

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

JAN 26 2005

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

VS.

W-INDUSTRIES LIMITED, L.P., a/k/a  
W-INDUSTRIES L.L.C.

Defendant.

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CIVIL ACTION NO. H-04-3808

JURY TRIAL DEMANDED

**CONSENT DECREE**

The Equal Employment Opportunity Commission ("Commission" or "EEOC") has alleged that Defendant W-Industries Limited, L.P. (sued herein as W-Industries Limited, L.P., a/k/a W. Industries L.L.C.) ("W-Industries"), is liable for retaliation, in violation of Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991. The EEOC's lawsuit alleges that Defendant violated these federal statutes by transferring and then discharging Brion Wilson in retaliation for opposing employment practices he reasonably believed to be unlawful under Title VII and because he filed a Charge of Discrimination with the Equal Employment Opportunity Commission. W-Industries denies any wrongdoing in connection with its treatment of Brion Wilson.

The parties wish to avoid the risks, uncertainties and expenses of continued litigation. Accordingly, the parties have agreed to settle this lawsuit. The parties agree that this Consent Decree is being entered into for the purpose of compromising disputed claims without the

necessity for protracted litigation. This Consent Decree is not an admission of wrongdoing or an adjudication or finding on the merits of the case.

Contemporaneous with this Consent Decree, W-Industries and Brion Wilson have entered into a Settlement Agreement and Release (hereinafter, the "Settlement Agreement"). W-Industries' consent to the entry of this Consent Decree is contingent upon Brion Wilson's execution of the Settlement Agreement.

The Commission and the Defendant stipulate to the jurisdiction of the Court and to satisfaction of all administrative prerequisites. The parties further waive hearing and entry of findings of fact and conclusions of law on all issues.

It is therefore ORDERED that:

1. This Consent Decree is entered in full and complete settlement of any and all claims arising out of or contained in this lawsuit, Civil Action No. H-04-3808, and in EEOC Charge No. 330-2003-02114 (the "Charge") and any claims that have been asserted or could have been asserted by Brion Wilson in this litigation or in the Charge, or otherwise concerning his employment, including the termination of his employment, with W-Industries.

2. W-Industries Limited, L.P. ("Defendant") agrees it will not engage in any employment practices which violate Title VII by unlawfully retaliating against any individual because of his complaints of discrimination, or because he opposed any practice made an unlawful employment practice by Title VII, or because he opposed a practice which he reasonably believed to be unlawful under Title VII, or because he filed a Charge of Discrimination with the EEOC, or provided testimony or evidence related to this lawsuit or to the investigation of EEOC Charge No. 330-2003-02114.

3. Annually, for three years from the entry of this Decree, Defendant will provide, using either an attorney or an independent experienced training person or group, a training program on employment discrimination, including Title VII, to all of Defendant's managers. The training shall include specific instruction regarding sexual harassment, including same-sex sexual harassment, and instruction on avoiding unlawful retaliation against employees who complain about conduct which they believe to be discrimination based on sex or any other discrimination made unlawful by Title VII. The training shall also include familiarizing trainees with the EEOC website and EEOC guidance regarding sex discrimination and retaliation. Prior to such training, the Houston District Office of the EEOC shall receive a copy of the training presentation outline. The first training shall be completed no later than May 2, 2005, or within six months from the date the Consent Decree is entered, whichever date is later. Within ten (10) days after the completion of the training, the EEOC shall be provided with a statement listing the date on which the training was completed; the names and signatures of all attendees, their job titles, the location at which they work; and all topics in the training presentation outline that were covered.

4. Defendant agrees it will specifically counsel Ed Nowak and Donald Thomas on avoiding unlawful retaliation against employees who complain about conduct which they believe to be discrimination based on sex or any other discrimination made unlawful by Title VII.

5. Defendant agrees that within twenty-one days after entry of this Decree it will conspicuously post the attached notice (Exhibit "A") in an area accessible to all employees at each of Defendant's facilities for a period of three years from the date the Decree is signed.

6. Defendant agrees that the EEOC, at its option, and upon reasonable agreed terms, may send a representative of the EEOC to conduct an annual monitoring inspection on Defendant's premises. The EEOC representative during this inspection can speak with any of Defendant's non-management employees, in groups or individually and can contact any non-management employee not present at work on the day of the inspection.

