

RECEIVED DISTRICT CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-1911 (CBS)

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PHASE II COMPANY, INC., d/b/a Phase 2 Company,
Defendant

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 24 2004

GREGORY C. LANGHAM
CLERK

~~[Proposed]~~ CONSENT DECREE

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I GENERAL PROVISIONS

- 1.1** This matter was instituted by Plaintiff, EEOC, an agency of the United States government, alleging that Defendant Phase II Company, Inc., a Colorado corporation, engaged in a pattern or practice of (1) creating a hostile work environment based on national origin (Mexico), and (2) retaliating against employees who complained about alleged discrimination, in violation Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. § 2000e, *et. seq.*
- 1.2** Ten individuals had filed charges with the Equal Employment Opportunity Commission: Damian Rodriguez Armendariz, Joel Cervantes, Fernando Chavez Esparza, Ivan J. Garcia, Felipe Rodriguez Gonzales, Sergio Hernandez, Jose Manuel Nuñez, Jose Hector Quiñones, Mike Rios, Jose San Miguel (“Charging Parties”).
- 1.3** Defendant Phase II denied all allegations of the complaint and asserted a number of affirmative defenses.
- 1.4** The Parties to this Consent Decree (“Parties”) are Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) and Phase II.
- 1.5** The Parties, desiring to settle this action by an appropriate Consent Decree (“Decree”), agree for purposes of this Consent Decree to the jurisdiction of this Court over the Parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant Phase II.
- 1.6** This Decree, being voluntarily entered into by the Parties, shall not constitute an

admission or an adjudication of the merits or the damages of this case and will not be construed as an admission by Phase II that it violated Title VII.

- 1.7 This Decree is final and binding upon the Parties as to the issues resolved, as well as upon their successors and assigns.
- 1.8 The EEOC and Phase II agree that this Consent Decree fairly resolves the issues alleged by EEOC in this lawsuit and constitutes a complete resolution of all the EEOC's claims against Phase II under Title VII that were made or could have been made against Defendant Phase II in this action by the EEOC.
- 1.9 This Decree resolves all claims alleged in this lawsuit by the EEOC, including back pay, compensatory and punitive damages, interest, injunctive relief, attorneys' fees and costs arising out of the issues in this lawsuit.
- 1.10 In consideration of the payments received pursuant to this Consent Decree, each Charging Party, represented by private counsel, agrees to enter into a separate release and waiver.
- 1.11 For purposes of this Consent Decree, the Court has jurisdiction over the parties and the subject matter of this lawsuit. The EEOC's Complaint asserts claims that, if proven, would authorize the Court to grant the monetary and equitable relief set forth in this Decree against Defendant. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights and privileges of any person. The Court shall retain jurisdiction of this action for the duration of the Decree for the purpose of entering all orders, judgments and decrees which may be necessary to

implement the relief provided herein.

- 1.12 Scope** - This Consent Decree covers all Phase II job sites and employees in Colorado and Wyoming.
- 1.13 Term of Consent Decree** - This Consent Decree shall remain in effect for two years subsequent to the effective date. In the event the terms and obligations outlined in this Consent Decree are not completed within the two years, the parties shall meet and confer concerning all matters that are alleged to constitute noncompliance. The Commission reserves the right to file an enforcement action under Section VII ("Enforcement of Consent Decree") of this Decree to ask the Court to extend the Decree for whatever period is necessary to allow Phase II to comply fully with the terms of this Consent Decree.
- 1.14 Compliance with Federal EEO Laws** - Nothing in this Consent Decree shall be construed to limit or reduce Phase II's obligation to comply with the statutes enforced by the Commission.
- 1.15 Effect of Consent Decree** - Phase II's compliance with this Consent Decree will fully and completely resolve all issues of law and fact which were raised and which could have been raised by the Commission or Charging Parties in litigation arising out of the above-referenced charges, as to acts and practices up to the effective date of this Consent Decree.
- 1.16 Complete Consent Decree** - This Consent Decree constitutes the complete understanding among the Parties with respect to the matters herein.

