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11-29-2000

## Equal Employment Opportunity Commission, Plaintiff, -against- La Cruz Azul de Puerto Rico, Inc., Defendant.

Judge Hector M. Laffitte

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**Equal Employment Opportunity Commission, Plaintiff, -against- La Cruz Azul de Puerto Rico, Inc., Defendant.**

**Keywords**

Equal Employment Opportunity Commission, La Cruz Azul de Puerto Rico Inc., 99-1410(HL), Consent decree / Settlement, Disparate Treatment, Compensation, Subjective Decision Making, HIV infection, Healthcare, Employment Law, ADA

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Plaintiff,

-against-

LA CRUZ AZUL DE PUERTO RICO, INC.

Defendant.

Civil Action No.  
99-1410(HL)

RECEIVED  
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U.S. DISTRICT COURT  
SAN JUAN, P.R.

CONSENT DECREE

1. This Consent Decree (referred to herein as the "Decree") is made and entered into between and among Plaintiff Equal Employment Opportunity Commission (referred to herein as "EEOC") and Defendant La Cruz Azul de Puerto Rico, Inc. (referred to herein as "La Cruz Azul").

2. On or about April 14, 1999, this cause of action was initiated by EEOC, an agency of the United States Government, alleging that La Cruz Azul violated the Americans with Disabilities Act of 1991, as amended (hereinafter "ADA"), and Title I of the Civil Rights Act of 1991 by engaging in unlawful discrimination.

3. EEOC alleged in the Complaint filed in this action that La Cruz Azul discriminated against Gerald E. Spillman and other similarly situated individuals by unlawfully implementing, maintaining, and administering a health care plan with limited coverage for treatment of Human Immunodeficiency Virus ("HIV") and Acquired Immune Deficiency Syndrome ("AIDS") in violation of the ADA.

4. The parties understand and agree that it is in their mutual interest to fully resolve the matter without further litigation.

5. Nothing in this Decree shall be construed to be an admission by La Cruz Azul of guilt or noncompliance with any federal, state or local law, rule or regulation.

6. EEOC and La Cruz Azul do hereby stipulate and consent to the entry of this Decree as final and binding between and among the parties' signatories hereto and their successors or assigns.

7. In consideration of the mutual promises of each party to this Decree, the sufficiency of which is hereby acknowledged, it is agreed and IT IS ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

a. This Decree resolves all matters raised in EEOC Charge Number No. 160-96-2016 and the Complaint in this action.

b. Each party agrees to fully bear its own costs and attorneys' fees incurred in this action.

c. The parties agree that this Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.

d. No party shall contest the jurisdiction of the federal court to enforce this Decree and its terms or the right of any party to bring an enforcement suit upon a breach of any of the terms of this Decree by any other party. Breach of any term of this Decree is deemed a substantive breach of this Decree. Nothing in this Decree shall be construed to preclude the parties from bringing proceedings to enforce this Decree if any party fails to perform one or more



of the promises and representations contained herein.

e. La Cruz Azul represents that no individual other than EEOC claimant Gerald E. Spillman, nor any medical provider on behalf of an individual other than Mr. Spillman, has sought coverage or reimbursement from La Cruz Azul for treatment related to HIV and/or AIDS provided outside of Puerto Rico. Furthermore, La Cruz Azul acknowledges and agrees that the EEOC's discovery or receipt of any evidence contrary to the aforementioned representation shall constitute a breach of this Consent Decree.

f. Within three (3) months of the entry of this Decree, La Cruz Azul will provide a two (2) hour ADA training session for all managerial and non-managerial officers, personnel and/or employees and one (1) additional hour ADA training for managerial personnel, to be conducted by an outside consultant acceptable to EEOC. Within ten (10) business days of the completion of the training program, La Cruz Azul will forward a summary of the topics covered and a copy of the attendance sheet to EEOC Trial Attorney, Andrée Peart.

