IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. AUGUSTA FIBERGLASS COATINGS, INC., and JOHN W. BOYD, Defendants.	)	CIVIL ACTION NO. 3:00-1255-25 **FINAL ORDER APPROVING CONSENT DECREE**

This matter is before the Court for entry of a final order approving the February 16, 2002, Consent Decree (Decree). For the reasons discussed below, the Court hereby ORDERS that the Decree and the Final Distribution List attached hereto is approved.

I. BACKGROUND

On April 24, 2000, Plaintiff, the Equal Employment Opportunity Commission ("EEOC"), filed a Complaint against Defendant Augusta Fiberglass Coatings, Inc. (AFC) alleging race discrimination. In its Complaint, the EEOC alleged AFC created a racially hostile working environment for its African American employees from 1979 until present, and that it discriminated against African American employees in the terms and conditions of their employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. The EEOC filed the lawsuit following investigation of charges of race discrimination filed by Lloyd Lundy and Charlie F. Williams. During the course of the litigation, the EEOC identified more than 300 African Americans who may have been subjected to racial harassment.

The EEOC and Defendants Augusta Fiberglass Coatings, Inc. ("AFC") and John W. Boyd

("John W. Boyd")[1] agree that the subject matter of this action is proper and have stipulated to jurisdiction of the Court over the parties.

This case was hotly contested throughout discovery and as the parties prepared it for trial. However, prior to the trial, the parties advised the Court that they desired to resolve the allegations in the pleadings without the burden, expense, and delay of further litigation. Under the settlement, Defendants did not admit to any wrongdoing nor did Defendants admit to any violation of Title VII. Rather, Defendants specifically denied the allegations of the Complaint. However, Defendants agreed to a settlement by Decree proposed by the EEOC. The Decree agreed to by the parties included injunctive and other equitable relief, in addition to $200,000 in monetary relief to be distributed to aggrieved persons identified by the EEOC.[2] On February 16, 2002, the Court approved the Decree.

Pursuant to the Decree, the EEOC was required to file with the Court a proposed distribution list. The EEOC was also required to send Notices containing certain information to the aggrieved persons and all other persons who have been listed as aggrieved persons at any time during this case. The Notices were to be sent by regular mail to each person's last known address within certain timeframes.[3] The EEOC has complied with these instructions. (See EEOC's Proposed Distribution

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[1]On September 14, 2000, the EEOC amended its complaint and identified Mr. Boyd as a party defendant. Mr. Boyd's only obligation pursuant to the Consent Decree is as a guarantor of the payments of Augusta Fiberglass Coatings, Inc.

[2]Defendants played no part whatsoever in the identification of aggrieved persons or the allocation of the settlement funds.

[3]On May 16, 2002, the EEOC moved to extend the notice period so that it could investigate whether an additional 63 additional individuals, whose race the EEOC did not identify during the litigation, were aggrieved persons. On May 23, 2002, the Court granted the EEOC's motion. To the extent it was able to obtain address information, the EEOC provided

List filed on March 28, 2002, Notices of Settlement filed on March 28, 2002, the Revised Distribution List filed on September 12, 2002, and Notices of Settlement filed on December 2, 2002, and the attached Certificates of Service.) In all, the EEOC sent Notice to 330 individuals.

Pursuant to the Decree, AFC has already paid Charlie Frank Williams and Lloyd Lundy, two of the aggrieved persons, $10,000. The remaining balance of the $200,000 settlement fund, $190,000, has not yet been distributed, pending this fairness hearing and final approval of the distribution by the Court.

On September 12, 2002, the EEOC moved for a fairness hearing. The EEOC attested in its motion that it had "concluded its investigation and determined that forty persons were aggrieved." At that time, the EEOC filed a Revised Distribution List setting forth the EEOC's proposed distribution of funds and the names of the aggrieved persons. The EEOC stated that it had "notified, or it has diligently sought to notify, in full accord with the Decree and with all subsequent orders of this Court, all persons on that schedule, as well as all other persons who have been listed as aggrieved persons at any time during this case."

On November 26, 2002, the Court issued a Scheduling Notice for the fairness hearing. On November 27, 2002, upon receipt of the Scheduling Notice, the EEOC sent the Court's Scheduling Notice and the Revised Distribution Schedule to all persons on the list of aggrieved persons. Additionally, the EEOC mailed the Scheduling Notice to all other persons who sent objections to the EEOC. (See EEOC's Certificates of Service regarding Scheduling Notice and Revised Distribution Schedule).

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notice to all African American individuals on this list. (See Notices and Certificates of Service filed on December 2, 2002).