- 1.17 Severability** - If one or more provisions of this Consent Decree are rendered unlawful or unenforceable by act of Congress or by decision of the United States Supreme Court, the parties shall attempt to agree upon what amendments to this Consent Decree, if any, are appropriate to effectuate the purposes of this Consent Decree. In any event, the unaffected provisions will remain enforceable.
- 1.18 Waiver of Commission Claims** - Nothing in this Consent Decree shall be construed to preclude the Commission from bringing suit to enforce this Consent Decree in accordance with the enforcement provisions of Section VII (“Enforcement of Consent Decree”) below.
- 1.19 EEOC Authority** - With respect to matters or charges outside the scope of this Consent Decree, this Consent Decree shall in no way limit the powers of the EEOC in seeking to eliminate unlawful employment practices pursuant to Title VII.
- 1.20 Charges Filed After the Effective Date** - Any individual charges of discrimination filed with the EEOC or the Colorado Civil Rights Division after the effective date of this Consent Decree, based on conduct alleged to have occurred prior to the effective date of this Consent Decree, will be processed by the Commission in accordance with its standard procedures.
- 1.21 Amendment** - By mutual written consent of the parties, this Consent Decree may be amended in the interest of justice and fairness. Phase II’s consent to amend this Consent Decree can be given only in writing signed by Alison Larsen.
- 1.22 Implementation** - The Parties agree to take all steps that may be necessary to fully

effectuate the terms of this Consent Decree.

II DEFINITIONS

- 2.1 Class Share** - The settlement amount which the EEOC determines will be paid to a particular Eligible Class Member.
- 2.2 Class** - The Class of individuals covered by this Decree consists of Phase II employees of or perceived to be of Mexican national origin who worked on the Fitzsimmons project during calendar years 1999 and 2000, who suffered discriminatory harassment or retaliation.
- 2.3 Class Administrator** - The EEOC shall carry out the administrative functions necessary to determination of eligible class members and amount of class share to be distributed as part of the Class Settlement Funds, as more specifically provided in Section V.
- 2.4 Complaint of Discrimination, Harassment, or Retaliation** - A complaint of discrimination, harassment, or retaliation, shall be any complaint which comes to the attention of a supervisor or manager and makes allegations which are appreciated by any supervisor or manager as an allegation of discrimination, harassment, or retaliation. For example, an employee who complains to a supervisor about being called names derogatory of his national origin, has made a complaint which is appreciated to be an allegation of harassment, regardless of whether the employee complains in writing or expressly uses the terms "discrimination" or "harassment." By contrast, a complaint by an employee that he was unfairly denied overtime may not be appreciated as an allegation of discrimination, unless the employee articulates that he believes he is being

treated differently because of his national origin.

- 2.5 **EEO** - The term “EEO” shall refer to the phrase “equal employment opportunity.”
- 2.6 **EEO Coordinator** - Defendant’s employee, Alison Larsen, who is responsible for ensuring compliance with this Consent Decree.
- 2.7 **Effective Date** -The Effective Date of this Decree is the date on which the Court gives preliminary approval to the Decree, after hearing, if required.
- 2.8 **Eligible Class Members** - To be eligible for class relief under this Decree, a member of the Class defined in ¶ 2.2 above, must submit a timely claim and be determined eligible under the procedures set forth in Section V, *infra*.
- 2.9 **Final Class Distribution List** - The Final Class Distribution List is the list of Eligible Class Members and the amount of each such class member’s Claim Share. *See* Section V *infra*.

III AFFIRMATIVE RELIEF

3.1 Notice and Posting of Decree Notice

3.1.1 Posting - Within sixty (60) days of the Effective Date of this Decree, Phase II shall conspicuously post the Notice attached hereto as Attachment A, in locations where all other employee-related notices are posted. The Notice shall remain posted for the duration of the Consent Decree.

