

## United States District Court, Northern District of Illinois

|  |   |  |           |
|--|---|--|-----------|
| Name of Assigned Judge or Magistrate Judge | William T. Hart   | Sitting Judge if Other than Assigned Judge |           |
| CASE NUMBER                                | 03 C 6365   | DATE                                       | 12/1/2004 |
| CASE TITLE                                 | Equal Employment Opportunity Commission vs. The American Bottling Company |  |           |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

**DOCKET ENTRY:**

(1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)  Local Rule 41.1  FRCP41(a)(1)  FRCP41(a)(2).

(10)  [Other docket entry] The parties have agreed that this action be resolved by entry of a consent decree; each party to the consent decree shall bear its own expenses, costs and attorneys' fees. Court retains jurisdiction to enforce the consent decree for a period of two years. Enter Consent Decree. Enter Consent Decree Addendum.

(11)  [For further detail see order attached to the original minute order.]

|   |  |  |   |
|---|--|--|---|
| <input type="checkbox"/> No notices required, advised in open court.<br><input type="checkbox"/> No notices required.<br><input checked="" type="checkbox"/> Notices mailed by judge's staff.<br><input type="checkbox"/> Notified counsel by telephone.<br><input type="checkbox"/> Docketing to mail notices.<br><input type="checkbox"/> Mail AO 450 form.<br><input type="checkbox"/> Copy to judge/magistrate judge. | <div style="text-align: center;"> <p>U.S. DISTRICT COURT<br/>NORTHERN DISTRICT OF ILLINOIS<br/>CHICAGO, ILLINOIS</p> <p>2004 DEC 1 - 11 58 AM</p> </div> | <p>number of notices</p> <p><b>DEC 02 2004</b></p> <p>date docketed</p> <p><i>JMS</i></p> <p>docketing deputy initials</p> <p>12/1/2004</p> <p>date mailed notice</p> <p>CW</p> <p>mailing deputy initials</p> | <p style="text-align: center;"><b>Document Number</b></p> <div style="font-size: 2em; text-align: center;">29</div> |
| <div style="border: 1px solid black; padding: 5px; display: inline-block;">                 CW             </div> <p style="margin-left: 20px;">courtroom deputy's initials</p>   | <p style="text-align: center;">Date/time received in central Clerk's Office</p>  |  |   |

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,** )  
 )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **THE AMERICAN BOTTLING COMPANY,** )  
 )  
 )  
 **Defendant.** )

**CIVIL ACTION NO. 03 C 6365**

**JUDGE HART  
MAGISTRATE JUDGE  
BOBRICK**

**DOCKETED  
DEC 2 2004**

**CONSENT DECREE**

**THE LITIGATION**

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action alleging that since at least 1999, Defendant, The American Bottling Company ("Defendant" or "the Company"), violated Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-2(a), by discriminating against Charging Party John Steele and a class of African-American employees because of their race. Specifically, the EEOC alleged that Defendant, at its Northlake, Illinois production facility, violated Title VII by maintaining a racially hostile and offensive work environment and by discriminating against John Steele. The Company denies these allegations.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC in Civil Action No. 03 C 6365. Nothing in this Decree should be construed as an admission by any party

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regarding either liability or non-liability.

**FINDINGS**

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties, the EEOC claimants, and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the EEOC claimants, and the public.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

**NON-DISCRIMINATION**

4. The Company, its officers, agents (including management personnel), successors, and assigns are enjoined from discriminating in the future on the basis of race. Nothing in this decree shall be construed as placing any obligation on any individual except in their capacity as an officer or agent of the Company. Also, nothing in this Decree shall be construed to mean that Title VII or this Decree imposes individual liability on officers, agents, or management personnel of the Company.

