

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

United States Courts  
Southern District of Texas  
FILED

DEC 11 2002

Michael N. Milby, Clerk

EQUAL EMPLOYMENT OPPORTUNITY §  
COMMISSION, §  
Plaintiff, §  
vs. § CIVIL ACTION NO. H-01-3541  
MEDICAL CENTER BRACE & LIMB, INC. §  
Defendant. §

**SUPPLEMENTAL CONSENT DECREE**

Plaintiff, the United States Equal Employment Opportunity Commission ("Commission" or "EEOC") and Defendant, Medical Center Brace & Limb, Inc. ("Defendant" or "Medical Center"), agree to entry of this Supplemental Consent Decree which includes additional undertakings agreed to by Medical Center Brace & Limb, Inc., and its president, John Fain.

**I. History of Proceedings and Events Giving Rise to Supplemental Consent Decree**

A. The Consent Decree in this cause was entered on September 4, 2002 in settlement of any and all claims arising out of or asserted in Civil Action No. H-01-3541 on behalf of Ms. Ileks, Ms. Nicholson and Ms. Hooter.

B. Paragraph 2 of that Decree provides that

"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 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."

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C. Without suggesting to this Court or any other third party that any breach of the Consent Decree has occurred, the EEOC and Medical Center have agreed to the entry of additional terms and conditions to be incorporated into the Consent Decree as set forth below (hereafter “undertakings”).

IT IS ORDERED that:

1. This Supplemental Consent Decree is entered to resolve a potential dispute regarding compliance with the extant Consent Decree.
2. The parties acknowledge that this Supplemental Consent Decree does not supplant the Consent Decree which remains in full force and effect.
3. The additional provisions set forth below become a part of and are merged with the provisions of the extant Consent Decree and are thereby subject to its provisions regarding compliance, periodic reporting and enforcement.
4. Medical Center agrees that, based on present facts, it shall not depose either Steven Plant or Bob Cook to investigate its potential claims that it has been slandered, libeled, disparaged or had its prospective business advantage interfered with.
5. Medical Center agrees that it shall inform the state court in its pending matter that it has decided to not depose either Mr. Plant or Mr. Cook. In addition, Medical Center agrees that it will permit the EEOC to review and approve its submission before Medical Center files it with that Court.
6. Medical Center agrees that during the term of this Decree if it intends to file suit against Mr. Cook, Mr. Plant or any business owned in whole or party by either of them for claims of libel, slander, business disparagement, or interference with prospective business advantage


or related action, or if it intends to depose them or otherwise compel their testimony, it must give the Commission three weeks' advance notice of its intent to file suit. Moreover, Medical Center agrees that it will not oppose any application made by the Commission to participate in any discovery in that intended action and to apply for consideration as a real party in interest. The Commission's application will set forth the facts that suggest there is good cause for its application.

7. Medical Center agrees that if it intends to seek injunctive relief against Mr. Cook, Mr. Plant and/or any business owned in whole or part by either or both of them, during the term of this Decree, it must advise the Commission no later than two working days prior to its application for injunctive relief. Furthermore, in the event that it applies for injunctive relief, it must immediately provide the Commission with its moving papers and all relevant pleadings, at Medical Center's expense, and it shall not oppose any application made by the Commission, to participate in those proceedings. Further, Medical Center agrees that it will permit the Commission to participate in any discovery related to its application for injunctive relief and, more specifically, it shall permit the Commission, if it chooses, to take the deposition of Mr. Fain and any other witnesses on an expedited basis so that the Commission may gather relevant evidence prior to the convening of a preliminary injunction hearing. The Commission's application will set forth the facts that suggest there is good cause for its application.
8. Medical Center's attorneys and John Fain agree that each will provide copies of the Consent Decree and the Supplemental Consent Decree to any attorneys known by them to be

representing Mr. Fain and/or Medical Center at any time in the future during the pendency of the Consent Decree and the Supplemental Consent Decree.

9. Medical Center and the Commission shall bear their own costs and attorney's fees.
10. This Supplemental Consent Decree shall be binding on John Fain, 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.
11. This Supplemental Consent Decree shall remain in effect for four years from the date of signing. During the period that this Supplemental 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.
12. Nothing in this Supplemental Consent Decree shall be construed to preclude the Commission from investigating any pending or future charges or 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.
13. As regards any undertakings set forth herein, notice to the Commission shall be effective if it is provided by personal delivery or mail to Jim Sacher, the regional attorney, at the Commission's Houston office.

Signed this 14<sup>th</sup> day of December, 2002 at Houston, Texas.

  
Ewing Werlein, Jr.  
United States District Judge

AGREED AND CONSENTED TO:

ATTORNEY FOR PLAINTIFF  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Jim Sacher,  
Regional Attorney

By: 

Kathy D. Boutchee

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Equal Employment Opportunity  
Commission

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