails on its merits because the reason for the arbitrator's ruling on the punitive damages claims was not based on any defense. Rather, the arbitrator found that the "preponderance of the competent and substantial evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including [Plaintiff], during the SM promotion contest. While Gallo may have acted with reckless indifference to [Plaintiff's] 42 U.S.C.A. § 1981 and Title VII rights during the pretextual SM promotion contest, the record does not show upper management did." Dkt. No. 22-11 at 26"" [Doc. 29, Pg 14]

The presiding Federal Judge, Lisa Godbey Wood, in this case broke her own established precedence. In a case she ruled on in recent years concerning punitive damages, *Spriggs v. Mercedes Benz USA, LLC*, CV 213-051 (S.D. Ga. Apr. 26, 2016), Judge Wood supported the jury finding against the employer and in favor of the Plaintiff for receiving punitive damages on three distinct points. First, that the

employer had acted with reckless disregard to Plaintiff's federal rights under Title VII and 42 U.S.C. § 1981.

Second, concerning the *Spriggs v. Mercedes Benz USA* case as to the job positions of the accused, she identified in her order:

> Plaintiff's supervisor was Taylor, the Shop Foreman.Id.at109:3-16. While Plaintiff reported directly to Taylor, she frequently needed to interact with Steve Sanfilippo("Sanfilippo"), the Warehouse Foreman, regarding contact information and parts orders. Id. Taylor and Sanfilippo reported to Richard Gerhardt ("Gerhardt"), the Supervisor of Operations.Id.at 109:17-21. The only management position above Gerhardt was Whitmore.Id.at 110:5-15, 243:15-17.

The highest and only one management position in question was that of Mr. Whitmore. In the case she decided concerning Anderson's Motion to Vacate, Mr. Gallo was higher up in the hierarchy, over managers and answerable directly to the Regional Vice President Curtis Benton.

Third, her order established that for the *Spriggs v. Mercedez-Benz* case, the record showed that the defendant had policies in place to ensure lawful employment practices and that they failed to comply with what they produced; therefore the Honorable Judge Wood relied on the following to support her position:

> Compare *Jackson v. Checkers Drive-In Restaurants, Inc.*, 8:10-CV-1483-T-26TBM, 2011 WL 3171812, at *4 (M.D. Fla. July 27, 2011)(defendant not liable for punitive damages where it has made "good-faith efforts" to comply with federal law through written policies prohibiting discrimination and procedures for reporting the same (citing *Kolstad*, 527 U.S.at 544)),with *Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1281–82 (11th Cir. 2008)(upholding punitive-damages award where defendant's management failed to follow antidiscrimination policy and investigate discrimination complaints, demonstrating ineffectiveness of policy and reckless indifference to employee's rights).

In the Petitioner, William Anderson's case, as aforementioned by the

Arbitrator; AIG neither produced nor defended any such policy, or investigated the complaint or showed a single attempt that would indicate a good-faith effort.

D. District Court's Clear Error Addressing Non-Existent Testimony & False Evidence

The District Court's opinion concerning non-existing false testimony and evidence is dismantled with its opening conclusion stating that:

> [P]laintiff misreads and consequently misstates the interim award and Renovitch's findings and conclusions in that award. Renovitcch did not find that Pickett collected the service agent position in May 2012.

That conclusion contradicts the factual record and seeks to negate the entire premise concerning the non-existing false evidence. The record specifically quotes Arbitrator Renovitch saying:

> The temporary appointment of Pickett to service agency #24 did not violate federal law (claim #2). Claimant claims his Section 1981 and Title VII rights were violated when Gallo appointed Pickett to temporarily collect premiums on service agency #24 from August 13 to October 8, 2012. This is claim #2. To prove this, Claimant must satisfy the above-described burden shifting test. The record shows Pickett helped service Watson's agency #24 after Gallo appointed Watson temporary SM on May 14 and before Watson was promoted on August 13. Gallo testified he made this temporary appointment on August 13 to "reward" Pickett for doing that work.