5. The Company shall ensure that an inspection for racial graffiti is made on a

weekly basis at its Northlake, Illinois production facility. Any racial graffiti or other racially derogatory images discovered or brought to the attention of the Company supervisors or other managers personally or in writing by any of its employees shall be removed or obliterated within twenty-four hours. Swastikas, references to the Ku Klux Klan, the Klan, KKK (collectively "KKK"), are racial graffiti to be dealt with by Defendant in accordance with this paragraph and Paragraph 10 below. Any racial graffiti or other racially derogatory images discovered or brought to the attention of a supervisor shall be immediately reported by the supervisor to his/her immediate supervisor or to the Human Resources Manager.

#### **NON-RETALIATION**

6. The Company, its officers, agents, employees, successors, assigns and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree. Nothing in this Decree shall be construed as placing any obligation on any individual except in their capacity as an officer or agent of the Company. Also, nothing in this Decree shall be construed to mean that Title VII or this Decree imposes individual liability on officers, agents, or any employees of the Company.

#### **MONETARY RELIEF**

7. The Company shall pay the gross sum of eighty thousand dollars (\$80,000) to be distributed as follows:
- a. The Company shall pay a total of \$30,000 to the Charging Party in this case, John

Steele, inclusive of attorneys fees and costs. This amount shall be distributed in a manner and on terms separately agreed to by Defendant and by Owens & Robinson on behalf of John Steele;

b. The Company shall pay a total of \$10,000 each to the remaining claimants for whom EEOC seeks relief: Willie Rich, Jr., Donald Wilson, Ronald Hadley, James Lewis, and Fred Van.

c. None of the money shall be considered compensation for lost wages, so no withholdings shall be made from the monetary amount. The Company will issue IRS Form 1099's with respect to the money paid. The division of the total amount among the claimants has been at the sole discretion of the EEOC. The Company had no part in determining how the monetary relief was divided among the claimants.

8. Payment shall be made in the following manner:

a. Within five (5) business days after receipt by the Company of a Release Agreement in the format of Exhibit A from a claimant, the Company shall issue and mail by certified mail to each EEOC claimant, a certified or cashier's check payable to the order of such claimant at the addresses indicated in Exhibits A and B, in settlement for damages claimed in this case by the EEOC, with a copy to the EEOC. In the event that a check is deemed undeliverable, the Company shall advise the EEOC. The EEOC shall then have an additional sixty (60) days to provide an alternative address for the mailing of such check. If a check remains undeliverable, then the Company shall issue a check in the same amount to the United Negro College Fund. Upon issuance of any such check to the United Negro College Fund, the Company shall be released from all obligations under this Decree to make any payment to such claimant, as if such claimant had signed the Release Agreement (Exhibit A), and the right of such claimant to receive

any monetary or other relief under this Decree shall be extinguished and forever barred. No portion of the monetary relief provided for by this Decree shall revert to the Company.

b. Within five (5) business days after receipt of the agreed upon Release Agreement from John Steele, the Company shall issue and mail a certified or cashier's check(s) to the law firm of Owens & Robinson in the amount directed by the law firm but the total amount provided to John Steele and his attorneys shall not exceed the amount listed in Paragraph 7a.

#### **POSTING OF NOTICE**

9. Within ten (10) business days after entry of this Decree, the Company shall post same-sized copies of the Notice attached as Exhibit C to this Decree on the bulletin board by the timeclock in the production warehouse at its Northlake, Illinois production facility. The Notice shall remain posted for two (2) years from the date of entry of this Decree. The Company shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. The Company shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. The Company shall permit a representative of the EEOC to enter the Company's premises at the Northlake, Illinois production facility for the sole purpose of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

#### **RECORD KEEPING**

10. For a period of two (2) years following entry of this Decree, the Company shall maintain and make available for inspection and copying by the EEOC records of each complaint of graffiti or of any racial incident occurring in its Northlake, Illinois production facility. Such report shall indicate the date the complaint was made, who made it, what was alleged, and what

actions the Defendant took to resolve the matter. The Defendant shall also make records of all actions it takes to prevent racial incidents or graffiti in its Northlake, Illinois production facility during the duration of this Decree.

