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EEOC v. Optical Cable Corporation

Keywords

EEOC, Optical Cable Corporation, 7:00cv00757, Consent Decree, Disparate Treatment, Assignment, Hiring, Termination, Training/Advancement, Manufacturing, Sex, Female, Race, African American or Black, Employment Law, Title VII

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

Civil Action No.7:00cv00757

OPTICAL CABLE CORPORATION,)

Defendant.)

CONSENT DECREE IN FULL
SETTLEMENT OF CIVIL ACTION

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INTRODUCTION

On October 1, 1996, Douglas L. Bonds filed a charge of discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 (“Title VII”), alleging that Optical Cable Corporation (hereinafter referred to as “Optical Cable” or “the Defendant”) had illegally discriminated against him by denying him training in employment and subsequently discharging him because of his race, Black (African-American). During the course of EEOC’s investigation of the charge, EEOC discovered possible additional violations and expanded the charge to investigate whether Optical Cable discriminated against Blacks as a class by failing to recruit and hire Blacks and whether the Defendant also segregated job classifications on the basis of sex thereby discriminating against females as a class.

On March 31, 1999, the EEOC issued a decision finding reasonable cause to believe, inter alia, that the Defendant had engaged in discriminatory hiring practices violative of Title VII by failing to train Mr. Bonds and discharging him because of his race; by failing to recruit and hire Blacks in its workforce, discriminating against Blacks as a class; and by maintaining sex-segregated job classifications thereby discriminating against females as a class on the basis of gender.

Conciliation was attempted during the period from April 1, 1999 to August 17, 1999, and was determined by the EEOC to have failed by letter dated August 17, 1999. The EEOC filed suit in the Western District of Virginia, Roanoke Division on September 26, 2000. The suit alleged that Defendant violated Title VII by discriminating against Mr. Bonds because of his race by failing to train him and discharging him; by discriminating against Blacks as a class by failing

to recruit and hire Blacks in its workforce; and by discriminating against females as a class by maintaining sex-segregated job classifications. Defendant by its answer denied all allegations of discrimination. Both parties began extensive written discovery.

Before commencing with the time and expense of extensive oral discovery, the parties again met to discuss resolution of the issues underlying the EEOC's lawsuit. The parties have reached settlement of all outstanding issues. Accordingly, the Commission and the Defendant recognize that settlement is the means of dispute resolution favored by Title VII and therefore have entered into this Consent Decree to resolve EEOC's allegations, to avoid the delay, costs and risks of further proceedings, and to promote and effectuate the purposes of Title VII. The parties now jointly request that the Court enter this Consent Decree as a resolution of all matters in EEOC's Complaint.

I. GENERAL PROVISIONS

A. This Decree constitutes full discharge and satisfaction of any claims which have been alleged in the Complaint filed in this Title VII action by the EEOC based on the charge of discrimination filed by Douglas L. Bonds, Charge Number 122-97-0006, and the subsequent expanded investigation of that charge. This Decree also resolves EEOC Charges Nos. 122A10094, and 122A20070 filed against Optical Cable.

B. Optical Cable, its officers, agents, servants, employees, successors in interest and all persons acting or claiming to act in its behalf and interest will be, and hereby are, enjoined and restrained from engaging in any employment practice which discriminates against its employees on the basis of race or sex. Specifically, Optical Cable is 1) enjoined from rejecting

qualified Black applicants in its workforce; 2) enjoined from steering women applicants into lower paid job classifications when they are qualified to perform in higher paid job classifications; and 3) enjoined from paying women employees less than male employees in the same job classifications doing the same work.

C. Optical Cable agrees that it will immediately eliminate from Mr. Douglas Bonds' employee records all documents and entries relating to the facts and circumstances which led to the filing of his charge of discrimination with the Commission and assures that Mr. Bonds will not be penalized in future application and or employment at Optical Cable. Optical Cable further agrees to prohibit any dissemination, directly or indirectly, except in response to a lawful subpoena or order of a court of competent jurisdiction, to any other employer or potential employer of any facts or circumstances surrounding Mr. Bonds' charge of discrimination or the events ensuing thereafter.

D. Optical Cable agrees that it will not discriminate against any of its employees or applicants for employment who oppose any practice made an unlawful employment practice by Title VII, or who make a charge, testify, assist, or participate in any manner in an investigation, proceeding, or hearing, under Title VII. Optical Cable further agrees that it will not retaliate against any employee because he or she made a charge, or participated, testified or assisted the Commission in any manner in this action or in the investigation of the employment discrimination charges resolved by this Decree.

II. TERM OF DECREE

This Decree shall become effective on the date of its entry by the Court. The Decree shall

remain in effect for three (3) years from that date. This provision does not in any way preclude the EEOC from filing an enforcement action for alleged noncompliance with the Decree or the Court from finding noncompliance with the Decree and ordering appropriate relief.

