

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 08-cv-01385-CMA-BNB

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

TAMMY LANE, MICHAEL GALASSO and CALVIN REED,

Plaintiff Intervenors,

v.

OLDCASTLE SW GROUP, INC. d/b/a UNITED COMPANIES OF MESA COUNTY,

Defendant.

CONSENT DECREE

I. RECITALS

1. Equal Employment Opportunity Commission ("EEOC"), an agency of the United States of America, alleges that Oldcastle SW Group, Inc. d/b/a United Companies of Mesa County ("United") engaged in a pattern or practice of unlawful employment discrimination based on sex and retaliation, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e, *et seq.* The alleged employment discrimination included sexual harassment, hostile work environment, disparate terms and conditions of employment, and discharge of a class of employees based on sex and/or retaliation, and on different terms and conditions of employment.

2. Tammy Lane, Calvin Reid, and Michael Galasso filed Charges of Discrimination ("Charges") with EEOC regarding the alleged discrimination, and later intervened in a lawsuit brought by the EEOC in the Federal District Court for the District of Colorado, Cause No. 08-cv-01385-CMA-BNB. They filed a Complaint in Intervention, and they are referred to herein as the "Intervenors." Intervenors Michael Galasso and Calvin Reed each added a claim for disability discrimination in violation of the Americans with Disabilities Act ("ADA").
3. The Parties hereto, desiring to settle this action by an appropriate Consent Decree ("Decree"), agree 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 Decree enforceable against United.
4. This Decree is final and binding upon the Parties as to the issues resolved, as well as upon their successors and assigns.
5. The Parties hereto agree that this Decree fairly resolves the issues alleged by EEOC and the Intervenors and constitutes a complete resolution of all EEOC's and the Intervenors' claims of unlawful employment practices under Title VII and the ADA that were made against United in the Charges and Complaints.

II. JURISDICTION

6. The Court has jurisdiction over the Parties and the subject matter of this lawsuit. EEOC's Complaint and Intervenors' Complaints in Intervention assert claims that, if proven, would authorize the Court to grant the monetary and equitable relief set forth in this Decree against United. This Decree conforms with the Federal Rules of Civil Procedure, Title VII, and the ADA, and is not in derogation of the rights and privileges of any Party or person. The Court shall retain jurisdiction of this action for the duration of the Decree for the purposes of entering all orders, judgments and decrees which may be necessary to implement the relief provided herein.

III. DEFINITIONS

7. **Complaint of Discrimination, Harassment, or Retaliation** - A complaint of discrimination, harassment, or retaliation shall be any oral or written complaint, which comes to the attention of a supervisor or manager of United and makes allegations which are appreciated by any supervisor or manager as an allegation of discrimination, harassment, or retaliation, regardless of whether the employee complains in writing or expressly uses the terms "discrimination," "harassment," or "retaliation."
8. **EEO** - The term "EEO" shall refer to the phrase "equal employment opportunity."
9. **Effective Date** - The Effective Date of this Decree is the date on which the Court gives final approval to the Decree, after hearing, if required.
10. **Parties** - The Parties to this Decree are EEOC, the Intervenors, and United.
11. **Private Counsel** - Attorneys representing the Charging Parties.

IV. GENERAL PROVISIONS

12. **Scope** - This Decree covers United's facilities, premises, and employees in Colorado.
13. **Term of Consent Decree** - This Decree shall remain in effect for 3 years subsequent to the effective date hereof. In the event the terms and obligations outlined in this Decree are not completed within 3 years, the Parties shall meet and confer concerning all matters that are alleged to constitute noncompliance. EEOC reserves the right to file an enforcement action under Section IX ("Enforcement of Consent Decree") hereof to extend the Decree for whatever period is necessary to allow United to comply fully with the terms of this Decree.
14. **Compliance with Federal EEO Laws** - Nothing in this Decree shall be construed to limit or reduce United's obligation to comply with the statutes enforced by EEOC: Title VII, Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, ADEA, and the Equal Pay Act, 29 U.S.C. §206(d).

