University of the District of Columbia Law Review

Volume 6 | Issue 1 Article 11

9-30-2001

# Black Plaintiffs And Class Action Employment Discrimination Lawsuits In Corporate America

Michael Green

# BLACK PLAINTIFFS AND CLASS ACTION EMPLOYMENT DISCRIMINATION LAWSUITS IN CORPORATE AMERICA

**Michael Green**

## INTRODUCTION

Class action lawsuits initiated by black employees against corporations have been commonplace in the United States in recent years. Why has there been an influx of litigation targeted to corporate America? Is there an epidemic of discrimination directed toward black employees in many companies— or is this legal action a result of a phenomenon that is coincidental? Although many argue that there is no "systematic" approach or policy to hinder the development of blacks in corporations, it is evident that serious problems do exist in many companies that have the propensity to curtail the advancement of black employees. In essence, this article will highlight certain circumstances where blacks were victims of employment discrimination in the workplace and show how this discrimination continues to exist, preventing blacks from reaching their full economic potential.

## I. PAST CLASS LAWSUITS AND BLACK PLAINTIFFS

### A. *Barriers Preventing Employment Advancement*

One of the earliest accounts of a class action lawsuit spearheaded by black employees against a corporate entity occurred in 1944. In *Steele v. Louisville & Railroad Co.*,[1] a lawsuit initiated by the National Association for the Advancement of Colored People (NAACP) on behalf of a black locomotive fireman and his fellow employees, the U.S. Supreme Court ruled that the fireman had been discriminated by his employer, the Louisville & Nashville Railroad Company. The high court reasoned that the railroad company and the labor union (Brotherhood of Locomotive Firemen and Enginemen) had a statutory duty to represent all members of its craft or railway employees without discrimination because of race.[2] Labor relations laws have been employed in attempts to prevent employers, or unions, from discriminating against black workers.[3] The Railway Labor Act (RLA) and the National Labor Relations Act (NLRA) have been used for these purposes. Under these acts, unions that represent a majority of employees in a collective bargaining unit serve as the exclusive representatives of all employees in the unit, regardless of whether or not they are union members. The U.S.

---

1 Steele v. Louisville & Railroad Co., 323 U.S. 192, 193 (1944).

2 *Id.* at 192.

3 DERRICK BELL, RACE, RACISM, AND AMERICAN LAW 752 (2000).

Supreme Court has established that the union must "represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith."[4]

The *Steele* case, which was argued in front of the U.S. Supreme Court by NAACP legal counsel, Charles H. Houston, was a suit that served as the foundation that aided other black plaintiffs who sought relief in courts to counteract the effects of employment discrimination. In 1969, twenty-five years after *Steele*, the U.S. Supreme Court upheld its ruling of the *Steele* precedent in *Glover v. St. Louis-San Francisco Railway Co.*,[5] holding that a railway company could not discriminate against black employees based on their race. In this case, eight blacks and five whites brought an action against the railroad company and the Brotherhood of Carmen of America in Birmingham, Alabama. The plaintiffs alleged they were qualified to work as carmen but were classified as carmen helpers for many years and therefore did not receive promotions.[6] In short, the U.S. Supreme Court believed that the plaintiffs indeed were qualified to perform the duties of carmen, which included repairing and maintaining passenger and freight cars. Thus, if the railway company and union set up schemes and contrived to bar blacks from promotions, this behavior deprived them of their legal rights as employees.[7]

### B. *Pervasive Discrimination in the Employment Arena*

When examining the parameters of job discrimination, it is vital to highlight what constitutes discrimination at a job related environment. Job discrimination takes three forms: employment discrimination, occupational discrimination, and wage discrimination.[8] The first is employment discrimination, the firing or not hiring of a black worker comparable in terms of economic productivity to the white worker who is retained or hired. Second, occupational discrimination is refusal to permit a qualified black worker to hold a higher status pay position. Third, wage discrimination is discrimination in wages paid to black and white workers of comparable productivity in the same occupation.[9] A prime example of where black workers were victims of employment discrimination occurred in a case that was consolidated with the *Steele* decision in 1944. In that year, the U.S. Supreme Court also decided *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen* [10] in favor of black employees who were victimized by job discrimina-

4 *Id.* at 752.

