

**Gregory Antollino. Esq.**  
**18-20 West 21<sup>st</sup> Street # 802**  
**New York, NY 10011**  
**(212) 334-7397**  
**gantollino@nyc.rr.com**

October 6, 2012

U.S. District Judge Joseph F. Bianco  
Long Island Federal Courthouse  
814 Federal Plaza  
Central Islip, New York 11722

RE: Zarda v. Altitude Express, Inc. & Ray Maynard, 10 Civ 4334 (JFB)

Dear Judge Bianco:

I represent plaintiff in this case, and follow up on the argument/conference held on 10/4/12. I want to report for the record that, as Mr. Zabell suspected, he had not provided me with what was ordered. First, he produced only one safety video – the one produced by the lawyer. There was testimony about, and an order to produce, a video by Ray Maynard himself. I expect, by copy of this letter, Mr. Zabell will produce that video forthwith, subject to the confidentiality order which I will sign as soon as I read it through to make sure it complies with the understanding we had at conference.

Second, as ordered, plaintiff was permitted to examine and pick, arbitrarily, ten jump videos from the 2009-10 seasons. What I didn't want were ten handpicked (by defendant) videos that demonstrated jumps in a light most favorable to defendants. What defendant did produce was exactly that – ten handpicked videos. By copy of this letter, I expect Mr. Zabell will live up to his promise on the record to produce the entire array of videos, for plaintiff to pick ten arbitrarily videos, to be copied at plaintiff's expense. This can be done at Maynard's November 16 deposition, or at another time Mr. Zabell and I agree upon.

Finally, I have ordered the transcript of the 10/4 argument and it will be coming by ordinary processing time. However, something you asked me at argument prompted me to undertake an investigation. The transcript will speak for itself, but you will likely recall asking me whether the Second Circuit discussed the plaintiff's expert in the Sassaman v. Ganache case, 566 F.3d 307 (2nd Cir. 2009). I told you then, as I recalled at the time, that the only discussion in the decision was whether the plaintiff in Sassaman had presented a cognizable theory of sex-stereotype discrimination by alleging that he was fired because he was a male accused of sexual harassment, with no investigation. I double-checked, and all that Sassaman stands for is the proposition that says that his is a cognizable theory of sex discrimination.

I went then to look at the docket (SDNY 06-5032). Upon remand, I have learned,

that the plaintiff had not produced an expert for the jury. The jury then rejected his theory in 30 minutes. Maybe Sassaman's evidence was bad ; I am not going to compare the facts of his and plaintiff's, other than to suggest that they both presented the same facial theory of discrimination. Nevertheless, I hired Professor Yoshino precisely to explain this theory of discrimination to the jury in lay persons terms, and to avoid a defense verdict on a unusual case. Thousands upon thousands of attorneys' fees are at stake because plaintiff's New York State sexual orientation claim does not provide for an award of attorneys' fees to the prevailing party. Mr. Zabell, in his opposition, to my motion demanded to see how much, if anything, I had paid Professor Yoshino. In response, I produced cancelled checks to show that I had paid him \$10,000. Antollino Reply Dec., Exhibit B. Plaintiff's theory of sex discrimination is cognizable legally, but subtle and not easy for a typical person to understand; for gosh sakes, that's why Judge Bryant dismissed his claim on summary judgment before he got reversed. But for a jury to understand - that is why I was willing to pay \$10,000 to make a case under Title VII. I did not, and would not have hired Yoshino to make out a sexual orientation discrimination claim, for which there are few monetary remedies. Of course we have resolved that aspect of Yoshino's testimony.

As soon as the transcript becomes available, I assume there will be an ecf hit. If I get it in the mail, I'll notify you by letter.

Sincerely,

/s/

Gregory Antollino

Cc: Saul Zabell by ecf