

CLOSED

**U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:97-cv-00130-H**

Equal Employment v. American National, et al
Assigned to: Judge Malcolm J. Howard
Demand: \$0
Cause: 42:1981 Job Discrimination (Race)

Date Filed: 02/26/1997
Date Terminated: 01/20/1999
Jury Demand: Both
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

**Equal Employment Opportunity
Commission**

represented by **David R. Treeter**
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V.

Defendant

American National Can Company
also known as

represented by **Craig Douglas Mills**
Buchanan Ingersol,PC

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Defendant

Ball-Foster Glass Container Co., LCCrepresented by **Craig Douglas Mills**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Robert A. Valois**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Thomas A. Farr**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***William P. Barrett**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|-------------------|----------|---|
| 02/26/1997 | 1 | Complaint filed; Job Discrimination - Pltf. req. permanent injunction, compensation, punitive damages and Trial by Jury. (fs) (Entered: 02/28/1997) |
| 03/19/1997 | 2 | Amended complaint by Equal Employment, adding jury demand; amends [1-1] complaint (bb) (Entered: 03/20/1997) |
| 04/07/1997 | 3 | Waiver of Service Returned Executed as to American National 3/19/97 Answer due on 5/18/97 for American National (bb) (Entered: 04/07/1997) |
| 04/16/1997 | 4 | Order reassigning case from Judge Boyle to Judge Howard signed by David Daniel; served. (bb) (Entered: 04/16/1997) |
| 04/16/1997 | | Case reassigned to Judge Malcolm J. Howard pursuant to Clerk's order this date; original file forwarded to Greenville Clerk's Office (bb) (Entered: 04/16/1997) |
| 04/17/1997 | | Case file received in Greenville. (ll) (Entered: 04/18/1997) |
| 04/24/1997 | 5 | Amended Waiver of Service Returned Executed as to American National 4/24/97 Answer due on 6/23/97 for American National (dh) (Entered: 04/30/1997) |
| 04/24/1997 | 6 | Amended Waiver of Service Returned Executed as to Ball-Foster Glass 4/24/97 Answer due on 6/23/97 for Ball-Foster Glass (dh) (Entered: 04/30/1997) |
| 05/15/1997 | | Case file to USMJ Dixon for consideration of Motion for Protective Order to be filed in Raleigh today. (ll) (Entered: 05/15/1997) |
| 05/15/1997 | 7 | Motion by American National, Ball-Foster Glass for permission to file memorandum and exhibits under seal . w/cs and sealed envelope containing memorandum and exhibits Cy. to USMJ Dixon. (ll) Modified on 05/16/1997 (Entered: 05/16/1997) |

