

11

CLOSED

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

Honorable Gerald Rosen

v.

Case No. 03-73829

DAIMLER CHRYSLER CORPORATION,

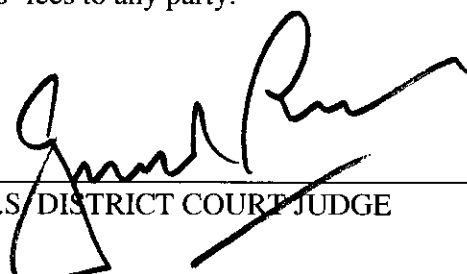
Defendant.

**STIPULATED ORDER OF DISMISSAL  
WITH PREJUDICE**

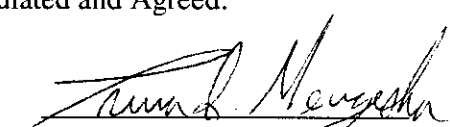
The parties having stipulated to the relief granted herein,

**IT IS HEREBY ORDERED** that the above-referenced civil action be and hereby is dismissed with prejudice and without an award of costs or attorneys' fees to any party.

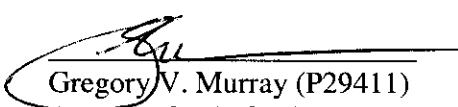
Dated: FEB 14 2005

  
\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE

Stipulated and Agreed:

By:   
Trina R. Mengesha (P59458)  
Attorney for Plaintiff

RECEIVED  
FEB 14 2005

By:   
Gregory V. Murray (P29411)  
Attorney for Defendant

CLERK'S OFFICE, DETROIT-PSG  
U.S. DISTRICT COURT

FILED  
FEB 18 2005  
CLERK'S OFFICE  
DETROIT

### **SETTLEMENT AGREEMENT**

1. Plaintiff, the United States Equal Employment Opportunity Commission (the "Commission") commenced Case Number 03-73829 on September 29, 2003 in the United States District Court for the Eastern District of Michigan, Southern Division ("Complaint") alleging that the Defendant, Daimler Chrysler Corporation ("DCC") failed to accommodate the Charging Party, Edward Olson as well as Heather Bakehorn, and other similarly situated applicants for employment who requested reading accommodations for DCC's pre-employment hourly non-skilled hiring test, in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* The Commission further alleged that the pre-employment hourly non-skilled hiring test had the effect of unlawfully screening out applicants with learning disabilities in further violation of the ADA. DCC denies these allegations.

2. As a result of settlement discussions, the Commission and DCC have resolved their differences and have agreed that this action as well as charge No. 170-2004-01354 filed by Claimant Brian Gelesh should be settled by execution of this Settlement Agreement and by entry of an Order dismissing this case with prejudice. It is the intent of the parties that this Settlement Agreement be a final and binding settlement in full disposition of any and all claims alleged or which could have been alleged in the Complaint or in the Charges of Discrimination filed by Edward Olson, Charge No. 230-A1-0235, Brian Gelesh or by any other individuals making the same or similar claim.

### **STIPULATED FACTS**

3. The Commission is the agency of the United States government authorized by the

ADA to investigate allegations of unlawful employment discrimination based upon disability, to bring civil actions to prohibit unlawful employment practices, and to seek relief for individuals affected by such practices.

4. DCC is an employer engaged in an industry affecting commerce within the meaning of Section 101(5) of the ADA, 42 U.S.C. § 12111(2), which incorporates by reference Sections 701(g) and (h) of Title VII, 42 U.S.C. § 2000e (g) and (h). DCC had at least 15 employees for 20 or more calendar weeks during the relevant period of time.

5. Pursuant to the ADA, the parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Michigan (Southern Division) over the subject matter and parties to this case.

6. Venue is appropriate in the Eastern District of Michigan (Southern Division). For purposes of this matter and proceedings related to this Settlement Agreement only, DCC agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

**NON-ADMISSION**

7. This Settlement Agreement, being entered into between the Commission and DCC, shall not constitute an adjudication or finding on the merits of this case and shall not be construed as an admission by DCC of any violation of the ADA or any other law, rule or regulation dealing with or in connection with equal employment opportunity. In fact, DCC expressly denies it has violated the ADA or any other law, rule or regulation dealing with or in connection with equal employment opportunity.

**NON-DISCRIMINATION**

8. DCC, its officers, agents, employees, successors, assigns and all persons in active concert or participation with them or any of them shall comply with the provisions of the ADA, 42 U.S.C. § 12101 et seq., with regard to disability discrimination.

**NON-RETALIATION**

9. DCC shall not take any action against any person which constitutes intimidation, retaliation, harassment, or interference with the exercise of such person's rights under the ADA because of the filing of Charge of Discrimination by Edward Olson, which forms the basis for the present case, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case under the ADA.

