

2000 WL 51807

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United States District Court, N.D. Illinois, Eastern Division.

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
James FERGUSON, Plaintiff–Intervenor,
v.
FOSTER WHEELER CONSTRUCTORS, INC., and Pipe Fitters Association, Local Union 597, Defendants.

No. 98 C 1601. | Jan. 12, 2000.

Opinion

CONSENT DECREE

DENLOW, Magistrate J.

THE LITIGATION

*1 1. On March 17, 1998, Plaintiff United States Equal Employment Opportunity Commission (the “EEOC”) filed its complaint in this action alleging that Defendant Foster Wheeler Constructors, Inc. (“FWCI”) violated Title VII of the Civil Rights Act of 1964 (“Title VII”) by subjecting Charging Parties, James Ferguson and Theodore Moore, and African–American employees as a class to a racially hostile and offensive work environment and by subjecting female employees as a class to a sexually hostile and offensive work environment at a construction site operated by FWCI from October 1995 to November 1996 at Robbins, Illinois (“the Robbins site”). Defendant denied the allegations in EEOC’s complaint.

2. As a result of their having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be fully and finally resolved by entry of this Consent Decree (hereafter “Decree”), with the exception of the claims of James Ferguson, which have been severed. Pursuant to this Decree, the EEOC hereby releases and forever discharges FWCI, its successors, parents, affiliates, assigns, directors, officers, agents, and representatives from all claims, demands, causes of action or liabilities as a result of or arising from the subject matter and claims asserted or that could have been asserted by the EEOC in this Complaint concerning the Robbins site. The doctrine of res judicata and collateral estoppel shall apply to the EEOC but not to James Ferguson, with respect to all issues of fact and law and matters of relief within the scope of the Complaint. Neither the agreement to entry of this Decree nor anything in this Decree or accomplished thereby shall be construed to be, or shall be admissible in any proceeding as evidence of an admission by FWCI of any pattern or practice of resistance to the full enjoyment of rights under Title VII, or any violation of, failure to comply with, or interference, or obstruction of compliance with Title VII or any other equal employment law or order.

FINDINGS

3. Having examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

A. This Court has jurisdiction of the subject matter of this action and of the parties to this case;

B. The terms of this Decree are adequate, reasonable, equitable and just and the rights of the class members, the EEOC, and FWCI and the public interest are adequately protected by this Decree; and

C. This Decree conforms with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the class members, the EEOC, FWCI and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

INJUNCTIVE RELIEF

4. Defendant, its directors, officers, agents, assigns, employees and successors are permanently enjoined from engaging in any employment practice which discriminates on the basis of race or sex.

*2 5. Defendant shall not retaliate in any way against any person, including, without limitation, members of the class, because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under or benefitted from this Decree.

RELIEF FOR THE CHARGING PARTIES AND THE CLASS

6. FWCI shall pay a total of One Million Three Hundred Twenty-Five Thousand Dollars (\$1,325,000.00) in monetary relief for non-wage, compensatory damages claims as follows: \$75,000.00 to Charging Party Theodore Moore, \$15,000.00 to each class member listed on Exhibit A, hereto; \$11,403.50 to each class member listed on Exhibit B hereto; and \$11,403.50 to each class member listed on Exhibit C hereto. FWCI shall issue I.R.S. 1099 Forms to the Charging Party Theodore Moore and each of the class members receiving monetary relief hereunder. The aforementioned amounts shall be paid as follows: Upon entry of this Consent Decree, the EEOC shall mail to Charging Party Theodore Moore and each Class Member on Exhibits A, B, and C a letter in the form of Exhibit D hereto, and a Release Agreement in the form of Exhibit E hereto. To be eligible for relief pursuant to this Consent Decree, Charging Party Theodore Moore and Class Members must execute and return to the EEOC the Release Agreement in the form of Exhibit E releasing their claims of race discrimination under Title VII (African-American males) or sex discrimination under Title VII (females), or both race and sex discrimination under Title VII (African-American females) as the case may be. The Commission will send to FWCI the executed Releases it receives from Charging Party Theodore Moore and Class Members. Within ten (10) days of FWCI's receipt of an executed Release Agreement, FWCI shall mail to Charging Party Theodore Moore or the Class Member, as the case may be, who executed such Release Agreement a check in the amount corresponding to his/her name of Exhibit A, B, or C, as the case may be. FWCI shall also mail a copy of each such check to the EEOC at the address set forth in Paragraph 21, below. Any Class Member who fails to deliver an executed Release Agreement to the EEOC within sixty (60) days from the date of entry of this Decree shall not be entitled to receive relief under this Consent Decree.