15. Effect of Consent Decree - United's compliance with this Decree will fully and completely resolve all issues of law and fact raised by EEOC in litigation arising out of the above-referenced charges as to acts and practices up to the effective date of this Decree.

16. Complete Consent Decree - This Decree constitutes the complete understanding among the Parties with respect to the matters herein, except to the extent that intervenors are entering into separate settlement agreements with United.

17. Severability - If one or more provisions of this 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 Decree, if any, are appropriate to effectuate the purposes of this Decree. In any event, the unaffected provisions will remain enforceable.

V. NON-DEROGATION OF EEOC RIGHTS

18. Waiver of EEOC Claims - Nothing in this Decree shall be construed to preclude EEOC from bringing suit to enforce this Decree in accordance with the enforcement provisions of Section IX ("Enforcement of Consent Decree") herein. Neither does this Decree preclude EEOC from filing lawsuits based on charges not resolved in this Decree.

19. EEOC Rights Reserved - EEOC reserves all rights to proceed with respect to matters not covered in this Decree and to secure relief on behalf of aggrieved persons not covered by this Decree. Under no circumstances shall EEOC by commenting or electing not to comment upon proposed policies or procedures pursuant to Section VI ("Affirmative Relief") be deemed to have waived its right to investigate or litigate any alleged adverse effects of said policy upon equal employment opportunities. Nor shall EEOC by commenting or electing not to comment upon said policies or procedures be considered to have accepted the validity of or approved the provisions adopted by United.

20. Charges Filed After the Effective Date - Any individual charges of discrimination filed with EEOC or the Colorado Civil Rights Division ("CCRD") after the effective date of this Decree based on conduct alleged to have occurred prior to the effective date of this Decree will be processed by EEOC in accordance with its standard procedures.

VI. AFFIRMATIVE RELIEF

21. Notice and Posting of Decree Notice

21.01 Posting - Within 60 days of the Effective Date of this Decree, United shall conspicuously post the Notice of Final Approval of Settlement attached hereto as Exhibit A ("Notice"), in each of its Colorado facilities where all other employee-related notices are posted.

21.02 Orientation on Consent Decree - Prior to posting the Notice required in the preceding Paragraph 21.01, United shall conduct orientation meetings advising all current employees, including supervisors, managers, and human resources employees with responsibility for such facilities, of the terms and conditions of the Decree. United shall notify the EEOC of the dates, times and locations at least 10 business days prior to each of the orientation meetings, and the EEOC shall have the right to attend any or all such meetings. In addition, United shall inform all current and future supervisors, managers, and human resources employees with responsibility for such facilities that any breach of or failure to comply with the terms and conditions set forth in this Decree shall subject them to appropriate disciplinary action up to and including termination.

22. Injunction

22.01 No Discrimination – United is permanently enjoined from discriminating against any employee or applicant in promotions, pay, discipline (including discharge),

terms and conditions of employment, or hostile work environment, because of sex, disability.

22.02 No Retaliation – United is permanently enjoined from retaliating against any employee, applicant, or class member for his or her participation in the EEOC process, the investigation by EEOC into this matter, participation in this lawsuit, complaining about or opposing any employment practice made unlawful by one or more of the statutes enforced by EEOC, or for asserting any rights under this Decree.

23. Letters of Reference – Upon request, United shall provide to any Intervenor or Class Member a letter of reference identifying the dates of employment and positions held. United shall change the termination of Tammy Lane to a layoff, and note such change in her personnel file.

24. EEO Training

24.01 Development of EEO Training Program - Within 60 days of the Effective Date of this Decree, United shall submit to EEOC a proposed EEO training program for new and current employees, including non-supervisory employees, supervisors, managers, and human resources 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.

