

U.S. COURTS

2003 MAY 23 P 3 10

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CLERK, IDAHO

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**ORIGINAL**

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF IDAHO

11 EQUAL EMPLOYMENT OPPORTUNITY  
12 COMMISSION,

13 Plaintiff,

14 v.

15 IDAHO PETERBILT, INC.,

16 Defendant.

CASE NO. CV-02-425-S-BLW  
CONSENT DECREE AND  
~~PROPOSED~~ ORDER OF  
DISMISSAL

17  
18 **I. INTRODUCTION**

19 1. This action originated with a discrimination charge filed by Robert Baty  
20 and Bret Purcell ("Charging Parties") with the Equal Employment Opportunity  
21 Commission. The Charging Parties alleged that Idaho Peterbilt, Inc. ("Idaho Peterbilt")  
22 subjected them to sex discrimination on the basis of their sex, male, also resulting in  
23 Mr. Purcell's constructive discharge in violation of Title VII of the Civil Rights Act of  
24 1964, as amended ("Title VII"), 42 U.S.C. § 2000e et seq.

25 2. The EEOC sent Idaho Peterbilt a Letter of Determination with findings of

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1 reasonable cause to believe that Idaho Peterbilt had violated Title VII.

2 3. The EEOC and Idaho Peterbilt want to conclude all claims arising out of  
3 the above charge without expending further resources in contested litigation.

4 **II. NON-ADMISSION OF LIABILITY AND NON-DETERMINATION BY THE COURT**

5 4. This Consent Decree is not an admission of wrongdoing or an  
6 adjudication or finding on the merits of the case.

7 **III. SETTLEMENT SCOPE**

8 5. This Consent Decree is the final and complete resolution of all Title VII  
9 allegations of unlawful employment practices contained in the EEOC's administrative  
10 determination and the complaint filed herein by the EEOC.

11 **IV. JURISDICTION AND VENUE**

12 6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331,  
13 1337, 1343 and 1345. Plaintiff EEOC's action is authorized pursuant to Sections  
14 705(g)(6), 706(f)(1) and (3) and Section 707 of Title VII of the Civil Rights Act of 1964,  
15 as amended, 42 U.S.C. §§2000e-4(f)(6), 2000e-5(f)(1) and (3) and 2000e-6 ("Title VII")  
16 and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The employment  
17 practices alleged to be unlawful in the EEOC's Complaint occurred within the  
18 jurisdiction of the United States District Court for the District of Idaho.

19 **V. DEFINITION OF TERMS**

20 For the purposes of this Consent Decree, the following definitions shall apply:

21 7. "The Effective Date of the Consent Decree" is the date the United States  
22 District Court for the District of Idaho enters the Consent Decree and (Proposed) Order  
23 of Dismissal.

24 8. Unless otherwise indicated, the word "days" refers to calendar days.

25 9. "Formal or Informal Complaints" includes any complaint, whether written

1 or oral, made to a supervisory employee of Idaho Peterbilt.

2 **VI. MONETARY RELIEF**

3 10. In settlement of the EEOC's claims in this lawsuit, Idaho Peterbilt has  
4 agreed to pay Mr. Baty and Mr. Purcell the total sum of \$80,000.00, less applicable  
5 withholdings required by law.

6 **VII. INJUNCTIVE RELIEF**

7 **A. Compliance with Title VII**

8 11. Idaho Peterbilt reaffirms its commitment to comply with Title VII. To  
9 further this commitment, the company shall monitor the affirmative obligations of this  
10 Consent Decree. The terms of this Consent Decree apply to all applicants and  
11 employees.

12 12. Idaho Peterbilt will not retaliate against any applicant or employee for  
13 opposing a practice deemed unlawful by Title VII or for making a charge, testifying,  
14 assisting, or participating in any investigation, proceeding, or hearing associated with  
15 this action.

16 13. Idaho Peterbilt, its officers, agents, and employees are hereby enjoined  
17 from engaging in personnel practices which unlawfully discriminate against applicants  
18 and employees in violation of Title VII. In recognition of its obligations under Title VII,  
19 Idaho Peterbilt will institute the policies and practices set forth below.