7. FWCI shall pay all its costs (except taxes, which shall be the obligation of the class members) associated with the distribution of funds to class members in accordance with paragraph 6, including without limitation the costs of postage. For purposes of this paragraph, costs shall not include any attorney's fees incurred by the Commission or any class member.

8. Within ten (10) business days after FWCI has completed issuing and mailing the checks pursuant to Paragraph 6, above, FWCI shall certify in writing to the EEOC that it has mailed the checks and distributed all of the funds—i.e., \$1,325,000.00—pursuant to Paragraph 6 of this Consent Decree.

*3 9. If any check issued by FWCI pursuant to Paragraph 6 is returned to FWCI as undeliverable, FWCI shall notify the Commission within five (5) business days of its receipt. If EEOC provides FWCI with a new address for a class member, then, within five (5) days of receipt of the new address, FWCI shall mail a check to the class member's new address. At the time checks are sent to a new address(es), FWCI shall provide written notice to EEOC that such checks were sent to the new address(es).

RECORD-KEEPING

10. In order to enable the EEOC to monitor the relief afforded by this Decree for the duration of this Decree, Defendant shall maintain and make available for inspection and copying by the EEOC all non-privileged documents and records which refer or relate to employee complaints regarding alleged racial and sexual harassment made subsequent to the entry of this Decree and reported or referred for disposition to any of the individuals identified in items (b) through (e) of FWCI's Policy Regarding Racial and Sexual Harassment and Equal Employment Opportunity. (See Exhibit F.)

11. Defendant shall make all documents or records referred to in Paragraph 10, above, available for inspection and copying together with a log describing any documents withheld under a claim of privilege within twenty (20) days after the EEOC so requests. In addition, Defendant shall make available all persons within its employ whom the EEOC reasonably requests for the purpose of verifying compliance with this Decree, and shall permit the EEOC to enter Defendant's premises during regular business hours for such purpose.

12. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have to maintain records under Title VII or any other law or regulation.

TRAINING

13. For the duration of this Decree, FWCI will provide training for its employees regarding racial and sexual harassment, as follows:

a) During each of the two years covered by this Decree, all full-time FWCI managers and supervisors shall participate in an annual training session designed for FWCI by an experienced employment law attorney. This training will involve detailed discussion of not only the law but the role of each manager and supervisor in maintaining a workplace free of harassment and one which promotes the interests of equal employment opportunities.

b) All employees will be provided a written presentation regarding the company's policies prohibiting racial and sexual harassment (including, without limitation, racial and sexual graffiti) and the company's procedures for making complaints, including access to on-site representatives as well as corporate compliance officials. At projects with fifteen (15) or more employees for a duration of twenty (20) or more weeks, all employees will also be provided a verbal presentation regarding the company's policies prohibiting racial and sexual harassment (including, without limitation, racial and sexual graffiti) and the company's procedures for making complaints, including access to on-site representatives as well as corporate compliance officials.

*4 c) FWCI will furnish all subcontractors with a copy of the FWCI policy attached as Exhibit F and advise them that FWCI expects subcontractors to implement their own policies similar to or consistent with the FWCI policy.

REPORTING

14. Defendant shall furnish the EEOC with a list (including the employee's name, race, gender, job title, address, social security number and date of complaint) of each employee who makes a complaint about alleged racial and sexual harassment which is recorded pursuant to paragraph 10. Defendant shall furnish the first such report six (6) months after entry of this Decree, and subsequent reports every six (6) months thereafter, and the final report one (1) month before the expiration of this Decree.

15. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have to submit reports under Title VII or any other law or regulation.