5 Glover v. St. Louis-San Francisco Railway Co., 393 U.S. 331 (1969).

6 *Id.* at 325.

7 *Id.* at 331.

8 Robert Olson Jr., *Employment Discrimination: New Priorities in the Struggle for Black Equality*, 6 Harv. C.R.C.L. L. Rev. 20, 26-27 (1970).

9 *Id.* at 26-27.

10 Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210 (1944).

tion. The *Tunstall* case arose under similar facts as *Steele*. Tom Tunstall was a fireman, who like the plaintiff in *Steele*, suffered because of the union's amendment to the collective bargaining agreement. As a result of the amendments, Tunstall was deprived of his seniority rights, removed from his job as a fireman, given more difficult work at a lower wage, and replaced as a fireman by a white member of the union.[11] This was typical of the kind of behavior exhibited toward black employees in companies where they were gaining skills that would improve their economic status in American society. Some believe the economic disadvantage of blacks is directly attributed to racial discrimination in employment.[12] Since the days of slavery, blacks in this country have been second class workers, mainly limited to the most unskilled, unattractive, and poorly paid occupations. Blacks traditionally have been under-represented among the ranks of professionals, managers, sales workers, craftsmen, and foremen.[13]

## II. Why Employers Discriminate

### A. *Differential Treatment of Black and White Employees*

Understanding a job description is essential to the growth of an employee who is trying to succeed in an employment atmosphere. However, blacks are often not prepared for the reality of employers discriminating against them in favor of white employees when they are both part of an employment environment. Therefore, blacks often do not reach their full potential as employees. Several reasons why an employer might prefer whites over blacks in an employment setting include racial prejudice of the employer, aversion of white employees to working with black employees, customer dislike of dealing with black workers, higher costs of identifying a black individual who is productive as a white one, higher cost of going outside traditional recruitment sources which do not include blacks, reasons based on criteria not related to production or race (e.g., nepotism), fear of adverse reaction from unions, and belief that whites are more productive.[14]

With this kind of racial climate existing in corporate America, it is understandable why many black employees have difficulty fulfilling their economic potential. This kind of behavior in the employment world can be construed as indicative of what keeps blacks from excelling in the corporate arena; it is behavior exhibited toward blacks maliciously and in a discriminatory fashion that some persons believe is designed to curb the advancement and development of black Americans in corporate America.

---

11 J. Clay Smith and E. Desmond Hogan, *Remembered Hero, Forgotten Contribution: Charles Hamilton Houston, Legal Realism, and Labor Law*, 14 Harv. Blackletter J. 1, 6-7 (1998).

12 *See* Bell, *supra* note 3, at 740.

13 *Id.*

14 *See* Olson, *supra* note 8, at 33.

### B. *Denial of Raises and Promotions*

Even when blacks are fortunate to receive positions in various companies, there is often a disparity in salary and wages between black workers and white employees. In 1980, black men between the ages of 25-34 years old earned a weekly wage that was 12.6% less than that of their white counterparts, even when the two groups were matched in years of school completed, region of residence and other measurable characteristics.[15] Also, black females do not rise to high level professional and administrative positions at the same rate as their white females co-workers.[16] This is a typical example of the kind of disparity that exists between black and white employees in companies. Oftentimes, the only recourse blacks have to remedy this discrimination is to pursue employment discrimination claims against employers in order for their grievances to be taken seriously. As indicated in the *Steele* and *Tunstall* cases listed earlier in the literature, black plaintiffs have sought litigation as a means to address the employment discrimination issues that plagued them in their work environments. Both of these cases are examples where blacks were systematically denied promotions and became victims of retaliation at their jobs as a result of their litigation actions. A further discussion of other case law that shows how litigation was instrumental in helping to rectify discrimination against black employees will be highlighted in the forthcoming section.

