

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

V.

Civil Action No.
3:11-cv-00041-CRW-TJS

**HILL COUNTRY FARMS, INC., d/b/a
HENRY'S TURKEY SERVICE**

Defendant.

EEOC'S POST-TRIAL BRIEF ON DAMAGES AND APPLICATION FOR INJUNCTIVE RELIEF

Plaintiff, U.S. Equal Employment Opportunity Commission (“EEOC”), brought this civil action under Title I of the Americans with Disabilities Act of 1990, as amended (“ADA”), 42 U.S.C. §12117(a), to correct unlawful employment practices on the basis of disability, and to provide relief to James Keith Brown and a class of 31 other intellectually disabled individuals (“class members”) who were subjected by Defendant, Hill Country Farms, Inc. d/b/a Henry’s Turkey Service (“HCF/HTS”), to nonpayment of wages, unlawful hostile environment harassment, and discriminatory terms and conditions of employment because of impairments, which include a wide range of intellectual and developmental disabilities. The EEOC further claimed, and has now established, that the employees with disabilities were adversely affected and profoundly harmed by those unlawful employment practices.

I. BACKGROUND

The judge and jury have rendered their decisions that the EEOC has proved its claims that since at least February 2007 through February 2009, Defendant, HCF/HTS, engaged in unlawful employment practices in violation of the ADA.

On September 18, 2012, Judge Charles R. Wolle, Senior District Court Judge for the United States District Court for the Southern District of Iowa, ruled, that HCF/HTS discriminated against the 32 class members on the basis of their disabilities with regard to their wages and benefits when compared to wages earned by non-disabled workers having equivalent work experience and level of productivity for performing the same jobs. The Court further concluded that the Defendant was not entitled to claim wage credits for requiring the class members to live in substandard living conditions or for other exceptions that might otherwise have been allowed under the Fair Labor Standards Act ("FLSA"). (Court Ruling Granting EEOC's Motion for Partial Summary Judgment on wage discrimination issues, September 18, 2012, Crt. Doc. #36). A judgment of \$1,374,266.53 (not yet including prejudgment interest) was awarded to the EEOC and the victims for the ADA wage violations.¹

In addition to the ADA wage discrimination claims upon which the EEOC prevailed, the EEOC alleged that the Defendant engaged in further discriminatory practices:

The Commission alleged that HCF/HTS subjected the class members to a hostile work environment based on their intellectual disabilities by subjecting them to severe or pervasive unwelcome and offensive conduct, both verbal and physical. Such conduct included, but was not limited to, physical assault such as hitting, kicking, pushing and other acts of aggression and intimidation by HCF/HTS Iowa-based supervisors. The class members were also subjected to

¹ The EEOC's submission of calculation of prejudgment interest filed on ____, is pending before the Court, and is expected to be considered with the final issuance of judgment as to all claims, including those decided on Motion for Partial Summary Judgment as a matter of law, and those more recently determined at trial by the jury's verdict.

derogatory and humiliating name-calling based on their disabilities. Defendant admittedly failed or to have policies or practices in place to prevent discrimination and failed or refused to take effective measures to prevent and correct such harassment. See Stipulation Nos.21-23 (Crt. Doc. #90) and testimony of Kenneth Henry and Randy Neubauer)

The EEOC also claimed that HCF/HTS discriminated against the class members with regard to the terms, conditions and privileges of their employment based on their disabilities. This discriminatory disparate treatment included, but was not limited to, relegation to substandard living conditions, inattention to illness or injury, including denial of access to adequate health care, imposition of unnecessarily harsh forms of discipline, restrictions on freedom of movement and communication and socialization, and discriminatory uncompensated job assignments.

I. JUDGMENT AND VERDICT ON ADA CLAIMS

Jury trial was held from April 23, 2013 through April 29, 2013. A unanimous jury verdict was returned for the EEOC and all 32 class members on May 1, 2013. The jury found violations of the ADA with respect to both of the claims (1) Terms and Conditions of Employment; and (2) Hostile Environment. The jury further found that the employer, through its officers and agents, acted with malice or reckless indifference to the federally protected rights of the class members. The jury awarded compensatory damages under the Civil Rights Act of 1991, 42 U.S.C. §1981a, for emotional harms and the loss of enjoyment of life in the amount of \$5,500,000 per victim of discrimination. The jury additionally awarded \$2,000,000 to each man as punitive damages.