g. Within five (5) business days of the entry of this Decree, La Cruz Azul will post and keep posted in conspicuous places on its premises for the duration of this Consent Decree the Notice attached as Exhibit "A". La Cruz Azul will also distribute the Notice attached as Exhibit "A" within five (5) business days to all employees, and within ten (10) business days to all independent contractors and employers of subscribers. Within thirty (30) calendar days of the entry of the Decree, La Cruz Azul will also distribute the Notice attached as Exhibit "A" to all subscribers. Within thirty (30) calendar days of the entry of this Decree, La Cruz Azul will forward a certification of compliance with this paragraph to EEOC Trial Attorney, Andrée Peart.

h. Within five (5) business days of the entry of this Decree, La Cruz Azul

shall submit to EEOC Trial Attorney, Andrée Peart, for the EEOC's review and approval a Non-Discrimination policy. Within five (5) business days of the EEOC's review and approval of the Non-Discrimination policy, La Cruz Azul will formally adopt its Non-Discrimination policy. The Non-Discrimination policy will be in form and content substantially similar to the draft attached as Exhibit "B" and will provide that La Cruz Azul will not discriminate against its employees, independent contractors, subscribers and/or employers of subscribers because of disability in violation of the federal statutes which prohibit employment discrimination, including, but not limited to, the ADA. Within ten (10) business days of its formal adoption of the Non-Discrimination policy, La Cruz Azul will distribute the Non-Discrimination policy to all employees, independent contractors and employers of subscribers. Within thirty (30) calendar days of <sup>its formal adoption, &</sup> the entry of the Decree, La Cruz Azul will also distribute the Non-Discrimination policy to all subscribers, <sup>and &</sup> ~~Within thirty (30) calendar days of the entry of this Decree, La Cruz Azul~~ will forward a certification of compliance with this paragraph to EEOC Trial Attorney, Andrée Peart.

i. Within ten (10) business days of the entry of this Decree, La Cruz Azul will pay the total gross settlement amount of \$200,000 (Two Hundred Thousand Dollars and No Cents) in compensatory damages to Gerald E. Spillman via overnight mail. La Cruz Azul further agrees to forward to EEOC Trial Attorney Andrée Peart a copy of the check endorsed by Mr. ~~Spillman~~ Spillman within ten (10) business days of La Cruz Azul's receipt. Within ten (10) business days of the payment of the settlement amount, La Cruz Azul will also issue to Mr. Spillman and copy to EEOC Trial Attorney Andrée Peart the form a completed Internal Revenue Service form 1099 statement, reflecting its payment of the settlement amount.

j. La Cruz Azul shall continue to permit Gerald E. Spillman or his agents to



send health benefits claims directly to the Service Director, currently Jose Moyett, and shall make every effort to process claims of Mr. Spillman in a timely manner.

k. La Cruz Azul will continue to waive the requirement that a claim for health benefits be filed within 6 months of the date of service in regard to health benefits claims submitted by Gerald E. Spillman or his agents.

l. La Cruz Azul and its agents shall comply fully with all provisions of the ADA.

m. La Cruz Azul shall not retaliate against any individual, including but not limited to Gerald E. Spillman, for asserting his or her rights under the ADA.


n. La Cruz Azul shall not retaliate against Gerald E. Spillman in the manner or length of time in which it receives, administers and/or processes Mr. Spillman's claims for health benefits.

o. La Cruz Azul shall administer and reimburse Gerald E. Spillman's claims for coverage of his medical treatment brought under Medicare in a timely manner and in compliance with all applicable federal, state and local laws, rules and regulations.

p. La Cruz Azul shall within ten (10) days of entry of the Decree provide to the EEOC and Gerald E. Spillman a written explanation of the extent of coverage, the procedure for submitting and administering Medicare claims of persons under age 65 on Medicare due to disability under the La Cruz Azul's current contract with Mr. Spillman's employer, Cornell University. La Cruz Azul will such written explanation to EEOC Trial Attorney, Andrée Peart. In the event that La Cruz Azul changes its coverage or administration of such Medicare claims during the course of this Decree, La Cruz Azul will notify the EEOC and Gerald E. Spillman in

writing within ten (10) days of the change.

