

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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6/20/17
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In the Matter of:)
)
OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS, U.S.)
DEPARTMENT OF LABOR,)
)
Plaintiff,)
)
vs.)
)
ORACLE AMERICA, INC.,)
)
Defendant.)

Case No. 2017-OFC-00006

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In the Matter of:)
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OFFICE OF FEDERAL CONTRACT)
COMPLIANCE PROGRAMS,)
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Plaintiff,)
)
vs.) Case No. 2017-OFC-00006
)
ORACLE AMERICA, INC.,)
)
Defendant.)
)

Friday,
June 6, 2017

90 Seventh Street, Suite 4-800
San Francisco, California 94103

The above-entitled matter came on for hearing,
pursuant to notice, at 9:20 o'clock a.m.

BEFORE: THE HONORABLE CHRISTOPHER LARSEN,
Administrative Law Judge

APPEARANCES :On behalf of the Plaintiff:

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On behalf of the Defendant:

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I N D E XPROCEEDINGS:PAGE:

Friday, June 6, 2017

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WITNESSES:DIRECTCROSSREDIRECTRECROSSALJ

(None called.)

EXHIBITS:IDENTIFIEDRECEIVEDREJECTEDPLAINTIFF

(None marked, nor received.)

DEFENDANT

(None marked, nor received.)

ADMINISTRATIVE LAW JUDGE

(None marked, nor received.)

P R O C E E D I N G S

(9:00 o'clock a.m.)

1
2
3 JUDGE LARSEN: All right. We're this morning on
4 Case No. 2017-OFC-6, that's OFCCP versus Oracle America. Can
5 I have the appearances of counsel, please?

6 MS. CONNELL: Good morning. Erin Connell on behalf
7 of Oracle.

8 JUDGE LARSEN: Ms. Connell, how are you today?

9 MS. CONNELL: I'm doing well. How are you?

10 JUDGE LARSEN: Very well, thanks.

11 MR. PARKER: Good morning, Your Honor. Warren S.
12 Parker, on behalf of Oracle.

13 JUDGE LARSEN: Mr. Parker, nice to see you.

14 MR. ELIASOPH: Good morning, Your Honor. Ian
15 Eliasoph, on behalf of OFCCP.

16 JUDGE LARSEN: Good morning, Mr. Eliasoph.

17 MR. ELIASOPH: Good morning.

18 MS. BREMER: Good morning, Your Honor. Laura
19 Bremer on behalf of OFCCP.

20 JUDGE LARSEN: Ms. Bremer, nice to see you again.

21 MR. PILOTIN: Good morning, Your Honor. Marc
22 Pilotin on behalf of OFCCP.

23 JUDGE LARSEN: Mr. Pilotin, good morning.

24 Okay. I have read the moving papers and let me
25 tell you where I am right now and then I'll give you an

1 opportunity to be heard, both sides.

2 It seems to me the moving parties have the laboring
3 oar here to show that OFCCP was unreasonable, as a matter of
4 law. The problem I have is I'm not sure the record allows me
5 to draw that conclusion. There seems to be, for example --
6 I've looked at the declarations of Mr. Siniscalco -- I hope
7 I'm saying that right -- and Ms. Suhr. And they talk about
8 this meeting that they went to.

9 Well, first of all, there was a meeting. There was
10 some effort to, at least, talk about the issues. Then, the
11 real dispute seems to be that Mr. Siniscalco wants us --
12 wanted OFCCP to consider a cohort analysis or some other form
13 of analysis while the Government took the position that only
14 a multiple regression analysis would do.

15 Now, how do I know, as a matter of law, that one of
16 those positions is unreasonable? That's where I'm struck.

17 So, with that, Ms. Connell, are you going to --

18 MS. CONNELL: Yes, Your Honor.

19 JUDGE LARSEN: Okay, go ahead. I'm all ears.

20 MS. CONNELL: Okay. Thank you, Your Honor. Thank
21 you for the opportunity to be heard.

22 Unfortunately, we should not be here today. This
23 litigation is a consequence of OFCCP's rush to file a
24 complaint in January of this year, even though the record
25 before you does demonstrate as a matter of OFCCP that did not

1 engage in reasonable efforts to resolve this matter through
2 conciliation.

3 They referenced the dispute about the cohort
4 analysis and the multiple regression analysis. And that is
5 true, that the parties have that disagreement. But that
6 really goes to the merits of the underlying dispute, which is
7 not what's at issue here. What's at issue here are the
8 OFCCP's efforts to resolve this and what both the Executive
9 Order, as well as its implementing regulations, mandate is
10 that prior to litigation, OFCCP engage in those reasonable
11 efforts.

12 Now, nine months passed between the time that the
13 OFCCP issued its notice of violation in March of 2016 and the
14 December 9th letter, in which the OFCCP ultimately referred
15 the matter to the Solicitor's Office for enforcement.

16 But if you look at the record, and it's not just
17 the declarations of Mr. Siniscalco and Ms. Suhr, but the
18 correspondence that is attached, that correspondence
19 undisputedly reflects that there were not reasonable efforts
20 here on behalf of the Agency.

21 What you see is you -- and I want to emphasize here
22 what the record does not reflect. If you read that
23 correspondence, the record reflects that the OFCCP never gave
24 Oracle even a basic explanation of the underlying facts
25 underlying its administrative finding of discrimination. It

1 never identified a particular employment practice or policy
2 that it contends is discriminatory. It never explained for
3 Oracle if it was accusing Oracle of intentional
4 discrimination or if it was proceeding under a theory of
5 disparate impact. It never gave Oracle a conciliation
6 proposal to consider or to counter. It never gave Oracle any
7 explanation of calculation of the methodology it used to
8 reach its high level damages estimate that was communication
9 at the conciliation meeting that you referenced. And it
10 never otherwise engaged Oracle in any meaningful way to allow
11 the parties to have an understanding of shared facts to
12 meaningfully engage in a conciliation process. And those
13 facts are undisputed.

14 It's not a matter of the parties' disputes about
15 the merits of the dispute. It's what efforts were made on
16 behalf of the Agency.

17 And the case law bears that out. The case law
18 holds that there's two things, really. One is that under
19 applicable case law, the Agency is required to give a
20 contractor a sufficient explanation of the factual basis and
21 legal theories underlying the Agency's administrative
22 discrimination of findings (sic) and administrative findings
23 of discrimination. And the cases that hold that are actually
24 -- there's two of them. EEOC versus Asplundh Treet Expert
25 Company and EEOC versus Argo Distribution. They're cited in

1 our papers.