II. REQUESTED MONETARY RELIEF AND ACKNOWLEDGMENT OF REMITTITUR

The Civil Rights Act of 1991, 42 U.S.C. §1981a, provides for compensatory and punitive damages for intentional discrimination under the Americans with Disabilities Act of 1990 and states in relevant part:

(b) COMPENSATORY AND PUNITIVE DAMAGES-

`(1) DETERMINATION OF PUNITIVE DAMAGES- A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

`(2) EXCLUSIONS FROM COMPENSATORY DAMAGES- Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

`(3) LIMITATIONS- The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party--

`(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000;....

In light of the evidence in this case that the total number of employees of Hill Country Farms, Inc., d/b/a as Henry's Turkey Service consisted of only the few officers and employees in Goldthwaite, Texas, and fewer than fifty (50) employees in Iowa, including the 32 workers with disabilities for whom the EEOC sought relief, the EEOC acknowledges that the total number of employees of the Defendant at the relevant time for this suit was fewer than 101 employees.

The EEOC, therefore, understands that the amount of damages of \$7,500,000 assessed and awarded by the jury to each of the 32 class members, while certainly an appropriate and meaningful measure of the actual harms suffered by these victims of discrimination, including but not limited to, the mental anguish, pain and suffering, and "loss of enjoyment of life", must

be drastically reduced in order to come within the stringent statutory limits for recovery under 42 U.S.C. §1981a. With that acknowledgement, the EEOC would, of course, accept a remittitur by the Court to reflect the statutory limits on the amount of damages in this case of \$50,000..

Of course each man's recovery of the maximum allowable \$50,000 is to be added to the amounts previously awarded by the Court for wage discrimination, together with applicable prejudgment interest on all the monetary damages awarded.

On, October 18, 2012, following the Ruling on Motion for Partial Summary Judgment, the EEOC, upon direction of the Court, filed a calculation of prejudgment interest applicable to the wage discrimination claims, and asks that the Court award the amounts set forth in the EEOC's submission which are based on sound legal basis for award of prejudgment interest. (Crt. Doc. #37).

Further the EEOC requests that the Court enter judgment for damages attributable to the claims that have been established by the EEOC, and that a final judgment include the calculation of prejudgment interest which is being submitted herewith based on an award of \$50,000 per class member, at the IRS prime rate, compounded quarterly for the period from February 7, 2007 through May 10, 2013. (See Attachments hereto: Declarations of Charles McGhee and Barbara Fuller with accompanying Exhibits containing calculations of damages and prejudgment interest).

III. ORDER INJUNCTIVE RELIEF IS APPROPRIATE

As represented in the Stipulation No. 4, (Crt. Doc. #90) which was considered as evidence at trial, and as attested to by the President of Hill Country Farms, Inc. the Defendant corporation is still a corporation in good standing in the State of Texas, and discrimination having been found, injunctive relief is appropriate.

Statutory and Circuit caselaw precedent clearly establish that the EEOC is entitled to the entry of an injunction against HCF/HTS. According to Title VII, if a court finds that a respondent employer “has intentionally engaged in or is intentionally engaging in” unlawful employment practices charged in the plaintiff’s complaint, the court may “enjoin the respondent from engaging in such practices” and “order such affirmative action as may be appropriate, which may include...any...equitable relief as the court deems appropriate.” 42 U.S.C. § 2000e-5(g)(1).²

It is ordinarily incumbent upon the Court to grant the plaintiff the most complete relief possible when discrimination has been established. *EEOC v. Rath Packing Co.*, 787 F.2d 318 (8th Cir. 1986) citing *Briseno v. Central Tech. Community College Area*, 739 F.2d 344, 347 (8th Cir. 1984). The concept of ensuring that full “make-whole” relief, including injunctive remedies such as monitoring, is something that the Courts of the Eighth Circuit have long recognized. *Rath Packing* ; See also, *Locke v. Kansas City Power and Light Co.*, 660 F.2d 359, 368 (8th Cir. 1981); *EEOC v. Delight Wholesale Co.*, 973 F.2d 664 (8th Cir. 1992); *Ingram v. Missouri Pacific R. Co.*, 897 F.2d 1450 (8th Cir. 1990); *Bibbs v. Block*, 778 F.2d 1318 (8th Cir. 1985) citing *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975).

