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### Sincere Beliefs Support Bias Verdict

On June 12, 2017, a federal appeals court upheld a \$590,000 jury verdict against Consol Energy for forcing a coal miner to retire because it would not accommodate his evangelical Christian beliefs that using a biometric hand scanner could leave him with the “Mark of the Beast,” branding him a follower of the Antichrist.<sup>1</sup>

The three-judge panel of the 4th U.S. Circuit Court of Appeals rejected Consol’s argument that it could accommodate Beverly Butcher’s beliefs by scanning his left hand, because the Bible says that the mark is on the right hand. (Revelation 13:16-17.) The Equal Employment Opportunity Commission litigated the case on Butcher’s behalf. The panel determined “[i]t is not Consol’s place as an employer, nor ours as a court, to question the correctness or even the plausibility of Butcher’s religious understandings.”

Butcher was an ordained minister who worked as a miner for Consol for 37 years before retiring under protest to avoid using the company’s new hand scanner system for tracking employee hours. Butcher had offered to check in with his shift supervisor or punch in on a time clock, but Consol insisted he scan his left hand or face discipline, including possible discharge. Butcher later learned that Consol had allowed two workers with injured hands to enter their personnel numbers on a keypad instead of using the scanner.

The EEOC sued Consol in a West Virginia district court for violating Title VII of the Civil Rights Act of 1964 by constructively discharging him instead of accommodating his religious beliefs. The jury awarded Butcher \$150,000 in compensatory damages and \$440,000 in lost wages and benefits. Consol challenged the verdict, but the district court held that the jury had enough evidence to find that Butcher’s beliefs were sincere and that Consol forced him to leave the company by insisting he use the hand scanner.

On appeal, Consol argued that Butcher’s beliefs, though sincere, were mistaken, citing evidence that his pastor did not share his view that the scanner could leave him with the mark of the beast. Consol also argued that Butcher’s claims did not meet the legal standard for constructive discharge, which requires evidence of “circumstances of discrimination so intolerable that a reasonable person would resign.”

The Circuit Court determined that the only relevant inquiry about Butcher’s beliefs is whether they are sincere, which the jury found they were. The panel found sufficient evidence to show that Butcher believed using the hand scanner would render him a follower of the Antichrist, “tormented with fire and brimstone.” The panel concluded that Consol’s refusal to accommodate Butcher’s religious objection discriminated against his religious beliefs and created intolerable working conditions.

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<sup>1</sup> *U.S. E.E.O.C. v. Consol Energy, Inc.* (4th Cir. June 12, 2017, No. 16-1230) \_\_F.3d\_\_ [2017 WL 2603976].