

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

AMERICAN NATIONAL CAN COMPANY,
d/b/a FOSTER-FORBES GLASS, and
BALL-FOSTER GLASS CONTAINER
CO., LLC,

Defendants.

CIVIL ACTION NO.
5:97-CV-130-H(3)

FINAL ORDER APPROVING
CONSENT DECREE

CIV 08 #59, p. 47

JAN 20 '99

The above-styled action is before the Court for final approval of the Consent Decree between the U.S. Equal Employment Opportunity Commission ("EEOC" or "Plaintiff") and American National Can Company d/b/a Foster-Forbes Glass and Ball-Foster Glass Container Co., LLC ("Defendants"). On September 8, 1998, this Court issued an order provisionally approving the Consent Decree and requiring that notice be given to members of the class. The EEOC sent the notice, dated October 7, 1998, to the members of the class. Objections to the settlement were to be mailed to the Clerk of the Court within thirty days of the date of the notice, or by November 6, 1998. On December 21, 1998, this Court conducted a hearing to assure fairness, reasonableness and adequacy of the proposed settlement as embodied in the Consent Decree. David R. Treeter, Esq. appeared on behalf of Plaintiff. Barry A. Hartstein, Esq. appeared on behalf of Defendant American National Can Company d/b/a Foster-Forbes Glass. Thomas A. Farr, Esq. appeared on behalf of Defendant Ball-Foster Glass Container Co., LLC. The Objectors, Sharon

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Johnson and Darwin Cook, did not appear at the hearing. The Court finds as follows:

1. The parties have fully complied with the notification requirements as set forth in the Consent Decree and this Court's order provisionally approving the Consent Decree.
2. Fair, reasonable, adequate and proper notice of this Court's order provisionally approving the Consent Decree and terms of the proposed Consent Decree has been given to the class.
3. The Court conducted a fairness hearing on December 21, 1998, with full and adequate opportunity for all affected individuals to present any challenge to the fairness of the Consent Decree. Two objections to the settlement were filed. Both Objectors were provided notice of the hearing. Neither Objector appeared at the hearing.
4. Standard of review. This court must determine whether the settlement is fair, adequate and reasonable, and is guided by Flinn v. FMC Corporation, 528 F.2d 1169 (4th Cir. 1975), cert. denied 424 U.S. 967 (1976). Accordingly, this court must evaluate the settlement in light of several factors such as: (a) the existence of fraud or collusion behind the settlement; (b) the complexity, expense, and likely duration of the litigation; (c) the stage of the proceedings and the amount of discovery completed; (d) the probability of the plaintiff's success on the merits; (e) the range of possible recovery; and (f) the opinions of the class counsel, class representatives, and absent class members.

5. Fraud or collusion. As the history of this matter shows, the parties vigorously contested both liability and damage issues. Plaintiff conducted a full investigation of the alleged discriminatory practices at the facility in question and identified the class of victims. Plaintiff and both Defendants were represented during the negotiations by counsel. Finally, the settlement was reached after discovery, including depositions and written discovery, had been conducted and after mediation with a mediator. Based on these facts and the record as a whole, this Court does not find any evidence of overreaching, fraud or collusion in reaching the settlement.

6. Complexity, expense and duration. It is clear that this is a complex case with the potential for substantial litigation expenses. Complexity is created by, among other things, the number of class members, the facts and circumstances peculiar to each claim, and the legal issues involved in the case. Based on these facts and the record as a whole, this Court finds that the complexity, expense and potential duration of the litigation justify settlement at this time.

7. Stage of the proceedings and discovery. At the time the settlement was reached, the parties had engaged in sufficient discovery to engage in meaningful settlement discussions. The parties exchanged information regarding liability and damages. Defendants took the depositions of twenty claimants. Attorneys for Plaintiff interviewed numerous witnesses and claimants concerning the allegations of the lawsuit. Furthermore,

Plaintiff has been investigating the allegations underlying this lawsuit since 1994. Based on these facts and the record as a whole, this Court finds that the parties could make an informed assessment of the merits of the litigation and its probable future course when the settlement was reached.

8. Probability of plaintiff's success and the range of possible recovery. The probability of Plaintiff's success on the merits is disputed. While Plaintiff contends that it could establish its claims, Defendant insists that it would prevail on either liability or damages. Since the merits are disputed, the Consent Decree contains Defendant's non-admission of liability. At this stage of the proceedings, it is not the job of the Court to reach any dispositive conclusions on these legal issues. Flinn, 528 F. 2d at 1172-3.

If Plaintiff did not prevail at trial, all ninety class members would recover nothing in monetary damages or injunctive relief. This settlement provides a certain recovery on what is otherwise an uncertain claim. Based on these facts and the record as a whole, this Court finds that Plaintiff's probability of success at trial is disputed and the recovery provided by the agreement is adequate, fair and reasonable.