24.02 Amount of Training Required

24.02.01 Non-Supervisory Employees – United will provide non-supervisory employees at least 1 hour of EEO training within 10 days of hire if a new employee or within 90 days of the effective date of this Decree if a current employee, and on an annual basis thereafter. This training may

be conducted live by an individual(s) not employed by or associated with United, but may be conducted by Craig Hall or Heather Harper of Oldcastle's corporate office in Atlanta, Georgia or if neither is available, then another in-house attorney approved by the EEOC, which approval shall not be unreasonably denied, or may be provided by videotape presentation purchased from an outside vendor.

24.02.02 Supervisory and Management Employees – United will provide supervisors and managers with at least 7 hours of EEO training within 10 days of hire or promotion into such positions or within 90 days of the effective date of this Decree if a current employee, and on an annual basis thereafter. This training must be conducted live, and by an individual(s) not employed by or associated with United, but may be conducted by Craig Hall or Heather Harper of Oldcastle's corporate office in Atlanta, Georgia, or if neither is available, then another in-house attorney approved by the EEOC, which approval shall not be unreasonably denied, .

24.02.03 Human Resources Employees With EEO Responsibilities – United will provide human resource employees who are responsible for any EEO functions, including but not limited to accepting or investigating discrimination or retaliation complaints, at least 20 hours of EEO training within 30 days of hire or promotion into such a position, or within 90 days of the effective date of this Decree if a current employee, and on an annual basis thereafter. This training must be conducted live by an individual(s) not employed by or associated with United, but may be conducted by Craig Hall or Heather Harper of Oldcastle's corporate

office in Atlanta, Georgia, or if neither is available, then another in-house attorney approved by the EEOC, which approval shall not be unreasonably denied.

24.03 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, the ADEA, the Americans with Disabilities Act, the Equal Pay Act, and the Pregnancy Discrimination Act;
- a review of United's non-discrimination employment policies and of the specific requirements of this Decree, with particular emphasis on the complaint procedure, and prohibitions on retaliation.
- training for supervisors, managers, and human resources employees shall include instruction on the proper procedures for responding to employee complaints of discrimination, harassment, and/or retaliation.

25. Modification and Implementation of Policies and Procedures

25.01 Review of Policies - During the first year of this Decree, United shall, in consultation with a qualified consultant ("Consultant"), which may include Craig Hall or Heather Harper of Oldcastle's corporate office in Atlanta, Georgia, or if neither is available, then another in-house attorney approved by the EEOC, which approval shall not be unreasonably denied, review United's existing policies and procedures, develop and implement new and/or revised policies and provisions to ensure equal employment opportunities are afforded to female employees and to employees with disabilities. During the second and subsequent years of this Decree, United may on its own or in consultation with the Consultant, develop additional policy revisions to ensure equal employment opportunities.

25.02 Policies to be Modified or Developed

25.02.01 Procedures to Guard Against Discriminatory Decision Making – In

consultation with the Consultant, United shall develop and implement policies and procedures to guard against discriminatory decision-making in (a) hiring and/or promotion into supervisory or management positions; (b) the terms and conditions of employment, including but not limited to determination of compensation and reduction thereof, and production expectations; (c) enforcement of policies; (c) enforcement of production policies; and (d) discipline and discharge.

25.02.02 Management Evaluation and Accountability Policy - In consultation

with the Consultant, United shall develop and implement a management evaluation and compensation system which includes EEO compliance and compliance with this Decree as factors for evaluating manager performance.

VII. MONETARY RELIEF

26. Payment to Charging Parties and Private Counsel

26.01 United agrees to pay a total amount of \$498,000.00, payable as follows: To Intervenor, back pay damages in the amount of \$292,306.35, to be divided equally among them; To Intervenor's counsel, the amount of \$205,693.65.

26.02 United's willingness to enter into this consent Decree is not an admission of an wrongdoing or liability by United, and United denies any wrongdoing or liability.

26.03 Payment under this Paragraph shall be paid in certified funds and delivered to Private Counsel no later than 7 days following the effective date of this Decree.