3.1.2 Orientation on Consent Decree - Prior to posting the Notice required in the preceding Paragraph 3.1.1, Phase II shall conduct orientation meetings advising all supervisors, managers and human resources employees with authority over Phase II

employees in Colorado and Wyoming of the terms and conditions of the Decree, with emphasis on the anti-retaliation provisions of the Decree. Phase II shall notify the EEOC of the dates, times and locations at least 20 business days prior to each of the orientation meetings, and the EEOC shall have the right to attend or participate in any or all such meetings. In addition, Phase II shall inform its supervisors, managers and human resources employees that any breach of, or failure to comply with, the terms and conditions set forth in this Decree shall subject them to dismissal or other appropriate disciplinary action.

3.2 Injunction

3.2.1 No Discrimination - Phase II shall not discriminate against any employee because of national origin. Phase II shall afford all employees the same training and terms and conditions of employment it affords all other employees in similar positions without regard to national origin.

3.2.2 No Retaliation - Phase II shall not retaliate against any employee or class member for his or her participation in the EEOC process, the investigation by the EEOC into this matter, participation in this lawsuit, or for asserting any rights under this Decree.

3.3 EEO Coordinator

3.3.1 Phase II's employee Alison Larsen will serve as EEO Coordinator to oversee Phase II's compliance with and implementation of this Consent Decree. If Phase II decides to change the EEO Coordinator during the term of this Consent Decree, it will provide written notice and a list of the new coordinator's qualifications to the EEOC.

3.3.2 The responsibilities of Phase II's EEO Coordinator will include, but need not be limited to:

- coordinating Phase II's compliance with anti-discrimination laws;
- ensuring Phase II's compliance with this Consent Decree;
- maintaining records to be preserved under Section VI ("Reporting and Recordkeeping") of this Decree;
- submitting the reports required under Section VI ("Reporting and Recordkeeping");
- assisting in development and implementation of Phase II's EEO Training Program, as required under Paragraph 3.4 ("Development of EEO Training Program") of this Decree;
- assisting in review and revision of Phase II's policies and procedures, as required under Paragraph 3.5 ("Modification and Implementation of EEO Policies and Procedures") of this Decree.

3.4 EEO Training

3.4.1 Development of EEO Training Program - Within one-hundred twenty (120) days of the Effective Date of this Decree, Phase II shall submit to the EEOC a proposed EEO training program for new employees, non-supervisory employees, supervisory employees, and human resource employees. Each training program will include the following information: (a) a detailed agenda; (b) curriculum vitae(s) for the individual(s) who will conduct the training; and (c) a plan to ensure that all employees receive the

required training.

3.4.2 Amount of Training Required

3.4.2.01 Non-Supervisory Employees - Phase II will provide non-supervisory employees at least one (1) hour of EEO training within ten (10) days of hire, and on an annual basis thereafter during the term of this Decree. This training may be by videotape presentation and may be made by qualified Phase II human resource employees.

3.4.2.02 Management/Supervisory Employees - Phase II will provide supervisory and management employees at least two (2) hours of EEO training within ten (10) days of hire or promotion into a supervisory position, and on an annual basis thereafter during the term of this Decree. This training must be conducted live, but may be presented by qualified Phase II human resource employees.

3.4.2.03 Human Resource Employees - Phase II will provide human resource employees at least ten (10) hours of EEO training within thirty (30) days of hire or promotion into a human resource position, and on an annual basis thereafter during the duration of the Consent Decree. This training must be conducted live, by individuals not employed by Phase II.

3.4.2.04 Required Subjects of Training - At a minimum, the EEO training programs shall include the following:

- instruction on the requirements of all applicable equal employment

opportunity laws including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, and the Pregnancy Discrimination Act.

- a review of Phase II's non-discrimination employment policies with particular emphasis on the complaint procedure and prohibitions on retaliation.
- instruction on any policies prohibiting national origin discrimination, hostile work environment, harassment, and retaliation.
- training for supervisory, management, and human resource employees shall include instruction on the proper procedures for responding to complaints of discrimination or harassment.