Before the court was documented proof that Arbitrator Renovitch was made aware through the Request for Reconsideration that throughout the entire record, Gallo "never" testified that Pickett ever helped service Watson's agency #24 after Gallo appointed Watson temporary SM on "May 14" and before Watson was promoted on August 13. Gallo never testified he made this temporary appoint on August 13 to "reward" Pickett for doing that work. This is non-existent false

evidence used to rule against Plaintiff's claim #2.

In the Motion to Vacate, Petitioner used the term of Pickett "servicing", "working", and "collecting". These are all terms used in the insurance industry when managing an agency. There were no other non-discriminatory reasons utilized by the Arbitrator in her Interim Award concerning claim #2 as she was made aware that Mr. Gallo was only informed of Plaintiff's desire to go on vacation after the discriminatory action concerning Mr. Pickett had already been made and that was documented in the EEOC record. After arguing back and forth with Mr. Gallo, Plaintiff's reluctant agreement "after" the discriminatory move had already taken place was not concurring with what Mr. Gallo had done. Plaintiff actually had no choice as he was subordinate and not in charge. Only the non-existent false evidence was used in ruling against Plaintiff for claim #2.

The non-existent false evidence was pointed out to the District Court in Petitioner's Motion to Vacate and the defendant's attorney was made aware and put on notice that non-existent false evidence was being used as it pertained to "his" witness and his case. The attorney neglected to address that in his challenge to Petitioner's Motion to Vacate because of the obvious; he could not because no such direct testimony existed. As an officer of the court he knew that it was false and non-existent and he could not justify it, even though he was obligated to do so in order to protect the integrity of the courts concerning due process and fraud.

I. The Eleventh Circuit's Erroneously addresses the utilization of Non-Existent False Evidence used to the Detriment of the Plaintiff:

Many courts are divided when it comes to whether or not due process is violated when evidence the courts relied on was determined to be false or perjured "after" a ruling was made utilizing the evidence as material. However, it must be clear to all courts that once evidence is identified as false or perjured "prior" to a ruling it should at the least be brought before scrutiny prior to a decision being made utilizing it as material. To willfully disregard the identifying of the falsity, if not akin to fraud, it should at the least be considered judicial misconduct. 9 U.S.C § 10(a)(3)(4).

The request for Reconsideration was in fact, the petitioner exercising his right to rebut the non-existent false evidence that was used as the non-discriminatory reason identified in the Interim Award. The request was well prior to the Arbitrator's final ruling. The problem the Arbitrator has is that this non-discriminatory reason was not proffered by the employer; it was made up by an officer of the court. This court has held that if the employer proffers a legitimate, non-discriminatory reason for its actions, then the plaintiff must show that the reason given is pretextual. *Godwin v. Corizon Health*, 732 Fed. Appx. 805, 808–09 (11th Cir. 2018). Plaintiff can rebut the non-discriminatory reason proffered by demonstrating "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." *Smith v. Thomasville Georgia,* 753 Fed. Appx. 675 (11th Cir. 2018). The Request for Reconsideration stated to the Arbitrator:

> Rick Pickett was erroneously identified as having collected the service agent position #24 in May 2012 when Roy Watson was given the trial manager position; that evidence and testimony was not presented during the entire proceeding by anyone from either side. However, Arbitrator Renovitch, it appears that you based your decision primarily on this concept not present during the trial or via depositions. The actual pay statements clearly identify that Rick Pickett did not work or receive payment on that position until after 13 August 2012, a full week after black competitor was identified as fully qualified to assume the position permanently. There is absolutely no mention of Rick Pickett servicing Agency #24 during the month of May 2012 in any deposition or trial testimony, therefore there can be no record to show he was actually awarded it for working hard at it.....With the record clarified, Claimant respectfully asks the arbitrator to reconsider the position that AIG had a non-discriminatory reason for placing a white male living over 120 miles away to not only collect income, but block qualified black male from being put into the position much sooner.

Again, the Eleventh Circuit's opinion fails to protect the Arbitrator from misconduct when it attempted to establish that the argument for the non-existent false evidence, renamed incorrectly as fact finding by the court, was not raised in district court and therefore waived when they concluded:

> Finally, Anderson challenges one of Renovitch's fact findings: that Pickett put in extra work after Watson was transferred to the temporary service manager position. Anderson has waived that argument because he did not raise it in the district court. Cf. *Bryant v. Jones*, 575 F.3d 1281, 1308 (11th Cir. 2009) ("It is well established in this circuit that, absent extraordinary circumstances, legal theories and arguments not raised squarely before the district court cannot be broached for the first time on appeal.").