POSTING OF NOTICE

16. Within twenty (20) days following entry of this Decree, Defendant shall post copies of the Notice, attached hereto and incorporated herein by reference as Exhibit G, in a conspicuous location easily accessible to and commonly frequented by Defendant's employees and applicants for employment at each of Defendant's work sites located in the United States and in existence at any time during the period from the date of this Decree until the date two (2) years from the date of this Decree. Defendant shall ensure that the postings are not altered, defaced or covered by any other material. Defendant shall certify to the EEOC in writing within thirty (30) days after entry of this Decree that the copies of the Notice have been properly posted and the location of each such posting; within twenty (20) days of the opening of a new work site, Defendant shall certify in writing to the EEOC that a posting has been properly posted at such work site. The Notice shall remain posted at each work site for the lesser of (i) a period of two (2) years from the date of entry of this Decree and (ii) the date on which the work site is completed and Defendant no longer employs anyone at such work site.

DISPUTE RESOLUTION

17. In the event that either party believes that the other party has failed to comply with any provisions of the Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party fifteen (15) days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within fifteen (15) days, the complaining party may apply to the Court for appropriate relief.

DURATION OF DECREE AND RETENTION OF JURISDICTION

18. Subject to paragraph 16, all provisions of this Decree shall be in effect for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of the two (2) year period, any disputes under Paragraph 17, above, remain unresolved, the term of the Decree shall be automatically extended until such time as all such disputes have been resolved. It is further provided that at the end of two years, the EEOC may apply to the court for an extension of the decree for a maximum of an additional one year.

MISCELLANEOUS PROVISIONS

*5 19. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns and successors of FWCI.

20. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

21. When the Decree requires the submission by Defendant of reports, notices or other materials to the EEOC, they shall be mailed to: Foster Wheeler Settlement, Equal Employment Opportunity Commission, Chicago District office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

Index of Exhibits

EEOC—Foster Wheeler

Consent Decree

- A. List of Claimants Receiving \$15,000.00
- B. List of Claimants Receiving \$11,403.50
- C. List of Claimants Receiving \$11,403.50
- D. Form of Letter from EEOC to Claimants
- E. Form of Individual Release for Claimants
- F. FWCI Policy Regarding Racial and Sexual Harassment
- G. Form of Notice to be Posted at FWCI Sites

EXHIBIT A

CLASS MEMBERS DIRECTLY EMPLOYED BY FOSTER WHEELER CONSTRUCTORS

Last Name	First Name	Middle Name	Race	Sex
Alexander	Doyle		B	M
Bell	Mark	M.	B	M
Black	John	W.	B	M
Bogan	Michael		B	M
Booker, Jr.	Maurice		B	M
Cobb	Darleen		B	F
Cote	Jean		W	F
Cunningham, Jr.	Walter		B	M
Davis	Eric	Lee	B	M
Foster	James	M.	B	M
Fuller	Kevin		B	M
Fulson	Zachary		B	M
Gordon	Airicka		B	F
Gray	Derrick		B	M

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Grice	Henry	E.	B	M
Harrison	Dennis		B	M
Higgs	Monconer		B	M
Hill	Keith		B	M
Holmes	Larry	C.	B	M
Howorth	Shella		B	F
Jackson	Rosie		B	F
Jones, Sr.	Reese		B	M
Kelly, Jr.	Robert	A.	B	M
Knowles, Jr.	Robert	L.	B	M
Lee	Terry		B	M
Maxey	Jaimy		W	F
McGhee	Joseph	H.	B	M
Moore	Theodore		B	M
Murphy	Bobby		B	M
Payne	David		B	M
Powell	Kaffie	H.	B	M
Ross	Lee		B	M
Shepard	Jeffrey		B	M
Smith	Robert	L.	B	M
Summers	Pierre		B	M
Taylor	Alvin		B	M
Thomas	Jerome		B	M
Ward	James		B	M

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Wash	Keith	M.	B	M
Williams	Calvin		B	M

EXHIBIT B

CLASS MEMBERS DIRECTLY EMPLOYED BY SUBCONTRACTORS

Last Name	First Name	Middle Name	Race	Sex
Allotey	Richard	V.	B	M
Anderson	James		B	M
Bailey	Bert	E.	B	M
Betts	Ruben		B	M
Ciecierski	Laurie		W	F
Clinton	John		B	M
Conway-Gaynor	Eileen		W	F
Davis	Kenneth		B	M
Davis (Belcher)	Rachel		B	F
Davis, Jr.	Harold	L.	B	M
Echols, Sr.	Derrick		B	M
Escott	Penny		W	F
Franklin, Jr.	Charlie		B	M
Gage	Raynard		B	M
Hall, Jr.	Willie	T.	B	M
Harrison	Tammie	L.	B	F
Hedrick	Jane	L.	W	F
Lockman	David	D.	B	M