2 Now, those cases are pre-Mach Mining decisions.
3 But they are particularly instructive, because those
4 decisions applied a standard of reasonable efforts to the
5 EEOC before Mach Mining confirmed that a lesser standard was
6 applicable in the EEOC context. But if you look at those
7 before Mach Mining settled the circuit split, those circuits
8 applied a reasonable effort standard. And they make clear
9 that without that basic explanation of the facts and the
10 legal theories underlying the allegations, there can be no
11 reasonable efforts at conciliation.

12 The other way you know that there was no reasonable
13 efforts here is because the OFCCP never gave Oracle even --
14 well, first of all, they never made a demand. There was
15 never a demand or even a conciliation proposal, let alone a
16 conciliation agreement. There was a high level damages
17 estimate that was discussed. But as you can see from the
18 declaration that was submitted, that was just that: A high
19 level damages estimate and it was a range. There -- it spans
20 more than \$100 million. So quite a range with no explanation
21 of how OFCCP reached those numbers.

22 And so the Courts have held that without an
23 explanation of how the Agency got to that calculation, that
24 there's no reasonable efforts, how can the Employer respond
25 to that? And the cases that hold that as a matter of law are

1 EEOC versus Ohio Health, which is a post-Mach Mining
2 decision. And in that case the Southern District of Ohio
3 held that even under the lower Mach Mining standard, the
4 EEOC, by failing to explain the calculations it used to reach
5 its demand, that it did not meet even the lower Mach Mining
6 standard.

7 And then EEOC versus IPS Industries, which is,
8 again, a pre-Mach Mining decision, but applies the reasonable
9 efforts standard.

10 So, again, without just that -- those basic
11 fundamental explanations, that's how you know that there was
12 no reasonable efforts made here. Instead, the Agency was
13 singularly focused on one thing: A rebuttal statistical
14 analysis from Oracle. Even though OFCCP was wholly
15 unwilling, and remains unwilling to this day to share its
16 statistical analysis with Oracle.

17 So, without the OFCCP sharing its statistical
18 analysis, there really is nothing for Oracle to rebut. All
19 Oracle has is the NOV. That's what -- the Notice of
20 Violation. It gives a high level description of its
21 statistical analysis, but it does not attached the
22 statistical analysis, nor does it give information for Oracle
23 to figure out what that statistical analysis has done.

24 For example, the Notice of Violation accuses Oracle
25 of discriminating in favor of Asian Indians. The OFCCP

1 regulations do not require Oracle to track whether its
2 applicants or employees are Indian. Nor does Oracle
3 voluntarily do that. And so how does Oracle know who the
4 OFCCP considered to be Asian Indian?

5 Similarly, the OFCCP repeatedly insisted that
6 Oracle submit a position statement, even though there's no
7 requirement that Oracle do that. Nevertheless, Oracle did
8 acquiesce and submitted a position statement on May 25th.
9 Before submitting that position statement, though, Oracle
10 told the OFCCP -- and this is borne out in the correspondence
11 -- "We need more facts. We need more information so we can
12 provide a meaningful position statement and we know what
13 we're responding to."

14 And although the OFCCP did respond to that letter,
15 it did not provide Oracle with the facts and just the basic
16 explanations that Oracle was looking for. Instead, it simply
17 referred Oracle back to the NOV or to the position that that
18 information was privileged.

19 So, Oracle did provide the position statement that
20 OFCCP requested and what was OFCCP's response to that May
21 25th position statement? On June 9th, OFCCP issued a show
22 case notice. That was the response.

23 So at this point, on June 9th, no conciliation
24 efforts have taken place. None.

25 JUDGE LARSEN: There's been back and forth, yeah,

1 you were about to say.

2 MS. CONNELL: Yes, but only about whether Oracle
3 was going to submit a position statement.

4 And so when Oracle finally did that, the Agency's
5 response was not then to initiate conciliation. And that was
6 the OFCCP's position. There was an email from former
7 District Director Robert Doles, that said, "Let us know when
8 we can expect you position statement and then we will
9 initiate conciliation efforts."

10 The next two months were spent back and forth about
11 whether Oracle had enough information to submit a position
12 statement and Oracle eventually did submit the position
13 statement. But the Agency's response to that was a show
14 cause notice, not conciliation efforts. And then at that
15 point, Oracle submitted another letter on June 29th, pointing
16 out that no conciliation had taken place yet and there's a
17 mandatory obligation to engage in reasonable efforts.

18 So at that point the OFCCP finally said, "Okay,
19 we'll meet with you." And that was the meeting that took
20 place on October 6th.

21 But, again, at that meeting, still no conciliation
22 proposal, no conciliation agreement. Only a very high level
23 damages estimate that admittedly did not take into account
24 mitigation. And OFCCP was clear this is not a demand. This
25 is all high level estimates for hiring and recruiting and it

1 spanned more than \$100 million.

2 Following that meeting, OFCCP -- or at that
3 meeting, OFCCP asked Oracle to provide additional
4 information, which Oracle did on October 31st. Again, what
5 was OFCCP's response when Oracle providing that additional
6 information? Well, Oracle didn't hear from OFCCP until
7 December 9th. And on December 9th, that letter is very
8 telling. It's a critical piece of evidence, because that
9 letter on December 9th that tells Oracle not that
10 conciliation has failed, but that Oracle has failed to rebut
11 the NOV. Which really is of no consequence.

12 Of course there's going to be a back and forth and
13 a disagreement, as you've noted. But that's not the standard
14 if Oracle has rebutted the NOV. It's did the Agency engage
15 in reasonable efforts to resolve this matter prior to
16 litigation? And in that letter there is no representation
17 that conciliation has failed. Instead, the Agency simply
18 referred the matter to the Solicitor for enforcement and that
19 ended the conciliation efforts.

20 Later, the Solicitor's Office did reach out to
21 Oracle -- although that wasn't part of the conciliation
22 process, because it had already been referred -- in January
23 and told Oracle at that point, "You have three days to make
24 your last, best, and final offer -- counter-offer." But
25 counter to what? There had still been no demand. No demand,

1 no conciliation proposal, only this high level damages
2 estimate that spans more than \$100 million.

3 It is patently unreasonable to expect Oracle to pay
4 that kind of money when it has this little information and
5 this little understanding, only --

6 JUDGE LARSEN: Well, was somebody asking Oracle to
7 pay that amount of money?

8 MS. CONNELL: Well, that was the damages estimate
9 that the OFCCP had made.

10 JUDGE LARSEN: Well, I don't recall either of the
11 declarants saying that the Government told Oracle, "If you'll
12 cut us a check for \$150 million, this is done."