Petitioner did not introduce an argument, but specifically pointed out in both the Request for Reconsideration "to the Arbitrator" and the Motion to Vacate "to the district court" that a strongly weighted piece of non-existent false evidence was being used the Arbitrator to make a ruling. A piece of evidence the Arbitrator identified as the non-discriminatory reason used to rule against a claim of the Plaintiff's. As an officer of the court, the Arbitrator had a legal duty not to blatantly

disregard such an assertion. It would have taken her only minutes to verify this, yet nearly two weeks later in her Final Award, without a word of address; she disregarded every legal breach she was afforded the opportunity to address. The Motion to Vacate stated:

> Arbitrator Renovitch not only violated her contractual agreement by deciding her award in a way contrary to the terms of that agreement leading to partiality, but ignored physical evidence and testimony and based the decision of one claim primarily on a false evidence fact that was not presented during the entire trial by either side, therefore, tipping the scale based on preponderance of evidence in favor of the Defendant in violation of 9 U.S. Code (10) (a) (2). This false evidence was also addressed in a timely matter prior to the granting of the final award and could have easily been addressed by the Arbitrator if she had wanted to be truly neutral and unbiased. (Exhibit 9, RFR p. 3: para 3, p. 4: para 1)

As this court will see, the non-existent false evidence as well as the breach of contract and other misconduct violations of bias was identified to the District Court.

Concerning the contractual breach, the question for this court is that once the Arbitrator rejected the defendant's request that AIG be allowed to have an exceedingly light burden and produce a non-discriminatory reason "without proof" and she got all parties to agree to preponderance of evidence, is she bound by it? The arbitrator rejected the defendants request and on record explained how she would utilize the preponderance of evidence scale to decide. The Plaintiff relied on her words as a contract of agreement.

The Eleventh Circuit in this case stated:

> Anderson further contends that arbitrator Renovitch "violated her contractual agreement" by applying the wrong burden of persuasion. AIG had argued that once Anderson made out a prima facie case AIG faced only an "exceedingly light" burden of producing a non-discriminatory reason for its

> action. The arbitrator rejected that AIG argument on the first day of trial. That rejection, according to Anderson, amounted to an agreement that AIG had to meet more than An "exceedingly light" burden. He complains that the arbitrator violated the agreement by permitting AlG to prove a non-discriminatory reason by less than a preponderance of the evidence and making fact findings accordingly. Those findings, Anderson says, caused him to lose on his retaliation claim and on his claim that AlG discriminated against him by appointing Pickett to the temporary position that Anderson had been promised.
>
> Contrary to Anderson's theory, the rulings of factfinders and decision makers do not amount to contractual agreements. Not only that, but his theory finds no place in the statutory grounds for vacating an arbitration award. See 9 U.S.C.A. § 10(a). A court cannot vacate an arbitration award on grounds not set out in 9 U.S.C.A. § 10. See *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1324 (11th Cir. 2010)

The Eleventh Circuit is again in error. The Plaintiffs contention is not about factfinding or applying the wrong burden of persuasion. The Eleventh Circuit is correct when they say the rulings of factfinders and decision makers do not amount to contractual agreements; however, that is not what Petitioner contended. It is about an officer of the court making a definitive statement of exactly how she would operate and had all parties to agree, on record, and then changed the terms and conditions of that agreement to the detriment of one party. Most often used for requests for summary judgments, AIG did not have to "prove", they only had to "produce" a non-discriminatory reason. Even so, the arbitrator in her own words said that she would not allow that and if that was not within her power to do, she should not have said it. The Arbitrator went on to use a non-discriminatory non – existent false piece of evidence to make a determination, even after it was brought to her attention that it was non-existent prior to her ruling.

The statutory grounds under 9 U.S.C.A. § 10(a) allows for an Arbitrator to be vacated for several things to include:

(3); any other misbehavior by which the rights of any party have been prejudiced. The Arbitrator in this case had multiple misconduct behaviors documented in the record.

