

United States Courts
Southern District of Texas
ENTERED

Michael N. Milby, Clerk of Court

[illegible]

JURY TRIAL DEMANDED

course of their employment constituted sexual harassment in violation of Section 703 (a) of Title VII.

C. Defendant denied the allegations of discrimination and sexual harassment.

D. The parties wish to avoid the risks, uncertainties and expenses of continued litigation. Accordingly, the parties have agreed to settle this lawsuit. Neither Defendant's consent to the entry of this decree nor any of the terms set forth in it shall constitute or be construed as an admission of any Title VII violation. Both parties agree that this Consent Decree is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted litigation.

E. The Commission and Defendant stipulate to the jurisdiction of the Court and the 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 ORDERED that:

1. This Consent Decree is entered in full and complete settlement of any and all claims arising out of or asserted in Civil Action No. H-01-3541 and the above-referenced Charges on behalf of Ileks, Nicholson and Hooter. The EEOC acknowledges that there are no other charges pending against Defendant as of July 16, 2002.
2. Defendant and all of its employees and/or agents associated with it agree they will not engage in any employment practices which discriminate against any individual with respect to compensation, terms, conditions or privileges of

employment because of such individual's sex and will not retaliate against any individual who has opposed any practice made an unlawful employment practice under Title VII or who has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Title VII.

3. Defendant and all of its employees and/or agents associated with them agree that they will not engage in any employment practice which discriminates against female employees because of their sex (sexual harassment) in violation of Title VII.

4. Annually, for four years from the entry of this Decree, Medical Center Brace & Limb will provide, using either an attorney or an independent experienced training person or group, a program on employment discrimination, including the law relating to sexual harassment, to John Fain and all management level and above employees. The training shall be completed not later than December 31, 2002, or within six(6) months from the date the Consent Decree is entered, whichever date is later. Defendant shall submit to the EEOC, each year at least thirty days in advance of the program, the name of the program provider and a curriculum outline indicating the information to be addressed during the program and copies of all agendas and materials to be distributed at the training seminar. The person who shall administer the training will be either attorney(s) or person(s) possessing at least five years of experience in labor and employment law. Written acknowledgment of receipt

of the training shall be obtained by Defendant from all individuals attending the training and retained among the employment records of Medical Center Brace & Limb and also copies shall be forwarded to the EEOC.

5. Medical Center Brace & Limb agrees that within six months from the entry of this Decree John Fain will undergo sensitivity training which addresses methodologies of responsiveness to the feelings and emotions of others, especially women, and behaviors to employ when interacting with employees and other individuals.
6. Annually, for four years from the entry of this Decree, Medical Center Brace & Limb will provide to the EEOC a copy of all complaints of sexual harassment made by any employee and describe the resolution of the complaint. The list shall also identify the name and title of the persons involved in the complaint.
7. Commencing immediately upon the entry of this Decree and for four years from the date of this Decree, Medical Center Brace & Limb shall permit an EEOC representative to do an annual monitoring inspection on Defendant's premises at the EEOC's option. Defendant, via John Fain, will receive a minimum of 2 business days notice of any such inspection. A monitoring inspection shall mean that the EEOC representative shall be permitted to speak with any Medical Center Brace & Limb employees, in a group and/or individually, during the monitoring inspection and shall be permitted to contact any employee who is

not present at work on the day the EEOC representative conducts the monitoring inspection.

8. Medical Center Brace & Limb agrees that it will revise its equal employment opportunity policy not later than October 31, 2002. The parties will cooperate in preparing the revised policy. The revised new policy shall include the following provisions: It will identify by name, address and telephone number, the person to whom complaints about sexual harassment or discrimination shall be made. This person shall be someone other than John W. Fain or Laura Hamman Fain. The policy should also outline how the complaints will be investigated, their confidential nature and provide assurances against retaliation for making a complaint. The policy will also provide that the complaining employee will be notified of the resolution of the complaint. During the period this Decree is in effect, copies of any internal complaints of sexual harassment and all notes regarding the investigation that are not privileged by law, and the resolution of the complaint shall be forwarded to the EEOC within 30 days of the complaint being made.

