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6-17-2005

## Equal Employment Opportunity Commission, Plaintiff, v. Butterworth Industries, Inc., Defendant.

Judge William C. Lee

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**Equal Employment Opportunity Commission, Plaintiff, v. Butterworth Industries, Inc., Defendant.**

**Keywords**

Equal Employment Opportunity Commission, Butterworth Industries Inc., 1:04-CV-300WCL, Consent decree / Settlement, Disparate Treatment, Failure to Accommodate, Termination, Other physical impairment disability, Manufacturing, Employment Law, ADA

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 1: 04-CV-300WCL
	)	
BUTTERWORTH INDUSTRIES, INC.,	)	
	)	
Defendant.	)	
_____	)	

CONSENT DECREE

Cause No. 1: 04-CV-300WCL was instituted by the Equal Employment Opportunity Commission ("Commission") pursuant to Section 107 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq. ("ADA").

The Commission and Butterworth Industries, Inc. ("Butterworth"), hereby stipulate to the jurisdiction of the Court over the parties and the subject matter of this action.

The Commission and Butterworth have advised this Court that they desire to resolve Cause No. 1: 04-CV-300WCL without the burden and expense of further litigation.

It is, therefore, the finding of this Court, based on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of the ADA will be promoted and effectuated by the entry of this Decree; and (3) this Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 14 below.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. This Consent Decree, being entered by the agreement of both parties for the purpose of settling this dispute wherein the Commission claims that Defendant violated the ADA and Defendant denies any and all liability, shall not be construed as an admission by Defendant of any violation of the ADA or any other law, rule or regulation.

2. Butterworth agrees that it will not discriminate against employees on the basis of disability.

3. Butterworth agrees that there will be no discrimination or retaliation of any kind against any person because of opposition to any practice made unlawful under the ADA, or because of the filing of a charge, the giving of testimony, assistance, or participation in any manner in an investigation, proceeding or hearing under the ADA.

4. Butterworth agrees to pay Gail Bricker or her heirs and assigns in the event of her death, \$5,500.00, less applicable taxes and deductions required by law, as damages, in settlement of her claim. Of this amount, \$1,200.00 shall be treated for tax purposes as back pay damages. The remaining amount of \$4,300.00 shall be treated as compensatory and punitive damages. Butterworth agrees not to deduct from the settlement amount of \$4,300.00 the amount of the employer's share of any costs, taxes or social security required by law to be paid by Butterworth. Butterworth further agrees to issue a form 1099 for the amount of damages that has been deemed compensatory and punitive damages. All payments shall be made by check and made payable to Gail Bricker and sent to her by certified mail at 801 East Hunter's Run Drive, Marion, IN 46953. Within fifteen days from the entry of this Consent Decree by the Court, the Commission will forward a release (see Appendix A) to Gail Bricker for her execution. The Commission will

notify counsel for Butterworth on receipt of the release executed by Bricker. Then, within fifteen (15) days, Butterworth shall mail the check, by certified mail, to Bricker. Butterworth shall mail a copy of Bricker's check and proof of its delivery to Bricker (a signed certified mail receipt) to the Commission. Upon receipt of proof of delivery of a check to Gail Bricker, the Commission shall forward the release to counsel for Butterworth.

5. Butterworth agrees to post the Notice of Non-Discrimination Policy attached as Appendix B to this Decree in a conspicuous place on its premises. Said notice shall remain posted throughout the term of this Decree.

6. Butterworth agrees to eliminate from the record of Gail Bricker all reference to her charge of discrimination and participation in this suit and shall make no reference to such charge or participation in the event Butterworth is contacted for references. This provision survives the expiration of the Consent Decree.

7. Within thirty days from the date of entry of this Consent Decree, Defendant Butterworth shall adopt a written policy prohibiting discrimination against applicants and employees on the basis of disability. A copy of said policy shall be provided to the EEOC for review and comment prior to its adoption.

8. Butterworth agrees that its managers and supervisors: Susan Butterworth, Margy Moore, Julie Hawkins, and Vicki Foy, shall attend a training seminar regarding disability discrimination. Said managers and supervisors must attend a seminar within six (6) months from the date of entry of this Decree. Thirty (30) days prior to the date of the seminar, the Defendant shall provide notice to the Commission regarding the date, time and place of the seminar, and shall send to the Commission a copy of the agenda, subject matter to be covered and an outline of

the written materials to be used. The Commission may at its option send its own representative to attend the training to observe or to speak at the training. Butterworth agrees that upon completion of the training program, Susan Butterworth shall train Frank Butterworth, III on the topic of disability discrimination. Upon completion of the training program, Butterworth shall certify to the Commission the specific training given and shall provide the Commission with a roster of all employees in attendance.