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| 05/15/1997 | 8 | Motion by American National, Ball-Foster Glass for protective order and for limited stay of discovery . w/cs. Cy. to USMJ Dixon. (ll) (Entered: 05/16/1997) |
| 05/15/1997 | 8 | SEALED Memorandum by American National, Ball-Foster Glass in support of [8-1] motion for protective order. (ll) (Entered: 07/08/1997) |
| 05/19/1997 | 9 | Order - setting hearing on defendants' Motion for Protective Order. Plaintiff will file its response to the motion no later than 12:00 o'clock noon Friday, May 23. The filing will be made in the Raleigh Clerk's Office. Motion hearing before USMJ Wallace W. Dixon set for 2:00 5/27/97 in Raleigh, Sixth Floor Courtroom for [8-1] motion for protective order, set for 2:00 5/27/97 for [8-2] motion for limited stay of discovery signed by Wallace W. Dixon. cys faxed to counsel of record and served by regular mail. cy to Cookie & Carol. (dh) (Entered: 05/20/1997) |
| 05/23/1997 | 10 | Memorandum by Equal Employment in opposition to [8-1] motion for protective order. w/cs and attachments. (ll) Modified on 07/24/1997 (Entered: 05/29/1997) |
| 05/23/1997 | 11 | Affidavit of Rosemary J. Fox by Equal Employment Re: [11-1] opposition memorandum. (ll) Modified on 07/24/1997 (Entered: 05/29/1997) |
| 05/27/1997 | 12 | Notice of attorney appearance for American National by Sharon L. McConnell, Raleigh, N.C. (fdc) Modified on 07/24/1997 (Entered: 05/27/1997) |
| 05/27/1997 | | Motion hearing re: [8-1] motion for protective order Motion hearing held before USMJ Wallace W. Dixon in Raleigh. Courtroom Deputy - Jolie Skinner. Counsel for Plaintiff: Rosemary Fox. Counsel for Defendants: Tom Farr, Steve Segebarth & Barry Hartstein. Issues were heard, matter taken under advisement. Written order to follow. Total Hearing Time - 1 1/2 hrs. Hearing Recorded. (dh) (Entered: 05/29/1997) |
| 06/23/1997 | 13 | Joint Answer to Complaint by American National, Ball-Foster Glass; jury demand (ll) (Entered: 06/26/1997) |
| 06/23/1997 | 13 | Motion by American National, Ball-Foster Glass to dismiss claims against ANC and Ball-Foster . w/cs. Response due on 7/16/97. (ll) (Entered: 06/26/1997) |
| 06/25/1997 | 14 | Motion by American National, Ball-Foster Glass to dismiss or in the alternative to join necessary parties. w/cs. Response due on 7/28/97. (ll) Modified on 07/24/1997 (Entered: 06/27/1997) |
| 06/25/1997 | 15 | Memorandum by American National, Ball-Foster Glass in support of [14-1] motion to dismiss. w/cs and attachments. (ll) Modified on 07/24/1997 (Entered: 06/27/1997) |
| 06/26/1997 | 16 | Request for Discovery Plan: Discovery Plan due by 7/16/97 (ll) Modified on 07/24/1997 (Entered: 06/26/1997) |
| 07/07/1997 | 17 | Order granting in part, denying in part [8-1] motion for protective order...A curative notice substantially in the form as outlined in this order will be prepared and mailed to defendants' employees as of April 11, 1996. Defendants will also provide to EEOC their employee roster going back to 1991 and for employees hired since April 1996 in order that the notice in conformance with the directions herein can be mailed to that group. Plaintiff will bear the cost of mailing. To this extent the motion is GRANTED. In all other respects, the motion for a protective |