The Supreme Court in *Franks v. Bowman Transportation Co., Inc.*, 424 U.S. 747 (1976), held that the remedial provision of Title VII (Sec. 706(g)) gives federal courts wide latitude to order “make-whole” relief to victims of unlawful workplace employment practices. Such make-

² Section 107 of the ADA specifically states that the remedies set forth in Section 706 of Title VII shall be the remedies under the ADA. 42 U.S.C. Sec. 12117. As such, the “make-whole” relief outlined in Section 706(g) of Title VII applies to cases filed under the ADA.

whole relief, includes, but is not limited to, an injunction against the employer, reinstatement, instatement, and backpay. *Franks, supra*, at 763. According to the *Franks* Court, to effectuate this “make-whole” objective, Congress in Section 706(g) vested broad equitable discretion in the federal courts to “order such affirmative action as may be appropriate,” which may include the types of relief identified above “*or any other equitable relief as the court deems appropriate.*” (Emphasis added). Section 706(g), therefore, gives moving parties broad authority to fashion a request for relief that is tailored to the particular case at hand, and affirms the broad discretion given to federal courts to “make-whole” discrimination victims.

In the Eighth Circuit, it is recognized that once a party has demonstrated the merits of a discrimination claim, the court must balance three factors to determine if injunctive relief is appropriate:

1. The threat of irreparable harm to the moving party;
2. The harm to be suffered by the non-moving party if the court grants the injunction; and
3. The public interest at stake.

Layton v. Elder, 143 F.3d 469, 472 (8th Cir. 1998)

An examination of these factors calls for issuance of injunctive relief that anticipates further violations of the ADA, or the recurrence of discriminatory acts or omissions by the corporation in any future business. In this case against HCF/HTS, the EEOC is not a private party. The threat of irreparable harm to the EEOC on behalf of the public interest under its statutory mandate to address discriminatory employment practices, in the absence of an order for full and prophylactic remedial relief on facts of this case which shock the public conscience, can be presumed or at least weighed heavily in favor of the public interest. This factor clearly ties into the third factor regarding the broader implications on the public interest.

Further, the harm suffered by the non-moving party, HCF/HTS, if the Court grants an injunction against the intact Texas corporation, which would be conditionally enforceable upon a potential return to full operations or re-initiation of the business by the Defendant or a successor, does not cause the Defendant to suffer harm by application of injunctive remedial relief that would simply serve to prevent or correct discriminatory practices in which it engaged prior to this cause of action.

Finally, the “public interest” at stake in the case is evident from the policies and practices that have become issues of public awareness and debate since the facts first came to light and after the facts were established as a matter of law by this Court regarding pay practices, and upon verdict by the jury on all other issues of treatment. Injunctive relief is an effective and important mechanism for preventing employment discrimination. *EEOC v. Rogers*, 470 F.2d 965, 966 (5th Cir. 1972). The EEOC’s primary purpose for bringing any lawsuit is to “vindicate the public interest in employment discrimination.” *General Tel. Co. of the NW., Inc. v. EEOC*, 446 U.S. 318, 326 (1980). This purpose remains the EEOC’s main goal even when the suit, such as the present one, also seeks victim-specific relief. *Id.* Thus, injunctive relief will be an effective method of achieving the EEOC’s primary goal in bringing this case: to put an end to the practices and policies (or the harms caused by the lack thereof) for the corporation which remains in good standing in Texas.

When issues common to both legal and equitable claims are tried together, the jury’s findings on the legal issues bind the judge when ruling on the equitable claims. *Hodges v. City of Houston*, 1995 WL 726463, at *2 (5th Cir. Nov. 15, 1995); *Los Angeles Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993); *Snider v. Consolidation Coal Co.*, 973 F.2d 555, 559 (7th Cir. 1992). This rule applies not only to the jury’s express determinations, but

also to findings implied by the express determinations. *Gates*, 995 F.2d at 1473. Thus, the jury's finding regarding the Defendant employer's state of mind will typically bind the Court's determination of whether it may grant injunctive relief pursuant to 42 U.S.C. § 2000e-5(g)(1). The jury's determination that officers and agents of HCF/HTS "acted with malice or reckless indifference" with regard to their discriminatory acts and omissions, implicitly establishes that the Defendant intentionally engaged in unlawful employment practices. *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 534 (1999). Therefore, the Court may order an injunction and other equitable relief pursuant to the ADA and the Civil Rights Act of 1991.

