

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

VINCENT HERZOG

Plaintiff,

Case No. 10-C-1140

v.

THYSSENKRUPP WAUPACA, INC.

Defendant.

ORDER APPROVING SETTLEMENT AGREEMENT

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case. Based upon the stipulated Settlement Agreement filed with this Court on September 12, 2011, the Settlement Agreement is APPROVED.

SO ORDERED this 15th day of September, 2011.

BY THE COURT:

s/ William C. Griesbach
William C. Griesbach
U.S. District Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

VINCENT HERZOG

Plaintiff,

Case No.

v.

1:10-cv-01140-WCG

THYSSENKRUPP WAUPACA, INC.

Defendant.

SETTLEMENT AGREEMENT

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff Vincent Herzog (“Herzog”) commenced this action in the United States District Court for the Eastern District Wisconsin, alleging that defendant ThyssenKrupp Waupaca, Inc. (“Thyssen”), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq. (“USERRA”) by failing to properly reemploy Herzog upon completion of his service in the United States Army.

2. Thyssen denies that it has violated USERRA and asserted that it properly reemployed Herzog upon completion of his service in the United States Army. Nevertheless, as a result of settlement discussions, Herzog and Thyssen (collectively, the “Parties”) have resolved their dispute and have agreed that this action should be resolved by entry of this Settlement Agreement. 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 in the Complaint filed in this action.

By Herzog's signature to both this Settlement Agreement and the "Release of all Claims" attached hereto as Appendix A, Herzog accepts the terms of this Settlement Agreement.

STIPULATIONS

3. The Parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Wisconsin over the subject matter of this action and of the Parties to this action for the purpose of entering and, if necessary, enforcing this Settlement Agreement.

4. Venue is proper in this judicial district for purposes of entering this Settlement Agreement and any proceedings related to this Settlement Agreement. Thyssen agrees that all conditions precedent to the institution of this action have been fulfilled.

FINDINGS

5. Having examined the provisions of this Settlement Agreement, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Settlement Agreement are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Settlement Agreement.
- c. This Settlement Agreement conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of the Settlement Agreement will further the objectives of USERRA and will be in the best interest of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

NON-ADMISSION

6. This Settlement Agreement is being entered with the consent of the Parties; and shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by Thyssen of any violations of USERRA.

NON-RETALIATION

7. Thyssen shall not take any action against any person, including but not limited to Herzog, that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

REMEDIAL RELIEF

8. Subject to the terms of a separate Release agreement between the Parties, Thyssen shall, within ten (10) business days from the date of entry of this Settlement Agreement, pay Herzog a total of \$45,000.00 (forty five thousand dollars) in back pay in lieu of reemployment at Thyssen, less the required employee withholdings and contributions on the back pay award as required by law. Thyssen shall pay all monies withheld from this back pay award to the appropriate governmental agencies. Thyssen also shall separately pay the appropriate employer's contribution to the Social Security fund due on the back pay award, *i.e.*, the employer's contribution shall not be deducted from the back pay award to Herzog. Thyssen shall mail the payment to Herzog by overnight delivery service to the following address:

Vincent Herzog
N4283 Highway 180
Marinette, WI 54143

9. The Parties shall file this Settlement Agreement with the Court no earlier than the date of execution by Herzog of the attached Release of Claims plus the expiration of the seven (7) calendar day revocation period described therein.

10. Within ten (10) business days from the date of entry of the Settlement Agreement, Thyssen shall remove any reference to Herzog's termination from all of Herzog's personnel files at Thyssen, as well as any of its third-party employment verification vendors. Thyssen shall record in all of Herzog's personnel files that Herzog voluntarily resigned from Thyssen on December 22, 2010. Thyssen shall treat Herzog the same as all employees who have voluntarily resigned from Thyssen and Thyssen shall also take all necessary steps to ensure that all of its third-party employment vendors treat Herzog in the same manner as all other persons are treated who have voluntarily resigned from Thyssen. Thyssen shall not indicate to any of Herzog's prospective employers that he was terminated from Thyssen and shall provide a neutral employment reference.

11. Within fourteen (14) days of compliance with paragraphs eight (8) and ten (10) of this Settlement Agreement, Thyssen shall provide written confirmation of its compliance to the following counsel for Herzog by facsimile and overnight delivery service to:

Delora L. Kennebrew
Chief
Employment Litigation Section
Civil Rights Division, PHB
601 D Street, NW, Fourth Floor
Washington, DC
20579 (FedEx Zip Code) 20004 (UPS Zip Code)
Facsimile: (202) 514-1005

**RETENTION OF JURISDICTION,
DISPUTE RESOLUTION AND COMPLIANCE**

12. The entry of this Settlement Agreement constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Herzog in this action. The Court, however, shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Settlement Agreement.

13. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Settlement Agreement. In the event of a dispute, the Parties shall give notice to each other fifteen (15) days before seeking resolution of the dispute by the Court, and may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Settlement Agreement.

EXPIRATION

14. The terms of this Settlement Agreement shall expire and this action shall be dismissed with prejudice without further order of this Court twelve (12) months from the date of entry hereof. The Parties agree, however, that the terms of the Release of Claims do not expire, but rather, survive the expiration of the terms of the Settlement Agreement.

MISCELLANEOUS

15. This Settlement Agreement is a public document and will be filed with the Court and posted and available on the United States Department of Justice ("DOJ") public website. Neither the DOJ, its Office of Public Affairs or Thyssen will issue any press release regarding this Settlement Agreement. However, nothing herein shall prevent the Court or the DOJ from

providing this Settlement Agreement or reporting the terms of this Settlement Agreement to Congress or other federal government agencies, or pursuant to Court order, law or regulation.

16. The Parties shall bear their own costs and expenses in this action, including attorneys' fees.

17. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

18. The terms of this Settlement Agreement are and shall be binding upon the heirs, successors, and assigns of Herzog and upon the present and future owners, officers, directors, employees, agents, representatives, successors, and assigns of Thyssen.

19. This Settlement Agreement and its Release of Claims constitute the entire agreement and commitments of the Parties. Any modifications to the Settlement Agreement must be mutually agreed upon and memorialized in writing signed by Herzog and Thyssen.

20. The effective date of this Settlement Agreement shall be the date upon which it is entered by the Court.

APPROVED and ORDERED this _____ day of _____, 2011.

UNITED STATES DISTRICT JUDGE

Agreed and Consented to by and on behalf of Plaintiff:



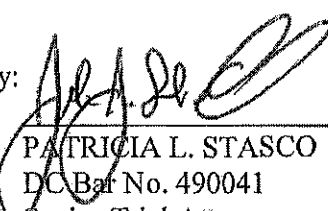
VINCENT HERZOG
Plaintiff

DELORA L. KENNEBREW
Chief

JAMES L. SANTELLE
United States Attorney

AUDREY J. WIGGINS
Deputy Chief

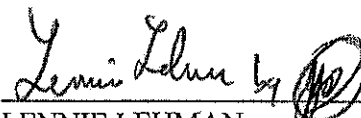
By:



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ATTORNEYS FOR PLAINTIFF VINCENT HERZOG

Agreed and Consented to by and on behalf of Defendant:

Joey Leonard
[SIGNATURE]

Joey Leonard
[PRINTED NAME]

Vice President, Human Resources
[TITLE]

On Behalf of Defendant ThyssenKrupp Waupaca, Inc.

Mitchell W. Quick

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