11. The Company shall make all documents or records referred to in Paragraph 10, above, available for inspection and copying within ten (10) business days after the EEOC so requests. In addition, the Company shall make available for interview all persons within its employ at the Northlake, Illinois production facility whom the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the EEOC to enter the Company's premises at its Northlake, Illinois production facility for such purposes on five (5) business days advance notice by the EEOC.

12. Nothing contained in this Decree shall be construed to limit any obligation the Company may otherwise have to maintain records under Title VII or any other law or regulation.

### **REPORTING**

13. The Company shall furnish to the EEOC the following written reports semi-annually for a period of two (2) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due twenty-four (24) months after entry of the Decree. Each such report shall contain:

a. A summary of the information recorded by the Company pursuant to Paragraph 5, including the location, date, and time of the reappearance of any racially offensive graffiti at the Northlake, Illinois production facility, and the actions taken by the Company, including any discipline given;

b. A summary of the information recorded by the Company pursuant to

Paragraph 10, including the name of the complainant, the allegation of the complaint and the action taken by Defendant in response; and,

c. A certification by the Company that the Notice required to be posted in Paragraph 9, above, remained posted during the entire six (6) month period preceding the report.

**ADOPTION AND DISTRIBUTION OF POLICY  
AGAINST RACIAL HARASSMENT**

14. Within fourteen (14) working days after the entry of this Decree, the Company shall adopt and distribute to all employees at the Northlake, Illinois production facility a policy against racial harassment ("the Policy"). The Company shall also provide a copy of the Policy to the EEOC. The Policy shall specifically prohibit racial insults and graffiti (including racially derogatory terms, swastikas, and references to the KKK). It shall provide that complaints of racial harassment may be made to any person in the chain of command above an employee or directly to the Plant Manager or to the Director of Human Resources. It shall not require employees to complain of harassment to a person against whom they allege harassment. It shall provide that employees who violate the policy are subject to discipline up to and including discharge. The Company shall forward the Policy to the EEOC within three (3) business days after distribution.

15. A copy of the Policy shall be distributed to each new temporary employee on the day the person is hired as a temporary employee either directly by the Company or through a temporary agency. In addition if an employee is first hired as a permanent employee at the Northlake, Illinois production facility a copy of the Policy shall be given to him/her on the date of hire. Copies of the Policy shall also be posted on the bulletin boards customarily used for



posting notices from management to employees.

### TRAINING

16. Defendant shall provide training on the requirements of Title VII on the following terms:

a. William M. Nelson, Senior Vice President, General Counsel will provide training with respect to racial harassment and with respect to the Policy implemented pursuant to Paragraph 14 above to the managers at the Northlake, Illinois production facility. The managers at the Northlake, Illinois production facility will provide training to the other employees at the Northlake, Illinois production facility.

b. The training will be provided to all the Company employees, including temporary employees employed at the time of the training at the Northlake, Illinois production facility. A registry of attendance shall be retained by the Company for the duration of the Consent Decree.

c. The Company shall first provide training in accordance with Paragraph 16(a) within ninety (90) calendar days of the entry of this Consent Decree. The Company shall then also provide such training on at least one occasion in calendar year 2005 and on at least one occasion in the year 2006 by October 31, 2006.

17. The Company agrees to provide the EEOC with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

18. The Company shall certify to the EEOC in writing with five (5) business days after the trainings have occurred that the training has taken place and that the required personnel have attended. Such certification shall include: (i) the dates, location and duration of the

trainings; (ii) a copy of the registry of attendance, which shall include the name and position of each person in attendance; and (iii) a listing of all current employees, including temporary employees, as of the date of the training at the Northlake, Illinois production facility.