IV. SPECIFIC INJUNCTIVE RELIEF REQUESTED

Based on this Court's Ruling on Motion for Partial Summary Judgment granted by the Court (Crt. Doc. #36) on the wage discrimination claims, and upon the additional findings by the jury based on a preponderance of the evidence, that the Defendant unlawfully discriminated against the class of workers with disabilities, the EEOC requests the following be ordered as injunctive relief against the Defendant³:

1. That the Defendant shall immediately notify the EEOC in writing if Defendant: (1) begins to conduct business; (2) re-establishes itself under a different name and begins to conduct business; or (3) re-establishes itself as any other entity engaged in business

³ Definition of "Defendant": Although Defendant HCF/HTS is presently not actively conducting business, the terms of a final judgment and order should be applied to Defendant if and when Defendant: (1) begins to conduct business; (2) re-establishes itself under a different name and begins to conduct business; or (3) re-establishes itself as any other entity engaged in business activities similar to those conducted while named Hill Country Farms, Inc. or Henry Turkey Services ("HCF/HTS"). The terms shall also apply to any and all successors, subsidiaries, assigns, affiliates, officers and directors and to any business entities that may be deemed as "successor" companies of and to any business entities that become affiliated with or grow out of the interests of HCF/HTS.

activities similar to those conducted while named Hill Country Farms, Inc. or Henry's Turkey Services.

2. That the Defendant shall immediately give written notice to the EEOC if a successor company is established or if any other business entity becomes affiliated with Defendant with the intent of hiring employees directly or to provide contract labor. Notice of the matters described in this paragraph shall be given to the EEOC within thirty (30) days of Defendant's knowledge of any of the above matters. Upon receiving such notification from Defendant, the Defendant recognizes the EEOC's right to petition the Court to enforce the final judgment against any or all parties contemplated to be engaging or re-engaging in a business related to the businesses of Hill Country Farms, Inc.
3. The Defendant and any and all of its successor employers, subsidiaries, assigns or affiliates as defined above, shall be permanently enjoined from discriminating against any job applicants and employees with physical, mental or intellectual impairments, in violation of the Americans with Disabilities Act of 1990, as amended.
4. If the Defendant is to engage in business at any time in the future, or should the principals and/or owners of Defendant engage in business activities under a different corporate name, or if there should arise any successor employer of the Defendant, then --- within ninety (90) days of starting or restarting such business, the Defendant and any successor employer of the Defendant, will comply with the following:
 - a. Notify the EEOC in writing that the Defendant is now engaging in business activities.

Defendant shall inform the EEOC of the name of the corporate entity, the name of the officers and executives and the date and state of incorporation.

b. The Defendant shall promulgate and implement the following written policies and procedures:

(1) For employees to be able to report complaints of discrimination, harassment, or inability to access medical care, reasonable accommodations or support services (from federal, state or local governments, or from private or non-profit organizations) as a result of the employer's acts or omissions. This policy and procedure will also provide the manner by which employees can request access to medical care or developmental support services.

(2) For employees, including but not limited to supervisory personnel, to report to the company's officers or human resources staff what they believe to be discriminatory conduct, harassment, failure to make reasonable accommodations of disabilities, excessive discipline or other forms of unfair treatment of intellectually or developmentally disabled employees.

c. All owners and all management and supervisory officials will receive a full day (6 hours minimum) of training regarding the Americans with Disabilities Act ("ADA") from a qualified employment and labor law attorney or professional trainer annually for each of the first five years after the business is initiated or re-established. The training will inform the management/supervisory employees of both, the complaint policy/procedures for individuals who believe that they are being discriminated against, and the reporting policy/procedure by which Defendant's managers or supervisors report discrimination that they believe is being suffered by intellectually or developmentally disabled ("IDD") employees.

- d. In addition to the training described above in Paragraph 4(c), annual training will also advise of the consequences imposed upon managers or supervisors for violating the ADA. The training will include a specific discussion or instruction relating to harassment of persons with disabilities, the reporting requirements regarding complaints of harassment, and the appropriate investigation of hostile environment and harassment claims. The training shall be at least two (2) hours in duration. No less than 10 days before the training is conducted, Defendant (or its successor or affiliate) will give written notice to the EEOC as to the date and location of the training, the name and qualifications of the person(s) providing the training and the substance of the training. All materials used in conjunction with the training shall be forwarded to the EEOC. Within thirty (30) days following the training, Defendant shall submit to the EEOC confirmation that the training was conducted, and a list of attendees.
- e. Should Defendant or its successor employer hire or rehire intellectually or developmentally disabled (“IDD”) employees at any time in the future, the Defendant or its successor employer will conduct a training of its management and supervisory staff that will include at least two hours of content on the abilities, disabilities and suggested reasonable accommodations, as well as residential and employment supports available for IDD employees. Within thirty (30) days following the training, the Defendant shall submit to the EEOC confirmation that the training was conducted, and a list of attendees.
- f. If the Defendant or its successor employs persons with intellectual or developmental disabilities (“IDD”), the employer shall retain a mental health professional, either