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| | | order is DENIED. (Mooting [8-2] motion for limited stay of discovery) signed by Wallace W. Dixon, USMJ. Cys. served. (ll) (Entered: 07/08/1997) |
| 07/14/1997 | 18 | Document filed by defendant American National, defendant Ball-Foster Glass titled: Defendant's Joint Amended Fourth Affirmative Defense. cs. (dh) Modified on 07/24/1997 (Entered: 07/21/1997) |
| 07/14/1997 | 19 | Memorandum by Equal Employment in opposition to [14-1] motion to dismiss, [13-1] motion to dismiss claims against ANC and Ball-Foster, cs. (Reply due July 31, 1997) (dh) Modified on 07/24/1997 (Entered: 07/21/1997) |
| 07/15/1997 | 20 | Motion for leave to file Amicus Curiae Brief filed by Glass, Molders, Pottery & Allied Workers International Union. w/cs. Response due on 8/7/97. (bb) Modified on 07/24/1997 (Entered: 07/16/1997) |
| 07/15/1997 | 21 | Memorandum by Glass, Molders, in support of [20-1] motion for leave to file Amicus Curiae Brief (bb) Modified on 07/24/1997 (Entered: 07/16/1997) |
| 07/16/1997 | 22 | Discovery Plan filed by Equal Employment, American National, Ball-Foster Glass (dh) (Entered: 07/21/1997) |
| 07/17/1997 | 23 | Discovery Plan filed by Equal Employment, American National, Ball-Foster Glass. cy to USMJ Dixon. (dh) (Entered: 07/22/1997) |
| 07/21/1997 | | Case submitted to: USMJ Dixon [22-1] discovery submitted. CASE FILE TO USMJ DIXON FOR ENTRY OF SCHEDULING ORDER. (dh) (Entered: 07/21/1997) |
| 07/21/1997 | 24 | Response by plaintiff Equal Employment to [17-1] order. (ll) (Entered: 07/24/1997) |
| 07/21/1997 | 25 | Notice of attorney appearance for Equal Employment by David R. Treeter. w/cs. (ll) (Entered: 07/24/1997) |
| 07/21/1997 | 26 | Joint motion by Equal Employment, American National, Ball-Foster Glass to submit a proposal for a curative letter (as required by the court's order of 7/2/97) to and including 7/25/97. w/cs. Cy. to USMJ Dixon. (ll) (Entered: 07/24/1997) |
| 07/23/1997 | 27 | Order on Scheduling by Magistrate Wallace W. Dixon setting Discovery cutoff 9/30/98 Deadline for filing of all motions 10/1/98 Jury Trial scheduled for <date not set> (an early 1999 Western Division setting) before Judge Malcolm J. Howard, USDJ Place: Fayetteville, NC No. of Interrogs. 100 No. of Depositions 50. Cys. served. Cal. cy. (ll) (Entered: 07/24/1997) |
| 07/23/1997 | | Oral Order...Court granted defendants (Thomas Farr) permission to file their response to the Objection (#24) to the motion for protective order to and including 8/1/97. Entered by Malcolm J. Howard, USDJ. (ll) (Entered: 07/24/1997) |
| 07/25/1997 | | Letter From: Rosemary J. Fox Re: Curative Mailing as instructed in order of July 7, 1997 by USMJ Dixon. (dh) (Entered: 07/28/1997) |
| 07/28/1997 | | Case submitted to: USMJ Dixon [0-0] letter submitted (dh) (Entered: 07/28/1997) |
| 07/31/1997 | 28 | Order granting [26-1] joint motion to submit a proposal for a curative letter until and including July 25, 1997. cys srevded. signed by Wallace W. Dixon, USMJ. (dh) |

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| | | (Entered: 07/31/1997) |
| 08/01/1997 | 29 | Response by American National, Ball-Foster Glass in opposition to [24-1] order response. w/cs. (ll) (Entered: 08/06/1997) |
| 08/04/1997 | 30 | Order - The court has worded the contents of the curative letter for the parties and attached a copy to this order. Plaintiff is directed to prepare and mail the letter to defendants' employees. signed by Wallace W. Dixon, USMJ. Cys. served. (ll) (Entered: 08/06/1997) |
| 08/11/1997 | | Case submitted to: Malcolm J. Howard, USDJ [29-1] opposition response submitted, [24-1] order response submitted, [17-1] order submitted for consideration of the objections to Judge Dixon's order of 7/7/97. (ll) (Entered: 08/11/1997) |
| 08/15/1997 | | Motion(s) submitted: [20-1] motion for leave to file Amicus Curiae Brief submitted, [14-1] motion to dismiss submitted, [13-1] motion to dismiss claims against ANC and Ball-Foster submitted. Remaining case file and updated docket sheet to Judge Howard. (ll) (Entered: 08/15/1997) |
| 08/18/1997 | 31 | Document filed by plaintiff Equal Employment titled: Plaintiff EEOC's Reply to Defendants' Response to EEOC's Objections to the Magistrate Judge's Order of July 2, 1997. (dh) (Entered: 08/21/1997) |
| 11/18/1997 | 32 | Order granting [20-1] motion for leave to file Amicus Curiae Brief, denying [14-1] motion to dismiss, denying [13-1] motion to dismiss claims against ANC and Ball-Foster signed by Malcolm J. Howard, US Judge. OB Ref: CIV OB# 56, P-18 cys served 11/18/97. (dh) (Entered: 11/21/1997) |
| 11/18/1997 | 33 | Document filed by movant Glass, Molders, titled: Memorandum of Law of Amicus Curiae Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO, CLC Concerning Motion to Dismiss For Failure to Join Necessary Parties, or in the Alternative To Join Necessary Parties. cs. (dh) (Entered: 11/21/1997) |
| 12/03/1997 | 34 | Motion by Equal Employment for reconsideration of [32-1] order , cs. (response due 12/26/97) (dh) (Entered: 12/10/1997) |
| 12/03/1997 | 35 | Memorandum by Equal Employment in support of [34-1] motion for reconsideration of [32-1] order, cs. (dh) (Entered: 12/10/1997) |
| 12/16/1997 | 36 | Response by American National, Ball-Foster Glass to [34-1] motion for reconsideration of [32-1] order. w/cs. Reply due on 1/6/98. (ll) (Entered: 12/17/1997) |
| 01/06/1998 | | Case file to USMJ Dixon for order setting trial date. (dh) (Entered: 01/06/1998) |
| 01/12/1998 | 37 | Order setting Jury trial before Judge Malcolm J. Howard for 1/25/99 in Fayetteville, NC signed by Wallace W. Dixon, USMJ. Cys. served. Cal. cy. (ll) (Entered: 01/12/1998) |
| 01/13/1998 | | Motion(s) submitted: [34-1] motion for reconsideration of [32-1] order submitted. Case file to Judge Howard for consideration. (ll) (Entered: 01/13/1998) |