**NON-MONETARY AND MONETARY RELIEF**

10. **Reasonable Accommodations:** DCC agrees to provide reasonable accommodations for its hourly non-skilled hiring test to each reading disabled job applicant who (a) provides documentation establishing that he/she has a disability as that term is defined by the ADA and (b) makes a request that the test be read to them. Specifically, DCC will provide to such applicants a reader and/or audio tape to verbally read all instructions and written portions of the test, including the answer choices. DCC will continue to engage in the interactive process with disabled applicants to determine and provide a reasonable and appropriate accommodation. DCC will also consider and provide reasonable accommodations on a case-by-case basis during employment as required by the ADA.

11. **Training:** DCC agrees that it shall provide a mandatory training program to all

individuals who make accommodation decisions on DCC's behalf in connection with the hourly non-skilled test taking process. The training shall focus on the requirements of the Americans with Disabilities Act of 1990, as amended and will focus on an employer's duty to reasonably accommodate under the statute. DCC shall provide sign-in sheets, with dates of training, to the EEOC within 180 days of the effective date of this Settlement Agreement.

12. **Job Offers:** DCC agrees that Edward Olson, Heather Bakehorn, Timothy Adkins, Kenneth Brandon, Brian Gelesh, Gary Howe, Antoine McCoy, Jeffrey Piwovar, Carlos Romero, Daniel Steck, Matthew Tyler and Candace Vaughn ("the Candidates") will be given an opportunity to take the hourly non-skilled hiring test within the next 60 days, with the assistance of a reader ("Special Test Session"). Any Candidate who successfully passes the test battery during this one-time Special Test Session and also successfully completes the remainder of the hiring process (employment history and background check, an assessment exercise, drug testing) (sometimes referred to here as "Successful Candidate") will be placed in the same Candidate Bank in the same order that he/she would have been placed in had he/she successfully completed the test battery on the dates and locations indicated on attached Exhibit A. Following the execution of this Settlement Agreement by the EEOC and the Candidate's execution of a Full and Final Release between DCC and the Candidate, DCC will (a) extend conditional job offers to each Successful Candidate who would have already been hired by DCC at the time this Settlement Agreement is entered, subject to the results of a pre-employment physical examination and (b) subsequently extend conditional job offers to all other Successful Candidates based on the hiring order in which he/she would have been placed had he/she successfully passed the test battery on the respective dates set forth on Exhibit A, subject to the results of a pre-employment physical examination and the results of a drug screen test

(which will be administered only if more than six months have elapsed since the Successful Candidate previously took a drug screen test).

13. **Monetary Compensation:** Following the execution of this Settlement Agreement, and a Successful Candidate's completion of the hiring process and execution of a Full and Final Release, DCC will pay monetary damages to the individuals in the amounts set forth opposite their names in column I on Exhibit B as non-economic compensatory damages. Each individual who is not a Successful Candidate but who signs a Full and Final Release, will receive the alternative amount set forth in column II on Exhibit B opposite their name as non-economic compensatory damages. For any amount designated as non-economic damages, DCC will issue each individual a Form 1099 for tax purposes. Column III on Exhibit B reflects an agreed upon amount of economic damages for certain Candidates. Only Successful Candidates who execute a Full and Final Release will be eligible to receive the amount set forth opposite their name in Column III and such amount will be subject to applicable federal and state tax withholdings.

#### **POSTING OF NOTICE**

14. DCC agrees that it shall post a copy of the Notice attached as Exhibit C in a conspicuous location at each of the facilities which test hourly non-skilled applicants. The notice shall be posted for one (1) year from the date the Settlement Agreement is fully executed. Should the posted notice become defaced, marred or otherwise made unreadable, DCC agrees to post a readable copy of the notice as soon as practical thereafter.

#### **DISPUTE RESOLUTION AND COMPLIANCE**

15. Prior to seeking any judicial relief to enforce any of the terms of this Settlement Agreement, the parties shall engage in a good faith effort to resolve any dispute concerning

compliance with the Settlement Agreement. Any party seeking court review of a matter shall be required to give fifteen (15) business days notice to the other party before initiating an action seeking such review.

### **REPORTING**

16. One hundred and eighty days (180) after the entry of this Settlement Agreement, DCC shall submit to the Commission a report of the steps it has taken to comply with this Agreement. Specifically, DCC shall report the names and job titles of each individual offered a job as part of this agreement. DCC shall also provide the EEOC with relevant documentation, including test results, regarding why it did not hire any of the individuals whose names appear on Exhibit B in the event any of the individuals are not offered positions of employment. Such documentation will include evidence that non-disabled applicants were rejected for the same reason and evidence supporting the determination not to hire the non-disabled applicant. DCC's report shall also note its accommodation efforts, including accommodation requests received by the individuals encompassed by this Settlement Agreement, and the accommodation provided, if any. DCC's report shall be submitted to: Adele Rapport, Regional Attorney, EEOC, Detroit District Office, 477 Michigan Avenue, Suite 865, Patrick V. McNamara Federal Building, Detroit, Michigan 48226.