3.5 Modification and Implementation of EEO Policies and Procedures

3.5.1 Review of Policies - During the first one-hundred twenty (120) days of this Decree, Phase II shall review Phase II's existing policies and procedures, and, if necessary, develop and implement new and/or revised policies and provisions to ensure equal employment opportunities are afforded to employees without regard to national origin. This includes a management performance review procedure that includes compliance with this Consent Decree. During the remainder of this Decree, Phase II may develop additional policy revisions to ensure equal employment opportunities.

3.5.2 EEOC Input - At least forty-five (45) days prior to implementation of any new or revised policy or procedure, the proposed policy or procedure shall be submitted to the EEOC. Within thirty (30) days of receiving the proposal, the EEOC will comment in writing upon the proposed policy.

3.5.3 EEOC Input Not a Waiver - Under no circumstances shall the EEOC, by commenting or electing not to comment upon Phase II's proposed changes or amendments, be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policy upon equal employment opportunities.

IV MONETARY RELIEF

4.1 Total Monetary Relief. The total amount paid by Phase II under this consent decree is seven hundred fifty thousand dollars (\$750,000.00), including payment to ten charging parties, their attorneys, and to class members.

4.2 Payment to Individual Charging Parties and their Attorneys. Charging Parties and their attorneys will receive \$600,000.00, to be paid in accordance with a separate settlement agreement and release.

4.3 Payment to Class Settlement Fund. Within thirty (30) days of the Court's preliminary approval of the claims process, as described below, Phase II shall pay the gross sum of one hundred fifty thousand dollars (\$150,000.00) ("Class Settlement Fund") into a separate interest bearing bank account, to be distributed among all "Eligible Class Members" (as that term is defined below), all in accordance with the provisions of this Consent Decree.

4.3.1 The Class Settlement Fund shall be used solely to make payments to individuals who timely submit Claim Forms and whom the EEOC determines, subject to Court approval, to be eligible to receive monetary relief in this lawsuit (“Eligible Class Members”).

4.3.2 No persons or entities other than Eligible Class Members shall receive any payments from the Class Settlement Fund, except for the non-profit organizations identified in paragraph 5.11 below.

V CLAIMS PROCESS AND DISTRIBUTION OF CLASS SETTLEMENT FUND

5.1 Preliminary Approval of Decree and Notice

The parties shall jointly submit this Decree to the Court for preliminary approval and for an order authorizing the EEOC to develop the content and method for notice to the Settlement Class, and the process of determination of shares to Eligible Class Members.

5.2 Production by Phase II of Name and Address List for Notice of Settlement

Within fifteen (15) days of entry of the Court’s order giving preliminary approval to the Consent Decree, Phase II shall furnish the EEOC, in computer-readable and hard copy form, the names, last known addresses and social security numbers, and dates of employment, of all employees who worked at the Fitzsimmons project during calendar years 1999 and 2000. The list of the names and related information is the Notice List to Potential Class Members.

5.3 Mailed Notice of Settlement

No later than twenty-one (21) days after Preliminary Approval, the EEOC shall send the

Notice of Settlement of Class Action and Claim Form, via first class mail, to all individuals on the Notice List to Potential Class members.

5.4 Confidentiality.

Claim Forms received by EEOC shall be treated as confidential and not disclosed to Phase II or any other person or entity, except that such Claim Forms may be submitted confidentially to the Court in accordance with the claims process set forth in this Decree.

5.5 Claims Administration

5.5.1 Responsibilities of the EEOC in Claims Administration. The EEOC will take all steps as are reasonably necessary to ensure Potential Class Members timely receive a Notice and Claim Form. These steps include:

- communicating with Potential Class Members and others, with the assistance of a Spanish interpreter when necessary, regarding the claims process, corrections and/or additional information needed for the Claim Forms, or for any other reasons as deemed reasonably necessary in order to ensure that the highest percentage of Potential Class Members receive notice of this Settlement and that Potential Class Members who wish to participate in this Settlement process are permitted to do so.
- The EEOC will provide, if necessary, telephone support to receive telephone calls from Potential Class Members or others regarding the claims process.
- EEOC will perform any and all other duties as are consistent with the

terms, purposes and goals of this Consent Decree.