9. Not later than November 30, 2002, Medical Center Brace & Limb agrees that it will provide to all current employees or other persons working at Medical Center Brace & Limb a copy of the revised equal employment opportunity policy outlined in the preceding paragraph and to new employees or to other workers during their first work week. Written acknowledgment of receipt of the policy

shall be obtained by Defendant from all individuals receiving it and retained among the employment records of Defendant.

10. Medical Center Brace & Limb agrees to provide written neutral job references for Ileks, Nicholson and Hooter stating dates of employment, position held and last salary in the format attached as Exhibit "A". If a company should call regarding any of the Charging Parties employment, Defendant agrees to provide only the information contained in the written job reference.
11. John Fain shall provide individual letters of regret to Ileks, Nicholson and Hooter concerning their employment at Medical Center Brace & Limb within thirty (30) days of the entry of this Decree. The Charging Parties will not publish the letter of regret to third parties other than family members.
12. Medical Center Brace & Limb agrees that no employee shall be asked or required to attend any type of psychological or psychiatric therapy with John Fain or any other official of Medical Center Brace & Limb as a term or condition of employment.
13. Defendant agrees that within ten days after entry of this Decree it will conspicuously post the attached notice (Exhibit "B") in an area accessible to all employees at each of Medical Center Brace & Limb's locations for a period of four years from the date the Decree is signed.
14. Defendant agrees to pay the total sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) on the terms further set out in the settlement

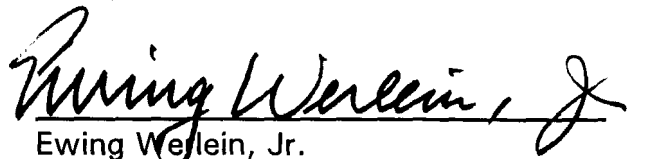
agreements with Ileks, Nicholson and Hooter in full and final settlement of the EEOC's lawsuit to provide monetary relief to Sandra Ileks, Kimberly Nicholson and Jennifer Hooter. Said sums shall be paid by July 31, 2002. A copy of the checks disbursed to each of them shall be mailed to the EEOC's undersigned counsel of record.

15. The sums payable to Ileks, Nicholson and Hooter may be subject to federal or state income tax. Medical Center Brace & Limb agrees to issue Internal Revenue Service ("IRS") Form 1099 or an equivalent form to Charging Parties' respective attorneys, who will have the sole responsibility for sending Form 1099's to their clients. Each Charging Party and their attorney will be responsible for paying any federal, state or local taxes, including federal income tax that may be due on the aforementioned monetary award. Defendant and the EEOC agree that the sums paid pursuant to this Decree are for personal damages and emotional distress. Medical Center Brace & Limb makes no representation as to the tax status of the funds being paid herein. Ileks, Nicholson and Hooter agree to indemnify and hold Medical Center Brace & Limb harmless in regard to classification of these funds as personal damages and emotional distress and in regard to any claim the IRS could make against it for failure to withhold federal income taxes from these funds.

16. Each party to this action shall bear their own costs and attorney's fees.

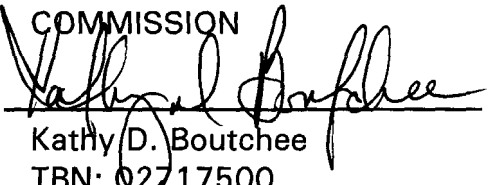
17. This Consent Decree shall be binding on Defendant and all of Defendant's successors-in-interest, and Defendant will notify all such successors-in-interest of the existence and terms of this Consent Decree.
18. This Decree shall remain in effect for four years form the date of signing. During the period that this Decree shall remain in effect, the Court shall retain jurisdiction to assure compliance with this 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 Decree in the event of a breach of any of the provisions herein.
19. 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 Decree.