### **COURT COSTS AND ATTORNEY FEES**

17. Each party shall bear its own court costs and attorney fees.

### **MISCELLANEOUS**

18. If any provision(s) of this Agreement is found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.

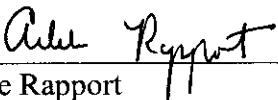
19. The terms of this Settlement Agreement shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of DCC.

20. This Settlement Agreement and the Full and Final Releases, signed between the individuals and DCC, constitute the entire agreement and commitments of the parties. Any modifications to this Settlement Agreement must be mutually agreed upon and memorialized in a writing signed by DCC and the Commission.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Eric S. Dreiband  
General Counsel

James Lee  
Deputy General Counsel

  
Adele Rapport  
Regional Attorney

Robert Dawkins  
Supervisory Trial Attorney

Trina R. Mengesha  
Trial Attorney  
Attorneys for Plaintiff

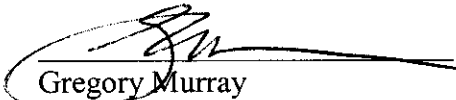
Detroit District Office  
Patrick V. McNamara Federal Building  
477 Michigan Ave., Room 865  
Detroit, MI 48226  
(313) 226-6701

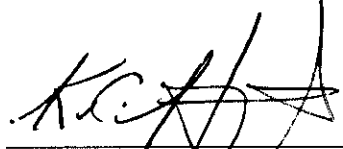
Dated: 2/4

DAIMLER CHRYSLER  
CORPORATION

VERCRUYSSSE MURRAY &  
CALZONE,

Attorneys for DCC

  
Gregory Murray  
31780 Telegraph Road  
Suite 200  
Bingham Farms, MI 48025  
(248) 540-8019

  
K.C. Hortop  
Co-Counsel for DCC  
DAIMLERCHRYSLER CORP  
1000 Chrysler Drive.  
Auburn Hills, MI 48326

Dated: 1/31/05



**EXHIBIT A**

<b>Name</b>	<b>Date</b>	<b>Candidate Bank</b>
Timothy Adkins	July 10, 2000	Detroit Temporary
Heather Bakehorn	Next test date in Indiana	Indiana Full-Time
Kenneth Brandon	March 26, 2002	Portland Full-Time
Brian Gelesh	August 4, 2003	Delaware Full-Time
Gary Howe	July 31, 2002	Detroit Part-Time
Antoine McCoy	December 3, 2002	Detroit Full-Time
Edward Olson	July 10, 2000	Detroit Full-Time
Jeffrey Piwowar	March 17, 2003	Detroit Full-Time
Carlos Romero	July 10, 2000	Toledo Full-Time
Daniel Steck	May 26, 2000	Toledo Full-Time
Matthew Tyler	March 31, 2000	Detroit Part-Time
Candace Vaughn	November 6, 2002	Detroit Part-Time

**EXHIBIT B**

<b>Name</b>	<b>COLUMN I</b>	<b>COLUMN II</b>	<b>COLUMN III</b>
Timothy Adkins	\$3,000	\$1,000	\$10,000
Heather Bakehorn	\$10,000	\$5,000	—
Kenneth Brandon	\$10,000	\$5,000	—
Brian Gelesh	\$10,000	\$5,000	—
Gary Howe	\$10,000	\$5,000	—
Antoine McCoy	\$10,000	\$5,000	—
Edward Olson	\$10,000	\$5,000	—
Jeffrey Piwowar	\$10,000	\$5,000	—
Carlos Romero	\$10,000	\$5,000	—
Daniel Steck	\$10,000	\$5,000	\$10,000
Matthew Tyler	\$10,000	\$5,000	—
Candace Vaughn	\$3,000	\$1,000	—

EXHIBIT C

NOTICE

This notice is being posted as part of the remedy agreed to by the United States Equal Employment Opportunity Commission and DaimlerChrysler Corporation pursuant to a Settlement Agreement, and to inform you of your rights guaranteed by the federal law under the Americans With Disabilities Act, 42 U.S.C. § 12101 *et. seq.* ("ADA"). The ADA prohibits discrimination against any employee on the basis of disability with regard to any term or condition of employment including hiring, layoff, recall, promotion, discharge, pay and fringe benefits or in retaliation for the opposition to unlawful employment practices.

The United States Equal Employment Opportunity Commission is the federal agency which investigates charges of unlawful employment discrimination and, if necessary, brings lawsuits in federal court to enforce Title I (the employment provision) of the ADA.

DaimlerChrysler Corporation supports and will comply with this federal law in all respects. Daimler Chrysler further agrees that it will provide reasonable accommodations to job applicants in its hiring process, including but not limited to, its hourly non-skilled hiring test.

Dated: \_\_\_\_\_

\_\_\_\_\_  
DAIMLERCHRYSLER  
CORPORATION