5.5.2 Responsibilities of Phase II in Claims Administration.

Phase II will reasonably cooperate with the EEOC in the processing of claims under Consent Decree. Phase II will establish the class settlement fund, described in paragraph 4.3, will timely provide a list of former employees, described in paragraph 5.2, will attempt to answer any questions the EEOC may have about dates of employment. Phase II will mail settlement payments in accordance with the Final Distribution List submitted by the EEOC, after approval by the Court. If any settlement checks are returned for incorrect address, Phase II will immediately notify EEOC in order for the EEOC to conduct additional tracing through search databases. In its first Report under Section VI below, Phase II will provide EEOC a final accounting, identifying whether all settlement checks have cleared. Phase II will mail checks to the non-profits identified in ¶ 5.11, when directed to do so by the EEOC.

5.6 Determination of Eligibility

5.6.1 Subject only to the approval of the Court, as provided for by this Decree, EEOC shall be the sole determiner of eligibility for relief under this Decree and the amount of monetary relief to be received by any Eligible Class Member under this Decree. Phase II will not participate in or object to EEOC's determinations.

5.6.2 Eligible Class Members shall include those individuals who satisfy each and all of the following criteria:

- the individual was employed by Phase II, at its Fitzsimmons project,

during calendar years 1999 and 2000;

- EEOC receives evidence credible to EEOC that the individual was subjected to national origin harassment or retaliation;
- the individual submits a timely claim form by August 15, 2004;

Acting in its discretion and subject only to final approval by the Court, as provided for in this Decree, EEOC shall exclusively determine the eligibility of claimants for relief under this Decree.

5.7 Determination of Class Share

5.7.1 Acting in its discretion and subject only to final approval by the Court, as provided for in this Decree, EEOC shall assign each Class Member whose Claim Form is timely received by EEOC and whom EEOC determines to be an Eligible Class Member to one of two or more "class tiers." In assigning Eligible Class members among these different "class tiers," EEOC will consider, but not be limited to, the following factors: (i) severity of harassment/retaliation, (ii) duration of harassment/retaliation, (iii) extent of harm.

5.7.2 In the negotiations for this Consent Decree, the parties recognized and agreed that (1) because of the completion of Phase II's work on the Fitzsimmons' project and the extent of the reduction in Phase II's workforce that began in the fall of 2000, class members might be able to recover only minimal, if any, lost wages in the Lawsuit, and (2) Charging Parties sought to raise additional claims in intervention and seek non-wage remedies and had stated their intent to pursue those other claims as a class action to

include Eligible Class Members. The parties agree that the EEOC shall make the determination of a fair and equitable distribution of the Class Settlement Fund among the Eligible Class Members based on the factors listed in paragraph 5.7.1. After the deadline for submission of claims, the EEOC shall calculate the Claim Share payable to each Eligible Class Member. For the reasons stated above, the amounts determined to be payable to each Eligible Class Member will be allocated as 12.5 percent for release of back pay claims and 87.5 percent for their release of all other claims that were or could have been raised in the Lawsuit or by intervening in the Lawsuit.

5.8 Notification of Eligibility and Class Share. No later than October 15, 2004, EEOC shall mail to each person from whom it has received a Claim Form, a letter containing the following information: (i) whether he or she has been designated an Eligible Class Member; (ii) if so designated, the amount of class share which EEOC has determined should be paid to the class member, (iii) his or her opportunity to object to EEOC's determinations in accordance with the provisions of this Decree. The letter will also inform each Eligible Claimant that any monetary payments he or she may receive from the Settlement Fund may be subject to mandatory federal, state and local income tax withholding, and in any event, will inform the Eligible Class Member that he or she will be responsible for payment of taxes.

5.9 Objection Procedure. Any Potential Class Member whose Claim Form is timely received by the EEOC and who desires to object to an EEOC determination concerning eligibility or "class share" may do so by submitting to EEOC a written objection, no later

than 30 days following the notification in ¶ 5.8. Any such written objection must state the basis for the objection. No later than 30 days following the deadline for receipt of all objections, EEOC shall review its determination as to eligibility and/or "class share" for the objecting Potential Class Member and either modify its determination or deny the objection and submit the objection to the Court with the Final Distribution List.