II. OBJECTIONS

Out of the 330 persons receiving Notices, four filed a timely objection.[4] These individuals were: (1) Lloyd Lundy; (2) Charlie Frank Williams; (3) Earnest T. Williams; and (4) Carl Jones, Jr. None of these individuals is represented by counsel. None of these individuals has sought to intervene in this lawsuit pursuant to section 706(f)(1) of Title VII of the Civil Rights Act of 1964, and Rule 24 of the Federal Rules of Civil Procedure.

A. Lloyd Lundy & Charlie Frank Williams

Lloyd Lundy and Charlie Frank Williams are included by the EEOC as aggrieved persons on the proposed Revised Distribution List now before the Court. According to the EEOC's proposed Revised Distribution List, Mr. Lundy is scheduled to receive monetary benefits in the amount of $14,661.02, more than any other individual. Mr. Williams is scheduled to receive $11,440, more than anyone other than Mr. Lundy.

Mr. Williams and Mr. Lundy objected to the proposed distribution for two reasons: (1) because they were not informed about how the settlement funds might be divided; and (2) because they were not adequately compensated for the damages they sustained. The Court will address both objections in order below.

First, the EEOC Certificate of Service filed on March 28, 2002, indicates that both individuals were sent a Notice, and that the Notice contained the EEOC's proposed distribution. Furthermore, since both men filed objections to the amount of money the EEOC proposed distributing to them after the notice was sent, it follows that they must have both received it. Therefore, the Court finds that both individuals were provided notice regarding the EEOC's

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[4]On April 30, 2002, Roselyn Singleton filed an untimely objection.

proposed distribution.

To the extent that they are objecting to the parties' agreement at the mediation to a monetary settlement of $200,000, it should be noted that both Mssrs. Lundy and Williams were both present throughout the mediation including the point when the parties agreed to settle for $200,000. At that time, both stated they were satisfied with the monetary amount agreed upon by the parties.

The second objection for both related to the amount of the EEOC's proposed monetary distribution. Mr. Williams asserted that he was racially harassed for more than twenty-five years, and that he sustained mental damages. He also stated he was denied pay raises and bonuses. Mr. Lundy stated that he was permanently damaged, physically and mentally, for the rest of his life, by the racial harassment at AFC.

At the hearing, Counsel for the EEOC outlined the procedures and methodology the EEOC followed to reach its proposed distribution of funds to the aggrieved persons. The EEOC based the proposed distribution to aggrieved persons on the following factors: (a) the nature of the harassment, including its seriousness; (b) the frequency of the harassment and duration of the employment; and (c) the harm caused by the harassment, or its emotional impact. To obtain this information, EEOC Trial Attorneys, Supervisory Trial Attorneys, and a paralegal conducted interviews of the aggrieved persons, and the potential aggrieved persons, regarding their experiences at AFC. Afterwards, on February 6, 2002, a team of three EEOC Trial Attorneys met to discuss each aggrieved individual's case and the facts related to it. The EEOC then calculated the presence or absence of the three factors listed above for each aggrieved person. The distribution to each aggrieved person was then calculated based on the number of factors present in each person's case.

With regard to Mr. Llundy, the EEOC determined all three factors were present. With regard

to Mr. Williams, the EEOC determined that two of the three factors were present. The EEOC determined that Mr. Williams, in interviews and at his deposition, did not testify to a significant emotional impact from the harassment. Rather, Mr. Williams was more upset about the pay discrimination, a claim the EEOC dismissed following his deposition.

Additionally, Mr. Turnage states that in calculating the distribution for Mr. Williams and Mr. Lundy, the EEOC considered the fact that these individuals were unique in that they were the only two aggrieved persons who filed EEOC Charges. Moreover, both individuals were extremely cooperative and helpful to the EEOC during the investigation and litigation of this matter. The degree of assistance and cooperation that both individuals provided corroborated their claims and demonstrated their commitment to correcting an injustice. Consequently, the proposed distribution reflects a recommendation to this Court that Mr. Williams and Mr. Lundy receive an additional $5,000 over and above that paid to the other similarly situated aggrieved persons.