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| 01/14/1998 | 38 | Order denying [34-1] motion for reconsideration of [32-1] order signed by Malcolm J. Howard, US Judge. cys served. (dh) (Entered: 01/14/1998) |
| 01/14/1998 | | Motion(s) referred: referred [7-1] motion for permission to file memorandum and exhibits under seal to USMJ Wallace W. Dixon. CASE FILE TO USMJ DIXON FOR CONSIDERATION. (dh) (Entered: 01/14/1998) |
| 01/16/1998 | | Oral Order granting [7-1] motion for permission to file memorandum and exhibits under seal Entered by Wallace W. Dixon, USMJ (dh) (Entered: 01/16/1998) |
| 01/20/1998 | | CASE FILE RETURNED from: Judge Dixon's chambers. (ll) (Entered: 01/20/1998) |
| 03/09/1998 | 39 | Motion by American National, Ball-Foster Glass to extend time to respond to plaintiff's discovery requests . w/cs. Cy. to Clerk. (ll) (Entered: 03/12/1998) |
| 03/13/1998 | 40 | Order granting [39-1] motion to extend time to respond to plaintiff's discovery requests to and including 4/17/98. signed by David W. Daniel, Clerk. Cys. served. (ll) (Entered: 03/13/1998) |
| 03/18/1998 | 41 | Motion by Glass, Molders, for protective order staying all discovery relating to the discharge of Leon Herndon on 10/30/96 . w/cs. Response due on 4/3/98. (ll) (Entered: 03/23/1998) |
| 03/18/1998 | 42 | Memorandum by Glass, Molders, in support of [41-1] motion for protective order staying all discovery relating to the discharge of Leon Herndon on 10/30/96. w/cs. (ll) (Entered: 03/23/1998) |
| 03/19/1998 | 43 | Unopposed Motion by American National to extend time to respond to plaintiff's discovery requests . w/cs. Cy. to Clerk. (ll) (Entered: 03/26/1998) |
| 03/20/1998 | 44 | Order granting [43-1] motion to extend time to respond to plaintiff's discovery requests to and including April 17, 1998. signed by David W. Daniel, Clerk. Cys. served. (ll) (Entered: 03/26/1998) |
| 03/25/1998 | 45 | Memorandum by Ball-Foster Glass in opposition to [41-1] motion for protective order staying all discovery relating to the discharge of Leon Herndon on 10/30/96, cs. w/attachments. (reply due 4/13/98) (dh) (Entered: 03/27/1998) |
| 03/26/1998 | 46 | Order denying [41-1] motion for protective order staying all discovery relating to the discharge of Leon Herndon on 10/30/96 signed by Wallace W. Dixon, USMJ. cys served by mail & fax on 3/26/98. (dh) Modified on 03/27/1998 (Entered: 03/27/1998) |
| 05/07/1998 | 47 | Notice of attorney appearance for Equal Employment by Erania Ebron-Fubara, Charlotte, NC. (dh) (Entered: 05/12/1998) |
| 05/15/1998 | | Informed by Jonathan R. Harkavy, mediator, that case has settled. Final paperwork within a few weeks. (ll) (Entered: 05/15/1998) |
| 05/18/1998 | 48 | Joint motion by Equal Employment, American National, Ball-Foster Glass to extend time for discovery deadlines . w/cs. Cy. to USMJ Mason. (ll) (Entered: 05/20/1998) |
| 05/20/1998 | | Motion(s) referred: referred [48-1] joint motion to extend time for discovery deadlines to USMJ William N. Mason. Case file to USMJ Mason for |

