

FILED	
DISTRICT OF NEBRASKA	
AT _____	M
APR 24 2003	
Gary D. McFarland, Clerk	
By _____	Deputy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

EQUAL EMPLOYMENT OPPORTUNITY	)	CASE NO. 8:01CV462
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	CONSENT DECREE
vs.	)	
	)	
OILGEAR COMPANY,	)	
	)	
Defendant.	)	

**I. RECITALS**

WHEREFORE, this matter was instituted by Plaintiff, Equal Employment Opportunity Commission ("Commission" or "EEOC"), an agency of the United States government, alleging that Defendant, OilGear Company, ("Defendant" or "OilGear") discriminated against Dean Gerdts ("Gerdts"). Specifically, Gerdts alleged Defendant OilGear failed to pay him equal wages because of his age, in violation of the Age Discrimination in Employment Act of 1967, as amended ("ADEA"). Defendant denies that it violated any law in regard to Gerdts.

WHEREFORE, the Commission and OilGear, desiring to settle this action by an appropriate decree, agree that Civil Action Number 8:01CV462 (hereinafter the "Settled Action") should be resolved by entry of this Consent Decree ("Decree").

WHEREFORE, this Decree is final and binding upon the Commission and OilGear, as well as upon their successors and assigns, as to the issues resolved.

## **II. FINDINGS**

Having examined the terms and provisions and the pleadings, record, and stipulation of the parties in the Settled Action, the Court finds the following:

- A. The Court has jurisdiction over the parties to the Settled Action.
- B. The terms and provisions of the Decree are fair, reasonable, and just.
- C. The rights of OilGear and the Commission are protected adequately by this Decree.

## **III. ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

### **1. Duration**

The duration of the Consent Decree ("Decree") will be for three (3) years from the date upon which the Court approves the Decree. The Consent Decree applies to OilGear's Fremont, Nebraska facility only.

### **2. Non-Discrimination Policies and Complaint Procedures**

Defendant agrees to maintain general nondiscrimination policies that reflect an understanding of its obligations under the ADEA. In addition, Defendant agrees to maintain an internal complaint procedures for responding to complaints of discrimination. Such complaint procedures shall identify at least two individuals to whom to make complaints, one of whom is not the direct supervisor of the complainant. In addition, the procedures should include a process for determining appropriate sanctions to be imposed against an employee found to have engaged

in unlawful age discrimination or age harassment. Said policies and complaint procedures shall be published to all employees and given to all new employees for the period of this decree.

3.     Training

A.     Defendant will require all individuals who work in any managerial or supervisor capacity to receive periodic training regarding the ADEA and other federal EEO laws. This training will be provided to all existing managers and supervisors during the first year of this Decree, and will be required as initial training for new managers and supervisors hired thereafter. Such training may be provided in conjunction with any new employee orientation training. Such training shall pertain to Defendant's obligations and employees' rights under federal EEO laws. Such training will be provided at the Defendant's expense.

B.     Within 30 days following completion of the manager and supervisor training identified in paragraph 3(A) above, Defendant will require all employees to review the EEO training material explaining the kinds of conduct prohibited under federal discrimination laws and explaining Defendant's anti-discrimination policies and complaint procedures. A supervisor or human resource employee will review the material with the employees. This training will be provided to all new and existing employees. Such training may be provided in conjunction with orientation training.

4.     EEO Record-Keeping Requirements

Defendant shall adopt and maintain a file retention system for all documents relating to EEO charges of discrimination filed and/or investigated by the EEOC or its state counterpart, the Nebraska Equal Opportunity Commission. Said file retention system shall comply with federal EEO record-keeping requirements as set forth in 29 C.F.R. §1602.14.

5.     Reporting Requirements

Every six (6) months, Defendant shall prepare and shall submit to the EEOC's Regional Attorney of the Denver District Office, a report containing the following information:

A.     The name, address, and telephone number of every employee or applicant who, in accordance with the "complaint procedures" outlined in paragraph III(2) above, makes a report of discrimination based on age to a manager or supervisor, which is subsequently investigated. Applicant is defined as any person who

- a)     Expresses in writing to a person with hiring authority an interest in being hired, or
- b)     any person offered an opportunity for employment by a person with hiring authority for the offered position.