Both Mr. Williams and Mr. Lundy appeared at the fairness hearing held on December 2, 2002. Each was given the opportunity to voice their concerns about the settlement and its effect on them. Both acknowledged that they received the highest awards from the settlement amount. In order to increase their amounts under the settlement, the awards of others would have to be reduced. The Court acknowledged the pernicious impact the alleged discrimination had on each of them. Both objectors, as well as counsel for the EEOC and for the Defendants, were given the opportunity to offer suggestions to the Court of a different resolution which could provide any greater relief to Mr. Williams and Mr. Lundy. The objectors had no suggestions. Counsel for the EEOC informed the Court, and the objectors, that participation in this settlement effectively would be the only available remedy for these individuals. Both were informed that they could choose to not participate

in the settlement. However, such a choice would probably place the chance of any recovery in jeopardy. Neither individual indicated that they wished to withdraw from the settlement nor that they wished to receive additional compensation under this settlement at the expense of other aggrieved individuals.

B. Earnest Williams

Earnest Williams is not listed by the EEOC as an aggrieved person. Thus, the EEOC proposes that he should not receive a distribution of the settlement funds. Mr. Earnest Williams objected to this determination. He asserts that he was discriminated against based on his race.

On January 16, 2002, Mr. Earnest Williams was interviewed by EEOC Paralegal Cora Davis. At the time, he failed to articulate a sufficient basis to constitute a prima facie case of racial harassment. Specifically, Mr. Earnest Williams told Ms. Davis a Caucasian supervisor called him "black ass" on two occasions during his six years of employment. During the interview with Ms. Davis, he also described a verbal altercation with the same supervisor, but he did not indicate that the altercation was racially motivated. In addition, Mr. Earnest Williams never saw racist graffiti or nooses, and he never saw other black employees racially harassed.

The EEOC determined that Mr. Earnest Williams did not articulate a prima facie case of racial harassment. Mr. E. Williams was subsequently removed from the list of aggrieved persons on the grounds that he would not be able to articulate sufficient facts to prove he was subjected to a racially hostile working environment. Mr. E. Williams was given notice of the fairness hearing and did not appear.

C. Carl Jones, Jr.

Carl Jones, Jr., is not listed by the EEOC as an aggrieved person. Thus, the EEOC proposes that he should not receive a distribution of the settlement funds. Mr. Jones objects to his exclusion from the list of aggrieved persons. He asserts that he was discriminated throughout his employment at AFC. He states excluding him from the list of aggrieved persons is unfair considering the discriminatory treatment.

On September 17, 2001, Mr. Jones was interviewed by Trial Attorney Edwin Turnage. Mr. Jones stated that he was subjected to racial harassment while employed by AFC. However, he was employed from 1986 to 1988.[5]

The EEOC is not seeking recovery of compensatory damages for aggrieved persons that were subjected to racial harassment before November 21, 1991, the effective date of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. (Amended Complaint) Consequently, no monetary damages are available to Mr. Jones from this settlement. Mr. Jones was given notice of the fairness hearing and did not appear.

III. DISCUSSION

This action was brought under the EEOC's enforcement powers, and thus is not subject to the requirements of Fed. R. Civ. P. 23 and its provisions requiring the district court to make a determination of reasonableness in a class action settlement. General Telephone Co. v. EEOC, 446 U.S. 318, 327 (1980); Binker v. Commonwealth of Pennsylvania, 977 F.2d 738, 747 (3rd Cir. 1992). Consequently, some courts have seen their role in reviewing an EEOC settlement as restricted to

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[5]On August 7, 2001, Mr. Jones was interviewed by EEOC Legal Technician, Stephanie Bradbury. Mr. Jones also told Ms. Bradbury that he was employed from 1986-1988.

"acknowledg[ing] that the parties have exercised the right, which they have, to discontinue this litigation." EEOC v. Consolidated Edison Co., 557 F. Supp. 468, 470 (S.D. N.Y. 1983). Here, however, the parties to the Decree have recognized that its settlement will affect the interests of persons who are not parties to this matter. Consequently, they agreed in the Decree to submit the matter to this Court for a determination whether the terms and distribution are fair, adequate and reasonable. (Decree at ¶5 & EEOC's Motion to Extend the Notice Period at p. 2).

In determining whether the settlement is fair, adequate and reasonable, the Court's intrusion on what is otherwise the parties' consensual agreement is limited to assuring that the agreement is not "the product of fraud or overreaching by, or collusion between, the negotiating parties." Binker, 977 F.2d at 748 (quoting Officers for Justice v. Civil Service Commission, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)). In assessing the fairness, reasonableness, and adequacy of a proposed Decree, the Court should examine: (1) the existence of fraud and collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. Flinn v. FMC Corporation, 528 F.2d 1169 (4th Cir. 1975), cert. denied 424 U.S. 967 (1976) ; McDonnell Douglas, 63 Empl. Prac. Dec. (CCH) Cases at 78,343 (quoting Reed v. General Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983)).

1. **There Was No Fraud By or Collusion Between the Parties**.