The District Court erred in that the Arbitrator's agreement to rule by preponderance of evidence was sealed by her own words and the simple mentioning of preponderance of evidence in her interim award does not take away from her rulings where she states that AIG gave an exceeding light, non-discriminatory reason for its actions. The rules for exceedingly light with a non-discriminatory reason as defined by the Defendant on page 19-20 of their post-hearing brief states that "Exceedingly light" means American General need only produce, not prove, a non-discriminatory reason for the adverse employment decision." [Doc. 22, Ex. 18, pg. 19-20]. That is exactly what the Arbitrator allowed: AIG produced a false non-discriminatory reason that they had never produced during any of its depositions, Request for Dispositive Motion, or at any other time until the trial and without physical evidence or proof. The Arbitrator ruled against the Plaintiff on two of their claims utilizing the concept of AIG providing a non-discriminatory reason, even after being made aware that one of the reasons utilized was non-existent false evidence that was not introduced by either side. Again, as officers of the court, are Arbitrators bound by a higher ethical standard to ensure their ruling are not implemented by non-existent false evidence and perjury when afforded the

opportunity to do so?

REASONS FOR GRANTING THE PETITION

Again, this case is unique and a far reaching precedent may be set. Acknowledging that Arbitrators are given an exceptionally broad difference to fact finding error and interpretation of the law, therefore creating an extremely "high hurdle" to overcome in order to vacate an Arbitrator's award and that those grounds are very limited. Also noting that only the most egregious errors which adversely affect the rights of a party constitutes misconduct to support vacatur, and that even erroneous exclusion of evidence does not provide a basis to set aside an award absent harm to the moving party. 9 U.S.C § 10(a)(3)(4). What is most notable is that every one of those afforded protections are usually applied after the Arbitrator's award was made "final".

In this case, an Arbitrator issued an "Interim" award which revealed blaring episodes of judicial misconduct to include, but not limited to, circumventing established Supreme Court guidance to benefit the defendant, utilizing non-existing false evidence to rule against plaintiff's claim, and violating to the Plaintiff's detriment an agreement of which she created containing the basic elements of a contract and had all parties agree to on record. As an officer of the court, the Arbitrator was made aware of these assertions and even if the courts want to call them errors at that point, once they are brought to the Arbitrator's attention, with plenty of time to address them prior to their "final" ruling, and the Arbitrator totally disregards them, it is no longer error, it is willful misconduct. Especially

when every assertion produced a bias and prejudices that created a detriment and adversely affected the Plaintiff, yet provided blatant relief to the defendant. 9 U.S.C § 10(a)(3)(4) The Plaintiff's Due Process Rights have been prejudiced by the Arbitrator's misconduct.

Although this is a civil case, in criminal cases the Supreme Court has long-since held that the due process clause protects against convictions based on testimony that the prosecutor knew or should have known was false. Due process protection from the use of false testimony developed parallel to and in conjunction with the due process principles, flowing from *Brady v. Maryland*, 373 U.S. 83, 87 (1963)[1] that require the prosecution to disclose exculpatory evidence to the defense.

But protection from false testimony is more robust than protection from non-disclosure of exculpatory evidence. When false testimony is given at trial the truth finding process is fundamentally corrupted.[2] All the participants in the trial—the prosecutors, the law enforcement officers, and the witnesses— understand that

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[1] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that suppression of exculpatory evidence by the prosecution violates due process when the evidence "is material either to guilt or to punishment").

[2] See Note, A Prosecutor's Duty to Disclose Promises of Favorable Treatment Made to Witnesses for the Prosecution, 94 HARV. L. REV. 887, 896 (1981) (remarking that "a jury that hears nothing is better informed than one that is actively misled"). See also *Jackson v. Brown,* 513 F.3d 1057, 1076 n.12 (9th Cir. 2008) (noting that "the prosecution's knowing use of perjured testimony will be more likely to affect our confidence in the jury's decision, and hence more likely to violate due process, than will a failure to disclose evidence favorable to the defendant"). The law has long inferred that a witness who will lie about one fact will lie about others. See *Mesarosh v. United States*, 352 U.S. 1, 13-14 (1956) (refusing to credit witness' testimony in defendant's trial because of witness's false testimony in other settings). Additional concerns arise when the prosecutor knowingly countenances false testimony. The prosecutor's willingness to do so signals her lack of concern with the fairness of the process and, further, suggests that she is compensating for a weak case and raises the additional concern that she may have allowed other falsities to go uncorrected or withheld other favorable evidence. See infra Section III.C.3.

false testimony is prohibited.[3] The presentation of false testimony violates that understanding.