Signed this 4TH day of September, 2002 at Houston, Texas.

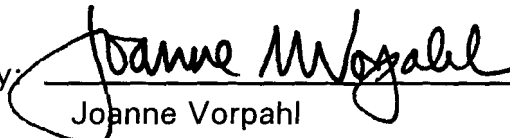

Ewing Wellein, Jr.
United State District Judge

AGREED AND CONSENTED TO:

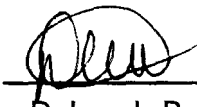
ATTORNEY FOR PLAINTIFF
EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION
By: 
Kathy D. Boutchee
TBN: 02717500
SDN: 10145
Equal Employment Opportunity
Commission
Houston District Office
1919 Smith, 7th Floor
Houston, Texas 77002
713/209-3399
fax 713/209-3402

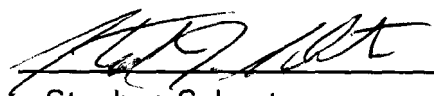
ATTORNEY FOR DEFENDANT
MEDICAL CENTER BRACE & LIMB, INC.

By: 
Joanne Vorpahl
TBN: 20619950
SDN: 777
Porter & Hedges, L.L.P.
700 Louisiana, 35th Floor
Houston, Texas 77002-2764
713/226-0600
fax 713/226-0201

ATTORNEY FOR PLAINTIFFS -
INTERVENORS SANDRA ILEKS
AND KIMBERLY NICHOLSON

By: 
Deborah Bryant
TBN: 24006920
8303 Southwest Fwy, Suite 640
Houston, Texas 77074
713/995-4458
fax 713/995-4461
SDN. 24986

ATTORNEY FOR PLAINTIFF-INTERVENOR
JENNIFER CAHILL HOOTER

By: 
Stephen Schecter
TBN: 17735512
921 E. Main Street
League City, Texas 77573
281/333-9450
fax 281/3339467

[Medical Center Brace & Limb Letterhead]

To Whom It May Concern:

_____ [NAME] _____ was employed by Medical Center Brace & Limb as a _____
[POSITION] _____ for the period from _____ [STARTING DATE] _____ to _____ [ENDING DATE]
_____. Her last salary/hourly pay wage was \$ _____.

Sincerely,

[Title]
Medical Center Brace & Limb

EXHIBIT "A"



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

Mickey Leland Federal Building
1919 Smith Street, 7th Floor
Houston, TX 77002-8049
(713) 209-3320
TTY (713) 209-3439
FAX (713) 209-3381

NOTICE

**AS REQUIRED UNDER THE TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED**

THIS NOTICE TO ALL EMPLOYEES OF MEDICAL CENTER BRACE & LIMB IS BEING POSTED REGARDING SEXUAL HARASSMENT AND DISCRIMINATION IN THE WORK PLACE AND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED.

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. MEDICAL CENTER BRACE & LIMB 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 sexual harassment or discrimination claim.
3. MEDICAL CENTER BRACE & LIMB prohibits sexual harassment and will not engage in the practice of altering the terms and conditions of employment on the basis of sex.
4. Sexual harassment is expressly prohibited and constitutes an unlawful discriminatory employment practice. Such discriminatory employment practices will not be tolerated at MEDICAL CENTER BRACE & LIMB.
5. Any employee who feels he/she is the target of such discrimination is advised to report this action promptly to Shalimar Turner, MCBL, 7110 Cecil, Houston, Texas 77030, (713) 799-1177 ext. 136 **OR** Teresa Cruz, MCBL, 7110 Cecil, Houston, Texas 77030, (713) 799-1177 ext. 145.

SIGNED this _____ day of _____, 2002.

John W. Fain
President, Medical Center Brace & Limb

This NOTICE shall be posted for four full years from date of signing.

EXHIBIT "B"