13 MS. CONNELL: It would have been better if they had
14 done that, because at least there would have been -- they
15 didn't, that's right.

16 JUDGE LARSEN: They didn't. So --

17 MS. CONNELL: They never made a demand. Instead,
18 they just wanted Oracle to put -- to make some sort of
19 settlement offer. But they had never made a demand or a
20 conciliation proposal or a draft conciliation agreement.
21 Nothing to respond to. And that's how you know in this
22 matter that these efforts were not reasonable as a matter of
23 law.

24 JUDGE LARSEN: Because they didn't make a demand?

25 MS. CONNELL: Because they didn't give Oracle the

1 basic factual information necessary to understand the
2 allegations that are being said against it.

3 If you look at the NOV, it doesn't identify an
4 employment practice that the Agency contends is
5 discriminatory. It doesn't even say if the Agency is
6 proceeding on a theory of intentional discrimination,
7 disparate treatment, or disparate impact discrimination.
8 Those are very different concepts.

9 If it is intentional discrimination, Oracle's
10 response is going to be very different than if the Agency is
11 accusing Oracle of utilizing a facially-neutral policy that
12 has a discriminatory impact.

13 So, without just these basic, fundamental facts,
14 Oracle is left to guess at what -- what is the basis for the
15 allegations being pled against us? All Oracle has is this
16 very high level description of a statistical analysis that
17 OFCCP -- their position is essentially, "Trust us." It shows
18 disparities that prove discrimination.

19 We ran a regression analysis and we accounted for
20 things like job title and time at Oracle and prior
21 experience. How? How did it account for that? Oracle can't
22 know. It didn't provide Oracle with those statistical
23 analyses. How is Oracle to rebut that when it doesn't have
24 the analysis to rebut?

25 So without the basic facts, as well as an

1 understanding of what it is that the Agency is looking for
2 from Oracle to resolve that, there is no reasonable efforts
3 to resolve this. Instead, the Agency rushed to file its
4 complaint in January of this year, and now we are here in
5 this litigation -- which is expensive, reputation damaging,
6 and we shouldn't be in this forum. Both the Executive Order
7 and the regulations are very clear that reasonable
8 conciliation efforts are a mandatory prerequisite and it is
9 for that reason --

10 JUDGE LARSEN: I understand that.

11 MS. CONNELL: Okay.

12 JUDGE LARSEN: I understand all of that.

13 Here's my problem. You're telling me that I can
14 look at this record and say, "OFCCP was unreasonable as a
15 matter of law. They did something in this case, which, if
16 done in any other case, would entitle the Government
17 contractor to judgment in its favor."

18 And I'm saying -- I'm asking you what was it they
19 did? What was the thing they did that I will find in the
20 record of some other case that will make it easy for me to
21 dispose of the case just like that? What was it?

22 MS. CONNELL: It's not what they did, Your Honor.
23 It's what they did not do.

24 JUDGE LARSEN: Well, that is problematic, too,
25 because I'm trying to decide who's being reasonable. And,

1 essentially, the Court here is placed in kind of an anomalous
2 position. Normally, we don't policy settlement discussions.
3 We don't look at them. We don't evaluate them. We don't say
4 who was reasonable and who was not reasonable. Most of the
5 time, we're not even supposed to take that into
6 consideration. The only time I do it, typically, is when I'm
7 awarding attorney fees under the Longshore Act, or something
8 like that, and I may look to see if one side's conduct was
9 reasonable.

10 You're standing there telling me they never made a
11 demand, they never made a demand. I'll be -- well, I won't
12 put words in their mouth, but, you know, one might ask, "Why
13 not make an offer, then? Why not say, 'Okay, OFCCP. Look, I
14 don't know what in the world you're talking about, but here's
15 \$100 to go get lost? How about that? Will you take it?'"
16 You can draw up an offer that way.

17 There's lots of ways to handle settlement
18 discussions. And settlement is all about posturing. I've
19 been in enough settlement negotiations to know, if you're
20 willing to take \$100,000, you don't walk in and say, "I'm
21 willing to take \$100,000." You spend the whole day in this
22 kind of kabuki theater pretending that you think you're
23 entitled to more until somebody coughs and says, "\$100,000."
24 Or until the Judge says, "I think you ought to pay \$100,000."

25 It's very, very hard for the Court to look at these

1 conversations and say, "Well, you guys weren't dealing in
2 good faith. You were posturing." All settlement
3 negotiations involve posturing, don't they?

4 MS. CONNELL: Yes, Your Honor. However, Mach
5 Mining holds that courts can and should and must judicially
6 review the mandatory conciliation efforts of administrative
7 agencies. And the Executive Order and the OFCCP's
8 regulations require reasonable efforts.

9 JUDGE LARSEN: I understand that.

10 MS. CONNELL: And so that --

11 JUDGE LARSEN: I agree with you, they require
12 reasonable efforts. The problem is finding reasonableness as
13 a matter of law is really a very, very high standard.

14 Look at it this way, suppose you were counsel for
15 OFCCP. And some underling comes to you and says, "We think,
16 you know, Larsen Hardware Store is -- which has a government
17 contract -- is discriminating against Asian American
18 employees. And we've done a statistical analysis that shows
19 that and we want to engage them in settlement discussions.
20 What do we have to do to make sure our settlement discussions
21 survive the reasonable test, so that some crazy ALJ at the
22 Department of Labor does not conclude that we were
23 unreasonable as a matter of law? What's the minimum we have
24 to do to satisfy the law?"

25 MS. CONNELL: Under the decisions that I cited to

1 you, there are two things.

2 JUDGE LARSEN: All right.

3 MS. CONNELL: Number one, they need to give a
4 basic, factual -- enough information -- enough information
5 for the contractor to understand the allegations that being
6 pled against it. So, just the basic facts, the basic legal
7 theories -- enough information so that that contractor can
8 hear --

9 JUDGE LARSEN: And how do I know, as a matter of
10 law, when enough is enough? Is it enough for me to say,
11 "I've done a statistical analysis that shows it"?

12 MS. CONNELL: No, Your Honor, it is not.

13 JUDGE LARSEN: It is not?

14 MS. CONNELL: No.

15 JUDGE LARSEN: I have to show you the statistical
16 analysis?

17 MS. CONNELL: Well, you have to, at least, explain
18 what that statistical -- identify the employment practice.
19 Identify if it's disparate impact or disparate treatment.
20 Explain the theory, what it is that Oracle has done wrong
21 here. There's just -- how do we respond?