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| | | consideration. (l) (Entered: 05/20/1998) |
| 05/28/1998 | 49 | Order granting [48-1] joint motion to extend time for discovery deadlines, Fact discovery due by August 31, 1998; Expert discovery due by October 30, 1998; Report from retained expert due from Plaintiff by July 30, 1998, and from Defendants by August 31, 1998. reset discovery due for 8/31/98 , reset motion filing deadline for 1/2/98 signed by William Norton Mason. cys served. (dh) (Entered: 05/28/1998) |
| 09/02/1998 | 50 | Joint motion by Equal Employment, American National, Ball-Foster Glass For An Order Provisionally Approving Consent Decree , cs. (dh) (Entered: 09/04/1998) |
| 09/02/1998 | 51 | Document filed by plaintiff Equal Employment, defendant American National, defendant Ball-Foster Glass titled: Consent Decree w/attachments. (dh) (Entered: 09/04/1998) |
| 09/04/1998 | | Motion(s) submitted: [50-1] joint motion For An Order Provisionally Approving Consent Decree submitted. CASE FILE TO JUDGE HOWARD FOR CONSIDERATION. (dh) (Entered: 09/04/1998) |
| 09/08/1998 | 52 | Order granting [50-1] joint motion For An Order Provisionally Approving Consent Decree. The Consent Decree is PROVISIONALLY APPROVED. Notice by certified mail, return receipt requested, shall be given of this Provisionally Approved Consent Decree by the Commission, to all Black current and former employees, except as provided in Consent Decree. Notice shall be given within 30 days of this Order, on or about the 8th day of October, 1998. Any objections to the Consent Decree must be postmarked to the Clerk's office no later than 60 days from the date of this order, on or about the 7th day of November, 1998. Set miscellaneous hearing before Judge Malcolm J. Howard to 10:00 a.m. on 12/21/98 in Greenville for objections to consent decree signed by Malcolm J. Howard, USDJ. Cys. served. Cal. cy. (l) (Entered: 09/08/1998) |
| 10/07/1998 | 53 | Order - the clerk is directed to deposit "Settlement Account" funds tendered by the defendants in the amount of \$275,000.00 in an interest-bearing account. cys served. cy to Financial Clerk. signed by Malcolm J. Howard, US Judge. (dh) (Entered: 10/07/1998) |
| 10/28/1998 | 54 | Document filed by Sharon Johnson in letter for in objection to settlement of case per court's order of 9/8/98 directing any objections to be filed by Nov. 7, 1998. (dh) (Entered: 10/30/1998) |
| 11/12/1998 | 55 | Document filed by Darwin J. Cook in letter form objecting to settlement of case per court's order on 9/8/98 directing objections to be filed by 11/7/98. (l) (Entered: 11/16/1998) |
| 11/16/1998 | | Case submitted to: Judge Howard [55-1] objection submitted [54-1] objection submitted for consideration. (l) (Entered: 11/16/1998) |
| 11/19/1998 | | CASE FILE RETURNED from: Judge Howard's Chambers - Hold case for hearing on objections to be held on 12/21/98. (l) Modified on 11/19/1998 (Entered: 11/19/1998) |
| 12/03/1998 | | Pre-trial conference set at 10:00 1/7/99 before USMJ Wallace W. Dixon in Raleigh, 5th floor. (dh) (Entered: 12/04/1998) |