9. Within thirty days from the entry of this Consent Decree, Butterworth agrees to review all of its employees' files to ensure that all medical records are retained separately. Butterworth agrees to certify to the Commission that all employee files have been reviewed and that employee medical records are being maintained separately.

10. Butterworth agrees to submit reports to EEOC detailing its compliance with this decree. Butterworth agrees to submit five (5) annual reports during the term of this decree. The first report shall be due on December 31, 2005 and the subsequent reports shall be mailed to the Commission no later than December 31st of each year covered by the decree. The report shall include the following information for the twelve (12) month period preceding the report: the identities of all employees who, during the reporting period, request an accommodation of a disability, including by way of identification each person's name, address, telephone number, nature of the request made and disposition of the request. The report shall also include, for each employee who has a disability and is discharged: the name, address, and telephone number of the discharged employee, the specific reasons why he/she was discharged, and the name and address of the individual responsible for making the decision to discharge said employee. All reports shall be directed to Laurie Young (or her successor), Regional Attorney, Equal Employment

Opportunity Commission, 101 West Ohio St., Suite 1900, Indianapolis, Indiana 46204.

11. Butterworth agrees that the EEOC may review compliance with this Decree. As part of such review, the EEOC may inspect the premises, interview employees, and examine and copy documents, during normal operating hours and upon reasonable advance notice.

12. In the event that the EEOC alleges that a violation of this Decree has occurred, prior to exercising any remedy provided by law, EEOC will give notice in writing thereof, specifically identifying the alleged violation to Butterworth. Butterworth will have thirty (30) days in which to investigate and respond to the allegation. Thereafter, the parties will have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to negotiate and confer regarding such allegation, before Plaintiff exercises any remedy provided by law.

13. Each party shall be responsible for their own costs associated with this action.

14. The term of this Decree shall be for five (5) years following the date of the entry of this decree. The Court shall maintain jurisdiction over the parties and the subject matter throughout the term of this Decree.

6-17-05  
Date

S/William C. Lee  
Judge, United States District Court

Copies to:

Jo Ann Farnsworth, Senior Trial Attorney  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
101 W. Ohio Street, Suite 1900  
Indianapolis, IN 46204

Shane Beal  
514 South Adams Street  
Marion, IN 46953

Jerry T. Drook  
514 South Adams Street  
Marion, IN 46953



APPENDIX A

RELEASE

In consideration of the payment to me by Butterworth Industries, Inc. of \$5,500.00, less applicable taxes and deductions, and in consideration of my agreement to withdraw my charge of discrimination no. 240-2005-05008, and in consideration of the Consent Decree agreed to by the Equal Employment Opportunity Commission and Butterworth in Civil Action 1:04-CV-300WCL, entered by the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, and in consideration of which this Release is a part, I, Gail Bricker, hereby fully and forever release and discharge Butterworth Industries, Inc., its successors and assigns, including its present and former directors, officers, employees and agents, from any claim or obligation based on alleged disability discrimination in violation of the ADA, which was or could have been raised in Civil Action No. 1:04-CV-300WCL and my charge of discrimination no. 240-2005-05008.

I agree that I will be solely and individually responsible for paying any and all taxes (including FICA or otherwise) which may be due and owing, if any, as a result of Defendant's payment of the sum set forth above. I acknowledge that I have not relied on any representations made by Defendant or the EEOC relating in any way to the tax treatment of the payments pursuant to this agreement.

I have read this Release and I execute it voluntarily, without coercion or threat of reprisal.

IN WITNESS WHEREOF, this Release is signed and executed by me on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
County of                    )  
                                      )SS  
State of                        )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

County of Residence \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

APPENDIX B

# **EMPLOYEE NOTICE**

**Posted Pursuant to an Agreement with the  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Indianapolis District Office**

NOTICE OF NON-DISCRIMINATION POLICY

Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.

Federal law also prohibits employers from discriminating against qualified individuals with disabilities in aspects of employment, including, but not limited to, hiring, promotion, discharge, pay, job training and fringe benefits. Federal law also prohibits employers from discriminating against employees and job applicants whom it regards as being disabled. The law also requires that employers and other covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

Butterworth Industries, Inc. supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U. S. Equal Employment Opportunity Commission.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

**Questions concerning this notice may be addressed to:**

**Equal Employment Opportunity Commission  
101 W. Ohio St., Suite 1900  
Indianapolis, Indiana 46204-4203  
Telephone: (317) 226-7212  
EEOC 800 # 1-800-669-4000  
TDD (317) 226-4162**