22 JUDGE LARSEN: I agree with you. They could have
23 done much more than they did. But the question is did they
24 do enough? Did they satisfy whatever the bare minimum is?

25 MS. CONNELL: And the answer to that is, "No."

1 JUDGE LARSEN: Your answer to that is, "No."

2 MS. CONNELL: Under the case law, the answer is,
3 "No."

4 JUDGE LARSEN: And how do I tell them, I go to the
5 next case, that I'm holding OFCCP to the same standard in the
6 next case as I do in this case? They're entitled to know
7 what their minimum obligation under the law is. And that's
8 what concerns me. It can't be a moving target if it's fact-
9 dependant. If it varies from case to case, then I shouldn't
10 be making that decision on summary judgment, it seems to me.

11 MS. CONNELL: That cases that I -- all of those
12 cases decide these issues as a matter of law.

13 JUDGE LARSEN: All right.

14 MS. CONNELL: And you say, "What is the bare
15 minimum?" The first is the explanation of the allegations
16 that are being pled against it. The second is some sort of
17 proposal to respond to. And not only a proposal to respond
18 to, but an explanation of how the Agency got there.

19 JUDGE LARSEN: You're telling me as a matter of
20 law --

21 MS. CONNELL: Yes.

22 JUDGE LARSEN: -- the obligation is on them to make
23 the settlement demand?

24 MS. CONNELL: Under the case law, yes, Your Honor.

25 JUDGE LARSEN: And until they've done that, no

1 matter else they may have done, there's out of here?

2 MS. CONNELL: I'm not aware of a single case in all
3 of the cases that's cited there that has not happened.

4 JUDGE LARSEN: Okay.

5 MS. CONNELL: Where the Agency has not presented a
6 conciliation agreement, made a demand. In all of these
7 cases, that is always present, and the cases go even further.
8 Not only does there need to be some sort of conciliation
9 proposal agreement demand, but an explanation of how they got
10 there. So that the Contractor can meaningfully respond.

11 And, again, the cases are EEOC versus Ohio Health
12 and EEOC versus IPS Industries.

13 JUDGE LARSEN: Okay. Thank you.

14 You understand, everything you say makes perfect
15 sense and it would be great if OFCCP had done all of those
16 things. Maybe we wouldn't be here. But I want you to
17 understand the question before me is not whether they could
18 have done a better job than they did, they may very well
19 could have.

20 MS. CONNELL: The question is whether they met --

21 JUDGE LARSEN: I'm looking for the very bottom of
22 the barrel here. What's the minimum they have to do as a
23 matter of law?

24 MS. CONNELL: And that is engage in reasonable
25 effort.

1 JUDGE LARSEN: I understand your position. Thank
2 you.

3 JUDGE LARSEN: All right.

4 Mr. Eliasoph?

5 MR. ELIASOPH: Good morning, Your Honor.

6 This Court is exactly right with respect to your
7 comment that courts don't typically police settlement
8 discussions. In fact, the Supreme Court's recent Mach Mining
9 decision, which Counsel has referred to, is very clear that
10 it set a bare minimum standard of review, because it did not
11 want to do what was happening here. Okay?

12 Oracle has placed into this Court's record, before
13 any discovery has taken place, the entire history of our
14 conversations during the conciliation process. In Mach
15 Mining, the Supreme Court explicitly said this is their
16 concern. This should not happen.

17 I am quoting from page 1655 of the opinion. As
18 this Court has explained, quote, "The maximum results from
19 the voluntary approach will be achieved if the parties know
20 that the statements they make cannot come back to haunt them
21 in litigation. And, conversely, the minimum results will be
22 achieved if a party can hope to use accounts of those
23 discussions to derail or delay a meritorious claim"

24 JUDGE LARSEN: Isn't the operative word there
25 "meritorious"?

1 MR. ELIASOPH: Correct. Yes, Your Honor.

2 JUDGE LARSEN: In all of the pleasant hours that
3 the six of us have spent together, we've never once talked
4 about the merits of this claim.

5 MR. ELIASOPH: And that's what we're here to say.
6 That we need to get back to the merits of this case.

7 It is --

8 JUDGE LARSEN: I don't think we were ever there.
9 Were we?

10 MR. ELIASOPH: Well, OFCCP has been focused on the
11 merits of the case.

12 As an initial matter, as this Court has observed,
13 this is a summary judgment motion. In our -- you just heard
14 a recitation of facts that have characterizations in them.
15 Please look at Oracle's brief. They are replete with
16 characterizations in every sentence.

17 Oracle doesn't even attempt to conform the motion
18 to the language of summary judgment. It did not lay out
19 which facts were purportedly undisputed. It does not even
20 mention the summary judgment in its briefing. This is
21 because Oracle cannot win under that standard.

22 Here is what is actually uncontested. OFCCP did
23 issue a NOV on March 11th, 2016. The NOV, which is in
24 Oracle's Exhibit E, include the following: It describes the
25 violation, we would think in detail, including standard

1 deviations, the pool effect OFCCP looked for, stating the
2 body of evidence OFCCP drew from. With respect to the
3 compensation violation we attached -- for each compensation
4 violation, what was used in the regression analysis, what the
5 variables were. Oracle -- this is all information that we
6 got from Oracle. So they know what we had.

7 We included standard deviations in there. We
8 also --

9 JUDGE LARSEN: If I read the Notice of Violation
10 I'm going to find all of that in it.

11 MR. ELIASOPH: Okay, yes. Of course.

12 It also had the corrective action that the Agency
13 seeks. It also states that Oracle had not supplied all of
14 the data, and that is a problem when it comes to calculations
15 of back pay. This is a case where there was data that we
16 felt we're entitled to, that is part of this case. This
17 Court will get to decide that. But we were saying through
18 the conciliation process that we're entitled to this data.
19 It is hard to calculate back pay when they're not even
20 supplying a whole year of data? Could they have done that?
21 Could they have supplied it and then we could have moved on
22 to that? Yes.

23 They chose not to, which is fine, but it means that
24 we go to the next step, which is have this Court handle this
25 conflict.

1 So, including the NOV and before filing this
2 lawsuit, almost 10 months of active conciliation took place.
3 OFCCP wrote Oracle at least 10 times. These communications
4 on their face --

5 JUDGE LARSEN: Is 10 months of active conciliation,
6 is that a characterization, Mr. Eliasoph?

7 MR. ELIASOPH: "Active" is a characterization.

8 JUDGE LARSEN: I thought so.

9 MR. ELIASOPH: "Ten months" is not. The number of
10 exchanges is not. These letters exist. They are in the
11 file. We don't think this Court -- and I will state, you
12 know, the Mach Mining test shows something much more limited
13 meets that bare minimum that you're looking for.

