

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED - 00

06 FEB 27 PM 3:07

RONALD WEAT, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT MICH.

BY: MRS

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

Civil Action No. 1 :05CV547

Hon. Joseph Scoville

v.

A & R TRUSS COMPANY,

Defendant.

ADELE RAPPORT (P44833)
ROBERT K. DAWKINS (P38289)
OMAR WEAVER (P58861)
Attorneys for Plaintiff
Equal Employment Opportunity Commission
Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
(313) 226-5673

CHARLES S. MISHKIND (P32346)
BRUCE D. OLSON (P44573)
Attorneys for Defendant
Miller Canfield Paddock and Stone, P.L.C.
99 Monroe Avenue, N.W., Suite 1200
Grand Rapids, MI 49503
(616) 776-6307

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties in order to effectuate a compromise and settlement of all claims. After careful review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff the United States Equal Employment Opportunity Commission ("the EEOC"), commenced the above entitled action on August 15, 2005, in the United States District

Court for the Western District of Michigan, Southern Division, alleging that the Defendant A & R Truss Company (“A & R Truss”), engaged in unlawful employment practices or otherwise ratified such practices which violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq. The EEOC alleged in its Complaint that A & R Truss discriminated against Theodore Kilgore by subjecting him to a hostile work environment because of his race, African American.

2. Defendant A & R Truss denies all allegations pertaining to unlawful employment practices alleged in the EEOC’s Complaint.
3. As a result of settlement discussions, the EEOC and A & R Truss have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. This Decree is contingent upon Mr. Kilgore signing an appropriate Settlement Agreement and Release of all claims. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged against A & R Truss or which might have been alleged against A & R Truss in the Complaint filed on behalf of Charging Party Theodore Kilgore.

STIPULATED FACTS

4. The Parties stipulate and agree that the EEOC is the agency of the United States government authorized to investigate allegations of unlawful employment discrimination, to bring civil actions to prohibit unlawful employment practices and to seek relief for individuals affected by the practices complained of in this lawsuit.
5. A & R Truss is an employer engaged in an industry affecting commerce within the meaning of Section 701(g) and (h) of Title VII of the Civil Rights Act of 1964, as

amended, 42 U.S.C. 2000e(g). A & R Truss had at least fifteen (15) employees for twenty (20) or more calendar weeks during the relevant time period.

6. Pursuant to Title VII, the Parties acknowledge the jurisdiction of the United States District Court for the Western District of Michigan (Southern Division) over the subject matter and the Parties to this case for the purpose of enforcing the provisions of this Decree if such enforcement becomes necessary.
7. Venue is appropriate in the Western District of Michigan (Southern Division). For purposes of this Decree and proceedings related to this Decree only, A & R Truss agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

NON-ADMISSION

8. This Decree, being entered with the consent of the EEOC and A & R Truss, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by A & R Truss of any violation of Title VII or any other law, rule, or regulation dealing with or in connection with the subject of equal employment opportunity and fair employment practice laws.

MONETARY RELIEF

9. A & R Truss agrees to pay monetary relief for Theodore Kilgore in the amount of \$25,000.00. This amount represents payment of \$25,000.00 in alleged non-pecuniary compensatory damages. A & R Truss shall issue a 1099 form for the amount in the ordinary course of business. The funds are to be paid in lump sums directly to Kilgore via certified mail at the following addresses: 1409 State Street, LaPorte, Indiana 46350. Defendant is to pay the funds to Kilgore within fourteen (14) days after execution of the Release by Mr. Kilgore and the entry of this Decree and Stipulation of Dismissal

by the Court, whichever occurs later. A copy of the check shall be sent to Adele Rapport, Regional Attorney, EEOC, 477 Michigan Avenue, Room 865, Detroit, Michigan 48226, within fifteen days of issuance of the checks.