None of the objections in this matter contains any facts or information that would demonstrate fraud by or collusion between the EEOC and AFC. Indeed, the parties' affirmative agreement to submit this matter for a fairness hearing, and their agreement to, and subsequent efforts

to, notify claimants of their right to object to the proposed Decree belie any such charge.

The parties settled this dispute on the verge of trial following more than a year of vigorous litigation. Numerous motions were filed by both sides, several of which remained unresolved at the time of the settlement. The settlement followed lengthy, complex, and arms-length negotiations. It was finally brought to fruition following twelve hours of mediation. The history of this litigation clearly demonstrates a lack of fraud or collusion. McDonnell Douglas, 63 Empl. Prac. Dec. (CCH) Cases at 78,343 (the history of the litigation relevant to issue of fraud or collusion). See also In re: Jiffy Lube Securities Litigation, 927 F.2d 155, 159 (4th Cir. 1991).

2. The Complexity, Expense and Duration of this Litigation Reflect the Fairness, Adequacy and Reasonableness of the Proposed Consent Decree.

Absent a settlement in this matter, this litigation will proceed. Given the number of aggrieved persons, the facts and circumstances peculiar to each claim, and the legal issues involved in the case, its complexity cannot be doubted. For example, John Boyd's liability as the alter ego of AFC represented a significant legal issue. The trial of the alter ego case would have involved numerous complex financial documents, expert testimony, and significant factual and legal issues.

The merits of the EEOC's Title VII claim was also extremely complex. The EEOC alleged the racially hostile working environment existed at AFC for more than twenty years. Proving this allegation would have involved numerous witnesses. Moreover, the EEOC would have been required to present each aggrieved person's testimony regarding how he or she was individually subjected to a racially hostile working environment as well as testimony about his or her damages. Because of the uniqueness of the claims associated with each aggrieved person, this case promised a very lengthy trial. At the hearing, counsel for the EEOC stated the probable length of the trial, as

well as the likelihood of appeal following trial, was a motivating factor behind the settlement.

3. **There Was Sufficient Disclosure of Information at this Stage of the Proceedings for the Parties to Engage in Meaningful Settlement Discussions.**

The discovery in this case was complete and substantial information was exchanged. After litigating the case for more than a year, the parties were preparing for trial at the time the settlement agreement was reached. Before settlement, they took numerous depositions and exchanged thousands of pages of documents. The EEOC had retained and intended to present at trial medical, psychiatric, and financial experts. Defendant had retained two accounting experts. All of the experts were deposed. Considering the late stage of this litigation, and the information exchanged and evaluated, there was clearly sufficient disclosure of information here for the parties to engage in meaningful settlement discussions.

4. **The EEOC's Probability of Success on the Merits and Probable Recovery at Trial Is Disputed.**

The parties strongly disagree on the merits of this action. The EEOC contends that its evidence of discrimination is strong, and that AFC's managers knew about the hostile work environment in which its black employees worked. It further asserts that AFC failed to take appropriate action to end the racial harassment. (See EEOC's Memorandum in Opposition to Defendant's Motions for Partial Summary Judgment and For Sanctions). AFC denies that it engaged in harassment of African-American employees and insists that it has not violated Title VII. (Decree) AFC further contends that the EEOC cannot recover damages for many of the aggrieved persons. (Defendant's Memorandum in Support of Motion in Limine on Damages Testimony)

Moreover, AFC remains undercapitalized, and its assets are presently encumbered by liens from creditors or pre-existing judgment creditors. (EEOC's Memorandum in Opposition to John

Boyd's Motion for Summary Judgment) Thus, collecting any judgment for the EEOC may have been difficult. (Defendant's Memorandum in Support of Summary Judgment) Because the parties dispute the merits, and the outcome of this case cannot be predicted with any certainty, the proposed Decree reflects concessions by both sides. While the EEOC does not obtain the full measure of relief it would seek at trial, neither does AFC escape monetary and equitable burdens as it had hoped.

The settlement affords a greater opportunity for recovery by the class than would occur if the EEOC should not prevail at trial on all claims. This risk of possible failure to prevail at trial was a consideration in the settlement negotiations. It is important to note that a failure to prevail at trial would result not only in loss of the monetary benefits of the settlement, but also loss of the injunctive relief that is designed to protect all aggrieved persons from future racial harassment. According to EEOC counsel, the difficulty of collecting and paying a monetary judgment was also a factor considered by the parties in settling on the sum of $200,000.