20 14. Idaho Peterbilt will improve and strengthen its existing policies against  
21 discriminatory employment practices based on sex and retaliation by creating an  
22 internal grievance and complaint resolution procedure as outlined below. This policy  
23 will be distributed individually to all present and future employees, both management  
24 and non-management, temporary and permanent, beginning 45 days after entry of this  
25 decree and continuing for the duration of the decree.

1 15. Idaho Peterbilt affirms the following "Statement of Zero-Tolerance Policy  
2 and Workplace Objectives":

3 Idaho Peterbilt is firmly committed to developing and  
4 maintaining a zero-tolerance policy concerning sex  
5 discrimination, sex-based harassment including same-sex  
6 harassment and retaliation against individuals who report  
7 discrimination or harassment in the company's workplace; to  
8 swiftly and firmly responding to any acts of sex  
9 discrimination, same-sex harassment or sex-based  
10 harassment or retaliation of which the company becomes  
11 aware; to implementing a disciplinary system that is  
12 designed to strongly deter future acts of sex discrimination,  
13 same-sex harassment or sex-based harassment or  
14 retaliation; to eradicating any vestiges of a work environment  
15 that is sexually hostile to individuals; and to actively  
16 monitoring its workplace in order to ensure tolerance,  
17 respect and dignity for all people.

11 **B. Expunging Records**

12 16. Idaho Peterbilt will not disclose any information or make references to any  
13 charge of discrimination or this lawsuit in responding to employment reference requests  
14 for information about Robert Baty and Bret Purcell. In response to any inquiries  
15 regarding Mr. Baty and Mr. Purcell, Idaho Peterbilt shall provide employment references  
16 that include only dates of employment and positions held.

17 17. Idaho Peterbilt will expunge from Mr. Baty's and Mr. Purcell's personnel  
18 files, any references to a charge of discrimination against defendant and this lawsuit.  
19 Idaho Peterbilt will not add any information or references to Mr. Baty's and Mr. Purcell's  
20 personnel files or records regarding their charge of discrimination and this lawsuit after  
21 such references have been expunged.

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1           **C. Workplace Policies**

2           18.    In order to effectuate the objectives embodied in Idaho Peterbilt's  
3 Statement of Zero-Tolerance Policy and Workplace Objectives and this Decree, Idaho  
4 Peterbilt shall make whatever specific modifications are necessary to its existing  
5 policies, procedures, and practices in order to ensure that the following policies,  
6 procedures and practices are in effect:

7           (a)    Sex Discrimination and Harassment Policy. Idaho Peterbilt agrees  
8 that it shall revise its sex discrimination and harassment policy, as  
9 necessary, in order to:

- 10           (i)    provide clear definitions and examples of prohibited sex  
11 discrimination, sex-based harassment including same-sex  
12 harassment, and retaliation;
- 13           (ii)   provide for substantial and progressive discipline for  
14 incidents of sex discrimination, or sex-based harassment  
15 including same-sex harassment, and retaliation;
- 16           (iii)   provide that complaints of sex discrimination, sex-based  
17 harassment including same-sex harassment and retaliation  
18 will be accepted by Idaho Peterbilt in writing and orally;
- 19           (iv)   provide a timetable for reporting a complaint, for  
20 commencing an investigation after a complaint is made or  
21 received and for remedial action to be taken upon  
22 conclusion of an investigation; and
- 23           (v)    indicate that, promptly upon the conclusion of its  
24 investigation of a complaint, Idaho Peterbilt will  
25 communicate to the complaining party the results of the

1 investigation and the remedial actions taken or proposed, if  
2 any.

3 (b) Complaint Procedures.

4 (i) Idaho Peterbilt agrees that it shall institute a complaint  
5 procedure to ensure that it is designed to encourage  
6 employees to come forward with complaints about violations  
7 of its sex discrimination, sex-based harassment including  
8 same-sex harassment and retaliation policy. As part of this  
9 policy, Idaho Peterbilt agrees that it shall provide its  
10 employees with convenient, confidential and reliable  
11 mechanisms for reporting incidents of sex discrimination,  
12 sex-based harassment including same-sex harassment and  
13 retaliation. Idaho Peterbilt agrees that it shall designate at  
14 least two upper management employees charged with  
15 investigating such issues, as persons who may be  
16 contacted, and their names, responsibilities, work locations  
17 and telephone numbers shall be routinely and continuously  
18 posted.