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Martin	Gregory	C.	B	M
Mazur	Christine		W	F
McDonald	Martin		B	M
Morris	Nicholas	D	B	M
O'Neil	Kevin		B	M
Oliver	Stephen	C.	B	M
Polk	James		B	M
Raiser	Joyce		W	F
Robertson	Dennis		B	M
Shannon	Leon		B	M
Smith	Carl	Mitchell	B	M
Smizer	Larry		B	M
Smothers	Dennis		B	M
Stephens	Val	G.	B	M
Talley	Mark		B	M
Titsworth	James	A.	B	M
Tucker	Eric	Joseph	B	M
Upton	Wendell		B	M
Valentine	Maurice		B	M
White	Otis	H.	B	M
Williams	Lance		B	M
Williams	Paxton		B	M
Wood	Janise	Kay	W	F
Wright	Reginald		B	M

EXHIBIT C

CLASS MEMBERS DIRECTLY EMPLOYED BY FOSTER WHEELER ILLINOIS

Last Name	First Name	Middle Name	Race	Sex
Booker, Sr.	Leroy		B	M
Braddy	Cheryl	M.	B	F
Brown	Stephen		B	M
Cooper	Vincent		B	M
Dodson	Donald		B	M
Fuller	David		B	M
Griffin	Kevin	J.	B	M
Henderson	Robert		B	M
Hopps	Anthony		B	M
Jackson	Jesse		B	M
Madkins	Warren		B	M
Nelson	Ray	V.	B	M
Parker	Allen	B.	B	M
Shaw	Victor		B	M
Waller	William		B	M

Exhibit D

Dear Class Member:

*6 The Equal Employment Opportunity Commission (“EEOC”) and Foster Wheeler Constructors, Inc. (“FWCI”) have settled the above-captioned action pursuant to a Consent Decree. In the litigation the EEOC alleged that FWCI created and

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maintained a racially and sexually hostile work environment at its construction project in Robbins Illinois from approximately April 1995 to November 1996. FWCI denied the allegations in EEOC's complaint. Pursuant to a Consent Decree that was agreed to between the EEOC and FWCI and which was approved by the Court, FWCI will pay an aggregate of \$1,325,000 to members of the class.

Pursuant to the Consent Decree, your share of the settlement amount is approximately \$ _____. *To be eligible for monetary relief under the Consent Decree you must execute and return the enclosed Release Agreement by no later than to:*

Ms. Janet Johnson
Paralegal Specialist
EEOC
500 West Madison Street
28th Floor
Chicago, IL 60661

Please be sure to include all of the information requested on the enclosed Release Agreement (e.g., address, phone, social security number)— this information is necessary for us to get your check delivered to you.

Sincerely,

Janet Johnson
(312) 353-7375

EXHIBIT E

RELEASE AGREEMENT

For and in consideration of payment to be made from Foster Wheeler Constructors, Inc. ("FWCI") in the amount of \$ _____, pursuant to a consent decree (the "Consent Decree") entered by the Court in *U.S. Equal Employment Opportunity Commission v. Foster Wheeler Constructors, Inc.*, Civil Action No. 98 C 1601 (N.D.Ill.), I, _____, hereby release and forever discharge FWCI, its successors, assigns, affiliates, directors, officers, agents, employees and representatives, from all claims, demands, causes of action or liabilities which the undersigned now has or has had against FWCI under Title VII of the Civil Rights Act of 1964, as amended, as a result of or arising from the subject matter and claims asserted, or which could have been asserted by the EEOC in *U.S. Equal Employment Opportunity Commission v. Foster Wheeler Constructors, Inc.*, Civil Action No. 98 C 1601 (N.D.Ill.). *Provided, however,* that nothing in this Release Agreement shall be construed as a waiver of any rights or claims I may have arising after the date of the Consent Decree.

Date: _____

Signed: _____

Print Name: _____

Current Address: _____

Phone Number: _____

Social Security No.: _____

EXHIBIT F

FOSTER WHEELER CONSTRUCTORS, INC.

