

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

(1) EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
(2) JAMES OWINGS, an Individual, and)	
LANCE WHISSENAND, an Individual,)	
)	
Plaintiff Intervenor,)	Case No. CIV-05-749-W
)	
(1) ACTION, INC., an)	
Arkansas Corporation,)	
)	
Defendant.)	

PLAINTIFFS' INTERVENOR COMPLAINT

1. This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, as amended, including 42 U.S.C. Section 1981 a, and Oklahoma law, to correct unlawful employment practices on the basis of sex, religion, retaliation, and to remedy intentional tortious conduct and negligent conduct, and to provide appropriate relief to Plaintiff Intervenor, James Owings and Lance Whisennand (hereinafter referred to as “Owings” and “Whisennand”).

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 451, 1331, 1337 and 1343. This action is authorized and instituted pursuant to Section 706 of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. Section 2000e-5.

3. The employment practices alleged to be unlawful, as well as the alleged acts of tortious and negligent conduct, were and are now being committed within the jurisdiction of the United States District Court for the Western District of Oklahoma.

4. Plaintiff, Equal Employment Opportunity Commission (the "Commission") filed a complaint in the United States District Court for the Western District of Oklahoma on June 30, 2005, against Defendant.

5. Owings and Whisennand, as the persons on whose behalf the Commission filed suit against Defendant, have an unconditional right to intervene in the case filed by the Commission. 42 U.S.C. Section 706(f)(1).

6. At all relevant times, Defendant has continuously been and is now doing business in the State of Oklahoma and has continuously employed at least fifteen employees. Defendant operates Action, Inc., in locations within the State of Oklahoma and other states and specifically on construction site located in Enid, Oklahoma where the Owings and Whisennand were employed.

7. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701 of Title VII, 42 U.S.C. § 2000e(b), (g) and (h).

8. All conditions precedent to the institution of this action have been met.

First Cause of Action

Sexually Hostile Working Environment

9. Since at least early 2003, Defendant has engaged in unlawful employment practices in violation of Title VII by creating, permitting and condoning a sexually hostile work environment. Specifically, the Defendant discriminated against Owings and Whisennand based upon sex (male) by subjecting them to a sexually hostile work environment. Owings and Whisennand were employed at a construction site in Enid, Oklahoma. Throughout their

employment with the Defendants, a male supervisor subjected Owings and Whisennand to sexual harassment, including but not limited to suggestive, lewd and offensive comments as well as unwelcome touching. The Defendant failed to have in place, and/or communicate to employees, a policy prohibiting such discriminatory treatment. Further, Defendant failed to take prompt, effective, remedial action to correct the conduct complained about by Owings and Whisennand. As a result of the sexually hostile environment, Whisennand was constructively discharged. The Defendant terminated Owings in retaliation for his opposition to unlawful employment practices under Title VII.

10. As a result Owings and Whisennand are entitled to relief as set forth below in their prayer for relief.

Seventh Cause of Action

Violation of Oklahoma Law

11. By subjecting, Owings and Whisennand to sexual harassment and wrongful termination, Defendant engaged in extreme and outrageous conduct and intentionally inflicted emotional distress upon Owings and Whisennand.

12. As a result, Owings and Whisennand are entitled to the relief set forth below in their prayer for relief.

WHEREFORE, James Owings and Lance Whisennand respectfully request the following relief:

- A. back pay;
- B. interest;
- C. pecuniary compensatory damages;

- D. non-pecuniary compensatory damages, including but not limited to damages for pain and suffering, humiliation, stress, and anxiety;
- E. punitive damages;
- F. reinstatement, or in the alternative, front pay in lieu of reinstatement;
- G. costs;
- H. reasonable attorneys fees;
- I. such other legal or equitable relief as the Court deems appropriate.

Respectfully submitted.

s/Michael R. Coulson
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JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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