## III. PROVING PATTERS OF EMPLOYMENT DISCRIMINATION

### A. *Filing an Employment Discrimination Claim*

Before an individual files an employment discrimination suit, it is critical to recognize if the individual is indeed a victim of job discrimination. Black employees must be aware of what constitutes employment discrimination before pursuing a claim that will be successful. Until the passage of Title VII of the Civil Rights Act of 1964, blacks had no effective legal machinery for dealing with employment discrimination. Prior to Title VII, most complaints of employment discrimination were handled by administrative civil rights agencies.[17] These agencies often viewed themselves as mediators between employers and black workers. Agencies during this period simply failed to act as law enforcement agencies enforcing the legal rights of blacks. For these reasons, the public policy against discrimination, though established well before Tittle VII in a variety of state laws, executive orders, and court decisions, remained unenforced.[18]

---

15 Leroy D. Clark, *The Law and Economics of Racial Discrimination in Employment by David A. Strauss*, 79 Geo. L J. 1655, 1699 (1991).

16 *Id.* at 1702.

17 Bell, *supra* note 3, at 765.

18 *Id.*

Prior to 1964, it was difficult for black Americans to have their employment discrimination claims taken seriously because there was no concrete body of law that could assure them proper redress against an employer. In fact, Title VII marked the turning point in employment discrimination law. Title VII established the Equal Opportunities Commission (EEOC), an executive agency empowered to receive, file, and investigate complaints of discrimination from individuals, and to facilitate complaints by voluntary means. Charges of discrimination had to be filed with the EEOC within 90 days after the incident; where local fair employment remedies were available, the plaintiff had to pursue those remedies first.[19] Title VII provided that plaintiffs could bring an action in federal district court after receiving a letter from the EEOC authorizing the suit. Also, Title VII barred discriminatory acts and practices by private employers or unions with 25 workers or more, and which engaged in an industry affecting interstate commerce.[20] Although one may be armed with the necessary tools to pursue an employment discrimination claim, such as the "right to sue letter" from the EEOC, a person must be cognizant of how to present a case at the trial level to ultimately prevail against an employer who practices discrimination.

### B. *Establishing a Prima Facie Case*

The key case that established the guidelines which employment discrimination suits must be measured was decided by the U.S. Supreme Court in 1973. In *McDonnell Douglas Corp. v. Green,*[21] a black civil rights worker, Green, filed a complaint with the Equal Employment Opportunity Commission (EEOC), charging that McDonnell Douglas's hiring practices were racially motivated. Green filed a complaint with EEOC claiming a violation of Title VII of the Civil Rights Act of 1964. EEOC found that McDonnell Douglas's rejection of the activist violated section 704(a) of the Act, which prohibits discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory conditions, but made no finding on claimant's allegation that the company violated section 703(a)(1), which prohibits discrimination in any employment decision.[22] Green subsequently filed a suit in District Court which dismissed his section 703(a)(1) claim because the EEOC made no finding concerning his section 704(a)(1) claim against McDonnell Douglas. The United States Court of Appeals for the Eighth Circuit affirmed the lower court's ruling on section 704(a)(1), but reversed with respect to Section 703(a)(1), holding that an EEOC determination of reasonable cause was not a jurisdictional prerequisite to claiming a viola-

19 *Id.*

20 DERRICK BELL, RACE, RACISM, AND AMERICAN LAW 752, 765 (2000).

21 McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

22 *Id.*

tion of that provision in federal court.[23] The U.S. Supreme Court vacated the appellate court decision and determined that the complainant, has the burden of establishing a prima facie case. He can satisfy that requirement by showing that: (i) he belongs to a racial minority; (ii) he applied and was qualified for a job the employer was trying to fill; (iii) though qualified, he was rejected; and (iv) thereafter the employer continued to seek applicants with complainant's qualifications.[24]