III. DEFINITIONS

A. “Company” means Optical Cable Corporation in Roanoke, Virginia.

B. “Commission” or “EEOC” is the Equal Employment Opportunity Commission, an agency of the United States government.

C. Each “Reporting Period” shall be one year and shall commence as of January 1. The first Reporting Period shall cover the period from the date the Decree is signed through December 31, 2002. The last annual report shall cover the period from January 1, 2004 through December 31, 2004.

D. An “Applicant” is an individual not employed by Optical Cable who completes and returns the requisite employment application of the company and who, until selected, rejected, or placed on a waiting list, completes any other steps which he or she is instructed to complete and which are required of other persons seeking the position in question.

E. The term “Hire” refers to the filling of an opening by an individual who is new to Optical Cable.

F. The terms “Operatives and Laborers” refer to various hourly job categories available at Optical Cable, including Extruder Operators, Respoolers, Respoolers II, OTDR Operators, Cablers, Fibers, Receiving, Samples and Shipping.

G. The term “Black” and “African-American” are used in this Decree

interchangeably.

IV. EFFECT OF DECREE

A. This Decree resolves all issues, as set forth in the Complaint in Equal Employment Opportunity Commission v. Optical Cable Corporation, 7:00CV00757 (W.D. Va), filed September 26, 2000, including all claims that the Company discriminated against Douglas L. Bonds by denying him training and by discharging him because of his race, Black, that the company discriminated against Blacks as a class on the basis of race in recruiting and hiring, and that the Company discriminated against females as a class on the basis of sex by maintaining sex-segregated job classifications. The Decree also resolves all claims of discrimination raised in Charge No. 122A10094 and Charge No. 122A200070 filed with the EEOC.

B. Actions taken pursuant to the requirements of this Decree are deemed by the Commission to be in compliance with the provisions of Title VII and relief provided by this Decree is deemed by the Commission to be necessary and sufficient to remedy past discrimination on the basis of race and sex and to further satisfy any requirement for remedial and affirmative relief during the term of this Decree with regard to those allegations in the complaint remedied by this Decree.

V. MONETARY REMEDY

A. To be Paid Directly to Douglas L. Bonds

Within three business days of the entry of this Decree, the Company shall pay \$75,000 directly to Douglas L. Bonds. The parties represent that \$2,000 of the \$75,000 award is for back wages and interest thereon from which the Company may deduct appropriate withholding,

including FICA and FUTA. The remaining \$73,000, from which no deductions will be made, is to satisfy EEOC's claim for compensatory damages with respect to Mr. Bonds and pursuant to which the Company will issue a Form 1099 to Mr. Bonds. Mr. Bonds shall execute a release agreement, attached as Exhibit D, releasing the Company from liability and shall be responsible for all taxes, if any, due as a result of the above payment. A check in the amount set forth above will be paid directly to Douglas L. Bonds, with a copy forwarded to the EEOC.

B. Race and Gender Class Fund

1. Establishment of the Fund

Within two business days of the entry of this Decree by the Court, the Company shall pay \$500,000 to an escrow account administered by Larry Beebe, Bond & Beebe, Bethesda, Maryland, hereinafter referred to as the Fund Administrator. In January 2003 and again in January 2004, the Company shall pay an additional \$175,000 in payments either into this fund or as directed by the EEOC in accordance with Section V. D. below. This fund, hereinafter referred to as the Race and Gender Class Fund, shall be used to satisfy all claims for back wages and compensatory damages for Blacks who the Commission has determined should have been hired between October 1, 1994 and December 1, 2001 and all claims for back wages and compensatory damages for females who were inappropriately assigned into lower paid job classifications and/or not hired into certain job classifications between October 1, 1994 and December 1, 2001.

Except as provided in Section V. B. 2. of this Decree, all distribution allocations from the Race and Gender Class Fund will be determined by the EEOC and will be in accordance with the provisions of Section VII, below. Funds not paid to individuals will be distributed in accordance

with the provisions of Section V. D. below.

2. For Settlement of Pending EEOC Charges

a. Charge No. 122A10094

Within 15 business days of the entry of this Decree, the Fund Administrator shall pay \$40,000 directly to the charging party who brought Charge No. 122A10094. The parties represent that \$25,000 of the \$40,000 award is for back wages and interest thereon from which the Fund Administrator may deduct appropriate withholding, including FICA and FUTA. The remaining \$15,000, from which no deductions will be made, is to satisfy EEOC's claim for compensatory damages and pursuant to which the Fund Administrator will issue a Form 1099 to the recipient. The recipient shall execute a release agreement, attached as Exhibit D, releasing the Company from liability and shall be responsible for all taxes, if any, due as a result of the above payment. A check in the amount set forth above will be paid directly to the charging party in Charge No. 122A10094, with a copy forwarded to the EEOC.

b. Charge No. 122A200070

Within 15 business days of the entry of this Decree, the Fund Administrator shall pay \$85,000 directly to the charging party in Charge No. 122A200070. The parties represent that this amount is to satisfy EEOC's claim for compensatory damages with respect to charging party and pursuant to which the Fund Administrator will issue a Form 1099 to the recipient. The recipient shall execute a release agreement, attached as Exhibit D, releasing the Company from liability and shall be responsible for all taxes, if any, due as a result of the above payment. A check in the amount set forth above will be paid directly to the charging party in Charge No. 122A200070,

with a copy forwarded to the EEOC.

c. Douglas Bonds

Within five business days of the entry of this Decree, the Fund Administrator shall pay an additional \$25,000 from the Race and Gender Class Fund directly to Douglas Bonds. The parties represent this amount is to further satisfy EEOC's claim for compensatory damages with respect to Mr. Bonds and pursuant to which the Fund Administrator will issue a Form 1099 to Mr. Bonds. Mr. Bonds shall execute a release agreement, attached as Exhibit D, releasing the Company from liability and shall be responsible for all taxes, if any, due as a result of the above payment.