q. In the event that Gerald E. Spillman's employment with Cornell University should terminate, La Cruz Azul shall offer to, and administer for, Gerald E. Spillman extended health insurance coverage in accordance with the Comprehensive Omnibus Budget Reconciliation Act of 1985 ("COBRA") and/or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). La Cruz Azul shall administer such COBRA and/or HIPAA coverage and payments in compliance with all applicable federal, state and local laws, rules and regulations. This provision shall not preclude the effect and application of any other right or benefit to which Mr. Spillman may be entitled at the time that Mr. Spillman's employment with Cornell University terminates.

 r. This Decree constitutes the complete understanding among the parties. No other promises or agreement shall be binding unless agreed to in writing and signed by these parties.



s. This Decree will remain in effect for five (5) years from the date of entry.

La Cruz Azul agrees to continue to comply with the provisions of paragraphs 7(j) - 7(q) thereafter, as long as Mr. Spillman is a subscriber of La Cruz Azul.

Dated: November 20<sup>th</sup>, 2000

Dated: November 16, 2000

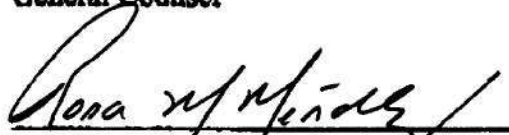
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

LA CRUZ AZUL DE PUERTO RICO, INC.



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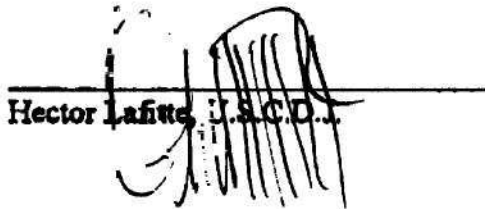
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San Juan, PR 00936-3507  
Attorneys for Defendant La Cruz Azul

SO ORDERED.

Date: 11-29-00

  
Hector Lafitte, U.S.C.D.

(Exhibit A)

November, 2000

**NOTICE**

This notice is posted at La Cruz Azul and is being distributed to you pursuant to the Consent Decree resolving litigation brought by the United States Equal Employment Opportunity Commission ("the EEOC") in case number 99-1410 (HL) in the District Court for the District of Puerto Rico against La Cruz Azul de Puerto Rico, Inc. ("La Cruz Azul"). In its complaint, the EEOC alleged that, La Cruz Azul discriminated against individuals with disabilities, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., by excluding coverage for medical services obtained outside of Puerto Rico relating to AIDS and AIDS-related illnesses. La Cruz Azul did not exclude coverage outside of Puerto Rico for any other illness.

Title I of the Americans with Disabilities Act of 1990 ("ADA") and the Consent Decree prohibits discrimination against qualified individuals and employees simply because they are disabled.

The ADA and the Consent Decree also prohibit retaliation against any individual by an employer because the individual complains of disability discrimination, cooperates with the government's investigation of a charge of discrimination, or otherwise exercises his or her rights under the ADA.

La Cruz Azul does not admit guilt or noncompliance with any federal, state or local law, rule or regulation. However, La Cruz Azul pledges pursuant to the Consent Decree to comply with the ADA.

Should you have any complaints of discrimination, you may contact the Equal Employment Opportunity Commission at the above address and telephone numbers.

**THIS IS AN OFFICIAL NOTICE NOT TO BE DEFACED BY ANYONE.**

This notice must remain posted at La Cruz Azul for five (5) years from the date of posting and may not be altered, defaced or covered by any other material.



(Exhibit A)



(Exhibit B)

La Cruz Azul prohibits and will not tolerate any discrimination or any form of harassment. Conduct which is discriminatory or harassing is a form of employee misconduct which undermines the integrity of the employment relationship. Moreover, such conduct may violate either federal and/or state laws.