NON-MONETARY RELIEF

10. A & R Truss agrees to develop a policy which complies with the anti-harassment provisions of Title VII of the Civil Rights Act of 1964, as amended. The policy shall contain a procedure for reporting instances of harassment and shall clearly identify who can receive complaints about harassment. In addition, at a minimum, the policy shall contain the following elements: 1) a clear explanation of prohibited conduct; 2) assurance that employees who complain will be protected from retaliation; 3) a process that provides multiple avenues for making complaints; 4) assurance of confidentiality to the extent possible; 5) the requirement of a prompt, thorough and impartial investigation; and 7) assurance that immediate and appropriate corrective action will be taken when A & R Truss determines that harassment has occurred. This policy shall be developed no later than sixty (60) days after the signing of this Decree. A draft policy shall be sent to Adele Rapport, Regional Attorney, at the previously provided address, for the Commission's approval no more than sixty (60) days after the signing of this Decree.

NON-DISCRIMINATION

11. A & R Truss and its management shall comply with the provisions of Title VII covering racial harassment in the workplace and with regard to its prohibitions against retaliation for engaging in protected activity.

DISPUTE RESOLUTION AND COMPLIANCE

12. The Parties agree that the United States District Court for the Western District of Michigan, Southern Division, will have all available equitable powers, including injunctive relief, to enforce the provisions of this Decree. The parties agree to the jurisdiction of the U.S. District Court for the Western District of Michigan for the purpose of reviewing compliance with this Decree. The Parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court and shall be required to give written notice to each other twenty (20) days before moving for such review.

POSTING OF NOTICE

13. A & R Truss agrees to post a mutually agreeable Notification, attached as Attachment A, in a conspicuous place which sets forth an employee's rights regarding the federal anti-discrimination laws. This Notice shall be posted for one year from the entry of this Decree by the Court. Should any posted copies of the Notice become defaced, marred or otherwise made unreadable, A & R Truss agrees to post a readable copy of this Notice in the same manner heretofore specified as soon as practical thereafter.

ALLOCATION OF COST

14. The Parties agree to pay their respective costs and attorneys fees associated with the investigation, institution and pursuit of this matter including the drafting and enforcement of this Agreement.

SEVERABILITY CLAUSE

15. If any provision of this Decree is found to be unenforceable by a Court, only the specific provision in question shall be affected and the other enforceable provisions shall remain in full force.

TRAINING

16. A & R Truss agrees to provide training to its current managers, and any new managers hired during the effective dates of this Decree, on Title VII of the Civil Rights Act of 1964, as amended and its prohibitions against harassment based on race and other protected status. The training shall include a discussion of what behavior constitutes racial harassment and what should be done when an individual believes that he/she has been subjected to harassment. The training shall also include a discussion of the new anti-harassment policy. An attendance list of each individual who completed the training shall be sent to Omar Weaver, Trial Attorney, at the previously provided address, within fifteen (14) days of the completion of the training. All such training sessions must take place within one (1) year of the signing of this Decree. In addition, consistent with its policy, A & R Truss shall provide new employees with its employee handbook which contains its anti-harassment policy within ten (10) days of his/her first day of work.

ENTIRE AGREEMENT

17. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to the Consent Agreement must be mutually agreed upon in writing and signed by the Parties hereto.

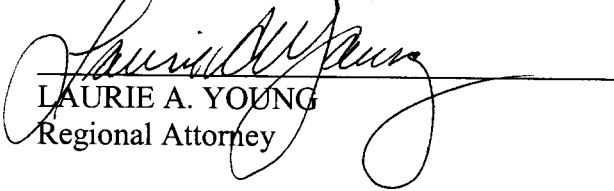
DURATION

18. This Decree shall remain in effect for one year from its entry with the Court and shall end of its own accord.

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION**

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel


LAURIE A. YOUNG
Regional Attorney

ADELE RAPPORT (P44833)
Associate Regional Attorney

ROBERT DAWKINS (P38289)
Supervisory Trial Attorney

OMAR WEAVER (P58861)
Trial Attorney

DETROIT FIELD OFFICE
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 865
Detroit, MI 48226

Dated: 2/22/06


IT IS SO ORDERED:

March 2, 2006

Date

A & R TRUSS CORPORATION

**BY: MILLER CANFIELD, PADDOCK &
STONE P.L.C.**



CHARLES S. MISHKIND (P32346)
BRUCE D. OLSON (P44573)
Attorneys for Defendant
Miller Canfield Paddock and Stone, P.L.C.
99 Monroe Avenue, N.W., Suite 1200
Grand Rapids, MI 49503

Dated: February 17, 2006

/s/ Joseph G. Scoville

Hon. Joseph Scoville
United States Magistrate Judge