C. Fund Administrator

The Fund Administrator shall be responsible for calculating and paying withholding taxes (including FICA and FUTA taxes that are owed), distribution of monies to Eligible Claimants as directed by the EEOC, and distribution of any remaining money to entities or organizations as directed by the EEOC as identified in Section V.E. below. Interest earned on the account shall be used to pay the costs of the Fund Administrator. To the extent that interest earned on the account is insufficient to fully pay the costs of the Fund Administrator, the Company will pay any outstanding costs.

D. Non-allotted Funds from the Race and Gender Class Fund

For each reporting period, any non-allocated monies will be designated for the Company's Recruitment Diversity Enhancement Fund, described in particularity in Section V. E., with the condition that no more than \$25,000 will be permitted to be designated for this fund

during any individual reporting period. Any additional non-allocated monies will be designated for an entity, organization or organizations that engage in programs or activities that further the purposes of Title VII. This entity, organization or organizations will be based in or have a presence in or around Roanoke, Virginia. After consultation with the Company, the EEOC will determine the recipient(s) and amount(s) to be given from non-allocated monies. The Company will be entitled to public credit for these distributions to an entity, organization or organizations.

E. Recruitment Diversity Enhancement Fund

The Company recognizes a need for diversifying its workforce and the benefits that flow from having greater diversification. Accordingly, Optical Cable shall designate \$75,000 for use in its Recruitment Diversity Enhancement Fund over the term of the Decree. Funds expended hiring a new Human Resources specialist may be allocated toward this purpose. This program will be designed to implement the Company's affirmative relief measures (the programs of which are described below in Section VI) and to enable the company to diversify its workforce.

VI. AFFIRMATIVE RELIEF MEASURES

The Affirmative Relief programs required by this Decree shall continue until at least December 31, 2004. The parties agree that the Company has the authority with prior approval of the EEOC to modify, amend, supplement and/or delete portions of the Affirmative Relief programs in this Decree in order to ensure that they are practical and effective.

A. Recruitment and Selection

1. General

The Company shall engage in relevant affirmative recruiting of Blacks into Operative and

Labor positions and females into the positions of Extruder and Cabler.

a. In response to each Black or female individual inquiring about employment opportunities, whether in person, by phone, e-mail, or letter, the Company shall provide written information concerning relevant employment opportunities with the Company; the procedures for applying and for renewing employment applications to the Roanoke facility; and the Company's commitment to equal employment opportunity.

b. Recruitment material, including newspaper advertisements, shall specifically advise that the Company is an "Equal Opportunity Employer" and that Optical Cable "promotes a diverse workforce."

c. The Company shall identify appropriate community, educational and professional organizations to serve as recruitment sources of Blacks and females in relevant recruitment areas. These recruitment sources, which will include the Virginia Employment Commission and the Roanoke Chapter of the National Association for the Advancement of Colored People (NAACP), and Total Action Against Poverty (TAP), will be notified monthly about job openings. Additionally, these sources will be notified annually regarding types of jobs generally available at the Company and the Company's commitment to developing and maintaining a diverse workforce. All such notifications shall announce that the Company is an equal opportunity employer and encourages the referral of Black and female applicants. The company shall not be limited in its recruitment efforts to these organizations. The Company shall provide a list of all such identified recruitment sources to the EEOC within 90 days after the entry of this Decree.

2. Target Advertising Program

The Company will place general and specific recruitment advertising to encourage Blacks and females to apply for openings during any periods when applications are being accepted by the Company. The Company will also continue to identify other sources for advertising to publicize its commitment to diversity in publications and media likely to be seen or heard by Blacks and females, including but not limited to the Roanoke Tribune and WTOY Radio.

The Company will, as necessary and in its discretion, use target advertising to publicize specific openings, to publicize the Company, and employment possibilities, in general, to publicize and fund job fair recruitment attendance and recruitment visits, or to otherwise support other programs being undertaken by the Company pursuant to this Decree.

The Company shall allocate \$25,000 from the designated Recruitment Diversity Enhancement Fund in Section V. E. over the term of this Decree to fund the Target Advertising Program.

3. Applicant Tracking

The Company shall continue its implementation of the applicant tracking procedures that it first started in 1998 to record the demographics of applicants applying to the Company; but, shall also record the job title(s) for which each applicant sought employment. All applicant tracking information will be retained by the Company for the next three years.