9. Opinions of class counsel, class representatives and absent class members. Class counsel contend that the settlement is fair, adequate and reasonable. Opinions of class counsel should be given weight in determining fairness because they are the most familiar with the applicable law and facts as they relate to this

case. Flinn, 528 F.2d at 1173.

Moreover, the entire class affected by the settlement includes ninety people. Although all class members received notice of the proposed settlement, none filed objections to the settlement. Only two individuals have expressed dissatisfaction. It is thus apparent that the class supports, or at least, accepts the settlement. Based on these facts and the record as a whole, this Court finds that the settlement is fair, reasonable and adequate.

10. Objections. Objections were received from the following individuals: Sharon Johnson and Darwin Cook. The Plaintiff recommended that the court deny the objections.

a. Objection Filed by Sharon Johnson.

Sharon Johnson filed an objection on or about October 26, 1998. Johnson objected because she was unable to respond to the correspondence that was sent to prospective class members. During the litigation of this case, the Plaintiff made several attempts to contact Johnson. On May 12, 1998, Plaintiff's Paralegal wrote Johnson in a final attempt to contact her. In that letter, Plaintiff informed Johnson that if it did not hear from her by May 20, 1998, it would assume that Johnson did not wish to participate in the case. The Plaintiff did not hear from Johnson until she filed her objection.

After Plaintiff received the objection, Plaintiff's paralegal contacted and interviewed Johnson regarding her work experiences with Defendants, seeking the same information that

had been sought from other prospective class members. Johnson worked for Defendants from 1978 to 1995. In 1978, shortly after she started work, Johnson saw a racial epithet written on the wall at work. She offered no other evidence of racial harassment, and she was never called a racially offensive name herself.

The conduct alleged by Johnson does not rise to the level of actionable racial harassment. Also, the alleged conduct occurred before the CRA of 1991; therefore, even if it is true, she is not entitled to damages. Finally, Johnson failed to attend the scheduled hearing on her objection.

For these reasons, the objection filed by Sharon Johnson is denied.

b. Objection filed by Darwin Cook.

Darwin Cook filed an objection by mailing it to the U.S. District Court on November 9, 1998. The Clerk of the Court received Cook's objection on November 12, 1998. Cook objected because he believed that he had been subjected to a racially hostile work environment, but he had been unable to present his claim to the EEOC.

During the litigation of this case, the Plaintiff made several attempts to meet with Cook. On two occasions, Plaintiff scheduled meetings with Cook, but he failed to attend either meeting. On May 12, 1998, Plaintiff's Paralegal wrote Cook in a final attempt to contact him. In that letter, Plaintiff informed Cook that if it did not hear from him by May 20, 1998, it would

assume that he did not wish to participate in the case. The Plaintiff did not hear from Cook until he filed his objection.

After the Plaintiff received the objection, the Plaintiff's paralegal contacted and interviewed Cook regarding his work experiences with Defendants, seeking the same information that had been sought from other prospective class members. Cook has worked for Defendants since 1995. Cook alleged that he was treated badly by his supervisor and called a racially offensive name.

Cook's objection was not timely filed. The conduct alleged by Cook in his objection does not rise to the level of actionable racial harassment. Cook failed to appear for interviews with the EEOC and failed to appear at scheduled hearing on his objection.

For these reasons, the objection filed by Darwin Cook is denied.

11. The court finds that the Consent Decree and the distribution of funds on the attached Exhibit "A" are fair, reasonable, adequate and consistent with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

Conclusion

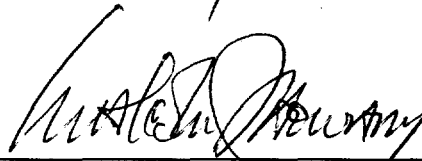
Based on the foregoing, and all the pleadings, records, proceedings and arguments of counsel herein, IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The objection of Sharon Johnson is DENIED;
2. The objection of Darwin Cook is DENIED;
3. "Exhibit A/Schedule 1" to the Consent Decree filed in

this matter, and attached hereto as "Exhibit A," is finally APPROVED and entered as of the date of this Order;

4. The Consent Decree, provisionally approved on September 8, 1998, is fair, adequate and reasonable, and is hereby APPROVED.

SO ORDERED, THIS 15th DAY OF January, 1999.



