IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	}
COMMISSION,	}
}	CIVIL ACTION NO.
Plaintiff,	}
	3:06-CV-1779-M
v.	}
	}
BEALL CONCRETE ENTERPRISES, LTD.,	} ECF
d/b/a Redi-Mix and Redi-Mix Concrete,	}
a wholly owned subsidiary of U. S. Concrete,	}
Inc.	}
	JURY TRIAL DEMANDED
	}
Dofondant	· }

PLAINTIFF'S FIRST AMENDED COMPLAINT

This is an action under Title I of the Am ericans with Disabilities Act of 1990, the Age Discrimination in Employment Act and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and ag e, and to provide appropriate relief to Charles Gentry and a class of similarly situated individuals who were adversely affected by such practices. Specificall y, Defendant discriminated against Mr. Gentry and similarly situated individuals by failing to provide them with a reasonable accommodation and then terminating their employment due to a record of a disability. The Commission further alleges that Mr. Gentry was terminated based on his age, and then denied rehire based on his record of a disability and his age.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the

Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3); Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Sec. 626(b) (the "ADEA"), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. Sec. 216(c) and 217; and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a.

2. The employment practices alleged to be unlawful were and are now being committed within the jurisdiction of the United States District Court for the Northern District of Texas.

PARTIES

- 3. Plaintiff, Equal Employment Opportunity Commission (the "Commission"), is an agency of the United States of Am erica charged with the adm inistration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3), and by Section 7(b) of the ADEA, 29 U.S.C. Sec. 626(b), as amended by Section 2 of Reor ganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.
- 4. At all relevant times, Defendant, Beall Concrete Enterprises, Ltd. ("Defendant"), has continuously been and is now doing busine ss in the State of Texas and has continuously employed at least twenty employees.
- 5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Section 101(5) of the ADA, 42 U.S.C. § 1 2111(5), and Section 101(7) of the ADA, 42 U.S.C. § 12111(7) , which incorporates by reference Section

- 701(g) and (h) of Title VII, 42 U.S.C. § 2000e(g) and (h), and Sections 11(b) (g) and (h) of the ADEA, 29 U.S. C. Secs. 630(b), (g), and (h).
- 6. At all relevant times, Defendant has continuously been a covered entity under Section 101(2) of the ADA, 42 U.S.C. Section 12111(2) and within the meaning of Section 11(b) of the ADEA, 29 U.S.C. Sec. 630(b).

STATEMENT OF CLAIMS

- 7. More than thirty days prior to the institution of this lawsuit, Charles Gentry filed a charge with the Commission alleging violation of the ADA and the ADEA by the Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.
- 8. Since May 20, 2004, the Defendant has engaged in conduct in violation of Section 102(b)(5)(A) of Title I of the ADA, 42 U.S.C. § 12112(b)(5)(A), and Section 102(a) of Title I of the ADA, 42 U.S.C. § 12112(a), by failing to provide Charles Gentry and similarly situated individuals with a reasonable accommodation, and then terminating their employment due to their record of a disability, pursuant to a policy requiring the termination of employees after 12 months of medical leave without consideration of providing a reasonable accommodation to individuals who are disabled under the ADA.
- 9. Since July 2004, the Defendant has engaged in conduct in violation of Section 102(b)(5)(B) of Title I of the ADA, 42 U.S.C. § 12112(b)(5)(B), by failing to rehire Charles Gentry based on his record of a disability.
- 10. Since May 20, 2004, the Defendant has engaged in unlawful employment practices by discharging and failing to rehire Charles Gentry based on his age in violation of Section 4 of the ADEA, 29 U.S.C. Sec. 623(a).

- 10. The effect of the practices complained of in paragraphs 8 and 9, above, has been to deprive Charles Gentry and similarly situated individuals of equal employment opportunities and otherwise adversely affect their status as employees because of their record of disability.
- 11. The effect of the practices complained of in paragraph 10, above, has been to deprive Charles Gentry of equal employment opportunities and otherwise adversely affect his status as an employee because of his age.
- 12. The unlawful employment practices complained of in paragraphs 8 and 9 were intentional.
- 13. The unlawful employment practices complained of in paragraph 8 and 9 were committed with malice or with reckless indifference to the federally protected rights of Charles Gentry and similarly situated individuals.
- 14. The unlawful employment practices complained of in paragraph 10 were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. Sec. 626(b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a per manent injunction en joining the Defendant, its officers, successors, assigns, and all perso ns in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of disability and age.
- B.. Order the Defendant to institute and carry out policies, practices, and program s which provide equal employment opportunities, and which eradicate the effects of its past and present unlawful employment practices.
- D. Order the Defendant to make whole Charles Gentry and a class of similarly situated individuals by providing appropriate back pay with prejudgment interest in amounts to

be determined at trial, front pay, pecuniary losses, compensatory damages including out-of-pocket expenses, liquidated damages and other a ffirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place reinstatement of Charles Gentry and similarly situated individuals.

- E. Order the Defendant to make Charles Gentry and similarly situated individuals whole by providing compensation for past a nd future pecuniary losses resulting from the unlawful employment practices described in paragraph 8 and 9, above, including but not limited to out of pocket medical expenses and job hunting expenses.
- F. Order the Defendant to make Charles Gentry and a class of similarly situated individuals whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described in paragraph 8 and 9, above, including but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of consortium, and loss of enjoyment of life, in amounts to be determined at trial.
- G. Order the Defendant to pay Charles Ge ntry and similarly situated individuals punitive damages for its in tentional, malicious conduct or reckless indifference described and referenced in paragraph 8 and 9, above, in an amount to be determined at trial.
- H. Grant such further relief as the Co urt deems necessary and proper in the public interest.
 - I. Award the Commission its costs in this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

RONALD S. COOPER General Counsel

JAMES L. LEE

Deputy General Counsel

GW ENDOLYN YOUNG REAMS

Associate General Counsel

s/ROBERT A. CANINO
ROBERT A. CANINO
Regional Attorney

Oklahoma State Bar No. 011782

s/TOBY W.COSTAS
TOBY W. COSTAS
Supervisory Trial Attorney

Texas State Bar No. 04855720

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Dallas District Office 207 South Houston Street, 3rd Floor Dallas, Texas 75202

(214) 253-2760 (telephone) (214) 253-2749 (facsimile)