

No. 18-11776

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff – Appellant,

v.

THE DOHERTY GROUP, INC., d/b/a DOHERTY ENTERPRISES,

Defendant – Appellee.

On Appeal from the United States District Court
for the Southern District of Florida, No. 14-cv-81184
Hon. Kenneth A. Marra, Senior United States District Judge

MOTION BY THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION TO VOLUNTARILY DISMISS THE APPEAL

SHARON FAST GUSTAFSON
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

ELIZABETH E. THERAN
Assistant General Counsel

JAMES M. TUCKER
Attorney

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**Plaintiff-Appellant's AMENDED Certificate of Interested
Persons and Corporate Disclosure Statement**

Pursuant to 11th Circuit Rules 26.1-1(a)(1) and 27-1(a)(9), Plaintiff-Appellant the Equal Employment Opportunity Commission hereby submits the following Amended Certificate of Interested Persons and Corporate Disclosure Statement, and pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-2(a), hereby certifies that the following is a complete list of the Trial Judge, Magistrate Judge, all attorneys, persons, associations of persons, firms, partnerships or corporations that have an interest in the outcome of the case, including subsidiaries, conglomerates, affiliates and parent corporations, and other identifiable legal entities related to a party:

Calo, Dena B. (Attorney for Defendant-Appellee)

Cruz, Kimberly A. (Attorney for Plaintiff-Appellant)

Equal Employment Opportunity Commission (Plaintiff-Appellant)

Foslid, Kristen M. (Attorney for Plaintiff-Appellant)

Goldstein, Jennifer S. (Associate General Counsel, EEOC)

Gustafson, Sharon Fast (General Counsel, EEOC)

Haile, Robert (Attorney for Defendant-Appellee)

Hon. Marra, Kenneth A. (Senior United States District Court Judge)

Hon. Matthewman, William Donald (United States Magistrate Judge)

The Doherty Group, Inc., d/b/a Doherty Enterprises, Inc. (Defendant-Appellee)

Theodossakos, Antoinette (Attorney for Defendant-Appellee)

Theran, Elizabeth E. (Assistant General Counsel, EEOC)

Tucker, James M. (Attorney for Plaintiff-Appellant)

Weisberg, Robert E. (Regional Attorney, EEOC)

The above list is AMENDED to add Sharon Fast Gustafson, EEOC General Counsel, and to remove James Lee, former EEOC Deputy General Counsel, who has retired from employment with the EEOC.

Plaintiff-Appellant further submits that the following persons and entities have asserted an interest in the outcome of this case solely as a result of their role in connection with the brief filed by Amicus Curiae:

Chamber of Commerce of the United States of America

Jones Day

Joseffer, Daryl

Roth, Yaakov (Jacob)

Savignac, Mark

Urick, Jonathan

U.S. Chamber Litigation Center

Pursuant to Federal Rule of Appellate Procedure 26.1, the Equal Employment Opportunity Commission, as a government entity, is not required to file a corporate disclosure statement. There are no publicly traded corporations or companies that have an interest in the outcome of this case or appeal.

/s/ James Tucker
JAMES M. TUCKER
ATTORNEY

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**Motion by the Equal Employment Opportunity Commission to
Voluntarily Dismiss the Appeal**

Pursuant to Federal Rule of Appellate Procedure 42(b) and Eleventh Circuit Rule 42-1, Plaintiff-Appellant Equal Employment Opportunity Commission (EEOC) requests that this Court grant the EEOC's motion to voluntarily dismiss the appeal. The parties have agreed to resolve the appeal through settlement, and have agreed that each party shall bear its own costs and attorney's fees accrued in the pending appeal. The EEOC files this motion in accordance with the terms of the settlement agreement. *See Attachment at 2 ¶2.*

Accordingly, the EEOC respectfully requests that this Court grant this motion to voluntarily dismiss the appeal.

Respectfully submitted,

SHARON FAST GUSTAFSON
General Counsel

JENNIFER S. GOLDSTEIN
Associate General Counsel

ELIZABETH E. THERAN
Assistant General Counsel

/s/ James M. Tucker

JAMES M. TUCKER
Attorney

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Certificate of Compliance

I hereby certify that the foregoing motion complies with the type-volume requirements set forth in Federal Rule of Appellate Procedure 32(g)(1). This motion contains 108 words, as determined by the Microsoft Word 365 word processing program, with 14-point proportionally spaced type for text.

/s/ James M. Tucker

JAMES M. TUCKER
Attorney

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Certificate of Service

I hereby certify that on this 21st day of August, 2020, I filed the foregoing motion electronically in PDF format through the Court's CM/ECF system. I certify that service of this document on counsel for Defendant-Appellee was accomplished via the Court's CM/ECF system.

/s/ James M. Tucker

JAMES M. TUCKER
Attorney

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Attachment

Settlement Agreement

In the matter of:

United States Court of Appeals for the Eleventh Circuit appeal No. 18-11776;
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff –
Appellant, v. THE DOHERTY GROUP, INC., d/b/a DOHERTY
ENTERPRISES, INC., Defendant – Appellee.