The high court felt that Green had established a prima facie case at the lower court level and should be allowed to pursue a claim of racial discrimination under section 703 (a)(1) on remand at District Court.[25] The *McDonnell Douglas* case relied on the concept of disparate treatment (cases where plaintiff must prove that defendant acted with discriminatory intent or motive) when determining if Green's firing was racially motivated.[26] Also, the U.S. Supreme Court set up a three-step process for distributing the burdens of proof between plaintiff and defendant. First, plaintiff has the burden of establishing a prima facie case that creates an inference of discriminatory motive. The burden then shifts to defendant to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." Finally, if defendant meets its burden, plaintiff must be afforded "a fair opportunity to show that [defendant's] stated reason for. . .rejection [of plaintiff is] in fact pretext.[27] This divided analysis was intended to ensure that an employer would not be held in violation of Title VII if its employment decision was lawful, and to preclude an employer from falsely asserting a pretext to hide its unlawful discrimination. The three-step analysis eases the initial, and often the ultimate, burden on plaintiff. While the *McDonnell Douglas* framework requires that plaintiffs eventually prove discriminatory intent at the pretext stage, it assures potential plaintiffs that they need not immediately face the task of anticipating and rebutting all the various reasons that an employer might give for its apparent discrimination.[28]

Another way that an employee can focus on the discriminatory practices of an employer is to attack the company under the disparate impact theory. In *Griggs v. Duke Power Co.*,[29] the U.S. Supreme Court determined that black employees were not required to pass an intelligence test or possess a high school diploma as a condition of employment in order to transfer to other jobs at the company

---

23 *Id.*

24 *Id.* at 793.

25 ARTHUR SMITH AND CHARLES B. CRAVER, EMPLOYMENT DISCRIMINTION LAW 119, 124 (2000).

26 Alisa D. Shudofsky, *Relative Qualifications and the Prima Facie Case in Title VII*, 82 Colum. L. Rev. 553 (1982).

27 *Id.* at 554.

28 *See* Shudofsky, *supra* note 26, at 554-555.

29 Griggs v. Duke Power Co., 401 U.S. 424 (1971).

plant. The high court effectively reversed the appellate court ruling which agreed with the lower court decision that there was no showing of discriminatory purpose in the adoption of the diploma and test requirements.[30] The nation's highest court reasoned in the *Griggs* case that:

> "Title VII of the Civil Rights Act of 1964, requires the elimination of artificial, arbitrary, unnecessary barriers to employment that operate invidiously to discriminate on the basis of race, and if, as here, an employment practice that operates to exclude blacks cannot be shown to be related to job performance, it is prohibited, notwithstanding the employer's lack of discriminatory intent."[31]

In short, this meant that employers seeking to screen applicants through the use of intelligence examinations or other tests disproportionately excluding minorities must demonstrate that the tests are job-related or adopt other screening techniques that do not disadvantage minority applicants.[32]

Despite the ruling of Griggs, seven years later, the Supreme Court took a different view: In *Furnco Construction Corp. v. Waters,*[33] the high court ruled that the black bricklayers who sued the Furnco Construction Company were not victims of racial discrimination. The bricklayers claimed that they were denied the opportunity of employment for particular jobs even though they were fully qualified. The court reversed the appellate ruling that the bricklayers made out a prima facie case under the *McDonnell Douglas* framework. As a result, it decided that the company's hiring practices were justified as a "business necessity" because these practices were required for the safe and efficient operation of the company's business.[34] The court also reasoned that statistics offered at trial by the company were relevant in determining if the company maintained a racially-balanced work force; statistics could reveal motive and discriminatory practices of the company.[35]

In addition, the U.S. Supreme Court decided another case in 1993, *St. Mary's Honor Center v. Hicks,*[36] the decision of which was not partial to a black employee who claimed he was victim of racial discrimination at the workplace. In the *Hicks*, plaintiff claimed he was unfairly demoted and discharged at a correctional facility where he worked as a correctional officer. He filed a Title VII claim in District Court, which determined that he had established, by a preponderance of the evidence, a prima facie case of racial discrimination; but the defen-

---

30 *Id.* at 424.