POLICY REGARDING RACIAL AND SEXUAL HARASSMENT AND EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of Foster Wheeler Constructors, Inc. ("FWCI" or the "Corporation") to select, develop, and advance employees based on the individual's ability and job performance. It has been, and shall continue to be, the policy of this Corporation to provide equal opportunities to all employees or applicants for employment, regardless of race, color, religion, national origin, sex, age, disability, veteran status (disabled veteran or Veteran of the Vietnam era) or other characteristics protected by law.

- *7 1. All recruiting, hiring, and promotion to all job classifications shall be without regard to race, color, religion, national origin, sex, age, disability, or veteran status.
- 2. All decisions relative to promotions shall be in accordance with the principles of EEO and shall be based solely upon valid requirements for such promotional opportunities.
- 3. All other Personnel actions, including compensation, benefits, transfers, layoffs, return from layoffs, participation in company-sponsored training, education tuition assistance, company-sponsored social and recreational activities shall be administered without regard to race, color, religion, national origin, sex, age, disability or veteran status.

It is also the policy of the Corporation to maintain a work environment for its employees, which is free from harassment based on sex or race, and other forms of unlawful harassment. Such conduct (including verbal and written remarks) is prohibited by the Corporation.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, or
- 3. Such conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive working environment.

Regardless of the legal definition of unlawful harassment, FWCI expects employees to refrain from any form of unwelcome harassment based upon race or sex, including:

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- Sexual or sex-based comments or jokes
- Racial epithets or race-based comments or jokes
- Unwelcome touching
- Racial or sexual graffiti

Complaints regarding harassment or discrimination regardless of its source may be taken to *any* of the following parties:

- a. The employee's immediate supervisor.
- b. The next level of management above the supervisor.
- c. The Human Resources representative (if any) at the employee's project site.
- d. The FWCI home office Human Resources Department (908-730-5585).
- e. Foster Wheeler Corporation's Corporate Compliance Officer (800-448-0480).

Complaints will be promptly investigated in as confidential a manner as possible. Remedial action, if called for, will be taken, and the results of the investigation will be communicated to the complaining party. Supervisors must report up the chain-of-command (orally or in writing) all complaints or instances of racial or sexual graffiti and non-trivial violations of the FWCI policy.

The company will not condone retaliation of any type against any employee filing a complaint, regardless of the outcome of the investigation.

Robert J. Burcin
President and CEO

EXHIBIT G

OFFICIAL NOTICE TO ALL FOSTER WHEELER CONSTRUCTORS EMPLOYEES AND APPLICANTS

*8 This notice is posted pursuant to a Consent Decree entered in a lawsuit brought against Foster Wheeler Constructors, Inc. ("FWCI") by the United States Equal Employment Opportunity Commission (the "EEOC"). The case is entitled *EEOC v. Foster Wheeler Constructors, Inc. et al.*, Case Number 98 C 1601, filed in the U.S. District Court for the Northern District of Illinois.

In the suit, the EEOC asserted that at its work site in Robbins, Illinois, FWCI discriminated against African American and female former employees in violation of the Title VII of the Civil Rights Act of 1964 ("Title VII"), by subjecting them to a racially and sexually offensive work environment consisting principally of racist and sexist graffiti in portable toilets. FWCI has denied the allegations in the EEOC's complaint.

To resolve this case, FWCI and the EEOC have entered into a Consent Decree, which provides for FWCI to make monetary payments to former African American and female employees at the Robbins work site, maintain certain records, make reports to the EEOC and post this Notice. The Consent Decree is not an admission by FWCI of a violation of Title VII or any other employment law.

The Equal Employment Opportunity Commission is the federal agency responsible for enforcing Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, Title I of the Americans with Disabilities Act and the Age Discrimination in Employment Act of 1967. These laws prohibit employers from discriminating on the basis of sex, sexual harassment, pregnancy, disability, age, race, color, religion, or national origin and from retaliating against any employee because he or she opposes such discrimination, files a charge of discrimination, or participates in the investigation or

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litigation of a discrimination charge or lawsuit.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two (2) years from the date shown below and must not be altered, defaced, or covered by any other material. Any question concerning this Notice or FWCI's compliance with its provisions or Title VII may be directed to: Foster Wheeler Settlement, U.S. Equal Employment Opportunity Commission Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, IL 60661.