- internally within the entity or externally through contract, as a consultant (“Consultant”) for any questions that arise regarding the IDD employees. For the first five years of business operations, if commenced, by the Defendant or successors, the Consultant will interview all IDD employees and provide detailed reports to the EEOC on a semi-annual basis (on June 1 and January 1 of each year), which shall include the following information: each employee’s pay rate, a job title and brief description of his/her job duties, and a record of responses to inquiries about any mistreatment or other complaints about working conditions.
- g. Should any IDD employee request a reasonable accommodation regarding the performance of his/her job, Defendant shall make an individualized assessment of the employee’s request, and have the Consultant provide advice and participate in the interactive process to determine the appropriate reasonable accommodation of the IDD employee. Each such requested accommodation shall be reported to the EEOC within fifteen (15) days of the request. Then, within fifteen (15) additional days of the Defendant making a decision as to the employee’s request, the Defendant shall report to the EEOC whether an accommodation request was granted, and, if so, shall provide a detailed account of the accommodation. If the accommodation is not granted, the Defendant will report to the EEOC any and all reasons why it was not granted, including whether such accommodation would have created an undue hardship to its business operations.
5. When provisions in the final judgment and order for prospective injunctive relief requires the submission by Defendant of documents or other materials to EEOC, such

documents or other materials shall be mailed to Robert A. Canino, Regional Attorney, EEOC Dallas District Office, 207 S. Houston St., 3rd Floor, Dallas, Texas 75202.

CONCLUSION

For all of the reasons set forth above, and in light of the abundance of evidence before the Court, not only in the form of the Stipulations of the parties (as embodied in the Pretrial Conference Order and submitted to the jury at trial), the extensive exhibits admitted without objection, as well as the overwhelming testimony with regard to blatant disregard of civil rights and laws that prohibit discrimination, the EEOC respectfully requests that this Court affirm the findings of the jury by issuing an order of permanent injunction in anticipation of any return to business by the corporation or any successor.

The EEOC further requests that the final judgment for the disparate treatment terms and conditions, and the hostile environment harassment claims reflect an award of \$50,000 per class member plus prejudgment interest as calculated and presented in Exhibit A, to the Declaration of Barbara Fuller. The order regarding prejudgment interest on these additional compensatory and punitive damages under 1981a should be for the total amount of \$188,328.96, based on the \$1,600,000 in damages for the 32 class members.

The EEOC further requests that this Court issue an Order granting the EEOC's earlier request for Prejudgment Interest in the total amount of \$283,568.06 on the underlying backpay of

\$1,374,266.53 for lost wages previously awarded by the Court in its Ruling of September 18, 2012 (Crt. Doc.# 36).⁴

The total monetary recovery for each class member should, thus, be adjudged and ordered accordingly along with the proposed injunctive relief set forth above.

Further, reasonable costs should be awarded to the EEOC as the prevailing party in this action.

Respectfully submitted this 10th day of May, 2013.

/S/ Robert A. Canino

Robert A. Canino

Attorney for Plaintiff(s):

U.S. Equal Employment
Opportunity Commission

Dallas, Texas 76202

Tele: 214-253-2750

Fax: 214-253-2749

Email: robert.canino@eeoc.gov

CERTIFICATE OF SERVICE

This is to certify that on May 10, 2013, I electronically transmitted the attached document to the Clerk of the Court using the ECF system of filing, which will transmit a Notice of the Electronic Filing to Defendant's counsel, who is an EFC registrant.

⁴ EEOC's Calculation submitted October 18, 2012. (Crt. Doc. #37), as interest on wage claims not only provides the cumulative total of prejudgment interest and the legal support for the calculations made, but also has a specific breakdown of prejudgment interest as applied to each class member based on the amount of damages that he is to receive individually. Therefore the Court's Order should incorporate a reference to EEOC's individual allocations of the prejudgment.

David Scieszinski
Attorney for Hill Country Farms, Inc.
d/b/a Henry's Turkey Service
dvdls@netwtc.net

/s/ Robert A. Canino
Robert A. Canino