31 *Id.* at 424.

32 William I. Taylor, *Brown, Equal Protection, and the Isolation of the Poor*, 95 Yale L. J. 1700, 1712 (1986).

33 Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

34 *Id.* at 567.

35 *Id.* at 568.

36 St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

dant rebutted that presumption by introducing evidence of two legitimate, nondiscriminatory reasons for their actions.[37] Also, the defendant effectively rebutted the plaintiff's claim that the reasons were pretextual. The lower court ruled that Hicks failed to carry his ultimate burden of proving that the adverse actions were racially motivated. The U.S. Court of Appeals for the Eighth Circuit set aside the lower court decision and concluded that Hicks was entitled to judgment as a matter of law once he proved that all of the center's proffered reasons were pretexual. The U.S. Supreme Court reasoned that the appellate court erred in its ruling and claimed that St. Mary's production of nondiscriminatory reasons, whether ultimately persuasive or not, satisfied its burden of production and rebutted the presumption of intentional discrimination.[38]

In essence, the *Hicks* ruling effectively makes it difficult for a plaintiff to prove that he has been a victim of racial discrimination in the workplace. This decision attempts to make the *McDonnell Douglas* framework irrelevant in disparate treatment cases that assume the element of presumption is enough to win an employment discrimination claim.

### C. *Class Action Suit Status*

The ability to use litigation as a valuable tool to correct wrongs that have been committed against black employees in companies is something that has sustained blacks throughout the years. Many blacks have been unafraid to take the plunge of suing corporations and companies that they wholeheartedly believe practice racial discrimination. In 1970, six years after Title VII was established (1964), roughly 350 employment discrimination claims were filed in the United States. However, 9,000 cases were reported in 1983 in this country.[39] Since racial discrimination has been found to be commonplace in many corporations in recent years, some individuals have not only been filing individual suits against companies, but also have consolidated their suits with other employees in their companies as well. Many have been filing what is known as "class action lawsuits" against corporations. In a class action lawsuit, one or more members of a group serve as representatives to prosecute claims on behalf of a larger group. Under Rule 23 of the Federal Rules of Civil Procedure, a party may sue or be sued as a representative of a class if:

> (i) the class is so numerous that the inclusion of each class member individually is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (v) the representative parties will

37 *Id.* at 502.

38 *Id.* at 502-503.

39 John J. Donohue III and Peter Siegelman, *The Changing Nature of Employment Discrimination Litigation*, 43 Stan. L. Rev. at 985 (1991).

> fairly and adequately protect the interest of the class. These four factors are often referred to as numerosity, commonality, typicality, and adequacy.[40]

Class actions are commenced when one party to a litigation files a motion with the trial court requesting permission (or certification) to proceed on behalf of a class, and the court, in its discretion, grants the motion and certifies a particular class (e.g., "all black applicants denied employment by the defendant employer between 1990 and 1997"). If the motion for class certification is denied, the party or parties may proceed as individually-named litigants.[41] In *Caridad v. Metro-North Commuter Railroad,* [42] this case involved a group of 1, 300 African-American employees who were denied an opportunity to receive class certification status at the trial court level in its racial discrimination suit against Metro-North Railroad. However, the United States Court of Appeals for the Second Circuit, reversed the lower court's ruling because it believed the African American employees met commonality and typicality requirements for class certification. Ultimately, the case was vacated and remanded to the lower court.[43]

With the knowledge that lawsuits are a tool to attack the overt discrimination that is widespread in corporate America, the number of employees filing federal claims regarding discrimination in promotions based on race has nearly doubled since 1990. With some major companies facing lawsuits by minorities (primarily blacks) who claim advancement is stymied, experts believe too many people of color are finding management positions out of reach.[44] More than 5,000 claims were filed in 2000 with the EEOC alleging discrimination in promotions, an increase from 3,208 claims filed in fiscal year 1990. EEOC also received 1,870 claims of racial discrimination in hiring which was a decrease from 2,365 in 1990.[45] See Table 1 for companies that had lawsuits filed against them by black class action litigants.