The Honorable Malcolm J. Howard
Judge, U.S. District Court

Copies to:

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COMMISSION
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Exhibit A/Schedule 1

DISTRIBUTION LIST

TOTAL AMOUNT TO BE DISTRIBUTED: \$275,000

GROUP I	TOTAL DISBURSEMENT: \$60,000	
IA		
1	Herndon, Leon 506 Pike Street Wilson, NC 27893-4621	\$25,000
IB		
2	Atkinson, Michael 424 Garner Street Wilson, NC 27893-2835	\$15,000
IC		
3	Farmer, Toney 1001 Aycock Street Wilson, NC 27893-5805	\$10,000
ID		
4	Napper, Robert 1822 East Trail Drive Wilson, NC 27893	\$10,000
GROUP II	TOTAL DISBURSEMENT: \$90,000 (\$5,000 x 18)	
5	Alston, Hattie P.O. Box 473 Bailey, NC 27807	\$5,000
6	Atkinson, Ronald 8019 Town Creek Road Elm City, NC 27822	\$5,000

7	Batts, Danny P.O. Box 7511 Wilson, NC 27895-7511	\$5,000
8	Best, Lorenzo 2211 Cameron Road Wilson, NC 27893	\$5,000
9	Brickhouse, Joseph 1003 Aycock Street Wilson, NC 27893-5805	\$5,000
10	Brown, Reginald P.O. Box 1213 Elm City, NC 27822	\$5,000
11	Butts, Bernard P.O. Box 891 Wilson, NC 27893	\$5,000
12	Bynum, Ernest 1818 Snowden Drive Wilson, NC 27893-6565	\$5,000
13	Cordell, Brenda 11 Kristie Lane Nashville, NC 27856-9530	\$5,000
14	Diggs, Bobby 2224 Imperial Avenue Wilson, NC 27893	\$5,000
15	Faison, Corvair 1812 London Church Rd. Apt. 6-A Wilson, NC 27893	\$5,000
16	Ferguson, Barry P.O. Box 1724 Wilson, NC 27893	\$5,000

17	Hammonds, Hubert III 906 S. Pender Street Wilson, NC 27893	\$5,000
18	Herndon, Maggie P.O. Box 513 Middlesex, NC 27557-0513	\$5,000
19	Jackson, Leonard 2003 Lenior Drive Wilson, NC 27893	\$5,000
20	Mincey, Margaret P.O. Box 1144 309 W. Lee Street Wilson, NC 27893	\$5,000
21	Walker, Clarethia 516 Church Street Wilson, NC 27893	\$5,000
22	Williams, Vera 2116 Fieldcrest Road Wilson, NC 27893	\$5,000
GROUP III	Total Disbursement: \$54,600 (\$2,600 x 21)	
23	Applewhite, Clyde 1400 Queen Anne Road Wilson, NC 27893-1446	\$2,600
24	Artis, Ivey 3714 Dianne Dr., Apt. B Wilson, NC 27893	\$2,600
25	Atkinson, Cleveland 511 Rogers Avenue Wilson, NC 27893-2533	\$2,600

26	Batts, Herman 2011 Fieldcrest Road Wilson, NC 27893-5605	\$2,600
27	Best, Curtis 1843 Butterfield Lane, SE Wilson, NC 27893	\$2,600
28	Burns, Alisa 2818 Lancaster Road Wilson, NC 27893	\$2,600
29	Carter, Dianne 208 Park Drive Wilson, NC 27893	\$2,600
30	Farmer, Samuel 1728 Westwood Avenue Wilson, NC 27893-5805	\$2,600
31	Hicks, Ardar 1003 Tarheel Road Wilson, NC 27893	\$2,600
32	Higgs, Keith 1610 Dartmore Drive, Apt. A Wilson, NC 27893	\$2,600
33	Hinnant, Elmray 801 Jordan Street Wilson, NC 27893-5929	\$2,600
34	King, David 906 Malpass Drive Wilson, NC 27893-6030	\$2,600
35	Mangrum, Wilbert 1303 Roundtree St., NE Wilson, NC 27893-2648	\$2,600

36	Mitchell, Aubrey 2317 Tranquil Dr., PO Box 1 Wilson, NC 27893	\$2,600
37	Raspberry, James 3005A Buckingham Road Wilson, NC 27893	\$2,600
38	Richardson, Waddell 1904 Rand Road Wilson, NC 27893	\$2,600
39	Roberts, Danny 1209 Crawford St., Apt. D Wilson, NC 27893-5955	\$2,600
40	Shackleford, Robert 1910 Lenoir Drive Wilson, NC 27893	\$2,600
41	Sherrod, Charles 3920 London Church Road Elm City, NC 27822	\$2,600
42	Watkins, Earnestine P.O. Box 564 Elm City, NC 27822-0564	\$2,600
43	Wells, Tommie 4867 Upchurch Road Elm City, NC 27822	\$2,600
GROUP IV	Total Disbursement \$70,3999.89 (\$1,497.87 x47)	
44	Artis, Keith 1305 S. Goldsboro, Apt. A Wilson, NC 27893-5819	\$1,497.87
45	Barnes, Archie 3904 Newton Avenue Wilson, NC 27893-1139	\$1,497.87

