

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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EQUAL EMPLOYMENT OPPORTUNITY :
COMMISSION, :
 :
 : **Civil Action No.**
 : **05-CV-6482 (CJS) (MWP)**
 :
 Plaintiff, :
 :
 v. : **FIRST AMENDED COMPLAINT**
 : **and JURY TRIAL DEMAND**
 :
 NICHOLS GAS & OIL, INC. and :
 TOWNSEND OIL CORPORATION :
 d/b/a/ TOWNSEND OIL & PROPANE, :
 :
 Defendants. :
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NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex, female, retaliation and/or constructive discharge, and to make whole Eliza Foss (“Foss”) and other similarly situated individuals (“claimants”). These allegations are described in greater detail in paragraph 16 below.

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 Sections 706(f)(1) and (3) and Section 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and § 2000e-6 ("Title VII"), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The unlawful employment practices alleged below were committed within the jurisdiction of the United States District Court for the Western District of New York.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission (hereinafter “EEOC” or “the Commission”), is an 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 Sections 706(f)(1) and (3) and Section 707 of Title VII, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and § 2000e-6.

4. Defendant Nichols Gas & Oil, Inc. has continuously been a New York corporation doing business in the State of New York and has had at least fifteen employees during the relevant time period.

5. Defendant Townsend Oil Corporation d/b/a/ Townsend Oil & Propane (hereinafter “Townsend”) has continuously been a New York corporation doing business in the State of New York and has had at least fifteen employees during the relevant time period.

6. Defendant Townsend purchased Defendant Nichols Gas & Oil, Inc. on or about November 30, 2005 and is a legal successor to Nichols Gas & Oil, Inc.

7. Defendant Townsend purchased and obtained all of the real property and most of the tangible assets of Defendant Nichols Gas & Oil, Inc., retained all of Defendant Nichols Gas and Oil Inc.’s employees, and hired Wayne Nichols (former President of Nichols Gas & Oil, Inc.) to work for it.

8. Since its purchase of Defendant Nichols Gas and Oil, Inc., Defendant Townsend has continued to engage in the same business as Defendant Nichols Gas & Oil, Inc., the sale of fuel and related customer service, out of the same physical facility.

9. There has been a substantial continuity of business operations by Defendant Townsend of the business operations of Defendant Nichols Gas and Oil, Inc., since the date of purchase of Defendant Nichols Gas and Oil, Inc. by Defendant Townsend Oil Corporation.

10. Defendant Townsend had actual notice of this action at the time it purchased Nichols Gas & Oil, Inc., and the lawsuit was listed in the Purchase Agreement between the two Defendants.

11. It is not assured that Defendant Nichols Gas & Oil, Inc. has had, or currently has, the ability to provide relief in this matter.

12. Defendant Townsend is liable in this matter under the principles of successor liability.

13. At all relevant times, Defendants have continuously been employers engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e-(b),(g), and (h).

14. At all relevant times, Defendants have continuously been employers engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII, 42 U.S.C. §§ 2000e-(b),(g), and (h).

STATEMENT OF CLAIMS

15. More than thirty days prior to the institution of this lawsuit, Eliza Foss filed a Charge of Discrimination with the Commission alleging violations of Title VII by Defendant Nichols Gas & Oil, Inc. All conditions precedent to the institution of this lawsuit have been fulfilled.

16. Since at least January 1999, Defendants have engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e. These practices include, but are not limited to, the following:

- (a) Defendants subjected claimants to frequent and pervasive sexual harassment, including unwelcome groping of female employees' bodies, including their breasts and buttocks.
- (b) Defendants also subjected claimants to on-going sexually explicit propositions and comments including, but not limited to: "suck my cock so I can go home with lipstick on the end of it and make my wife jealous," "I could come over and fuck your brains out" and requests for "blow-jobs." Defendant also permitted an environment where female employees were referred to as, "whore" and "stupid bitch" and references were made about their bodies, using language such as "ass" and "tits."
- (c) Although claimants protested and complained about the harassment Defendants made no efforts to prevent or eradicate this continuing egregious and offensive behavior.
- (d) Defendants caused the constructive discharge of claimants due to the on-going severe and pervasive sexual harassment.
- (e) Defendants retaliated against claimants who complained of sexual harassment or who refused to participate in the sexualized work atmosphere by further harassing them, terminating them and/or taking other adverse action against them.

17. The effect of the practices complained of above has been to deprive claimants of equal employment opportunities and otherwise adversely affect their status as employees because of their sex.

18. The unlawful employment practices complained of above were intentional.

19. At all relevant times, Defendants acted with malice or reckless indifference to the federally protected rights of claimants.

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 it, from engaging in any employment practices that discriminate on the basis of sex;

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

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

D. Order Defendants to make whole all those individuals 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 provide punitive damages for its malicious and/or reckless conduct, in amounts to be determined at trial;

- F. Grant such further relief as the Court deems necessary and proper;
- G. 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: New York, New York

Date: October 1, 2007

Respectfully submitted,

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