---

40 Kauff, McClain & McGuire LLP, *Recent Developments in Class Action Litigation of Federal Discrimination Claims*, at 1, (last visited Dec. 7, 2000) <http://www.kmm.com/99yir4.html>.

41 *Id.* at 1.

42 Caridad v. Metro-North Commuter Railroad, 191 F.3d 283 (1999).

43 *Id.* at 283.

44 Stephanie Armour, *Minorities Say Job Advancement Blocked*, USA TODAY, Oct. 31, 2000, at A1.

45 Armour, *supra* note 44, at A-1.

**TABLE 1**
**BLACK CLASS ACTION LAWSUITS AGAINST COMPANIES**

| Company |
|---|
| Lockheed Martin Corp. (2000)*** |
| Microsoft Corp. (2000)** |
| General Motors (2000)* |
| Nissan Acceptance Corp. (2000)* |
| National Broadcast Company (NBC) - (2000)**** |
| Nextel Communications (2000)***** |

Source: *WASHINGTON POST, Oct. 25, 2000; **ATLANTA-JOURNAL CONSTITUTION, Dec. 6, 2000; ***YAHOO NEWS, OCT. 4, 2000; ****AFRO-AMERICAN ALMANAC, Aug. 8, 2000; *****USA TODAY, October 31, 2000.

## IV. SETTLEMENT AS A REMEDY OR RELIEF

### A. *Texaco Case*

If an individual is confident that he or she has been a victim of blatant and overt discrimination, it is imperative that the individual consider pursuing a claim. Litigation is a way that employees can seek redress in a courtroom and compensate them for the hardships they have endured throughout their tenure as employees at a discriminatory work environment. Being successful during trial is one way for employees to be properly compensated. Another option for employees such as black class action plaintiffs is to agree to settlement offers from corporations immediately before a trial is commenced or even completed. In 1996, the Texaco Inc. agreed to pay $176 million to 1,400 black employees who were part of a class action lawsuit originally filed in 1994. The original plaintiff in the case, a senior financial analyst at the company in Texaco's Harrison, New York office, claimed she was denied chances for advancement, seminars and foreign travel while less qualified white employees—often people she trained—moved ahead of her up the corporate ladder.[46] This suit was abruptly settled after ten days of intense negotiations once the disclosure of a secret recording of senior Texaco executives denigrating black workers and plotting to destroy incriminating evidence in the lawsuit became public.[47] The Texaco settlement in 1996 became the largest award ever in a race class action lawsuit during that time. As a result of the settlement, Texaco was forced to compensate its employees financially and reshape its corporate policies. The agreements of the Texaco settlement are listed as: (1) distribute cash payment to all plaintiffs who were a part of the lawsuit; (2) employees in the settlement must receive 10% raises; (3) establish a

46 Thomas Mulligan, *Texaco Settles Race Bias Suit for $176 Million*, LOS ANGELES TIMES, Nov. 16, 1996, at A1.

47 *Id.*

"task force" designed to evaluate all existing employment policies and practices at Texaco; (4) develop a company-wide diversity and sensitivity program; and (5) review and revise Texaco's recruitment, hiring and promotion practices.[48]

The Texaco settlement is a classic example where a company known to have "deep pockets" felt it was best to settle the suit before the negative publicity had a serious effect on the company financially. Was Texaco's willingness to settle an acknowledgment that discrimination existed at the company, or was it a way to curb the damaging public relations that resulted from the suit? Whatever Texaco's motive for settling the suit, it was a resolution that gave many black plaintiffs the vindication they desperately sought—and confirmed their belief that they were indeed victims of racial and employment discrimination. See Table 2 and Table 3 for additional black class action lawsuits where blacks received large jury awards and settlements from companies who were sued for racial and employment discrimination.