26.04 United will not condition the receipt of individual relief on any Intervenor's agreement to (a) maintain as confidential the terms of this decree, (b) waive his or

her statutory right to file a charge with any federal or state anti-discrimination agency, or (c) waive his or her right to apply for a position with the United. In the event any Intervenor applies for a position, United agrees to treat him or her in the same manner as any other applicant.

27. Taxes

- 27.01** United shall prepare and distribute tax reporting forms to Intervenors who receive payment under this Decree.
- 27.02** United shall make appropriate reports to the Internal Revenue Service and other tax authorities, including without limitation the Colorado Department of Revenue.
- 27.03** United shall be responsible for the employer's share of any taxes applicable to payments under this Decree. Charging Parties shall be responsible for payment of the employee's share of taxes owed to any governmental authority as a result of payments under this Decree.

VIII. REPORTING AND RECORD KEEPING

28. Document Preservation

- 28.01** For the duration of the Decree, United shall maintain such records as are necessary to demonstrate its compliance with this Decree and verify that the reports submitted are accurate, including but not limited to the documents specifically identified below.
- 28.02** While the Decree is in effect and for 2 years following the Termination of the Decree, United shall retain the following hard-copy (paper or fiche) and computer records:
- all personnel files including all performance appraisals, attendance, production, discipline and termination records;
 - all complaints of discrimination or harassment based upon sex and/or

disability, and all records of the investigation of those complaints;

- all complaints of retaliation prohibited by statutes enforced by the EEOC, and all records of the investigation of those complaints;
- all records of employee discipline and discharge, including any investigative records supporting the decision;
- all job advertisements;
- all applications, including employee applications for open positions;
- all records regarding selection of successful candidates;
- all notices of rejection provided to employees seeking promotion or change of assignment;
- all computerized payroll data; and
- all data used in performance reviews and selections for positions filled.

29. Reports

29.01 Initial Report - Within 90 days of the effective date of this Decree, United shall provide EEOC with the following:

- a status report on the project to review and revise existing policies as necessary to ensure equal employment opportunities, as required herein;
- verification that all non-supervisory employees, supervisors, managers, human resource employees with responsibility for United's Colorado facilities, and the Owners have completed training on the terms and provisions of this Decree, as required herein;
- proposed EEO training programs, as required herein.

29.02 Periodic Reports

29.02.01 During the term of this Decree, United shall submit semi-annual reports to EEOC. With each report, United shall submit all data in both

electronic and hard copy form. EEOC will comply with the Freedom of Information Act exemptions which require EEOC to withhold from production under FOIA certain private personnel, financial, medical, and other documents described in 5 U.S.C.A. §552(b)(1) – (9).

29.02.02 The first reporting period will begin on the effective date of this Decree, and will end on the last day of the sixth complete calendar month thereafter. Each subsequent reporting period will be 6 calendar months.

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

- All records documenting disciplinary actions taken during the reporting period, including documents supporting the discipline, investigative records, and records reflecting the decision-making process;
- All records documenting handling of employee complaints of discrimination, harassment, and/or retaliation made during the reporting period, including any records of the complaint, any investigative records (including lawyer-conducted investigations), notes of witness interviews, records gathered, investigative reports or recommendations, records reflecting what, if any, remedial steps were taken, and any records documenting the decision-making process, other than portions of documents written specifically to request or provide legal advice.
- A list of employees during the reporting period, listed by hire date and categorized by sex;

- All records documenting the selection decision for each available position filled during the reporting period, including job advertisement; applications received; a summary of the applicant pool categorized by sex; name and sex of the person selected for the position, and any records documenting the decision-making process.
- Copies of all complaints, formal or informal, of sex discrimination, sexual harassment, disability discrimination, and/or retaliation, and copies of the investigative records.
- Verification of employee attendance for all EEO training conducted during the reporting period.

