

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	CIVIL ACTION NO.
Plaintiff,	)	3:04-CV-612-RM
	)	
v.	)	<u>AMENDED</u>
	)	<u>COMPLAINT</u>
DAMPING TECHNOLOGIES, INC.,	)	
	)	<u>JURY TRIAL DEMAND</u>
Defendant.	)	
_____	)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and Titles I and V of the Americans with Disabilities Act of 1990 to correct an unlawful employment practice on the basis of retaliation and to provide appropriate relief to Mary Steely. The Commission alleges that Defendant terminated Mary Steely in retaliation for filing a charge of discrimination, in violation of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 e-5(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; Section 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 626(b) (the “ADEA”),

which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217; and Section 107(a) of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

2. The employment practice alleged to be unlawful was committed within the jurisdiction of the United States Court for the Northern District of Indiana, South Bend Division.

### PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII, the ADEA, and Title I of the ADA, and is expressly authorized to bring this action by Section 706 (f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5 (f) (1) and (3); Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705; and by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Section 706(f)(1) and (3), 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, Damping Technologies, Inc., (the “Employer”), has continuously been an Ohio corporation, doing business in the State of Indiana and the City of Mishawaka, and has continuously had at least 20 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h); Sections 11(b), (g), and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g), and (h); and Section 101(5) of the ADA, 42 U.S.C. § 12111(5), and

Section 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(g) and (h).

6. At all relevant times, Defendant Employer has been a covered entity under Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

#### CONCILIATION

7. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practice alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

#### STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Mary Steely filed a charge with the Commission alleging violations of Title VII and Titles I and V of the ADA by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. On or about July 21, 2003, Defendant Employer engaged in an unlawful employment practice at its Mishawaka, Indiana, facility, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a); Section 4 of the ADEA, 29 U.S.C. § 623(d); and Section 503 of Title V of the ADA, 42 U.S.C. § 12203. Defendant Employer discharged Mary Steely in retaliation for filing a charge of discrimination.

10. The effect of the practice complained of in paragraph 9 above has been to deprive Mary Steely of equal employment opportunities and otherwise adversely affect her status as an employee, because of retaliation.

11. The unlawful employment practice complained of in paragraph 9 above was intentional.

12. The unlawful employment practice complained of in paragraph 9 above was done with malice or with reckless indifference to the federally protected rights of Mary Steely.

13. The unlawful employment practice complained of in paragraph 9 above was willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

#### PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from discharging employees because they have filed charges of discrimination and any other employment practice which discriminates on the basis of retaliation.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for employees who have filed charges of discrimination, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employers to make whole Mary Steely by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place reinstatement or in the alternative an award of front pay to Mary Steely.

D. Grant a judgment requiring Defendant Employer to pay appropriate back wages in an amount to be determined at trial, and an equal sum as liquidated damages, or prejudgment

interest in lieu thereof to the individual whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to Mary Steely.

E. Order Defendant Employer to make whole Mary Steely by providing compensation for past and future pecuniary losses resulting from the unlawful employment practice described in paragraph 9 above, including but not limited to out of pocket expenses, plus prejudgment interest, in amounts to be determined at trial.

F. Order Defendant Employer to pay Mary Steely punitive damages for its malicious and reckless conduct described in paragraph 9 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

#### JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully Submitted,

ERIC S. DREIBAND  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

LAURIE A. YOUNG, #11480-49  
Regional Attorney

MICHELLE EISELE, #12070-49  
Supervisory Trial Attorney

/s/ Kenneth L. Bird  
KENNETH L. BIRD, #10780-02  
Senior Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Indianapolis District Office  
101 West Ohio Street, Suite 1900  
Indianapolis In 46204-4203  
Phone: (317) 226-7204  
Fax: (317) 226-5571  
Email: [Kenneth.Bird@eeoc.gov](mailto:Kenneth.Bird@eeoc.gov)