**TABLE 2**
**CLASS ACTION SETTLEMENTS OF RACIAL BIAS SUITS**

| Company | Date of Settlement | Amount Including attorney's fees |
|---|---|---|
| Coca-Cola | 2000 | $192.5 million |
| Texaco | 1997 | $176.1 million |
| Shoney's | 1989 | $132.5 million |
| Winn-Dixie Stores | 1999 | $33 million |
| CSX Transportation | 1999 | $25 million |

Source: WASHINGTON POST, November 17, 2000.

**TABLE 3**
**BLACK CLASS ACTION LAWSUITS (SETTLEMENTS & JURY AWARDS)**

| Company | Amount |
|---|---|
| Circuit City (1996)*** | $288,700 (Jury) |
| Boeing Company (1999)**** | $15 million (Settlement) |
| Amtrak (1999)***** | $8 million (Settlement) |
| FDIC (2000)** | $14 million (Settlement) |
| Interstate Bakeries Corp. (2000)* | $121 million (Jury) |

Source: *AFRO-AMERICAN ALMANAC, Aug. 8, 2000; **NEW NATION NEWS, Nov. 23, 2000; ***CENTRAL OHIO SOURCE, Dec. 1996; ****NEWSWIRE, Jan. 22, 1999; *****THE CALIFORNIA ADVOCATE, Aug. 13, 1999.

### B. *Coca-Cola Decision*

In 2000, the Coca-Cola Company settled a lawsuit with African American workers for $192.5 million. This settlement surpassed the Texaco case which gave

48 *Id.*

black plaintiffs $176 million in 1997 for their race discrimination class action.[49] The settlement covers a class defined as salaried African American employees in the United States who worked for Coca-Cola from April 22, 1995 to June 14, 2000. A large amount of the $192.5 million settlement will establish a compensatory damages fund to resolve claims of emotional distress, hostile environment and non-wage related disparate treatment. The average class member will get $40,000, while the four original plaintiffs will receive no more than $300,000 each. A sum of $23.7 million will be placed in a back pay fund. Another $43,5 million will be used for salary adjustments over 10 years, and $10 million will go toward a promotional achievement fund. Finally, $36 million will be used to implement changes in the human resources program and $20.6 million will be used for attorneys fees.[50] The agreement covers approximately 2,200 black salaried employees and former employees who worked for the company.[51] One of the plaintiffs, a senior, information analyst for the company in Atlanta, Georgia—originally sought legal advice in 1998 after a manager insulted her by using a racist remark. She reported the incident to the company's equal opportunity manager, who took no immediate action. Another black plaintiff joined the suit after watching all eight of her African American colleagues leave the marketing department where she was assigned employment duties. She believed that her managers withheld pay raises and promotions she deserved.[52]

The Coca-Cola settlement is a typical example of where a company agrees to pay a settlement but admits no wrongdoing. Coca-Cola was initially sued for discriminating against black salaried employees in pay, promotions, and evaluations, but the company denied the allegations. Does Coca-Cola represent a company that does not want to admit to fostering a work environment that tolerates racial discrimination? Coca-Cola may not have an overt policy of discrimination, but its settlement is among a growing number of such agreements that go beyond monetary compensation by forcing companies to make systematic changes in management and policy.[53] Coca-Cola's changes in policy are to: (1) organize a seven-member task force to review how Coca-Cola pays, promotes, and evaluates African Americans; (2) hire two psychologists who will review the company's human resources policies; (3) establish a 24-hour complaint hotline; (4) hire a

---

49 BARNEY TURNEY, COCA-COLA AGREES TO PAY $192.5 MILLION, MAKE HR POLICY CHANGES TO SETTLE LAWSUIT, BUREAU OF NATIONAL AFFAIRS (BNA), EMPLOYMENT DISCRIMINATION REPORT 703, 703-04. (Nov. 29, 2000).