29.03 Other Reports

- 29.03.01** No later than 10 business days prior to holding the orientation meetings required herein, United shall provide EEOC with the dates, times and locations of the orientation meetings;
- 29.03.02** No later than 10 days prior to any scheduled training required herein, United shall inform EEOC of the date, time, and location when the training is scheduled to be conducted.
- 29.03.03** As required herein, United shall deliver to EEOC any proposed or amended employment policies

30. Additional Data - EEOC shall have the right to request additional computer or other data from United so long as the information sought is necessary and consistent with the monitoring of the Decree. United shall comply with a request for additional data within 20 business days of the request. Any disputes regarding the propriety of any request for additional data shall be resolved by the Court as provided herein.

IX. ENFORCEMENT OF CONSENT DECREE

31. Enforcement by EEOC - It is expressly agreed that if EEOC concludes that United breaches this Decree, EEOC may initiate a lawsuit in this Court after complying with the informal resolution procedures set forth herein.

32. Requirement of Informal Resolution Efforts

32.01 Notice of Dispute - Prior to initiating an action to enforce the Decree, EEOC will provide written notice to all other Parties 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.

32.02 Response to Notice of Dispute - Within 10 business days after service of the Notice of Dispute, or longer if agreed upon in writing by the parties, United will provide a written response and provide the requested documents or information.

32.03 Service - Service of the Notice of Dispute and any Responses shall be made by hand-delivery, facsimile transmission, or electronic mail.

32.04 Meeting - After service of the Responses, the Parties will schedule a telephone or in-person meeting to attempt to resolve the dispute.

32.05 Dispute Resolution Period - If the dispute has not been resolved within 30 days after service of the Notice of Dispute, or longer if agreed upon in writing by the parties, an action to enforce the Decree may be brought in this Court.

33. Expedited proceedings - The provisions of this section do not prevent EEOC from bringing an issue before the Court when the facts and circumstances require immediate Court action. EEOC's moving papers shall explain the facts and circumstances that necessitate immediate Court action. If EEOC brings a matter before the Court requiring immediate Court action, copies of the moving papers will be provided to United and Private Counsel.

X. MISCELLANEOUS PROVISIONS

34. Amendment - By mutual written consent of all of the Parties hereto, this Decree may be amended in the interest of justice and fairness in order to execute the provisions involved.

35. Implementation - EEOC and United agree to take all steps that may be necessary to fully effectuate the terms of this Decree.

SO ORDERED

United States District Court Judge

Date

APPROVED AS TO FORM AND CONTENT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By: Mary Jo O'Neill
Mary Jo O'Neill
Regional Attorney

Date: 2/16/10

OLDCASTLE SW GROUP, INC. d/b/a UNITED COMPANIES OF MESA COUNTY

By: Craig Lamberty

Date: 2/3/10

Name

Title

s/ William E. Moench
Trial Attorney
EEOC – Denver Field Office
Attorney for Plaintiff

s/ Michael Santo
Bechtel & Santo, LLP
205 North 4th Street, Suite 300
Grand Junction, CO 81501
Attorney for Defendant

EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is being posted as part of the remedy agreed to pursuant to a Consent Decree between Oldcastle SW Group, Inc. d/b/a United Companies of Mesa County ("United") 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 United: Within the United organization, you may make such a report to the Human Resource Representative at your facility or to any supervisor or manager. By reporting a problem to United, you do not waive any rights to file a charge of discrimination with the EEOC or the Colorado Civil Rights Division ("CCRD").

Reporting to EEOC: 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 Field Office of the EEOC, at any of the following numbers:

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

The Denver Field Office of the EEOC is located at 303 East 17th Avenue, Suite 410, Denver, Colorado 80203.

Reporting to the CCRD: 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 CCRD at any of the following numbers:

Telephone: (303) 894-2997
Fax: (303) 894-7830
Toll Free: 1-(800) 262-4845
E-Mail: ccrd@dora.state.co.us

The CCRD has offices in the following locations:

222 S. 6th Street, #301
Grand Junction, CO 81505

1560 Broadway, #1050
Denver, CO 80202

200 W. "B" Street, #234
Pueblo, CO 81003