4. Placement Goals

a. Each year during the term of this Decree, the Company shall make good faith efforts to hire qualified African Americans for open operative and laborer positions at a rate at

least equal to the percentage of available minorities having requisite skills for "General Operative" positions as set forth in the company's 2000-2001 Affirmative Action Plan developed pursuant to OFCCP regulations, 41 C.F.R. § 60-2 (implementing Executive Order 11246 for federal contractors).

b. Each year during the term of this Decree, the Company shall make good faith efforts to gender-integrate its workforce by a) hiring qualified men into Respooler positions; b) hiring qualified men into OTDR Operator positions; c) hiring qualified women into Cabler positions; and d) hiring qualified women into Extruder Operator positions.

c. The parties recognize that the Company's continuing obligation to make a good faith effort to attain placement goals for Blacks and females set forth in this Decree is subject to the availability of qualified and interested Black and female applicants, respectively.

d. In the event the Company fails to achieve any placement goal established by this Decree, the Company shall be deemed to be in compliance with this Decree, notwithstanding its failure to achieve said placement goal, if it has materially complied with the procedures set forth in the Decree in Section V and the other provisions of Section VI unrelated to placement goals, and can demonstrate its good faith effort to attain the placement goal.

e. The Company shall not be required to offer any job to a person who is not qualified to perform it based on non-discriminatory qualifications. The Company shall not be required under this Decree to keep in effect any offer to any person who, after the offer is extended, affirmatively indicates a lack of interest in the job in question or fails to accept the offer within a reasonable period of time. A reasonable period of time equals at least that

normally afforded to white males to whom similar offers have been extended.

f. The goals contained in this Decree are not intended to operate as a quota or ceiling upon employment of Blacks or females. The Company shall not cease its affirmative relief efforts upon achieving any goal contained in this Decree.

g. Any reduction in force implemented shall be conducted in conformance with existing non-discriminatory procedures for reductions in force.

B. Training for Positive EEO Management Practices

1. General

To assist in its attainment of the goals and the objectives set forth in this Decree, the Company will continue to train executives, managers and supervisors in understanding the principles of diversity and essential human resource management techniques.

It is the intention of the Company to provide EEO awareness to its general workforce in future years, including management employees. The Company acknowledges that the effectiveness of its implementation of the following measures is dependent upon the understanding of the entire workforce, but particularly of its middle management and line supervisors, that these efforts have the full commitment of the company's upper-management, including, the Board of Directors, Chief Executive Officer, and top Company officials. To that end, the Company will, within 21 days of the entry of this Decree and continuing throughout the term of the Decree, communicate to its workforce, and particularly its middle managers and line supervisors, the commitment of the Company to the implementation of this Decree and furtherance of the Decree's purposes.

2. EEO/Affirmative Action and Management Training

During the first 90 days of the term of this Decree, the Company shall provide EEO/Affirmative Action and Management training in proper methods of recruiting, selecting, promoting, disciplining and terminating employees for all executives, managers and supervisors.

3. Sexual and Racial Harassment Training

During the first 90 days of the term of the Decree, the Company shall incorporate sex and race harassment training into its training for executives, managers and supervisors. It is the Company's policy that all executives, managers, supervisors and employees respect the personal dignity of all others. The sexual and racial harassment training reflects the Company's commitment to ensuring that its workplace is free of sexual and racial harassment.

4. Managing a Diverse Workplace

During the first 90 days of the term of this Decree, the Company shall incorporate diversity training into its training for executives, managers and supervisors, designed to raise the awareness of participants of both overt and subtle biases and barriers inhibiting the development of a multicultural organization.

5. Discrimination Complaint Procedure

The Company agrees to use its established Complaint Procedure set forth on page 4-5 of the current Employee Handbook under the Company's Harassment Policy to resolve employee complaints of discrimination or harassment, attached as Exhibit E. Notices of the complaint procedure shall be posted conspicuously at Company facilities, explained at new employee orientation, and described at least annually in an employee newsletter or other all-employee

distribution. The Notices will also explain to all employees that an employee who does not wish to take his or her complaint to company management may alternatively take the complaint to the United States Equal Employment Opportunity Commission (“EEOC”) and assure the employee that there will be no retaliation for choosing to go first to the EEOC rather than company management. The Notices will post the toll free number and address of the EEOC Richmond Area Office, and shall be posted in conjunction with the EEOC Poster attached as Exhibit B.

C. Communications and Outreach

1. General

The Company understands that in order to carry out the objectives of this Decree it must be recognized in the community as an employer which supports and practices equal employment opportunity and affirmative action.

The Company agrees to implement the provisions set forth in this section to assist it in receiving community recognition as an equal opportunity/ affirmative action employer and, thereby, increase its support in carrying out the objectives of this Decree.

2. Existing Communications

The Company agrees to continue to review its existing internal and external communications to assure the absence of sex or race-based stereotyping, to assure that when employees are featured or pictured they include the diversity of the Company work force, and to identify strategies, publications and other avenues where the opportunity currently exists to demonstrate its support for equal employment opportunity and workplace diversity. Whenever possible within the constraint of each publication’s intended business purpose, the Company will

present a diverse work force committed to equal employment opportunity.