Whether in civil cases or criminal case, utilizing any kind of false testimony by any officer of the court should be viewed with the utmost scrutiny as it pertains to defendants or plaintiffs. Due process must be protected. In this case, *Anderson v. AIG*, both the arbitrator and the defendant's attorney were put on notice that non-existing false testimonial evidence was being utilized against the plaintiff for the benefit of the defendant prior to a ruling and both disregarded it.

Arbitration agreements are contracts and the performance within them are governed by contractual agreements. The defendant submitted a request for Summary Judgment by producing exceedingly light, non-discriminatory reasons for actions the employer took to counter Plaintiff's establishment of a *prima facia* case. The Arbitrator denied the Request and established that the Plaintiff had overcome the request for Summary Judgment by proving that the proffered explanations for the adverse employment actions did not stand up to the significant relevant factual disputes.

On the opening day of the trial, Defendant attempted to establish another opportunity to produce a different exceedingly light non-discriminatory reason without proof as a defense against the Plaintiff. After going back and forth with the defendant's attorney concerning their request, the Arbitrator unambiguously denied defendant's request and detailed on the record an offer of how she was going to

[3] See United States v. Wong, 431 U.S. 174, 180 (1977) (recognizing that perjury is never a protected option).

interpret exceedingly light as preponderance of evidence, which is 50 percent plus a very small amount asking if we were in agreement (recorded on day one of trial p. 6: 23-25; p. 7: 1-25; pg. 8: 1-25), we accepted and the consideration was a fair and impartial ruling based on preponderance of evidence. The Plaintiff relied upon the Arbitrator's agreement to his detriment when she changed her agreement without notice in the Interim Award. The Arbitrator allowed the defendant to produce, without actual proof, an extremely light, non-discriminatory reason which she applied to overcome the Plaintiff's evidence and deny two claims once the Interim Award was issued. One of the claims was denied utilizing non-existent false evidence as a non-discriminatory reason. The Plaintiff utilized the Request for Reconsideration akin to a motion to rebut the non-discriminatory allowance and evidence; the request was disregarded to the Plaintiff's disadvantage.

The Circuit Court's ruling is erroneous as it applied facts, testimony that did not exists. Plaintiff's Due Process Rights have been prejudiced by the Arbitrator's misconduct. 9 U.S.C § 10(a)(3)(4).

The courts must not allow a precedent to be set which allows an Arbitrator, as an officer of the court to ignore established Supreme Court guidelines and implement a defense on behalf of a defendant which the defendant did not request or present on their own behalf, especially when that violation is brought to the Arbitrator's attention prior to their Final Award.

This court must not allow a precedent to be set which would allow an Arbitrator, as an officer of the court held to a higher standard of legal and ethical

obligation, to disregard properly given notice and be allowed the freedom to make a ruling based on non-existent false evidence that was brought to that officer's attention prior to their final ruling.

This court must not allow a precedent to be set which allows an Arbitrator, as an officer of the court to establish on record a contractual agreement between themselves and the parties involved and then switch from agreed upon terms to a term that creates a detriment and prejudice against one party, especially without notification to the party harmed.

CONCLUSION

The World needs for this case to endure. This Honorable Court must grant the writ of certiorari in this case to ensure the world that as people find themselves in a world moving towards arbitration as a more and more common standard supported by this court; that this court will not allow such blatant misconduct to go unchecked. With Arbitrators holding vast amounts of discretionary power, power not even granted most judges within the legal system, this case must become a beacon of hope to the world. This case will represent to the people of the world the assurance that Arbitrators who commit blatant acts of misconduct and are given the opportunity to avoid those misconducts prior to their final award and choose to disregard the law to favor big business, should not expect the legal system to go out of its way to justify and protect them from that judicial misconduct.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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