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| 12/03/1998 | | Jury trial set at 10:00 1/25/99 before Judge Malcolm J. Howard in Fayetteville. (dh) (Entered: 12/04/1998) |
| 12/16/1998 | | Case submitted to: Judge Howard [52-2] relief submitted. CASE FILE TO JUDGE HOWARD Re: Hearing scheduled for Monday, December 21, 1998 at 10:00 a.m. in G'ville. (dh) (Entered: 12/16/1998) |
| 12/16/1998 | 56 | Document filed by plaintiff Equal Employment titled: EEOC's Response To Objection to Consent Decree - w/attachments, cs. (dh) (Entered: 12/21/1998) |
| 12/16/1998 | 57 | Affidavit of Rosemary J. Fox Re: [56-1] document(s) (dh) (Entered: 12/21/1998) |
| 12/21/1998 | | Motion hearing re: Hearing on Objections to Consent Decree held in G'ville before Judge Malcolm J. Howard. Courtroom Deputy - D. Heath. Court Reporter - Ken MacKenzie. Counsel present - For the Plaintiff: David R. Treeter, Sr. For the Defendants: Thomas A. Farr & Barry Harstein, Chicago. Court reviews case history and order setting today's hearing. Court notes there is no appearance by any of the objecting parties. Court notes objections filed by employees Sharon Johnson & Darwin J. Cook to the Consent Decree. Mr. Treeter advises the court that a letter was sent to his office by William Hill, but no official objection has been filed with the court. Court notes the filing of the objection by Darwin J. Cook shall be deemed untimely filed. Court accepts argument and theory supplemented by the EEOC and agreed to be the defendants. Plaintiff shall provide the court with a proposed order adopting the Consent Decree. Court adjourned at 10:20 a.m., Sine Die. (dh) (Entered: 12/21/1998) |
| 01/20/1999 | 58 | Final Order Approving Consent Decree - IT IS ORDERED AND ADJUDGED that the objections of Sharon Johnson and Darwin Cook are DENIED; "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; The Consent Decree, provisionally approved on September 8, 1998 is fair, adequate and reasonable and is hereby APPROVED. signed by Malcolm J. Howard, USDJ. OB Ref: CIV OB #59, p. 47. Cys. served. (ll) (Entered: 01/20/1999) |
| 01/20/1999 | | Case closed. Non-permanent. (ll) (Entered: 01/20/1999) |
| 04/14/1999 | | (ja) (Entered: 04/14/1999) |
| 04/14/1999 | | Case file to Raleigh-60 days up. (ja) (Entered: 04/14/1999) |
| 04/23/1999 | 59 | Order - Pursuant to the final order approving the consent decree in this matter, filed on January 20, 1999, the United States District Clerk of Court is now ordered to disburse the settlement funds the defendants previously deposited with it. Funds shall be disbursed consistent with Exhibit A/Schedule 1 to the Final Order Approving the Consent Decree. The clerk shall after deducting the registry fee from the accrued interest on the settlement fund and after seven months have passed from the date of issuance of the settlement checks, disburse the remaining balance of the fund to the United Negro College Fund, Corporate Gifts, 8260 Willow Oaks Corporate Drive, Fairfax, VA 22031. cys served, cy to financial clerks. signed by Malcolm J. Howard. (dh) (Entered: 04/23/1999) |
| 09/22/2000 | | Letter to counsel to retrieve sealed documents. (dh) (Entered: 09/26/2000) |

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