5.10 Court Approval of Final Distribution List. No later than thirty (30) days after the time provided for the EEOC to review its determination on any objection, EEOC shall file with the Court a motion for the Court's approval of the allocation of the Settlement Fund among Eligible Class Members as determined by EEOC. In connection with this motion, EEOC shall file, under seal, a final settlement distribution list which shall contain the name, address and Final Settlement Amount for each Eligible Claimant. The EEOC shall simultaneously file with the Court any objections filed by any Potential or Eligible Class member. The Court may approve or order modifications of the Final Distribution List consistent with the Court's rulings on objections.

5.11 Distribution of Settlement Fund.

5.11.1 Except as provided in paragraph 5.11.2 below, within fourteen (14) days after the Court's approval of the allocation of the Settlement Fund among Eligible Class Members, Phase II shall draw on the Settlement Fund checks in the amounts approved by the Court, and shall mail such checks to the addresses provided by EEOC for the Eligible Class Members. Simultaneously, Phase II shall send to the EEOC a listing of each payee's name and the check amount. Phase II shall promptly notify EEOC in writing of any

checks that are returned or are not cashed after a period of thirty (30) days has elapsed from the date on which the settlement checks were mailed. EEOC may take, at EEOC's expense, further steps to reach those Eligible Class Members who did not receive and/or deposit their settlement checks. In the event that any portion of the Settlement Fund, including accrued interest, has not been distributed as required by this Decree after a period of one hundred twenty (120) days has elapsed from the date on which the settlement checks were mailed by Phase II, then such remaining amounts from the Settlement Fund shall be paid, at the direction of the EEOC, subject to such further orders as the Court may deem appropriate, in equal amounts to the following non-profit organizations: Salud Clinic in Larimer County and National Immigration Project of the National Lawyers Guild.

5.11.2 Prior to distribution, each Eligible Class Member on the Distribution List shall complete and provide to Phase II an Internal Revenue Service W-9 form and a W-4 form containing complete and accurate information. If, prior to the date for distribution, Phase II has not received an Internal Revenue Service W-9 form and a W-4 form from an Eligible Class Member whose name appears on the Distribution List, Phase II shall distribute to the Eligible Class Member the appropriate amount no later than 30 days after the date Phase II has received the W-9 and W-4 forms.

VI REPORTING AND RECORD KEEPING

6.1 Document Preservation

6.1.1 For the duration of the Decree, Phase II agrees to maintain the following records

as are necessary to demonstrate its compliance with this Decree and retain the records listed below two years following the termination of the Decree:

- all personnel files including all performance appraisals, discipline and termination records;
- all complaints of discrimination or harassment based upon national origin and all records of the investigation of those complaints; and
- all complaints of retaliation prohibited by statutes enforced by the EEOC and all records of the investigation of those complaints.

6.2 Reports

6.2.1 Initial Report. Within one-hundred twenty (120) days of the Effective Date of this Decree, Phase II shall provide the EEOC with an affidavit of compliance including a narrative description describing the following.

- Existing policies have been reviewed and revised as necessary to ensure equal employment opportunities, as required in Paragraph 3.5.
("Modification and Implementation of EEO Policies and Procedures")
above.
- All Phase II supervisors, managers, and human resource employees with supervisory authority over people employed by Phase II in Colorado have attended training on the terms and provisions of this Decree, as required in Paragraph 3.1.2 ("Orientation on Consent Decree").
- Proposed EEO training programs are being developed, as required in

Paragraph 3.4 ("EEO Training"), above.

- Training provided during the reporting period.
- Verification that the notice remains posted.

6.2.2 Periodic Reports

6.2.2.01 During the term of this Decree, Phase II shall submit four (4) semi-annual reports to the EEOC. With each report, Phase II shall submit all data in written form.

6.2.2.02 The first reporting period will begin on the Effective Date of this Decree, and will end on the last day of the fifth complete calendar month thereafter. (e.g. June 16, 2004, through November 30, 2004.) Each subsequent reporting period will be six calendar months.