14 But this is not a case where the Agency, "Here's
15 your NOV. We don't really care what you have to say. We're
16 filing." This is not that case.

17 JUDGE LARSEN: If it were, would you have a problem
18 with the Court doing something about it?

19 MR. ELIASOPH: Absolutely. In that -- in such a
20 circumstance, there would not be reasonable efforts. We have
21 to -- and I'll skip to the Mach Mining test, because it --
22 Mach Mining says it three different times and it's very
23 clear.

24 JUDGE LARSEN: All right.

25 MR. ELIASOPH: The Agency has to only do two

1 things. They Agency must put the Contractor on notice of the
2 violations and it must try to engage the Employer in some
3 form of discussion so as to give the Employer the opportunity
4 to remedy the alleged discriminatory practice.

5 As indicated, the Supreme Court itself calls this a
6 bare bones test. It is why Oracle is arguing in its brief
7 that Mach Mining can't apply here. They're aware that under
8 this test, they fail. And it is also why they continually
9 cite pre-Mach Mining cases.

10 Under the standard for conciliation, again, OFCCP
11 made -- you will see in the -- in what has been submitted --
12 repeated efforts to engage Oracle, which is what was
13 required.

14 A September 2016 GAO study found that OFCCP only
15 finds discrimination in two percent of reviews, and that 99
16 percent of violations are resolved through conciliation.
17 This is not an Agency that is trigger happy. To the extent
18 anything extraordinary occurred in this conciliation process,
19 it was Oracle's refusal to meet OFCCP for seven months. That
20 is well documented. Oracle's refusal to submit substantive
21 rebuttal.

22 In one of Mr. Siniscalco's letters, he goes so far
23 as to say "rebuttal has nothing to do with conciliation."

24 They also refuse to supply the data that OFCCP said
25 it was interested in seeing. It also wrote -- Oracle, if

1 you'll look at the letters -- wrote extremely pugnacious
2 letters that repeatedly characterized --

3 JUDGE LARSEN: Oh, I think there's enough pugnacity
4 to go around in this case.

5 MR. ELIASOPH: Well, I respectfully ask you to look
6 at Mr. Siniscalco's May letter --

7 JUDGE LARSEN: All right.

8 MR. ELIASOPH: -- which accuses the Agency of
9 bullying, of lying -- all types of things. And that level of
10 discourse is not present, we submit, in OFCCP's briefings.

11 JUDGE LARSEN: Well, I've got to ask you the same
12 question I asked Ms. Connell. Isn't that what happens in
13 settlement negotiations? Don't people say -- don't people
14 use a lot of hyperbole?

15 MR. ELIASOPH: Sure, they do.

16 JUDGE LARSEN: So, how is the Court supposed to
17 look at this correspondence and conclude, "Well, the
18 Government was right to pull the trigger, because Oracle was
19 being so disrespectful and so uncooperative," and how do I
20 know they're being uncooperative?

21 MR. ELIASOPH: My point here, Your Honor, is --

22 JUDGE LARSEN: Don't they have to have some
23 evidence that there was -- that they had no reason to
24 withhold the information? None of that's in the record
25 before me.

1 MR. ELIASOPH: Your Honor --

2 JUDGE LARSEN: How can I tell whether that's a good
3 call or a bad one?

4 MR. ELIASOPH: -- my only point here with respect
5 to this is Oracle is claiming we did not conciliate. In
6 fact, despite having, you know, very harsh letters and, you
7 know, being accused -- this happened in May. I'm pointing to
8 a letter in May. We continue for a long time after that. We
9 did exactly as you said, okay? Maybe they're taking a
10 settlement position, they're drawing a hard line. Fine. We
11 continued forward, we kept asking for that meeting, which
12 doesn't happen until October.

13 The -- OFCCP's efforts here, when you review the
14 case law, you'll see far exceed what the other cases have
15 found to be sufficient.

16 In fact, Oracle implicitly admits that it's trying
17 to break new ground here, claiming that the reasonable effort
18 standard has not been specifically defined in the OFCCP
19 context. This simply is not true.

20 In US versus Thurston Motor Lines, which is cited
21 in our brief, no less of an authority than a Circuit Court --
22 in this case, the Fourth Circuit -- explicitly analyzed and
23 reversed the District Court that dismissed the case brought
24 under the Executive Order for failure to conciliate. In that
25 case, the Government officer responsible for enforcement of

1 the Executive Order did not even tell the Contractor that the
2 denial of access matter would be referred to enforcement.
3 The Court said that the matter was, nonetheless, conciliated
4 because the Contractor knew the records were sought and not
5 provided.

6 With respect to the substantive discrimination
7 claims in Thurston, the Court of Appeals stated that it could
8 not rule as a matter of law that the Government had failed to
9 conciliate, despite all of that the Government had done in
10 that case prior to filing the lawsuit, was, quote, "raise
11 questions concerning possible discriminatory practices."

12 In Priester -- OFCCP versus Priester, 78-OFC-11, a
13 Secretary's decision also involved a failure to conciliate
14 under the Executive Order. There, there was one meeting
15 which the Contractor described as a "take it or leave it
16 proposition." The Secretary, whose decisions are binding
17 precedent, found that these efforts were sufficient.

18 Under the Rehab cases, there are many. And while
19 that did have a standard that used the term "efforts" versus
20 "reasonable efforts," when you look at those cases, the
21 Courts read into the standard reasonable efforts. In fact,
22 in Southern Pacific Transportation, the Court used the term
23 "reasonable efforts." That Court concluded, "The failure of
24 the Agency to volunteer to back down from its position,
25 particularly in the absence of signs of reciprocation, did

1 not prove a lack of good faith." And they're talking about
2 in respect to conciliation here. It continues:

3 "A law enforcement agency is not
4 obligated to accept 50 percent or 80
5 percent or 90 percent obedient to the law
6 by a violator."

7 This is, again, consistent with the -- in fact,
8 this case long pre-dates Mining, but the Supreme Court makes
9 the exact same point in the Mach Mining case.

10 In Mach Mining, the employer argued that the
11 standard for review should be that the agency -- or, in this
12 case, the EEOC must refrain from making "take it or leave it"
13 offers. The EEOC has to go back and forth with the employer,
14 considering and addressing the various counter-offers, and
15 giving it sufficient time at each turn to review and respond.
16 And that is what Oracle is saying has to happen here.