3. New Communications

The Company will develop new communications materials, such as a career opportunities booklet, advertising, and brochures to communicate to employees and the public at large its support and practice of equal employment opportunity and diversity in hiring.

4. Organization Outreach and Support

The Company will participate in community organizations and events and identify new opportunities in order to communicate its commitment to equal employment opportunity and diversity.

The Company shall designate \$10,000 from the designated Recruitment Diversity Enhancement Fund in Section V. E. over the term of this Decree to carry out the Organization Outreach and Support Program.

VII. NOTICE AND CLAIMS PROCEDURES

A. In General

The Race and Gender Class Fund shall be used solely to make payments to individuals who timely submit Claim Forms (“Claimants”) and whom the EEOC determines, subject to Court approval, to be eligible to receive monetary relief in this lawsuit (“Eligible Claimants”) with non-allocated funds to be disbursed in accordance with Section V. D.

The Company agrees that the EEOC shall determine who is an Eligible Claimant under this Consent Decree and the amount of monetary relief to be received by any Eligible Claimant subject only to the approval of the Court as described in Section VII.D. below.

B. Criteria For Determining Potential Eligible Claimants

Only those Claimants who satisfy each and all of the following criteria are potential

Eligible Claimants:

a. Black applicants

- i. The Claimant is Black;
- ii. The Claimant applied or would have applied (if interest can be established to the EEOC's satisfaction) for a job with the Company between October 1, 1994 and December 1, 2001;
- iii. The Claimant was not hired by the Company;
- iv. The Claimant met all the non-discriminatory job qualifications at the time of the application; and
- v. The EEOC timely receives from such Claimant, in accordance with the procedures set forth in this Consent Decree, a completed Claim Form, attached to this Consent Decree as Exhibit C

b. Former and Current Female Employees

- i. The Claimant is a woman who is or was employed by the Company;
- ii. The Claimant, upon being hired by the Company, was assigned to a job as a Respooler or OTDR Operator;
- iii. The Claimant met all non-discriminatory job requirements

for a Cabler or Extruder operator position at the time of hire.

C. Notification of Settlement / Claims Process

On or before a date determined by the EEOC and until sixty days after that date (the “Notification Period”), notice of settlement and the claims process will be posted, published, and distributed as set forth below. The date the EEOC chooses to commence the notification period will be no earlier than February 15, 2002 and no later than April 30, 2002. The EEOC will provide the Company at least one (1) week’s notice of the date it has selected for the commencement of the notification period.

1. Hiring Location Notice

The Company agrees to prepare and post the notice attached as Exhibit A (“Notice”) in the following locations at its Roanoke location:

- a. in the employee area where labor and employment notices are ordinarily posted; and,
- b. in the area where job applications are distributed, and/or accepted.

2. Website Notice

As a further means of notifying potential Eligible Claimants of the settlement of this lawsuit and of the claims process described in this Consent Decree, the Company agrees to publish the notice attached as Exhibit A on its website at the webpage where the Company lists employment opportunities during the Notification Period.

3. Media Notice

The Notice, attached as Exhibit A, shall be published four times in the Roanoke Times and Salem Times-Register (two Sunday editions and two weekday editions) and four times in the Roanoke Tribune. Additionally, arrangements will be made with WTOY radio to announce the terms of the settlement. The cost of the publications and radio advertisements set forth in this Section shall be paid by the Company.

4. Notice by letter

The EEOC will contact by letter all black applicants known to have submitted an application during the relevant time period and all former and current female employees who were hired by the Company into Respooler and OTDR positions. The letter will provide notice of the settlement and claims process.

D. Claims Process

1. Claims Period

All Claim Forms must be submitted to the EEOC and be postmarked by no later than 60 days after the end of the notification period.

2. Determination and Notification of Eligibility

The EEOC shall mail a copy of the Claim Form (attached as Exhibit C) to each individual who requests one. The Claims Period will extend no later than 60 days after the end of the notification period and all Claim Forms must be postmarked by the close of the claims period to be considered for individual monetary relief under this Decree.

3. Court Approval of Monetary Relief

Within forty-five (45) days after the close of the claims period, the EEOC shall file with

the Court a motion for the Court's approval of the allocation of the Race and Gender Class Fund among Eligible Claimants as determined by the EEOC. The EEOC shall simultaneously notify all persons who submitted claim forms of its determination regarding their entitlement to individual monetary relief pursuant to the allocation schedule filed with the Court, and shall also notify all such persons of their right to object to the allocation purposed by the EEOC. The Court may conduct a hearing on the approval of the EEOC's purposed allocation schedule.

4. Objection Procedure

Any Claimant who desires to object to the EEOC's purposed allocation as it affects the Claimant's individual eligibility or award, may do so by submitting written objections to the EEOC within 21 days after the date of mailing of the EEOC's notice of allocation schedule. The EEOC will consult with any such objectors and, within 14 days after the close of the 21 day objections period, submit to the Court the written objections of any claimants who desire the Court to review their objection together with the EEOC's response to their objection.