50 *Id.* at 703.

51 Sarah Schafer, *Coke to Pay $193 Million in Bias Suit*, WASHINGTON POST, Nov. 17, 2000, at A1.

52 *Id.* at A16-17.

53 *Id.* at 17.

ombudsmen to investigate complaints; and (5) consider more blacks for jobs internally to meet diversity goals.[54]

As Table 1 indicates, there are other lawsuits that have been initiated by black plaintiffs involving race discrimination class actions, which may lead some to believe that employment discrimination has reached epidemic proportions in corporations. The Lockheed Martin Corporation is the latest company to be sued by African American workers. In December of 2000, the EEOC asked a federal judge in Atlanta to allow the agency to become a party to the lawsuit. The lawsuit was originally filed by eleven workers at Lockheed Martin's military factory in Marietta, Georgia. The suit alleges that the company discriminated in hiring and pay and tolerated a hostile work environment that included racist language and the open display of racist material left in a black employee's work space.[55]

In sum, if the pending class action lawsuits against companies result in favorable jury awards or settlements for blacks, will this relief or success help them in their work environments in the future. In other words, are diversity training programs, task forces, sensitivity workshops, and financial compensation enough to eliminate systematic and blatant discrimination in corporate America. Can a revised company policy change the "mindset" of individuals intent on prohibiting the advancement of black employees and maintaining an unofficial racial policy that excludes blacks from progressing economically in a company.

## Conclusion

Despite the existence of impediments that deny blacks the opportunity to advance in the employment world, they have continued their quest to receive fair treatment in the economic arena. Systematic and overt discrimination are devices that are used to inhibit the development of blacks in the corporate world, but the perseverance of black workers throughout the years has enabled them to gain major legal victories. It has been documented in literature that sophisticated tools have been used to prevent blacks from ascending up the corporate ladder. Case law has been presented to give an accurate account of the widespread discrimination that is manifested in corporate America. Some might argue that companies do not set out to deliberately discriminate against black employees. However, the material in the literature indicates a contrary opinion. Whether it is inadvertent discrimination or a company policy designed to exclude blacks, a climate that prohibits blacks from achieving economically does exist in some companies.

The material also highlights that qualified and professional blacks do exist in all realms of corporate America, but they are not exempt from being victims of

54 *See* Tumey, *supra* note 49, at 703-704.

55 Greg Schneider, *EEOC May Join Lockheed Case: Private Suits Accuse Company of Racial Bias*, Washington Post, Dec. 6, 2000, at A1.

employment discrimination. The Texaco and Coca-Cola cases are clear-cut examples where professional blacks were victims of an adverse working environment that was not conducive to their best interest and professional development. Whether blacks hold positions at the entry or management level in companies, competent black workers are commonplace in the corporate world. In fact, many have endured poor working conditions throughout the years because they do not want to be perceived as disgruntled employees. Many have withstood hostile workplaces because they were concerned about job security and losing their economic base. One key reason some blacks initially tolerate discriminatory behavior is because they want to continue to support themselves and their families. However, blacks have not been reluctant to pursue claims in recent years. The influx of race discrimination class actions at Texaco, Coca-Cola, and Lockheed Martin companies is an indication that blacks are serious about seeking redress for past discrimination and are truly concerned about improving their working conditions.

It is not acceptable for blacks to have to tolerate employment atmospheres that are discriminatory. It is unfortunate that blacks have to seek litigation as a viable option when a work environment becomes unbearable. Although black Americans may possess the ability to endure racial discrimination in the workplace, they want to be treated as employees who simply aspire comparable pay for comparable work and production. They represent employees who would not have to pursue legitimate racial discrimination lawsuits if they were treated fairly in the corporate arena. Blacks simply want to benefit from the same set of rules that reward nonblack employees (primarily white employees) in wages, raises, benefits, assignments and promotions in an employment setting. In short, blacks feel that if they are producing on the job, they should be adequately compensated, both professionally and financially.