19 (ii) Idaho Peterbilt agrees that it shall enable complaining  
20 parties to be interviewed by Idaho Peterbilt about their  
21 complaints in such a manner that permits the complaining  
22 party, at such party's election, to remain inconspicuous to all  
23 of the employees in such party's work area. Idaho Peterbilt  
24 agrees that its complaint procedure shall not impose upon  
25 individuals seeking to make a complaint alleging sex

1 discrimination, sex-based harassment including same-sex  
2 harassment and/or retaliation any requirements that are  
3 more burdensome than are imposed upon individuals who  
4 make other complaints of comparable gravity.

- 5 (iii) Idaho Peterbilt agrees that it shall ensure that its policies  
6 and procedures provide that complaint handling and  
7 disciplinary procedures regarding all complaints of sex  
8 discrimination, sex-based harassment including same-sex  
9 harassment and/or retaliation are investigated and  
10 addressed promptly. Specifically, Idaho Peterbilt agrees that  
11 it shall make its best effort to investigate all complaints of  
12 sex discrimination, sex-based harassment including same-  
13 sex harassment and retaliation promptly and to complete  
14 investigations within five (5) weeks. Idaho Peterbilt will  
15 further make its best effort to prepare its written findings of  
16 the results of each investigation and the remedial actions  
17 proposed within fourteen (14) days after completion of the  
18 investigation, and shall thereupon promptly communicate to  
19 the complaining party the results of the investigation and the  
20 remedial actions taken or proposed, if any. Idaho Peterbilt  
21 will maintain a centralized location for recording of all  
22 discrimination or harassment complaints that it receives.
- 23 (iv) Idaho Peterbilt agrees that it shall make its best effort to  
24 ensure that appropriate remedial action is taken to resolve  
25 complaints and to avoid the occurrence of further incidents

1 of sex discrimination, sex-based harassment including  
2 same-sex harassment and retaliation. Idaho Peterbilt further  
3 agrees that it shall revise its progressive discipline policy to  
4 provide for substantial discipline short of termination --  
5 including, but not limited to, suspensions without pay -- as a  
6 possible consequence for violations of its sexual harassment  
7 policy.

8 (c) Policies Designed To Promote Supervisor Accountability.

- 9 (i) Idaho Peterbilt agrees that it shall impose substantial  
10 discipline -- up to and including termination, suspension  
11 without pay or demotion, or recommendation of suspension  
12 of any supervisor or manager who engages in sex  
13 discrimination, sex-based harassment including same-sex  
14 harassment or permits any such conduct to occur in his or  
15 her work area or among employees under his or her  
16 supervision, or who retaliates against any person who  
17 complains or participates in any investigation or proceeding  
18 concerning any such conduct. Idaho Peterbilt shall  
19 communicate this policy to all of its supervisors and  
20 managers.
- 21 (ii) Idaho Peterbilt agrees that it shall continue to advise all  
22 managers and supervisors of their duty to actively monitor  
23 their work areas to ensure employees' compliance with the  
24 company's sex discrimination and harassment policy, and to  
25 report any incidents and/or complaints of sex discrimination,

1 sex-based harassment including same-sex harassment and  
2 retaliation of which they become aware to the department  
3 charged with handling such complaints.

4 (iii) Idaho Peterbilt agrees to revise its current supervisor  
5 appraisal process to include performance evaluations for the  
6 handling of equal employment opportunity ("EEO") issues as  
7 an element in supervisor appraisals, and to link such  
8 evaluations directly to supervisor salary/bonus structure.

9 (iv) Idaho Peterbilt agrees that it shall include "commitment to  
10 equal employment opportunity" as a criterion for qualification  
11 for supervisory positions.

12 (d) Training.