#### **DISPUTE RESOLUTION**

19. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within ninety (90) days of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

#### **DURATION OF THE DECREE AND RETENTION OF JURISDICTION**

20. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 19, above, remain unresolved, the terms of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

#### **MISCELLANEOUS PROVISIONS**

21. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.
22. The terms of this Decree are and shall be binding upon the present and future

representatives, agents, directors, officers, assigns, and successors of the Company in their capacities as representatives, agents, directors and officers of the Company, and not in their individual capacities. Nothing in this Decree shall be construed to mean that Title VII or this Decree imposes individual liability on present or future officers, agents, directors, or representatives of the Company.

23. When this Decree requires the submission by the Company of reports, certifications, notices, or other materials to the EEOC, they shall be mailed to: The American Bottling Company Settlement, c/o Jeanne Szromba, Trial Attorney, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to The American Bottling Company, they shall be mailed to: Elizabeth A. McDuffie, Esq., Gonzalez, Saggio & Harlan, L.L.P., 208 South LaSalle Street, Suite 1460, Chicago, IL 60604.

For the EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
1801 L Street, N.W.  
Washington, D.C. 20507

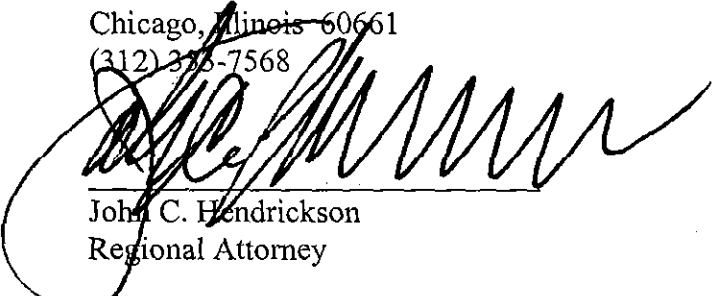
Eric Dreiband  
General Counsel


James Lee  
Deputy General Counsel

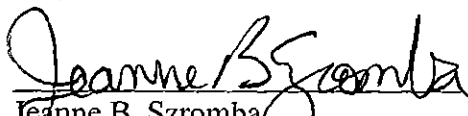
Gwendolyn Young Reams  
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

500 West Madison Street  
Suite 2800  
Chicago, Illinois 60661  
(312) 375-7568


  
John C. Hendrickson  
Regional Attorney

  
Diane I. Smason  
Supervisory Trial Attorney

  
Jeanne B. Szromba  
Trial Attorney

DATE: 12/1/04

For The American Bottling Company:

  
William M. Nelson  
Senior Vice President and General Counsel  
5950 Sherry Lane  
Suite 500  
Dallas, TX 75225

  
ENTER:

The Honorable William T. Hart  
United States District Judge

**EXHIBIT A**

**RELEASE AGREEMENT**

I, XXXXXXXXXX, for and in consideration of the sum of \$XXX000.00, payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. The American Bottling Co., No. 03 C 6365 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge The American Bottling Company ("the Company"), and all past and present shareholders, officers, agents, employees, and representatives of the Company, as well as all successors and assigns of the Company, from any and all claims and causes of action of any kind which I now have or ever have had under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. The American Bottling Company, No. 03 C 6365 (N.D.Ill.).

\_\_\_\_\_  
Date

\_\_\_\_\_  
XXXXXXXXXX

**EXHIBIT B**

\_\_\_\_\_, 2004

XXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXX,XXXXXX

Re: EEOC v. The American Bottling Co.,  
No. 03 C 6365 (N.D. Ill.)

Dear Mr. XXXXXXXXXXX:

A Consent Decree resolving the above-referenced lawsuit was signed by the parties and entered by the Court on \_\_\_\_\_, 2004. Pursuant to the terms of the Consent Decree, enclosed you will find a copy of a Release to be signed by you.