17 We would submit that did happen here.

18 JUDGE LARSEN: But did you make a demand?

19 MR. ELIASOPH: Notably -- well, what we did --

20 JUDGE LARSEN: Do I have that in the record before
21 me?

22 MR. ELIASOPH: What we stated during the meeting
23 was that we did not have -- if the parties were willing to
24 talk about numbers and to move to that phase, we would need
25 information from them. Because, otherwise, we would be

1 guessing.

2 They -- it is their records. They have the
3 employment -- this not a case like many of the pre-Mach
4 Mining cases that they cit, or Ohio Health, which three
5 different District Courts have said was wrong -- and that's
6 in our brief -- and did not comply with Mach Mining. But
7 this is not a case where we have one individual, like in Ohio
8 Health, who the EEOC was claiming was not properly
9 accommodated. This is a very complicated case. We
10 acknowledge that. We never got to the point where we were
11 talking back and forth, about our numbers. All we could do,
12 honestly, in fulfilling the Agency's mission, was provide a
13 high level number. And we were happy to engage in that.

14 But, as the communications will show, Oracle never
15 moved to that next step. That is really the nub of what
16 happened here. We had a conciliation meeting, we thought
17 that we were going to move to the next step --

18 JUDGE LARSEN: It sounds to me as though each of
19 you is saying, "They were supposed to come up with a number
20 and they didn't do it, so."

21 MR. ELIASOPH: I'm not even saying that much. I'm
22 just saying we needed to engage. We needed information from
23 them. They wouldn't provide it. We had a conversation about
24 that.

25 Going back to the standard, the Supreme Court about

1 Mach Mining noted that this is not the type of settlement --
2 mandated settlement discussion they attempt to analogize to
3 laws that have totally different terminology despite the
4 obvious similarities with Title 7.

5 These should be rejected by this Court.

6 The Supreme Court said:

7 "Title 7 ultimately cares about
8 substantive results, while dispewing any
9 reciprocal duties of good faith in
10 negotiation.

11 "It's conciliation provision
12 explicitly serves a substantive mission
13 to eliminate unless discrimination from
14 the work place.

15 "In discussing a claim with an
16 employer, the EEOC must always insist
17 upon legal compliance. And the employer,
18 for its part, has no duty to confer or
19 exchange proposals, but only refrain from
20 any discrimination.

21 "Given that this is the structure of the law," the
22 Supreme Court continued, "those kinds of rules do not
23 properly apply to" -- or, I'm sorry, "the heightened review
24 they seek." And they refer to this more searching analysis,
25 that they invite this Court to do.

1 The Supreme Court said:

2 "In this context, where the Agency has
3 this mission to eliminate
4 discrimination," quote, "those kinds of
5 rules do not properly apply to a law that
6 treats the conciliation process, not as
7 an end in itself, but only as a tool to
8 address work place discrimination."

9 OFCCP has kept steady focus on attempting to secure
10 Oracle's compliance. For 10 months, after numerous attempts
11 to secure voluntary compliance, OFCCP was forced to file
12 suit.

13 I want to address a few additional comments made by
14 Ms. Connell to show what actually did occur.

15 So, Ms. Connell indicated that, as one of her few
16 examples of something OFCCP did not do, was respond to
17 Oracle's inquiries of, "How did you determine who Asian
18 Indians are?"

19 Exhibit J of their declaration on page 2, you'll
20 see No. 8. This is part of the list of 56 questions they
21 submitted, which look a lot to us like contention
22 interrogatories. As part of this conciliation agreement,
23 they wrote, "Please write with specificity how OFCCP
24 identified any individuals referenced in Violation 1 as
25 "Asian Indian."

1 Now, Ms. Connell suggested we just wouldn't provide
2 that information. But we did. We wrote: Applicant's
3 surname, citizenship, visa status, the labor condition
4 application, and supporting information submitted to the US
5 Department of Labor by Oracle were used to determine country
6 of origin." They asked the question. Where we could answer
7 it, we did. Some questions, we felt violated our
8 deliberative process privilege, other went to the informers'
9 privilege. There is nothing in any case law that suggests
10 that conciliation means open your case files to the employer.

11 But did we engage? Did we make reasonable efforts?
12 We clearly did. So if anybody is entitled to summary
13 judgment on this issue of conciliation, it is the Government.

14 JUDGE LARSEN: But you didn't ask for it.

15 MR. ELIASOPH: One more point -- we do mention in
16 our brief that we -- since this Court is making findings of
17 fact, there is authority under the federal rules for this
18 Court, sua sponte, to find in our favor summary judgment, so
19 this Court need not revisit the issue.

20 We also invited, since we couldn't move -- counter-
21 move without this Court's permission, we suggested that if
22 the Court felt that was necessary in counter-moving, that we
23 would be willing to pursue that process.

24 I also just want to address something flatly
25 incorrect about the law that was stated by Ms. Connell. In

1 the context of OFCCP litigation, contractors have argued that
2 OFCCP needs to identify whether it's pursuing a disparate
3 treatment case or a disparate impact case. I don't have the
4 case on hand, since this is a new argument, but I believe it
5 was Honeywell. But the Secretary of Labor has been very
6 clear, OFCCP -- the notice requirements do not involve
7 theories of liability. That is the theory of liability. She
8 said that's needed. That's not true, and you will find that
9 in OFCCP case law and we'd be happy to supply the case or
10 cases to that effect.

11 JUDGE LARSEN: All right. Thank you.

12 MR. ELIASOPH: Thank you, Your Honor.

13 JUDGE LARSEN: All right. Ms. Connell, you get the
14 last word.

15 MS. CONNELL: Okay, thank you, Your Honor.

16 First, I want to address this very critical point
17 and that is the standard of judicial review that is
18 applicable here. Section 3 of the Mach Mining decision
19 addresses the scope of judicial review and makes abundantly
20 clear that the Court needs to look at the precise language of
21 the non-discrimination law at issue. In Mach Mining, that
22 law was Title 7. And it requires the EEOC to endeavor to
23 conciliate.

24 Here, the law is Executive Order 11246 and its
25 implementing regulations. And those laws require OFCCP to

1 engage in reasonable efforts. So, Title 7 just goes to
2 whether any efforts at all were made, not the substance and
3 not the -- you don't engage in a probing review of that. But
4 under Executive Order 11246, because the standard is one of
5 reasonableness, the Court does need to look at the substance
6 of the efforts that were made.

7 So, the standard that Mr. Eliasoph referred to in
8 Mach Mining is not the standard that applies here. That is a
9 different stand of whether the OFCCP -- excuse me, whether
10 the EEOC endeavored to resolve the claim.