6.2.2.03 Each report shall contain the following information for the relevant reporting period:

- the number of employees employed in Colorado at the start and end of the reporting period, categorized by national origin to the extent known to Phase II;
- a summary of all complaints, formal or informal, of national origin discrimination, harassment or retaliation, and copies of the investigative files relating to each complaint; and
- verification of employee attendance for all EEO training

conducted during the reporting period.

6.2.3 Other Reports

6.2.3.01 No later than twenty (20) business days prior to holding the orientation meetings required under Paragraph 3.1.2 (“Orientation on Consent Decree”), Phase II shall provide the EEOC with the dates, times and locations of the orientation meetings;

6.2.3.02 No later than twenty (20) days prior to any scheduled training, as required under Paragraph 3.4 (“EEO Training”), above, Phase II shall inform the EEOC of the date, time, and location when the training is scheduled to be conducted.

6.2.4 Additional Data - The EEOC shall have the right to request additional data from Phase II, so long as the information sought is necessary and consistent with the monitoring of the Decree. Phase II shall comply with a request for additional data within thirty (30) days of the request.

6.2.5 Access to Information - The EEOC shall have reasonable access to review all records maintained by Phase II relating to the implementation or administration of this Consent Decree.

VII ENFORCEMENT OF CONSENT DECREE

7.1 No Private Right of Action - There is no private right of action to enforce Phase II’s obligations under the Decree and only the EEOC, Phase II or their successors may enforce compliance with the Decree.

7.2 Burden of Proof on Enforcement - The party bringing an enforcement action shall have the burden to show noncompliance. Any party who responds to an enforcement action by arguing that implementation of the recommendation would cause undue hardship shall have the burden to show the same.

7.3 Requirement of Informal Resolution Efforts

7.3.1 Notice of Dispute - Prior to any party initiating an action to enforce the Decree, the party seeking enforcement will provide written notice to the other party(ies) of the nature of the dispute. This notice shall specify the particular provision(s) believed to have been breached and a statement of the issues in dispute. The notice may also include a reasonable request for documents or information relevant to the dispute.

7.3.2 Response to Notice of Dispute - Within fourteen (14) days after service of the Notice of Dispute, the non-initiating party will provide a written response and provide the requested documents or information.

7.3.3 Service - Service of the Notice of Dispute and any Responses shall be made as provided in Paragraph 8.1 ("Notice") below.

7.3.4 Meeting - After service of the Response(s), the parties will schedule a telephone or in-person meeting to attempt to resolve the dispute.

7.3.5 Dispute Resolution Period - If the dispute has not been resolved within thirty (30) days after service of the Notice of Dispute, an action to enforce the Decree may be brought in this Court.

7.4 Attorneys' Fees For Enforcement of Decree - If the dispute is resolved without resort

to the Court, each party shall bear its own attorney fees and costs for work performed to enforce the Decree. If the dispute is submitted to the Court for resolution, the Court shall award the prevailing party its reasonable attorney fees and court costs for all work reasonably necessary to enforce the provisions of this Decree, as determined by the Court.

VIII NOTICE

- 8.1** Any notice, report or communication required under the provisions of this Consent Decree shall be sent by certified mail, postage prepaid, to the appropriate party as follows.

THE EEOC
Regional Attorney
Denver District Office
Equal Employment Opportunity Commission
303 E. 17th Avenue, Suite 510
Denver , CO 80203
Lynn.Palma@EEOC.gov
Rita.Kittle@EEOC.gov

PHASE II
Alison Larsen
EEO Coordinator
216 Hemlock Street
Fort Collins, CO 80522

SO ORDERED, ADJUDGED AND DECREED this 24 day of May, 2004.

EOD
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAY 24 2004

GREGORY C. LANGHAM
CLERK


Edward W. Nottingham
United States District Judge

APPROVED AS TO FORM:



Joseph H. Mitchell, Regional Attorney
Denver District Office
Equal Employment Opportunity Commission
303 E. 17th Avenue, Suite 510
Denver, CO 80203



Kenneth R. Stettner
Stettner, Miller and Cohn, P.C.
1380 Lawrence Street, Suite 1000
Denver, CO 80204

NOTICE TO EMPLOYEES

This Notice is being posted jointly as part of an agreed consent decree between Phase II, Co., Inc. and the Equal Employment Opportunity Commission (EEOC).