As to each individual identified, the Defendant shall provide the following additional information:

- 1. A detailed summary of the complaining party's allegation;
- 2). the name of any alleged discriminating official; and,
- 3). a description of what action was taken by OilGear, if any.

Defendant will provide the business address for any alleged discriminating official who continues to be employed by OilGear. Defendant will provide the last known home address for any alleged discriminating official who is separated from his or her employment with OilGear.

B.     A description of each training seminar completed by Defendant's employees, as referenced in Paragraph III 3(A) setting forth:

- 1). Name and title of the attendees;
- 2). Place and sponsor of the training; and,
- 3). A general statement of the topics covered in the seminar.

OilGear shall also maintain records evidencing the training each employee received pursuant to Paragraph III 3(B) .

6.     Monitoring

Defendant agrees that the Commission will reserve the right to monitor compliance with the Decree by conducting site visits at the Defendant's Fremont, Nebraska facility, physically inspecting the premises, interviewing current or former employees, and copying documents. The Commission will provide Defendant with reasonable written notice at least five (5) business days before any inspection of Defendant's premises.

7.     Notice Posting

The notice, which is Exhibit A attached hereto, and incorporated herein by reference, shall be placed conspicuously in all of Defendant's facilities, in an area to which all employees have access. The notice shall remain posted for the term of the Decree. If the notice becomes defaced or illegible, Defendant shall replace it.

8.     Gerdts

Gerdts agrees to sign a Settlement Agreement and Release as drafted by Defendant's counsel. The EEOC is not a party to this separate Settlement Agreement and Release.

9. No Retaliation

Defendant agrees not to retaliate against any current or former employee who provided any evidence in the administrative investigation or this litigation. Defendant will not retaliate against any employee who engages in protected conduct under the laws EEOC enforces.

10. Positive Reference

Defendant shall provide Gerdtz a letter of reference confirming dates of employment.

11. Monetary Compensation

Defendant agrees to pay a monetary settlement of \$10,000.00 to Gerdtz, as compensation for backpay and liquidated damages. Payment will be hand delivered to Gerdtz within ten (10) days of the entry of this judgement and delivery of the signed and notarized Confidential Release and Settlement Agreement to OilGear, whichever occurs later. Payment will be issued in the full amount to Gerdtz, in accordance with the Settlement Agreement.

12. Retention of Jurisdiction

A. This Court shall retain jurisdiction of this cause for purposes of compliance with this Decree and entry of such further orders or modification as may be necessary or appropriate to effectuate the purposes of the ADEA, or to avoid unnecessary hardship to any party.

B. Upon the Court's approval of the Consent Decree and payment to Gerdtz, the parties shall promptly file a Joint Stipulation for Dismissal with Prejudice ("Joint Stipulation") of this civil action, upon which the filing of this Decree shall dissolve, and this Civil Action No. 8:01CV462 shall be dismissed with prejudice.

13. Enforcement

A. There is no right of private non-parties to enforce Defendant's obligations under the Consent Decree, and only the Commission and Defendant, or its successors, may enforce compliance herewith.

B. This Decree shall in no way limit the Commission's power and authority to investigate or litigate charges of discrimination against the Defendant that do not relate to Gerdt's charge of discrimination or this litigation.

14. Costs and Attorney's Fees

Each party will pay its own fees and costs.

15. Notice and Mailing

Any notice, report or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, to the Commission as follows

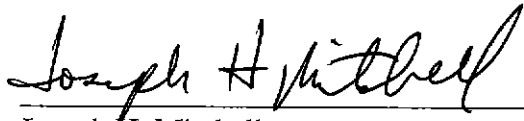
Joseph H. Mitchell, Regional Attorney  
Equal Employment Opportunity Commission  
Denver District Office  
303 E. 17<sup>th</sup> Ave., Suite 510  
Denver, CO 80203

IT IS SO ORDERED this 25 day of April, 2003.

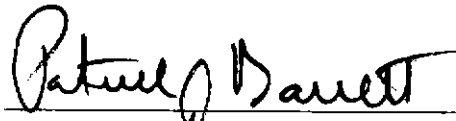
BY THE COURT

  
Judge  
United States District Court

APPROVED AS TO FORM:



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