7. Defendant will maintain a written equal employment opportunity policy which sets forth the requirements of federal laws against employment discrimination and specifically those provisions which make sex discrimination, including sexual harassment, unlawful and which make it unlawful to retaliate against any current or former employee because he opposed any practice made unlawful by Title VII, or because he opposed a practice which he reasonably believed to be unlawful under Title VII, or because he filed a Charge of Discrimination with the EEOC or otherwise made a complaint of discrimination. The policy maintained will set forth the concepts embodied by the following statement:

W-Industries is firmly committed to developing and maintaining a zero-tolerance policy concerning sex discrimination, sexual harassment and retaliation against individuals who report discrimination or harassment in the company's workplace; to swiftly and firmly respond to any acts of sex discrimination, sexual harassment or retaliation of which the company becomes aware; to implementing discipline that is designed to strongly deter acts of sex discrimination, sexual harassment or retaliation; and to actively monitoring its workplace in order to ensure tolerance, respect and dignity for all people.

8. Defendant agrees to pay Brion Wilson ONE HUNDRED SIXTEEN THOUSAND FOUR HUNDRED NINETY DOLLARS AND TWENTY-TWO CENTS (\$116,490.22), subject to applicable withholding for taxes on a portion of such amount. The payment to Brion Wilson shall be made in two checks, which shall be mailed via certified mail, return receipt requested, to

Mr. Wilson c/o his attorneys: Jan Woodward Fox, A Professional Legal Corporation, 440 Louisiana, Houston, Texas 77002, concurrently with the final draft of the Settlement Agreement and Release, which check shall not be negotiated until such time as Brion Wilson executes and returns the Settlement Agreement to counsel for W-Industries. Copies of the checks shall be sent concurrently to the Commission at the following address: Equal Employment Opportunity Commission, attention: Aimee McFerren, 1919 Smith Street, 7th Floor, Houston, Texas 77002.

The parties agree that ninety-six thousand four hundred ninety dollars and twenty-two cents (\$96,490.22) of the settlement amount paid to Mr. Wilson is payment for compensatory damages under Title VII and is not tied to any claim for back or future wages. Such amount is mutually understood to be payment on account of personal injury for pain and suffering and related bodily symptoms. No amounts will be withheld for taxation purposes against that portion of the monetary award. Defendant agrees to issue Internal Revenue Service ("IRS") Form 1099 or an equivalent form to Mr. Wilson who will have the sole responsibility for paying federal, state or local taxes, including federal income tax, if any, that may be due on that portion of the monetary award.

The remaining twenty thousand dollars (\$20,000) of the monetary award payable to Mr. Wilson shall be subject to applicable withholding for taxes. Defendant shall issue an IRS Form W-2 for that portion of the monetary award.

9. Defendant agrees to pay Jan Woodward Fox, a Professional Legal Corporation FIFTY-EIGHT THOUSAND FIVE HUNDRED NINE DOLLARS AND SEVENTY-EIGHT CENTS (\$58,509.78) concurrently with the delivery of the Settlement Agreement and Release. At the time Brion Wilson executes and returns the Settlement Agreement and Release to counsel

for W-Industries, Jan Woodward Fox, a Professional Legal Corporation may negotiate the check in the amount of \$58,509.78 payable to Jan Woodward Fox, a Professional Legal Corporation. The check shall be mailed via certified mail, return receipt requested, to Jan Woodward Fox, a Professional Legal Corporation, 440 Louisiana, Houston, Texas 77002. A copy of the check shall be sent concurrently to the Commission at the following address: Equal Employment Opportunity Commission, attention: Aimee McFerren, 1919 Smith Street, 7th Floor, Houston, Texas 77002. The parties agree the fifty-eight thousand five hundred nine dollars and seventy-eight cents (\$58,509.78) is paid to Jan Woodward Fox a Professional Legal Corporation as payment for attorney's fees and expenses. Defendant shall issue an IRS Form 1099 to Jan Woodward Fox and to Brion Wilson in connection with the payment to Ms. Fox.

10. Defendant agrees to segregate in separate, confidential folders all documents related to Mr. Wilson's Charge of Discrimination and the Commission's lawsuit. These documents shall not be part of his personnel file. Further, Defendant agrees not to reference any of the following to any potential employer of Mr. Wilson: his Charge of Discrimination, the Commission's lawsuit, or this Consent Decree entered in the Commission's lawsuit.

11. Defendant agrees to provide prospective employers of Brion Wilson his name, dates of employment and last position held, and will state that the fact that no further information is provided does not reflect negatively on Mr. Wilson, but is consistent with Defendant's policy concerning job references.