Unlawful Discrimination: Under federal law, it is unlawful for an employer to discriminate based on race, color, religion, sex, national origin, age (over 40), or disability. This means that a supervisor or manager cannot make decisions about hiring, promotion, pay, or other conditions of employment, based on race, color, religion, sex, national origin, age (over 40), or disability. This also means that the work environment should be free from harassment or ridicule based on race, color, religion, sex, national origin, age (over 40), or disability.

Unlawful Retaliation: It is also unlawful to discriminate or retaliate against any individual who reports or complains about what he or she believes to be unlawful discrimination based on race, color, religion, sex, national origin, age (over 40), or disability.

Reporting Improper Conduct: If you are aware of any events, conduct, or information, which you believe may indicate some improper discrimination or harassment, it is very important that you report the information so the necessary steps may be taken to investigate, identify, and promptly remedy any problems. You may report such improper to conduct to any of the following:

Reporting to Phase II: Within the Phase II organization, you may make such a report to the EEO Coordinator, the Human Resource manager/Operations Manager, the Hispanic Liaison or to any supervisor or manager. By reporting a problem to Phase II, you do not waive any rights to file a charge of discrimination with the EEOC or the Colorado Civil Rights Division.

Alison Larsen, EEO Coordinator , 216 Hemlock Street, P.O. Box 1459, Fort Collins, CO 80522
Phone: (303) 449-0101 (toll free in the metro area)

Tim Jimmerson, Human Resources Manager/Operations Manager, 216 Hemlock Street, P.O. Box 1459, Fort Collins, CO 80522; Phone: (303) 449-0101 (toll free in the metro area)

Francisco Sollano, Hispanic Liaison and Superintendent (job site)

Reporting to the U.S. Equal Employment Opportunity Commission: The EEOC is responsible for enforcing federal laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Denver District office of the EEOC, at any of the following numbers:

Telephone: 303.866.1300; Toll Free: 1.800.669.4000
TTY: 303.866.1950
Fax: 303.866.1085

The Denver District office of the EEOC is located at 303 East 17th Avenue, Suite 510, Denver, Colorado 80203.

Reporting to the Colorado Civil Rights Division: The CCRD is the agency responsible for enforcing state laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (over 40), or disability. You may directly contact the Colorado Civil Rights Division at any of the following numbers:

Telephone: 303.894.2997 (English and Spanish)
Toll Free: 1.800.262.4845 (English and Spanish)
TTY: 1.800.659.2656; TTY Spanish: 1.800.377.3242
Fax: 303.894.7830

The Colorado Civil Rights Division has offices in the following locations: 1560 Broadway, Suite 1050, Denver, CO 80202.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-1911 (CBS)

CERTIFICATE OF SERVICE

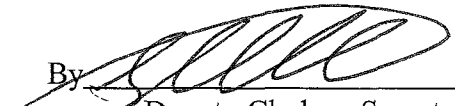
I hereby certify that a copy of the Consent Decree signed by Judge Edward W. Nottingham on May 24, 2004 was served on May 24, 2004 by hand-delivery, where a "D.C." box number or asterisk (*) is indicated after the recipient's name, by electronic mail to the electronic mail address specified where a double asterisk (**) is indicated after the recipient's name, or otherwise by depositing it in the United States mail, postage prepaid, addressed to the recipient:

Magistrate Judge Craig B. Shaffer*

Lynn L. Palma, Esq.
Joseph H. Mitchell, Esq.
EEOC Denver District Office
303 E. 17th Avenue, Suite 510
Denver, CO 80203
Attorneys for Plaintiff

Kenneth R. Stettner, Esq.
Stettner, Miller and Cohn, P.C.
1380 Lawrence Street, Suite 1000
Denver, CO 80204

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk or Secretary