In order to obtain any monetary relief under the Consent Decree in this case, you must sign the Release and return it to me. Please mail the signed Release to me as soon as possible at the following address:

Jeanne B. Szromba  
Equal Employment Opportunity Commission  
500 West Madison Street  
Suite 2800  
Chicago, Illinois 60661

I have enclosed a pre-addressed envelope for your convenience. You may, of course, wish to make and keep a copy of the signed Release for your own records.

If you have any questions about the Release or cannot sign and return the enclosed documents within seven days, please contact me at (312) 353-7546.

Sincerely,

Jeanne B. Szromba  
Trial Attorney

Encls.

**EXHIBIT C**  
**NOTICE TO ALL AMERICAN BOTTLING COMPANY EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. The American Bottling Co., No. 03 C 6365 (N.D. Ill.), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against The American Bottling Company, ("the Company"). In its suit, the EEOC alleged in part that the Company fostered or tolerated a racially hostile working environment at its Northlake, Illinois production facility in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). The Company denies these allegations.

To resolve the case, the Company and the EEOC have entered in to a Consent Decree which provided, among other things, that:

- 1) the Company paid monetary relief to certain current and former employees;
- 2) the Company will not discriminate on the basis of race and will remove any racial graffiti if it should appear;
- 3) the Company will not retaliate against any person because he/she opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree;
- 4) the Company will adopt and distribute to all employees at its Northlake, Illinois production facility a policy against racial harassment and will train all its employees at its Northlake, Illinois production facility regarding racial harassment and its policy.

The EEOC enforces the federal laws against discrimination in employment on the basis of race, color, religion, national origin, sex, age or disability. If you believe you have been discriminated against, you may contact the EEOC at (312) 353-8195. The EEOC charges no fees and has employees who speak languages other than English. If you believe you have been discriminated against you may contact the EEOC.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

**This Notice must remain posted for two years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: the Company Settlement, EEOC 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable William T. Hart  
District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

THE AMERICAN BOTTLING COMPANY, )

Defendant. )

CIVIL ACTION NO. 03 C 6365

JUDGE HART  
MAGISTRATE JUDGE  
BOBRICK

CONSENT DECREE ADDENDUM

MISCELLANEOUS PROVISIONS

24. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.



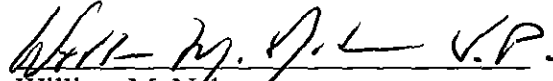
For the EQUAL EMPLOYMENT  
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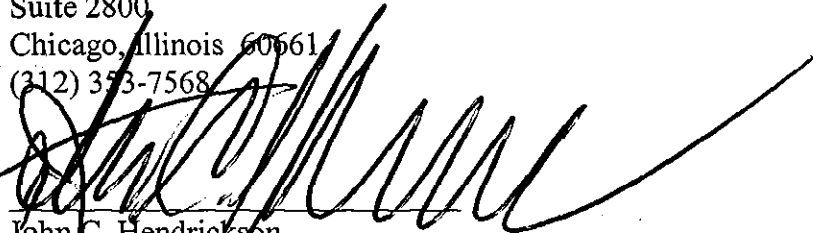
Gwendolyn Young Reams  
Associate General Counsel


For The American Bottling Company:

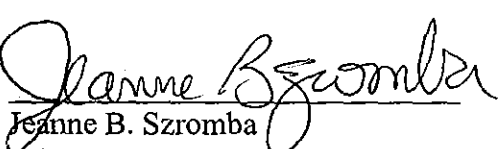
  
William M. Nelson  
Senior Vice President and General Counsel  
5950 Sherry Lane  
Suite 500  
Dallas, TX 75225

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

500 West Madison Street  
Suite 2800  
Chicago, Illinois 60661  
(312) 353-7568

  
John C. Hendrickson  
Regional Attorney

  
Diane I. Smason  
Supervisory Trial Attorney

  
Jeanne B. Szromba  
Trial Attorney

  
WITNESSED BY:

The Honorable William T. Hart  
United States District Judge

DATE: 12/1/04