For the purposes of this policy, the Americans with Disabilities Act of 1990 (ADA) makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA makes it unlawful to discriminate in all employment practices, such as recruitment, pay, hiring, firing, promotion, job assignments, training, leave, lay-off, benefits, and all other employment-related activities. The ADA also makes it unlawful for an employer to discriminate on the basis of disability against a qualified individual with a disability in regard to "[f]ringe benefits available by virtue of employment, whether or not administered by the [employer]." 29 C.F.R. Section 1630.4(f). Such fringe benefits include the health insurance administered by La Cruz Azul.

La Cruz Azul will not discriminate on the basis of disability against its own employees and subscribers who are qualified individuals with a disability in the administration or coverage provided by La Cruz Azul's health benefits.

Under the ADA, a person has a disability if he or she:

- has a physical or mental impairment that substantially limits a major life activity;
- has a record of a substantially limiting impairment; or
- is regarded as having a substantially limiting impairment.

A qualified individual with a disability is

- someone who has a substantial impairment and is able to perform those tasks that are essential to the job, with or without a reasonable accommodation.

A substantial impairment is

- one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

A reasonable accommodation is

- any change or adjustment to a job or work environment that permits a qualified employee with a disability to perform the essential functions of a job, or to enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities.

La Cruz Azul will provide reasonable accommodation to the known disabilities of a qualified individuals with a disability, unless to do so would impose an undue hardship on the Company.

Furthermore, La Cruz Azul prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports. This applies to both supervisory and nonsupervisory personnel alike. Retaliation against an individual for reporting discrimination or harassment or for participation in an investigation of a claim of discrimination or harassment is a serious violation of this policy and, like discrimination or harassment itself, will be subject to disciplinary action. La Cruz Azul's Employee Relations department and the EEO department are jointly responsible for ensuring compliance with this provision.



La Cruz Azul has established a complaint procedure to allow employees and subscribers an opportunity to report issues within the Company that they feel are based upon discrimination, retaliation, and/or harassment.

1. Reporting the Discrimination/Harassment/Retaliation

La Cruz Azul strongly urges the reporting of all incidents of discrimination, harassment, or retaliation, regardless of the offender's identity or position. Any employee or subscriber who believes he or she has been subjected to such conduct, should report the alleged incident immediately to one or more of his or her manager, Employee Relations department manager (at address and phone number) and/or the EEO department manager (at address and phone number). Employees should not feel obligated to report their complaints to their immediate supervisor first before bringing the matter to the attention of one of the other La Cruz Azul designated representatives identified above. If you have reported the conduct and feel that your concerns have not been adequately addressed, please directly contact the Managing Director - Human Resources at (address and phone number).

Complaints of alleged discrimination, harassment or retaliation will be investigated in a timely manner. Depending on the circumstances, investigation of a complaint may include: a request for a written statement from the employee filing a complaint; individual interviews with the parties involved and/or, when necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge; and/or review of any relevant records, files or documentation. La Cruz Azul will give all employees impartial and fair consideration.

The purpose of this provision is to protect the confidentiality of the employee or subscriber who files a complaint; to encourage the reporting of any incidents of discriminatory treatment or harassment and to protect the reputation of any employee wrongly charged. Therefore, confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. Any employee who is interviewed in an investigation will be instructed to maintain the confidentiality of the investigation. Unless required by subpoena or otherwise required by law or court order, information concerning a complaint generally will not be released by the La Cruz Azul to third parties or anyone within the Company who is not involved with the investigation.

Misconduct constituting discrimination, harassment or retaliation will be dealt with promptly and appropriately. La Cruz Azul will take steps to stop the discrimination, harassment and/or retaliation immediately and to prevent its recurrence, including, for example, training, referral to counseling, monitoring of the offender and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reduction of wages, demotion, reassignment, temporary suspension without pay or termination, as La Cruz Azul believes appropriate under the circumstances.

The employee or subscriber who reports the discrimination, harassment or retaliation and the individual(s) accused will be advised of the La Cruz Azul's final resolution of the complaint.

Nothing in this policy prohibits an employee or subscriber from also reporting the discrimination, harassment or retaliation to the any local, state or federal anti-discrimination agency, such as Puerto Rico's Department of Labor and Human Resources or the United States Equal Employment Opportunity Commission.

(Exhibit B)