11 And, again, here it goes to the substance and the
12 degree of the efforts, whether they were reasonable. It's a
13 different standard and here it is a much more probing and
14 much more exacting standard of reveal.

15 JUDGE LARSEN: But you've indicated on page 12 of
16 your motion that the courts and the regulations have not
17 defined "reasonable efforts" for purposes of OFCCP.

18 MS. CONNELL: No, no, no. What we have said is
19 that there's no cases --

20 JUDGE LARSEN: Right.

21 MS. CONNELL: -- that interpret that. But the
22 language of the statute is clear.

23 JUDGE LARSEN: I understand the language is there.

24 MS. CONNELL: Right. And so -- so that is a much
25 more -- on its face, "reasonable efforts" is more than simply

1 efforts, or whether the Agency endeavored to resolve the
2 matter.

3 Here, the Agency is required to engage in
4 reasonable --

5 JUDGE LARSEN: That is one way of reading the
6 Executive Order, I agree. But I don't have a Court that says
7 it is the right way to read it, do I?

8 MS. CONNELL: The statute and the regulations say
9 "reasonable efforts."

10 JUDGE LARSEN: Yes, I know they do.

11 MS. CONNELL: So, "reasonable efforts" is more
12 than --

13 JUDGE LARSEN: So more exacting or less exacting
14 has never been judicially determined, as far as you know?

15 MS. CONNELL: On the face of the statute, it is
16 more exacting, we would argue, Your Honor.

17 JUDGE LARSEN: I understand that.

18 MS. CONNELL: Additionally, there are -- again,
19 pre-Mach Mining decisions that apply a reasonable standard.
20 And the standard that those courts apply is that to satisfy
21 the requirement of conciliation, the EEOC must outline to the
22 employer a reasonable cause for its belief that Title 7 has
23 been violated, offer an opportunity for voluntary compliance,
24 and respond in a reasonable and flexible manner to the
25 reasonable attitudes of the employer. So that was the way

1 that the Eleventh Circuit, the Fifth Circuit, and the Second
2 circuit interpreted a reasonableness standard.

3 So, again, looking at the standards that were
4 applied in Mach Mining, that is not the standard that applies
5 here. The standard here is one of reasonable efforts.

6 And it is for that same reason that the authority
7 on which the OFCCP relies, they use ALJ decisions -- which
8 are not binding on this Court -- those applied an efforts
9 standard. Effort is different than reasonable effort. Those
10 cases that Mr. Eliasoph referred to, those were not under
11 Executive Order 11246. Those cases applied to an old --
12 those cases interpreted a old version of the regulations
13 implementing the Rehabilitation Act, which was later changed
14 to match Executive Order 11246, and was changed to
15 "reasonable efforts." But in those decisions and at the time
16 that those decisions were issued, the standard was "efforts."

17 And the decisions themselves acknowledge that only
18 minimal efforts are required to meet just the effort
19 standard.

20 As to the two decisions that he referenced --
21 Preister Construction and the United States versus Thurston
22 Motor Lines, those cases are simply factually
23 distinguishable. Preister did not even involve a substance
24 of allegation of discrimination. The issue there was whether
25 a construction contractor had engaged in an affirmative

1 action effort. It's an entirely different circumstance and
2 it's simply not persuasive and is certainly not governing
3 here.

4 And the same with United States versus Thurston
5 Motor Lines. The facts of that case are wholly
6 distinguishable from the facts here. And that case is
7 neither binding nor persuasive in this context.

8 The other thing that I want to address is this
9 concept that we never provided information regarding
10 mitigation to allow them to make a back-pay offer -- or
11 demand. They never asked for any mitigation evidence --
12 whatever that means. And that's not the standard.

13 The law says that OFCCP must engage in reasonable
14 efforts. The question here isn't did Oracle engage in
15 reasonable efforts. The question is did OFCCP engage in
16 reasonable efforts. They're the government agency with the
17 obligation to do that.

18 JUDGE LARSEN: Here, again, suppose OFCCP goes to
19 XYZ Corporation and says, you know, "We're concerned about
20 your discriminatory practices and we'd like you to provide
21 this information." And XYZ Corporation says, "No. We'll
22 give you nothing. Go pound sand"? Are you telling me that
23 XYZ Corporation is not obligated to play ball at any level,
24 because the burden to be reasonable is exclusively on OFCCP?

25 MS. CONNELL: No. And the case law bores that out.

1 If the contractor says, "I'm not willing to engage with you
2 at all," then the OFCCP or the EEOC will have met their
3 obligations. That is not the case here.

4 Oracle -- and this is not a characterization, it's
5 in the correspondence. You know, to the point about
6 characterization, you can look to the correspondence itself
7 to see what actually transpired. And Oracle never walked
8 away from the table. Oracle, to this day, remains willing to
9 conciliate.

10 JUDGE LARSEN: I can look to the correspondence and
11 see what positions the parties took. That, I can do. That's
12 my problem. I don't know why they took them. I don't know
13 whether those positions are warranted. I don't know whether
14 those are statements made in good faith or bad faith.
15 Nothing in the record helps me understand that, that I can
16 see.

17 MS. CONNELL: Well, Your Honor, I think that if you
18 look at what the case law holds is the OFCCP's obligation, it
19 was not met here.

20 I want to address two final points.

21 JUDGE LARSEN: Okay.

22 MS. CONNELL: Mr. Eliasoph's claim that
23 distinguishing between disparate impact and disparate
24 treatment is not required. He is arguing about whether
25 that's required for notice, pleads the pleading standard in

1 bringing a case, not in the conciliation context.

2 That's not our position is they had to plead that
3 one way or the other. That's not the argument that we're
4 making here today. We're arguing that among other things in
5 the totality of the circumstances, that is one example in the
6 conciliation context of something that they had an obligation
7 to explain for us to meaningfully understand and to
8 meaningfully conciliate this matter.

9 The second issue on surnames, on who was Asian
10 Indian, we can't know who they assumed to be Indian based on
11 surnames. And we wouldn't purport to make those, frankly,
12 stereotypical assumptions ourselves. So that does not clear
13 up for us who they determined to be Indian, just simply
14 telling us, "Well, we made assumptions based on surnames."

15 JUDGE LARSEN: Well, did you ask them who they
16 determined to be Indian?

17 MS. CONNELL: We did and they didn't --

18 JUDGE LARSEN: Or did you ask them to tell you how
19 they determined how many Indian employees there were?

20 MS. CONNELL: We asked them how they determined,
21 and they said they looked at surnames.

22 JUDGE LARSEN: Yes, okay. And you think that's a
23 lousy method, and it may well be. But they answered your
24 question, didn't they?