5. Notification and Distribution of Final Settlement Amounts

Within fourteen (14) days after the Court enters an Order approving the allocation of the Race and Gender Class Fund, the Fund Administrator shall draft checks to Eligible Claimants in accordance with the final allocation schedule, deduct appropriate amounts according to the payment received, and forward payment to each eligible claimant by certified mail, return receipt requested. Before payment is processed by the Fund Administrator, all Eligible Claimants must submit to the EEOC a signed release form, attached as Exhibit D. The EEOC will forward the signed release forms to the Company. The Fund Administrator will mail copies of the checks to

the EEOC at the same time it mails the checks to each Eligible Claimant.

As directed by the EEOC, the Claims Administrator shall take further steps in a timely manner to reach those Eligible Claimants who did not receive and/or deposit their settlement checks.

6. Surplus Funds to Organizations in Furtherance of Title VII

In the event that any portion of the Race and Gender Class Fund, including accrued interest, has not been distributed as required by this Consent Decree after a period of one hundred twenty (120) days has elapsed from the date on which the settlement checks were mailed by the Fund Administrator, then such remaining amounts from the Race and Gender Class Fund shall be distributed as set forth in Section V. D. above.

If all distributions set forth in the allocation schedule have been satisfied after the first or second payment into the Race and Gender Class Fund, subsequent payments do not need to be made to the account controlled by the Fund Administrator, but rather the Company may make payments, as directed by the EEOC, pursuant to Section V. D. above.

VIII. REPORTS AND RECORDS

A. The Company shall maintain the following documents and records during the term of the Decree:

1. Applications, resumes and interview notes, if any, of all applicants during the reporting period.
2. All material regarding applicant tracking (see Section VI A. 3).
3. Copies of all newspaper advertisements placed during the Reporting Period under

Section VI A. 1. b.

4. Copies of the notices of Openings sent to community, educational and professional organizations under Section VI A. 1. c.

5. Copies of the general and recruitment advertising placed during the reporting period pursuant to the Targeted Advertising Program, Section VI. A. 2., as well as a listing of the name, telephone number, and address of the contact person for any advertising source utilized for the first time.

6. A listing of the executives, managers and supervisors participating in the company's comprehensive training programs described in Section VI. B.

7. A copy of the communications published pursuant to Section VI. C. (Communications and Outreach).

8. A list of the job fairs, recruitment events, and educational institutions visited and the names of individuals who responded with applications (with percent of Black and female noted) as a result of the same and related outreach activities.

9. All materials regarding employee complaints of harassment or discrimination, as well as all materials regarding the Company's handling of such complaints.

B. The Company agrees to submit an annual written report to the Commission concerning the implementation of this Decree no later than 60 days after the last day of the Reporting Period. Each report shall contain the information set forth below in subparagraphs 1 through 5 concerning the most recent Reporting Period. The Company further agrees to submit a written Report on Goals Accomplishment covering the first six (6) months of each Reporting

Period no later than 30 days after the end of the interim six (6) month period which shall contain the information required by subparagraph 3 below.

The period covered by the Reports shall be as follows:

- date of Signing to December 31, 2002 – First Annual Report;
- Jan. 1, 2003 to June 30, 2003 – Six Month Report on Goals Accomplishment;
- Jul. 1, 2003 to Dec. 31, 2003 – Second Annual Report;
- Jan. 1, 2004 to June 30, 2004 – Six Month Report on Goals Accomplishment;
- Jul. 1, 2004 to Dec. 31, 2004 – Third Annual Report.

1. A list of all applications for employment at the Company during the reporting period including date of application, sex, race, job title applied for, hired or not hired, date of hire, department hired into, if applicable.

2. A list of promotions during the reporting period at the Company including name, sex, race, effective date, job promoted from, job promoted to and department promoted to.

3. For each of the positions discussed in Section VI. A. 4., a list of hires and promotions by job title during the reporting period, including name, race, sex and salary of each person hired or promoted.

4. Copies of the information recorded in Section VIII. A., subparagraphs 2 through 9.

5. Copies of the Company's affirmative action plan, as established by requirement of 41 C.F.R. § 60-1.40, for the year covered by the relevant annual report.

6. The Company shall maintain records of the underlying data summarized in any report required by this Decree until the expiration of this Decree.

IX. NOTICE

All notifications and reports required under this Decree shall be made in writing and in the case of notification to the Commission, shall be sufficient if hand-delivered or sent by registered or certified mail to:

Richard J. Mrizek, Esq.
Equal Employment Opportunity Commission
10 South Howard Street, 3d Floor
Baltimore, MD 21201

X. REVIEW AND COMPLIANCE

A. General Principles

1. Within ninety (90) days after receipt of each annual or six-month report, the Commission shall notify the Company of all of its specific objections, if any, to the Company's compliance with the terms of the Decree that are known to the Commission on the basis of that report. Failure of the EEOC to specifically object to alleged noncompliance within ninety (90) days after the receipt of an annual report shall constitute waiver by the Commission of its right to contest the Company's noncompliance with the Decree for the period covered by that report as to all matters.

