

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

BELL GAS INCORPORATED, and  
BALLEW DISTRIBUTING, INC.

Defendants.

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COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and to provide appropriate relief to Evelyn Silva and Cheri Brisco who were adversely affected by such practices. The Commission alleges that Defendants Bell Gas Incorporated and Ballew Distributing, Inc. discriminated against Evelyn Silva and Cheri Brisco because of their sex, female. Specifically, the Commission alleges the Defendants sexually harassed Ms. Silva and Ms. Brisco; they were subjected to severe and/or pervasive sexual harassment by Facility Manager and Supervisor Carroll Madsen and Warehouse Manager Max Stacy, which created a hostile work environment. The Commission further alleges that Defendants did not exercise reasonable care to prevent and promptly correct the sexual harassment.

## **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 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §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 District of New Mexico.

## **PARTIES**

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3).

4. At all relevant times, Defendants Bell Gas Incorporated and Ballew Distributing, Inc. (collectively the "Employers" or "Defendants" or "Ballew") were each New Mexico corporations which continuously did and are now doing business in the State of New Mexico and in the City of Roswell. Each has continuously had at least fifteen employees and collectively they have operated a business under the name of Ballew Distributing.

5. At all relevant times, Defendants have continuously been and are now employers engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

### **STATEMENT OF CLAIMS**

6. More than thirty days prior to the institution of this lawsuit, Evelyn Silva and Cheri Brisco filed charges with the Commission alleging violations of Title VII by Defendants. All administrative conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least May 1999, Defendants have engaged in unlawful employment practices at the Ballew Distributing facility in Roswell, New Mexico in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a), by discriminating against Evelyn Silva and Cheri Brisco because of their sex, female, by sexually harassing them.

8. The sexual harassment included sexually offensive comments, sexual questions, sexual suggestions and unwelcome touching.

9. Defendants failed to exercise reasonable care to prevent and promptly correct the sexual harassment.

10. The effect of the practices complained of in paragraphs 7-9 above has been to deprive Evelyn Silva and Cheri Brisco of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.

11. The unlawful employment practices complained of in paragraphs 7-9 above were intentional.

12. The unlawful employment practices complained of in paragraph 7-9 above were done with malice and/or reckless indifference to the federally protected rights of Evelyn Silva and Cheri Brisco.

### **PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in any employment practice that discriminates on the basis of sex, including sexual harassment.

B. Order Defendants to institute and carry out policies, practices and programs which provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendants to make whole Evelyn Silva and Cheri Brisco by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7 above, including job search expenses and other pecuniary losses, in amounts to be determined at trial.

D. Order Defendants to make whole Evelyn Silva and Cheri Brisco by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 7 above including, but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and other non-pecuniary losses, in amounts to be determined at trial.

E. Order Defendants to pay punitive damages to Evelyn Silva and Cheri Brisco for its malicious and/or reckless conduct described above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs in this action.

**JURY TRIAL DEMANDED**

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

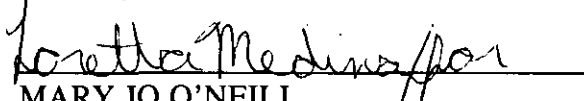
DATED this 26<sup>th</sup> day of September, 2002.

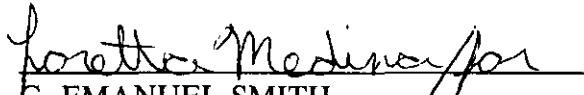
Respectfully submitted,

GWENDOLYN YOUNG REAMS  
Acting General Counsel

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COMMISSION

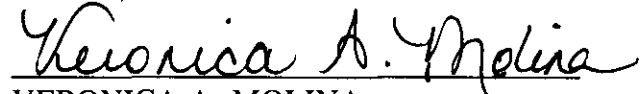
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