5. EEOC Counsel and the Majority of Claimants are Satisfied With This Resolution.

EEOC attorneys handling this case, and their Supervisor, Mindy E. Weinstein, are experienced employment law attorneys. For example, Trial Attorney Edwin Turnage practiced employment discrimination litigation in South Carolina for more than ten years before joining the EEOC, and has now been an EEOC Trial Attorney for more than three years. EEOC counsel agrees that considering the risks associated with continuing the litigation, the monetary settlement agreed upon by the parties is fair, just and reasonable. While the opinions of counsel are not determinative of whether a settlement should be approved, their opinions should be given weight because they are the most familiar with the applicable law and facts. Flinn, 528 F.2d at 1173; McDonnell Douglas, 63 Empl. Prac. Dec. (CCH) Cases at 78,344; Cotton v. Hinton, 559 F.2d 1326, 1330-31 (5th Cir.

1977).

With respect to the class members' opinions, thirty-eight of the forty aggrieved persons have expressed no dissatisfaction with the terms of the agreement. Only two of forty aggrieved persons have expressed dissatisfaction. Thus, ninety-five percent of the aggrieved persons do not object to the EEOC's proposed distribution. McDonnell Douglas, 63 Empl. Prac. Dec. (CCH) Cases at 78,345.

IV. CONCLUSION

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

1. AFC shall comply fully with the provisions of this Court's February 16, 2002 Decree.

2. AFC shall pay $200,000 to those aggrieved persons identified by the EEOC in accordance with the Final Distribution List, attached hereto. AFC has already paid $10,000 to Charlie Frank Williams and Lloyd Lundy.

3. The first payment of $30,000 shall be made by AFC to the escrow agent within ten days of this Final Order. The escrow agent shall make the first disbursement to the aggrieved persons within twenty days of this Final Order.

4. Except as is set forth above, the funds shall be distributed in accordance with the procedures and deadlines set forth in the Decree.

IT IS SO ORDERED.

December 13, 2002
Date

Terry L. Wooten
The Honorable Terry L. Wooten
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	**CIVIL ACTION NO. 3:00-1255-25**
Plaintiff,	)	
v.	)	**FINAL DISTRIBUTION LIST**
AUGUSTA FIBERGLASS COATINGS, INC., and JOHN BOYD,	)	
Defendants.	)	

The settlement funds distribution shown below is to be made annually, pursuant to the February 16, 2002 Consent Decree, over a period of approximately four years. Each of the four annual payments will be approximately 1/4 of the total distribution shown in the following table:

FIRST	M.I.	LAST	Percentage	Total$
Angela		Adams	1.61	$3,220.34
Gene		Anderson	1.61	$3,220.34
James		Armstrong	1.61	$3,220.34
Catherine		Chisolm	4.83	$9,661.02
Sherri		Chisolm	4.83	$9,661.02
Dale		Collins	1.61	$3,220.34
Quincy		Copeland	3.22	$6,440.67
Joyce	J.	Copeland	1.61	$3,220.34
Earnest		Corbitt	1.61	$3,220.34
Annie		Davis	1.61	$3,220.34
Laurie		Dowling, Jr.	1.61	$3,220.34
Anthony		Dunbar	1.61	$3,220.34
Kelcy		Geter	1.61	$3,220.34
Shirley		Heart	1.61	$3,220.34
Inez		Hosey	3.22	$6,440.68
Rosevelt		Hutto	4.83	$9,661.02
Donace		Iaasic	3.22	$6,440.67
Ronnie		Jackson	3.22	$6,440.67
Nathaniel		James	1.61	$3,220.34
Marion		James	1.61	$3,220.34
Alphonzo		Jenkins	1.61	$3,220.34
Derek		Jones	1.61	$3,220.34
Bobby	P.	Jones	1.61	$3,220.34
Michael		Kearse	3.22	$6,440.67
Nathaniel		Kearse	1.61	$3,220.34
Lloyd	A	Lundy	7.33	$14,661.02
Leroy		Mays	3.22	$6,440.67
Terie		McMillan	1.61	$3,220.34
Justine		Myers	1.61	$3,220.34
Curtis		Pressy	1.61	$3,220.34
Handley		Rice	3.22	$6,440.68

Anthony		Rice	1.61	$3,220.34
Will		Rogers	1.61	$3,220.34
Ricky		Sapp	1.61	$3,220.34
Bessie	W.	Sapp	4.83	$9,661.02
Margaret	A.	Scott	1.61	$3,220.34
Edward	C.	Tyler	1.61	$3,220.34
Randalph		Walker	3.22	$6,440.67
J.	C.	Washington	1.61	$3,220.34
Charlie	F.	Williams	5.72	$11,440.68

$200,000.00