2. It is expected that review and compliance of this Consent Decree, in accordance with Section X, shall be conducted by the EEOC Baltimore District Legal Unit.

B. Compliance Reviews

1. Before an on-site compliance review will be scheduled, the Commission will notify the Company of any matters of concern and limit its on-site review to those issues so

identified. The Company shall then have 45 days after receipt of the Commission's notification in which to respond.

2. If during the course of the compliance review the Commission wishes to interview employees, any such interviews will be scheduled to avoid where possible and otherwise minimize disruption of the Company's operations.

C. Enforcement Procedure

1. If the Commission has concerns at any time during the term of this Decree about the Company's compliance with its terms, the Commission will notify counsel for the Company in writing of the Commission's specific contentions of alleged noncompliance and the factual bases therefor. After the Commission has given the Company such written notice, the Company shall have a period of 30 days thereafter to investigate, correct, or refute such contentions prior to the Commission's initiation of any court action concerning the alleged non-compliance.

2. This Decree shall be specifically enforceable in the United States District Court for the Western District of Virginia after the steps specified in Section X have been taken. None of the parties shall challenge the personal jurisdiction of such court or assert that venue is proper in any other district court.

XI. CONSTRUCTION

A. If any clause, sentence, paragraph or part of this Decree or the application of same to any person or circumstances, is, for any reason, judged by a court of competent jurisdiction to be totally or partially unenforceable or contrary to law or if the enactment or amendment of any federal or state statute, order, ordinance, or regulation renders any provision of this Decree totally

or partially unenforceable or contrary to law, such judgment, enactment, or amendment shall not affect, impair, or invalidate the remainder of this Decree.

B. This Decree shall be construed and interpreted in accordance with and governed by the laws of the United States. Its terms are the product of negotiation and are not to be construed as having been authored by one party rather than by the other.

C. This Decree contains the entire agreement between the parties hereto with respect to the matters herein and it supersedes all negotiations, representations, comments, contracts, and writings prior to the date of this Decree. No waiver and no modification or amendment of any provision of this Decree, except as set forth in Section VI, shall be effective unless made in writing and duly signed by the party or parties bound.

D. It is the express intention of the parties that this Decree shall not be offered in evidence or otherwise used in any manner by any person, firm, corporation, entity, organization, or agency of government in an attempt to prove that the Company has violated any equal employment opportunity law, regulation, ordinance, or order, and that this Decree shall not be used as a means to require the continuation of any program or action beyond the term of this Decree.

E. Should either the Commission or the Company determine that modifications, additions, or deletions to this Decree are necessary, the appropriate parties shall meet to discuss said changes. No modification, deletion, or addition to this Decree shall be adopted unless it is agreed upon in writing, signed by the parties, and approved by the Court.

F. In the event that any dispute arises between or among the parties regarding the

interpretation or application of this Decree or any provision thereof, the party or parties claiming a dispute shall give written notice of the dispute to the other interested party or parties. The interested parties shall meet within 30 days after receipt of such notice and make good faith efforts to resolve any such dispute.

The undersigned parties in the above-captioned action hereby consent to the entry of the foregoing Consent Decree.

AGREED AND CONSENTED BY:

FOR PLAINTIFF:

NICHOLAS M. INZEO
Acting Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

GERALD S. KIEL
Regional Attorney

STEPHEN P. O'ROURKE
Supervisory Trial Attorney

AMY E. GARBER (VSB# 37336)
Trial Attorney

RICHARD J. MRIZEK
Trial Attorney

FOR DEFENDANT:

OPTICAL CABLE CORPORATION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
10 S. Howard Street, 3rd Floor
Baltimore, Maryland 21201
(410) 962-4260

SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATE

EXHIBIT A

**IF YOU ARE AFRICAN-AMERICAN
AND APPLIED FOR A JOB AT
OPTICAL CABLE CORPORATION
BETWEEN OCTOBER 1, 1994 - DECEMBER 1, 2001
YOU MAY BE ENTITLED TO MONEY DAMAGES**

**NOTICE OF SETTLEMENT BETWEEN EEOC AND
OPTICAL CABLE CORPORATION THAT PROVIDES INDIVIDUAL MONETARY
RELIEF FOR AFRICAN-AMERICANS WHO APPLIED FOR JOBS AT OPTICAL
CABLE
FROM OCTOBER 1, 1994 through DECEMBER 1, 2001**

The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing federal employment discrimination statutes, and Optical Cable Corporation (Optical Cable) have reached an Agreement resolving a lawsuit that claimed Optical Cable had discriminated against African-American job applicants. That settlement has been approved by the United States District Court for the Western District of Virginia and has been entered as a Consent Decree.

All persons who believe they were rejected for employment by Optical Cable because of their race may be entitled to individual relief under Consent Decree.