The parties to this Settlement Agreement (“Agreement”) are the Equal Employment Opportunity Commission (“Commission”) and The Doherty Group, Inc., doing business as Doherty Enterprises (“Doherty”).

On September 18, 2014, the Commission brought suit against Doherty in the United States District Court for the Southern District of Florida (Equal Employment Opportunity Commission v. Doherty Enterprises, Incorporated, No.9:14-cv-81184), alleging that Doherty violated Title VII of the Civil Rights Act of 1964 by using certain terms in its mandatory arbitration agreement. In January 2015, while this suit was pending in district court, Doherty revised its arbitration agreement. On February 22, 2018, the district court granted Doherty’s motion for summary judgment. On April 26, 2018, the Commission filed a notice of appeal to the Eleventh Circuit Court of Appeals, as captioned above (the “pending appeal”), from the final judgment entered against it in the district court. At this time, the parties have agreed to resolve by settlement the pending appeal to the Eleventh Circuit.

NOW, THEREFORE, in consideration of the conditions and mutual promises set forth herein, IT IS HEREBY AGREED:

[1] Arbitration Agreement: Doherty agrees that, insofar as it maintains any type of arbitration agreement to resolve disagreements between Doherty and its employees or applicants

for employment, the agreement will include, among other provisions, the following two paragraphs:

I and Doherty Enterprises both agree that any claim, dispute, and/or controversy (including but not limited to any claims of employment discrimination, harassment, and/or retaliation under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans With Disabilities Act, the Family and Medical Leave Act, the Uniformed Services Employment and Reemployment Rights Act, and any other applicable federal, state, or local statute, regulation, or common law doctrine) which would otherwise require or allow resort to any court between myself and Doherty Enterprises (and/or its parents, subsidiaries, affiliates, owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, ending of my employment with, or other association with Doherty Enterprises, whether based in tort, contract, statutory, or equitable law, or otherwise, shall be submitted to and determined exclusively by binding arbitration.

I understand that nothing in this binding Arbitration Agreement prevents me from first filing a charge or complaint, communicating with, or cooperating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission (“EEOC”), the National Labor Relations Board (“NLRB”), or any other federal, state, or local agency charged with the enforcement of any laws. However, I also understand that I shall not be entitled to file a complaint in Court related to such charge or complaint, communication, or investigation.

[2] Voluntary Dismissal of the Appeal: Within seven (7) calendar days of the date this agreement is executed, the Commission will file a motion to voluntarily dismiss the pending appeal pursuant to Federal Rule of Appellate Procedure 42(b) and 11th Circuit Rule 42-1 with the United States Court of Appeals for the Eleventh Circuit. In that motion, the Commission will state that the parties have agreed to resolve the appeal through settlement, and that each party shall bear its own costs and attorney’s fees accrued in the pending appeal. The Agreement shall

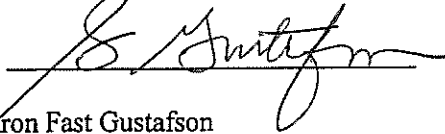
not be interpreted as a reflection of the merit or lack thereof of EEOC's claims or Doherty's defenses.

[3] Costs and Attorneys' Fees: The parties agree that each shall bear its own costs and attorneys' fees accrued in the pending appeal. The parties further agree that this settlement does not limit, affect or impact Doherty's ability to petition the district court for an award of its costs and attorney's fees incurred in this litigation prior to the pending appeal, nor does it limit, affect or impact the validity or substance of that petition. The parties further agree that this settlement does not limit, affect or impact the Commission's ability to oppose any such petition, if filed, nor does it limit, affect or impact the validity or substance of any opposition.

[4] Procedure for Enforcing Compliance: The parties agree that this Agreement shall remain in effect for three (3) years from the date of its execution. Doherty shall email a one-sentence Annual Report to the EEOC Office of General Counsel at mndoconsentdecreecompliance@eoc.gov on July 30, 2021, July 29, 2022, and July 31, 2023, confirming its compliance with this Agreement. The parties shall make a good faith attempt to resolve any dispute regarding the enforcement of this Agreement by informal consultation before seeking enforcement through the judicial process. If informal consultation fails, the parties shall maintain the right to seek enforcement of this Agreement in the United States District Court for the Southern District of Florida. The parties hereby consent to the jurisdiction of the United States District Court for the Southern District of Florida for the purpose of enforcing this Agreement.

[5] Entire Agreement: This Agreement constitutes the entire and only understanding between the parties hereto in regard to the pending appeal, as captioned above. This Agreement may not be modified, altered, or changed except upon express written consent of all the parties.

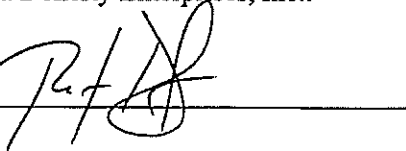
For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION:

By: 

Sharon Fast Gustafson
General Counsel

Date: 08/20/20

For THE DOHERTY GROUP, INC.,
d/b/a Doherty Enterprises, Inc.:

By: 

Tim Doherty
President and Chief Operating Officer

Date: 8/18/20