

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

Civil Action No.

-against-)

COMPLAINT AND JURY
TRIAL DEMAND

THE LUBRIZOL CORPORATION and)
NOVEON, INC.,)

06 CA 11734 RWZ

Defendants.)

MAGISTRATE JUDGE

M. Alexander

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race and retaliation by The Lubrizol Corporation and Noveon, Inc. (hereafter "Defendants"), and to make whole Truc La and Michael Richer (hereafter referred to as "La" and "Richer," respectively, and collectively as "Charging Parties"). As alleged in greater detail in paragraph 7 below, Defendants subjected Charging Parties to unlawful discrimination by (1) creating and failing to remedy a hostile work environment on the basis of La's race (Asian) and national origin (Chinese/Vietnamese) and retaliating against him when he complained; (2) constructively discharging La; and (3)

terminating Richer when he objected to the harassment of La and supported La's claim.

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. §2000e-5(f)(1) and (3).

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Massachusetts.

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, 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).

4. Noveon, Inc. is a Delaware corporation and a wholly-owned subsidiary of The Lubrizol Corporation. The Lubrizol Corporation is an Ohio corporation. At all relevant times, Defendants continuously operated a plant located in Wilmington,

Massachusetts where both Charging Parties were employed, and continuously employed at least 15 employees.

5. At all relevant times, Defendants have continuously been employers 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).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, the Charging Parties each filed a charge with the Commission alleging violations of Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least 2004, Defendants have engaged in unlawful employment practices in violation of Section 703 (a) of Title VII, 42 U.S.C. §2000e-(a) and (b). These practices included, but are not limited to, the following:

a) Employees of the Defendants harassed La on account of his race and national origin throughout the term of his employment. La was born in Vietnam of Chinese parents. While this harassment often took the form of verbal insults and racially charged comments, La's coworkers also sabotaged the equipment La used on the job and otherwise hindered his ability

to excel as a full time extruder operator. Examples of such harassment include, but are not limited to, the following:

- i) Defendants' employees routinely verbally harassed La, ridiculing his accent and calling him "shorty," "truck la la la," "kid," "boy," and "Little Chinese." One coworker also suggested that La go back to Vietnam, and he physically picked up La and threatened to dump him in a garbage can.
- ii) La's coworkers placed foreign objects such as washers, hairnets, and colored pellets into the chemical mixture used by the extruding machines, hid tools La needed, spit on his equipment, and unplugged his machines. When La complained to his supervisors, he was instructed to fix the machines and keep working or quit.
- iii) One lead extruder operator employed by the Defendants often singled out La for repeated harassment. Referring to La, he said that he was going to tell his uncle, a Vietnam vet, that "he fucked up and forgot to shoot one of them while he was over there." In a separate incident, when La was having technical difficulty with a computer, this employee commented,

"I thought all of them were computer literate." This operator was later promoted to supervisor.

- iv) Despite frequent complaints to supervisors and Human Resources personnel, nothing was done to redress the harassment La experienced on the job. Defendants did not conduct an investigation into his complaints until after he filed a charge of discrimination with the Commission.
- v) La's supervisors retaliated against his complaints of discrimination by assigning him menial tasks and by making him a "floater" rather than allowing him to work at a single machine.
- vi) Because of the harassment and lack of support he received after he complained, La was constructively discharged on or about June 16, 2005.

b) Defendants also unlawfully retaliated against Richer when they terminated him for opposing Defendants' harassment of La and supporting La's claim, as follows:

- i) From the time he was hired in December of 2003, Richer received positive evaluations of his job performance.
- ii) In November of 2005, Richer was contacted by one of Defendant's employees who had investigated La's

charge of discrimination. Richer confirmed to this employee that La had been a victim of sabotage and ridicule motivated by racial and ethnic prejudice, in particular by the employee whose uncle was a Vietnam vet. This employee was told that Richer had supported La's claim.

- iii) In January of 2006, that employee became Richer's direct supervisor and, in his first week, took away Richer's title of Line Leader. On February 1, 2006, Defendants terminated Richer's employment. When Richer asked for an explanation, his supervisors stated "poor performance" and refused to explain what they meant.
- iv) Although Defendants claimed that Richer was terminated because his performance was poor and he committed a time clock violation, these explanations were entirely false. In terminating Richer, Defendants ignored their progressive discipline policy by failing to issue him any warnings for his alleged performance issues. Defendant also disciplined him more severely for an alleged time clock violation than a similarly situated coworker.

8. The effect of the practices complained of has been to deprive the Charging Parties of equal employment opportunities, inflict emotional pain and suffering upon them, cause them to suffer financial losses, and otherwise adversely affect them.

9. Defendants' unlawful employment practices complained of above were intentional.

10. The unlawful employment practices complained of above were done with malice or with reckless indifference to the federally protected rights of the Charging Parties.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practices which discriminate on the basis of race or national origin or that retaliate against individuals for engaging in protected activity;

B. Order Defendants to institute and carry out policies, practices and programs which provide equal employment opportunities for employees, and which eradicate the effects of Defendants' past and present unlawful employment practices,

including training of all employees and counseling for those found to have harassed employees;

C. Order Defendants to make whole all those individuals affected by the unlawful employment practices described above, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendants' unlawful employment practices;

D. Order Defendants to make whole all those individuals adversely affected by the unlawful employment practices described above by providing compensation for non-pecuniary losses, including pain, suffering, and humiliation in amounts to be determined at trial;

E. Order Defendants to pay all those individuals adversely affected by the unlawful employment practices described above, by providing compensation for past and future pecuniary losses in amounts to be determined at trial.

F. Order Defendants to pay all those individuals adversely affected by the unlawful employment practices described above punitive damages for their malicious and/or reckless conduct in amounts to be determined at trial.

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

H. Award the Commission its costs in this action.

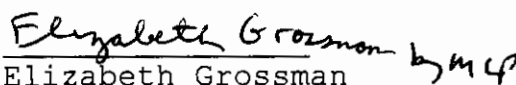
JURY TRIAL DEMAND


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

Dated: Boston, Massachusetts
September 27, 2006

Respectfully submitted,

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