46	Barnes, Bernice 205 Park Drive Wilson, NC 27893	\$1,497.87
47	Barnes, Chester 5714 Woodside Road Wilson, 27893	\$1,497.87
48	Batts, Milton 1816 Springfield Road Rocky Mount, NC 27801-3060	\$1,497.87
49	Best, Jocelyn 508 South Herman Street Goldsboro, NC 27530	\$1,497.87
50	Blue, Corintha 5242 NC 91 Hwy Wilson, NC 27893-2719	\$1,497.87
51	Brown, Eva 307 W. Lee Street Wilson, NC 27893	\$1,497.87
52	Bynum, Charles II 1206 Sauls Street, S.W. Wilson, NC 27893	\$1,497.87
53	Cox, William 4118 Raven Ridge Drive Wilson, NC 27893	\$1,497.87
54	Davis, Earlene 3709 Dianne Drive, Apt. B Wilson, NC 27893	\$1,497.87
55	Dickerson, Margaret 1205 Washington Street Wilson, NC 27893	\$1,497.87

56	Dupree, Preston 2200 Farr Place, Apt. A Wilson, NC 27893	\$1,497.87
57	Edmonds, Brenda 4310 Tarts Mill Road Wilson, NC 27893	\$1,497.87
58	Edmundson, Frankie 1705 Corbett Avenue Wilson NC, 27893-8902	\$1,497.87
59	Edwards, Cecil 530 Sycamore Street Rocky Mount, NC 27801	\$1,497.87
60	Edwards, Janette 1308 Sauls Street Wilson, NC 27893	\$1,497.87
61	Evans, Keith 732 Eastern Avenue Rocky Mount, NC 27801	\$1,497.87
62	Evans, Issac 2614 Nottingham Road Wilson, NC 27893-1239	\$1,497.87
63	Farmer, Doris 107 Gray Street Wilson, NC 27893	\$1,497.87
64	Hall, Jean 2024 Fieldcrest Road Wilson, NC 27893	\$1,497.87
65	Hinton, Hope 4900 White Oak Drive Wilson, NC 27893	\$1,497.87

66	Hooks, Steven 1607 Dartmore Drive Wilson, NC 27893	\$1,497.87
67	Jones, James 216 Kingston Avenue Rocky Mount, NC 27803-4830	\$1,497.87
68	James, Janet 107 South Vick Street Wilson, NC 27893	\$1,497.87
69	Jones, Joel Rt. 2, Box 96 Bailey, NC 27807	\$1,497.87
70	Jones, Phyllis P.O. Box 1222 Wilson, NC 27893-1222	\$1,497.87
71	Joyner, Larry 609 Jordan Street Wilson, NC 27893	\$1,497.87
72	Langston, Tommy 901 Briggs Street Wilson, NC 27893	\$1,497.87
73	Lavender, Maurice 1508 Downing Street Wilson, NC 27893	\$1,497.87
74	Lindsey, Donnie 1907 Oakdale Drive Wilson, NC 27893	\$1,497.87
75	Lindsey, Lorenzo 4615 Landfill Road Wilson, NC 27893-7693	\$1,497.87

76	Lucas, Barbara 5318 NC 91 Wilson, NC 27893	\$1,497.87
77	Lucas, Johnnie Jr. 5606 Lake Haven Ct. Wilson, NC 27896	\$1,497.87
78	Lucas, Marilyn P.O. Box 1123 Elm City, NC 27822-1123	\$1,497.87
79	Lucas, Sidney 5318 NC 91 Wilson, NC 27893	\$1,497.87
80	McNeil, Robert 1006 Third Street Wilson, NC 27893	\$1,497.87
81	Pender, Derralyn 3617 Highway 301 N Wilson, NC 27893-9459	\$1,497.87
82	Powell, Golynda 1320 Washington Street Wilson, NC 27893	\$1,497.87
83	Reid, Robin 1119 Meadow Street Wilson, NC 27893	\$1,497.87
84	Rogers, Lue Rt. 3, Box 533 Middlesex, NC 27557-9235	\$1,497.87
85	Stewart, Tom 404 Shadowy Lane Goldsboro, NC 27530	\$1,497.87

86	Vines, Janet (nee Janet Ferguson) 1025 Long Avenue Rocky Mount, NC 27801	\$1,497.87
87	White, Helena 5637 Hwy 91 Wilson, NC 27893	\$1,497.87
88	White, Letitia 1704 Hillcrest Drive Wilson, NC 27893	\$1,497.87
89	Whitley, Abigail 1208 Atlantic Street Wilson, NC 27893	\$1,497.87
90	Wilson, Joe Jr. Jerusalem MHP, Lot 13 Walstonburg, NC 27888	\$1,497.87