13 (i) Idaho Peterbilt agrees that it shall provide annual,  
14 mandatory sex discrimination and sexual harassment  
15 training to all employees, and supervisors; to provide  
16 mandatory sex discrimination and sex-based harassment  
17 including same-sex harassment training to all new  
18 employees during employee orientation; to provide  
19 mandatory sex discrimination and sex-based harassment  
20 including same-sex harassment training to all senior  
21 management officials; and to provide training to all persons  
22 charged with the handling of complaints of sex  
23 discrimination, sex-based harassment including same-sex  
24 harassment and retaliation in the workplace, and the  
25 techniques for investigating and stopping it. This training

1 shall include issues regarding such discrimination as it may  
2 affect employees and/or customers of Idaho Peterbilt. Idaho  
3 Peterbilt understands and agrees that this training,  
4 particularly that directed towards senior management  
5 officials, may require one-on-one training or educational  
6 sessions.

7 (ii) Idaho Peterbilt agrees that all training required by this  
8 Decree shall be conducted by experienced sex  
9 discrimination and sexual harassment educators and/or  
10 consultants. Idaho Peterbilt agrees that the training outlined  
11 in this Decree shall begin with an initial assessment  
12 conducted by the educators and/or consultants and may  
13 include a broad assessment of Idaho Peterbilt's function as  
14 it interplays with the training issues outlined above. Idaho  
15 Peterbilt understands that this assessment may result in  
16 policy or training recommendations beyond those required  
17 by this Decree, and that Idaho Peterbilt shall be responsible  
18 for all costs associated with any assessment or training  
19 growing out of this Decree.

20 (iii) Idaho Peterbilt agrees that it shall require a senior  
21 management official to introduce all discrimination and  
22 harassment training to communicate Idaho Peterbilt's  
23 commitment to its Statement of Zero-Tolerance Policy and  
24 Workplace Objectives.  
25



1 EEOC shall first give the company 10 days' notice. The EEOC and the company shall  
2 use that 10-day period for good faith efforts to resolve the matter.

3 **IX. RETENTION OF JURISDICTION**

4 23. The United States District Court for the District of Idaho shall retain  
5 jurisdiction over this matter for the duration of the Decree.

6 **X. DURATION AND TERMINATION**

7 24. This Decree shall be in effect for five (5) years, commencing with the  
8 date the Decree is filed. If the EEOC petitions the court for breach of agreement, and  
9 the court finds the company to be in violation of the terms of the Consent Decree, the  
10 court may extend this Consent Decree.

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1 **XII. CONCLUSION**

2 25. The provisions of this Consent Decree are not binding on the parties until  
3 the authorized representatives of each party sign and the court enters the consent  
4 decree in the court.

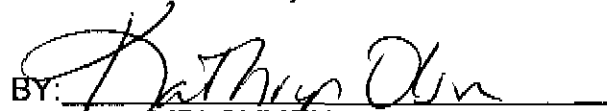
5 DATED this 9<sup>th</sup> day of May, 2003.

7 A. LUIS LUCERO, JR.  
8 Regional Attorney

GWENDOLYN YOUNG REAMS  
General Counsel

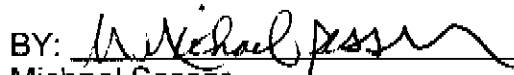
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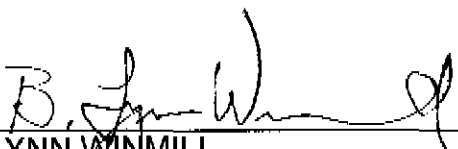
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ORDER

The Court having considered the foregoing stipulated agreement of the parties,  
IT IS HEREBY ORDERED THAT the foregoing consent decree be, and the same is,  
approved as the final decree of this Court in full settlement of this action. This lawsuit is  
hereby dismissed with prejudice and without costs or attorneys' fees to any party. The  
Court retains jurisdiction of this matter for purposes of enforcing the consent decree  
approved herein.

DATED this 22nd day of May, 2003.

  
\_\_\_\_\_  
B. LYNN WINMILL  
CHIEF JUDGE  
UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
District of Idaho  
May 23, 2003

\* \* CLERK'S CERTIFICATE OF MAILING \* \*

Re: 1:02-cv-00425

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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Chief Judge B. Lynn Winmill  
 Judge Edward J. Lodge  
 Chief Magistrate Judge Larry M. Boyle  
 Magistrate Judge Mikel H. Williams

Visiting Judges:  
 Judge David O. Carter  
 Judge John C. Coughenour  
 Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 5-23-03

BY:   
(Deputy Clerk)