12. Six (6) months from the date of entry of this Decree, eighteen (18) months from the date of entry of this Decree, and again at thirty-six (36) months from the date of entry of this Decree, Defendant shall provide to the Houston District Office of the EEOC a report on its

efforts to comply with the terms of the Decree. These reports should be directed to the attention of Aimee McFerren.

13. This Decree shall remain in effect for three years from the date of signing. During the period that this Decree shall remain in effect, the Court shall retain jurisdiction to assure compliance with this Consent Decree and to permit entry of such further orders or modifications as may be appropriate. The EEOC is specifically authorized to seek Court-ordered enforcement of this Consent Decree in the event of a breach of any provisions herein. By signing this Consent Decree, the parties agree to not file any appeal seeking to be relieved of any or all of the terms of the Consent Decree.

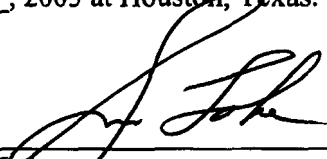
14. This Consent Decree shall be binding on Defendant and any purchaser, including successors-in-interest. Defendant will provide prompt notice to the EEOC of any transfer of ownership within a month of signing a letter of intent or within two weeks of the change of ownership, whichever event occurs earliest. Defendant will promptly notify any purchaser, including successors-in-interest, of the existence and terms of this Consent Decree.

15. Nothing in this Consent Decree shall be construed to preclude the Commission from filing a separate action under Title VII or any other statute which the Commission enforces in the future for any alleged violations by Defendant not resolved by this Consent Decree and not part of the Charge.

16. Each signatory certifies that he or she is authorized to execute this document on behalf of the party or parties whom he or she represents.

17. Except as provided herein, the parties shall bear their own costs and attorney fees.


Signed this 26th day of JANUARY, 2005 at Houston, Texas.

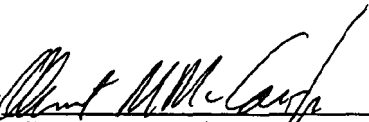
  
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Sim Lake  
United States District Judge

AGREED AND CONSENTED TO:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

McCAIG LAW OFFICES

By:   
\_\_\_\_\_  
Aimee McFerren  
Kentucky Bar No.: 89912  
Southern District No.: 36953  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1919 Smith Street, 7th Floor  
Houston, Texas 77002-8049  
(713) 209-3323  
Fax: (713) 209-3402

By:   
\_\_\_\_\_  
Albert M. McCaig, Jr.  
Bar No.: 13336800  
1210 Saunders  
P.O. Box 760]  
Waller, Texas 77484  
(936) 372-9101  
Fax: (936) 372-5581  
  
ATTORNEY FOR DEFENDANT

ATTORNEY FOR PLAINTIFF



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Houston District Office**

Mickey Leeland Federal Building  
1919 Smith Street, 7<sup>th</sup> Floor  
Houston, Texas 77002-8049  
PH: (713) 209-3320  
TTY: (713) 209-3439  
FAX: (713) 209- 3381

**NOTICE TO THE EMPLOYEES OF  
W-INDUSTRIES LIMITED, L.P.**

**THIS NOTICE IS POSTED PURSUANT TO A CONSENT DECREE ENTERED INTO BETWEEN THE EEOC AND W-INDUSTRIES LIMITED, L.P. REGARDING SEX DISCRIMINATION AND RETALIATION IN THE WORK PLACE PURSUANT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.**

1. Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's sex, race, color, religion, national origin, age or disability with respect to compensation, hiring or other terms, conditions or privileges of employment.
2. W-INDUSTRIES LIMITED, L.P. supports and will comply with such Federal law in all respects and will not take any action against employees because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission (EEOC), providing information to the EEOC, and/or receiving compensation for the settlement of any employment discrimination claim.
3. Sex discrimination, including sexual harassment and retaliation, is expressly prohibited and constitutes an unlawful discriminatory employment practice.
4. W-INDUSTRIES LIMITED L.P. prohibits sex discrimination, including sexual harassment and retaliation, and will not tolerate sex discrimination, sexual harassment or retaliation against any employee who reports discrimination or harassment in the company's workplace.
5. Any employee who feels they have been the target of sex discrimination, sexual harassment and/or retaliation is advised to report this action promptly to \_\_\_\_\_.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
T.L. Lynn  
President

W-INDUSTRIES LIMITED, L.P.

This OFFICIAL NOTICE shall remain posted for three full years from date of signing.