25 MS. CONNELL: Well, that doesn't give us the

1 information to replicate the statistical analysis is the
2 point that I'm making. We have repeatedly asked them for
3 their statistical analysis, so that we can see what they did.

4 That is the sole basis for their allegation made
5 against Oracle.

6 JUDGE LARSEN: Have they ever given you the
7 statistical analysis?

8 MS. CONNELL: No, to this day.

9 JUDGE LARSEN: To this very day?

10 MS. CONNELL: Down to this very day, they have not
11 given us the statistical analysis. To this very day. And
12 that is patently unreasonable. It's the sole basis for the
13 claims that they pled.

14 How can we rebut and respond and engage in a
15 meaningful process when we don't have the single thing that
16 forms the basis of the NOV and the allegations that are made
17 against us.

18 JUDGE LARSEN: Is that enough in your opinion, the
19 failure to provide the statistical analysis? Is that enough
20 to entitle to you judgment as a matter of law?

21 MS. CONNELL: In this case, I think it is, Your
22 Honor, yes.

23 And just my final point, if Your Honor is not
24 inclined to dismiss the case all together, certainly Your
25 Honor would be justified to issue a stay -- a 60-day stay and

1 order the OFCCP to engage in reasonable efforts to allow the
2 parties to try and resolve this case through informal means
3 while at the same time not litigating.

4 Again, you should not be in this forum. So if
5 you're not inclined to dismiss the case all together -- and
6 we think you would be well warranted to do that here -- but
7 if you're not inclined to do that, we would ask that you
8 issue a 60-day stay -- which is the course that the Court in
9 Mach Mining took -- to allow reasonable conciliation efforts
10 to take place.

11 JUDGE LARSEN: Do you all want to see a settlement
12 judge? I'm not asking you personally, Ms. Connell, but I
13 throw it out to the five of you. We have a settlement judge
14 program here. We could assign -- regardless of what I do
15 with this motion, we can assign this case. We can ask a
16 settlement judge -- Judge Gee to appoint a settlement judge.
17 She will appoint another judge who will not be involved in
18 the hearing, who will not communicate to me what goes on in
19 settlement discussions. I'm telling you that right now. But
20 you can meet privately with him or her and try and work this
21 out, if that's what you're interested in doing.

22 I had a guy yesterday in a Longshore case. He
23 asked me for a 60-day continuance for a hearing set in
24 October, because they wanted to discuss settlement. And I
25 said, "Why not discuss settlement? Why do I have to continue

1 the October hearing?" Your hearing is not even until next
2 year.

3 MS. CONNELL: Your Honor, the reason that we asked
4 for the stay is because by law OFCCP was required to engage
5 in these reasonable efforts prior to instigating litigation.
6 Litigation is expensive, it's time consuming, it's
7 distracting.

8 JUDGE LARSEN: I wouldn't agree with you more.

9 MS. CONNELL: Oracle should not be in this
10 litigation forum. And to allow OFCCP to litigate when they
11 haven't met that prerequisite is to encourage litigation over
12 conciliation.

13 Remember, contractors choose to be regulated by
14 OFCCP. And in making that choice to do business with the
15 federal government, but at the same time be subject to OFCCP
16 oversight, contractors rely on the notion that their OFCCP is
17 going to follow its own regulations and the Executive Order
18 that authorizes it to act.

19 And to allow OFCCP to go straight to litigation
20 when it hasn't first engaged in that mandatory prerequisite
21 of reasonable conciliation efforts --

22 JUDGE LARSEN: But, Ms. Connell, you don't want to
23 cut off your nose to spite your face. You can conciliate
24 now, even if this was Provident and they pulled the trigger
25 too quickly and we now find ourselves in litigation and we

1 all agree that none of us want to be here, why not meet with
2 a settlement judge and hammer this out? Maybe we don't
3 conciliate now. Maybe they won't like to go and putting on
4 their evidence. Maybe they don't have any evidence, I don't
5 know.

6 MS. CONNELL: Is Your Honor suggesting that you
7 would implement a stay?

8 JUDGE LARSEN: I'm saying what does a stay have to
9 do with it? You can do that any time you want -- any time
10 you want, stay or no stay. Tell me you'd like to have a
11 settlement judge appointed and it will be done.

12 MS. CONNELL: Okay. We understand that is an
13 option that is available to us, Your Honor.

14 JUDGE LARSEN: I do think -- I want to observe for
15 what it's worth -- I'm not talking about the motion now or
16 the merits of the motion before me, but I do observe, for
17 what it's worth, that I think the regulatory scheme is that
18 these things ought to be worked out if they can be worked out
19 without a lot of back and forth.

20 I think the government expects that businesses who
21 contract with the federal government are on board with the
22 idea of routing out discrimination and not engaging in
23 discrimination. I'm sure Oracle does not want to be unfair
24 to any of its employees and if that's our common goal, then
25 let's get together and associate it and work on it together.

1 And if there's a problem, let's take care of it without the
2 embarrassment, without the publicity, without the attorney
3 fees.

4 That option is always open to you.

5 MS. CONNELL: We understand that, Your Honor.

6 JUDGE LARSEN: Case or no case. And the trial is a
7 long time off. So it's not like if you don't settle it this
8 afternoon, we're going to go to trial tomorrow.

9 And I say that to both of you. You know, nobody
10 likes being the subject of -- you know, an ongoing -- well,
11 maybe if you keep giving us stuff and maybe we'll turn
12 something up.

13 So, that's just something to think about.

14 MS. CONNELL: Understood, Your Honor.

15 JUDGE LARSEN: If there's nothing further on the
16 motion, then the matter is under submission. I'll issue an
17 order as soon as I can. Thank you very much for being here
18 today.

19 We stand adjourned.

20 (Whereupon, the proceedings concluded at 9:59
21 o'clock a.m.)

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REPORTER'S CERTIFICATE

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TITLE: OFCCP vs. ORACLE AMERICA, INC.

CASE NUMBER: 2017-OFC-00006

OWCP NUMBER: N/A

DATE: JUNE 16, 2017

LOCATION: SAN FRANCISCO, CALIFORNIA

This is to certify that the attached proceedings before the United States Department of Labor, were held according to the record and that this is the original, complete, true and accurate transcript which has been compared to the reporting or recording accomplished at the hearing.

Robert Olson

SIGNATURE OF REPORTER

June 20, 2017

DATE