If you are African-American and applied for a job with Optical Cable between October 1, 1994 and December 1, 2001 and did not receive a job offer from Optical Cable, you may request a Claim Form and obtain further information at:

**United States Equal Employment Opportunity Commission
Regional Attorney
10 South Howard Street
Baltimore, Maryland
(410) 962-4260**

**ALL CLAIMS MUST BE FILED
NO LATER THAN _____ 2002.**

EXHIBIT B

NOTICE OF NON-DISCRIMINATION

_____ This Notice is being posted pursuant to a Consent Decree voluntarily entered into by Optical Cable Corporation (“Optical Cable”) and the Equal Employment Opportunity Commission (“EEOC”) in connection with the settlement in the case entitled EEOC v. Optical Cable Corporation, 7:00CV00757, filed in the United States District Court for the Western District of Virginia.

The EEOC lawsuit alleged that Optical Cable violated Title VII of the Civil Rights Act of 1964 (“Title VII”) by wrongfully discharging a former employee because of his race, by failing to hire African-American applicants on the basis of their race from 1994-2001, and by failing to hire women into Extruder and Cabler positions on the basis of their gender from 1994-2001. Optical Cable and the EEOC resolved this case with a Consent Decree.

Under the terms of the Consent Decree, Optical Cable has agreed to:

1. Not engage in any employment practice which violates Title VII;
2. Not retaliate against any person who exercises rights under Title VII;
3. Make monetary payments to Black applicants not hired because of their race;
4. Make monetary payments to former and current female employees who were hired into Respooler and OTDR Operator positions and were not offered Extruder and Cabler positions because of their gender;
5. Make a monetary payment to a former employee wrongfully discharged because of his race;
6. Provide training to all managers and supervisors concerning the requirements of Title VII;
7. Take affirmative steps to recruit and hire African-American employees;
8. Take affirmative steps to hire women into Extruder and Cabler positions;
9. Post this Notice;
10. Maintain employee record information;
11. Make annual reports to the EEOC concerning its compliance with the Consent Decree and Title VII.

Federal law prohibits covered employers from discriminating against any employee or applicant for employment on the basis of disability, sex, race, color, national origin, or age, and from retaliation. Should you have any complaints of discrimination or retaliation, you can contact the EEOC. EEOC charges no fee for its services and has employees who speak languages other than English.

DATED: _____

Neil D. Wilkin, Jr.

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

This Notice must remain posted for four (4) years from the date shown above and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission, 1-800-669-4000 or TTY 1-800-669-6820.

APPLICANT'S CLAIM FORM

Instructions: Please answer *every* numbered question to establish your claim. When asked to “explain” your answer, please provide as much information as possible. Please feel free to write on the back of this form or to add additional pages as needed.

If you are unsure of any information, particularly dates, please approximate and write “approx.”

If you do not know the answer to a question, please answer with “I don’t know”.

Please return your claim form to:

**Richard J. Mrizek, Esq.
Equal Employment Opportunity Commission
10 South Howard Street, 3d Floor
Baltimore, MD 21201**

Your claim form must be postmarked by _____ 2002 to be considered.

1. Name:
2. Address:
3. Phone Number:
4. Social Security Number:
5. Race:
6. Did you complete and submit an application to work at Optical Cable Corporation (Optical Cable) at any time from October 1, 1994 through December 1, 2001?
 Yes No
7. If you did not complete and submit an application, why not?

8. If you did complete and submit an application, explain the steps that you took to obtain employment with Optical Cable.
9. Describe any interactions you had with Optical Cable regarding your application, including what took place during any interviews you had.
10. When did you apply?
11. What job or jobs did you apply for?
12. What other companies did you apply to during the same time period?
13. Were you offered a job by Optical Cable?
14. If you were not offered a job at Optical Cable, do you have any information or ideas about the reason you were not offered a job? Please explain.
15. What prior job experience did you have when you applied for a job with Optical Cable?
15. What was your home address at the time you applied for a job at Optical Cable?
16. What was the next job you had after applying at Optical Cable?
17. When did you start your next job?
18. What was your pay at your next job?

I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____ Date _____

 Claimant (print name)

Your claim form must be postmarked by _____ 2002 to be considered.

NOTE: In order for you to receive any benefit from the settlement of this lawsuit, you may be required to provide additional information.

BEFORE YOU MAIL YOUR CLAIM, PLEASE CHECK TO MAKE SURE YOU:

Answered EVERY numbered question.

Signed your claim application.

Wrote today's date next to your signature.

Exhibit D

RELEASE AGREEMENT

In consideration for the payment of \$ _____, I, _____, the undersigned, hereby RELEASE, acquit and forever discharge Optical Cable Corporation, its officers, agents, employees, successors and assigns, from any and all claims under Title VII of the Civil Rights Act of 1964, as amended, arising prior to the date of the entry of the Consent Decree in Full Settlement of Civil Action in EEOC v. Optical Cable Corporation, 7:00CV00757, including, but not limited to, any actions, causes of action, charges, damages, sums of money, wages, dividends, employee or other benefits, attorney's fees, costs, losses, liabilities or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted.

Date: _____ Signed: _____