

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:11-cv-430

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CONSENT DECREE
)	
UNITED INSURANCE COMPANY OF)	
AMERICA,)	
)	
Defendant.)	
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The Equal Employment Opportunity Commission (the “Commission”) instituted this action pursuant to Section 107(a) of the Americans with Disabilities Act, as amended (the “ADA”), 42 U.S.C. § 12117(a) which incorporates by reference Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission’s complaint alleged that Defendant, United Insurance Company of America (the “Defendant”) failed to hire Craig Burns as an Insurance Agent/Representative because of his disability, in violation of the ADA. Defendant denies the Commission’s allegations and further denies that it violated the ADA. Likewise, the Commission does not disavow the allegations contained in its Complaint. The Commission’s entry into this Consent Decree does not in any way imply or suggest that Defendant was in compliance with the law with respect to its dealings with Craig Burns as alleged in this action.

The Commission and the Defendant hereby stipulate to jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

The parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made 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 the Consent Decree; and (3) this Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 15 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant shall not engage in any employment practice that discriminates on the basis of an individual's disability within the meaning of the ADA. Further, Defendant shall not refuse to hire, discharge, or otherwise exclude or disqualify any applicant or employee with a disability from employment with Defendant based on any perceived safety risk related to the individual's disability without first (a) performing an assessment of whether the applicant or employee poses a direct threat using an assessment process and decisional criteria that comply with the ADA and (b) considering whether there are any reasonable accommodations available that could eliminate or significantly reduce any perceived safety risk to an acceptable level.

2. Defendant shall not discriminate or retaliate against any person because of his or her opposition to any practice made unlawful under the ADA or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. Defendant shall pay Craig Burns the sum of Thirty Seven Thousand Five Hundred and no 100s Dollars (\$37,500.00) in settlement of the claims raised in this action. Defendant

shall make payment by issuing a check payable to Craig Burns. Payment shall be made within fifteen (15) days after the Court approves this Consent Decree, and Defendant shall mail the check to Craig Burns at an address provided by the Commission. Within ten (10) days after the check has been sent, Defendant shall mail to Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C., 28202, a copy of the check and proof of its delivery to Craig Burns.

4. Within ten (10) days of the entry of this Decree by the Court, Defendant shall remove from the personnel file of Craig Burns any and all documents, entries, or references of any kind relating to the facts and circumstances which led to the filing of EEOC Charge Number 433-2010-00762 and the related events that occurred thereafter. Within fifteen (15) days of the entry of this Decree by the Court, Defendant shall report compliance with this provision to the EEOC.

5. Defendant shall maintain an anti-discrimination policy that includes the prohibition against discrimination based on disability. Defendant shall maintain procedures for reporting discrimination and a procedure for the thorough and immediate investigation of employee complaints of discrimination. During the term of this Decree, Defendant shall distribute the policy to all new employees and review it with them at the time of hire.

6. During the term of this Decree, Defendant shall post a copy of the policy described in paragraph 5, *supra*, in its central office in St. Louis, Missouri in a place where it is visible to all of its personnel whose job duties include those listed in paragraph 7 below. If the policy becomes defaced or unreadable, Defendant shall replace it by posting another copy of the policy. Within ninety-five (95) days after the Consent Decree is entered, Defendant will post the

policy and notify the EEOC that it has been posted.

7. During the term of this Decree, Defendant shall provide a training program to all of its personnel in its central office in St. Louis, Missouri whose job duties include: making hiring and discharge decisions; assessing whether an employee or applicant constitutes a direct threat as defined by the ADA; acting on requests for reasonable accommodations; receiving and investigating complaints of discrimination; and/or making decisions regarding preventative and corrective actions as a result of discrimination investigations. The training program shall include an explanation of the requirements of the ADA and its prohibition against retaliation in the workplace. The training program shall also include an explanation of Defendant's policy referenced in paragraph 5 above, and an explanation of the rights and responsibilities of employees and managers under the policy. In addition, the training shall include the following:

- (a) An explanation of the employer's obligation to conduct an individualized assessment in determining whether an employee or applicant is disabled under the ADA;
- (b) A list of appropriate methods for determining whether an employee or applicant poses a direct threat as defined by the ADA; and
- (c) An explanation of the obligation to engage in the interactive process under the ADA when an employee or applicant requests a reasonable accommodation.

The training program shall be completed within one hundred (100) days after entry of the Decree by the Court. At least twenty (20) days prior to the training program, Defendant shall provide the Commission with an agenda for the training program. At least ten (10) days prior to the training program, the Commission shall either: (a) notify Defendant that it approves the

agenda for the training program or (b) notify Defendant of any changes or additions that the Commission would like Defendant to make to the agenda for the training program. Within ten (10) days after completion of the training program, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all employees in attendance.

8. Beginning within thirty (30) days after the entry of this Decree by the Court, and continuing throughout the term of this Decree, Defendant shall conspicuously post the attached Employee Notice, marked Exhibit A, hereby made a part of this Decree, in its central office in St. Louis, Missouri at a place where it is visible to all of its personnel whose job duties include those listed in paragraph 7 above. If the Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice. Within forty-five (45) days after entry of this Decree, Defendant shall notify the Commission that the Notice has been posted pursuant to this provision.

9. During the term of this Consent Decree, Defendant shall provide the Commission with reports at six (6) month intervals, with the first being due four (4) months after approval by the Court of this Decree. The reports will include the following information:

- A. The identity of each applicant for a position with Defendant who, to Defendant's knowledge, has a physical or mental impairment, at the time of application, including by way of identification each person's full name, social security number, last known address and telephone number, position sought, and date of application;

- B. For each person identified in 9.A above to whom no offer of employment was made, the date of the decision not to make an offer of employment, the full name and job title of each Defendant employee who took part in the decision, and the reason no offer of employment was made.

In the event there is no activity to report pursuant to this paragraph, Defendant shall send the Commission a “negative” report indicating no activity.

10. The Commission may review compliance with this Decree. As part of such review, the Commission may inspect Defendant’s facilities, interview employees, and examine and copy documents after giving reasonable advance, written notice to Defendant. The Commission will give Defendant five (5) days notice of its intent to interview employees and examine and copy documents. However, no notice will be given where the Commission inspects Defendant’s facilities to review compliance with the provisions of paragraphs 6 and 8.

11. If anytime during the term of this Decree, the Commission believes that Defendant is in violation of the Decree, the Commission shall give notice of the alleged violation to Defendant. Defendant shall have thirty (30) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of fifteen (15) days or such additional period as may be agreed upon by them, in which to engage in negotiation regarding such allegations before the Commission exercises any remedy provided by law.

12. The term of this Decree shall be for two (2) years from its entry by the Court.

13. All reports or other documents sent to the Commission by Defendant pursuant to this Consent Decree shall be sent to: (1) if by mail – Lynette A. Barnes, Regional Attorney, Equal Employment Opportunity Commission, 129 W. Trade Street, Suite 400, Charlotte N.C.,

28202; or (2) if by email – EEOC-CTDO-decree-monitoring@eoc.gov.

14. Each party shall bear its own costs and attorney's fees.

15. This Court shall retain jurisdiction of this cause for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

1/24/12
Date

James E. Fox
Judge, U.S. District Court
Eastern District of North Carolina

The parties jointly request that the Court approve and enter the Consent Decree:

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff**

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