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US Equal Employment Opportunity Commission v. ATMI Precast, Inc. and Waubonsee Development Company, Inc.

Judge Harry D. Leinenweber

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US Equal Employment Opportunity Commission v. ATMI Precast, Inc. and Waubonsee Development Company, Inc.

Keywords

EEOC, ATMI Precast Inc., Waubonsee Development Company Inc., 01 C 7505, Consent Decree, Disparate Treatment, Retaliation, Compensation, Hispanic, National Origin, Construction, Title VII, Employment Law

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
A.T.M.I. PRECAST, INC. and)
WAUBONSEE DEVELOPMENT)
COMPANY, INC.)
)
Defendant.)
_____)**

**DOCKETED
AUG 23 2002**

**Civil Action No. 01 C 7505
Judge Leinenweber
Magistrate Judge Bobrick**

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action alleging that from at least 1995 to the present, Defendants ATMI Precast, Inc. (hereinafter "ATMI") and Waubonsee Development Co., Inc.(hereinafter "Waubonsee") violated Section 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e-2(a) and 42 U.S.C. § 2000e-3(a) by discriminating against Jose Urbina, (hereinafter "Urbina"), Augustin Gonzalez, (hereinafter "Gonzalez"), David Marin (hereinafter "Marin") and Rodolfo Chavez (hereinafter "Chavez") (hereinafter collectively "the Claimants") on account of their national origin (Hispanic). Specifically, the EEOC alleged that Defendants violated Title VII by paying a lower salary to a class of Hispanic employees who perform field work for ATMI compared to non-Hispanics. EEOC also alleged that Defendants retaliated against Charging Parties, Urbina and Gonzalez for opposing practices made unlawful by Title VII. ATMI and Waubonsee deny these allegations.

13

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC in this action. Nothing contained in this Decree shall be construed as an admission with respect to any of the claims of the suit. Nothing in this Decree shall be construed as an admission by either party as to the liability or non-liability of the Defendant.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties, the Claimants and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties, the Claimants and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

4. ATMI and Waubensee, their respective officers, agents (including management personnel), successors, and assigns will not unlawfully discriminate on the basis of national

origin.

5. For the duration of the period the Decree is in force, Waubonsee shall advertise anticipated erector job openings by posting a prominently displayed notice in English and Spanish at the ATMI facility. The notice shall state the required qualifications and anticipated salary. Where the qualifications include union membership, the notice shall state the address and phone number of the applicable union hall where employees can find information regarding obtaining the necessary qualifications. This paragraph shall not preclude Waubonsee from engaging in any other type of advertising or recruitment.

NON-RETALIATION

6. ATMI and Waubonsee, their respective officers, agents, employees, successors, assigns and all persons acting in concert with any of them shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

MONETARY RELIEF FOR CLAIMANTS

7. Within five (5) business days after entry of this Decree, the EEOC will mail to Claimants a copy of the Release Agreement attached as Exhibit A, and a copy of the letter attached as Exhibit B to this Decree.

8. Within five (5) business days after receipt by the EEOC of the signed Release Agreements, EEOC shall mail the Release Agreements to Michael G. Cleveland, Vedder, Price, Kaufman & Kammholz, 222 N. LaSalle St., Chicago, IL 60601.

9. Following receipt of the signed Release Agreements, Defendant will mail by

certified mail: on or before September 1, 2002, a check payable to each claimant for 50% of the amount set forth opposite their name on Exhibit C; on or before November 1, 2002, a check payable to each claimant for 25% of the amount set forth opposite their name on Exhibit C; and on or before January 1, 2003, a check payable to each claimant for 25% of the amount set forth opposite their name of Exhibit C. 50% of the total payments shall be in the nature of wages, less appropriate withholding for the employee's share of federal, state and local taxes, as applicable, and the other 50% of the total payments shall constitute damages for which a Form 1099 will issue. All such payments shall constitute full settlement of all Claimants' claims under Title VII of the Civil Rights Act of 1964 including underpayment of wages, which were or could have been asserted in this action.

POSTING OF NOTICE

10. Within five (5) business days after entry of this Decree, ATMI and Waubonsee shall post a same-sized copy of the Notice attached as Exhibit D to this Decree in a conspicuous locations easily accessible to and commonly frequented by Defendants' human resources personnel and employees. The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendants shall take all reasonable steps to ensure that the postings are not altered, defaced or covered by any other material. ATMI and Waubonsee shall certify to the EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. ATMI and Waubonsee shall permit a representative of the EEOC to enter ATMI and Waubonsee's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

11. For a period of three (3) years following entry of this Decree, ATMI and Waubonsee shall maintain and make available for inspection and copying by the EEOC records of each request by an ATMI employee for employment at Waubonsee. These records shall include the employee's name, social security number, address, telephone number, date of request, position applied for, outcome of request, and explanation of basis any requests which are denied.

12. ATMI and Waubonsee shall make all documents or records referred to in Paragraph 11, above, available for inspection and copying within five (5) business days after the EEOC so requests. In addition, ATMI and Waubonsee shall make available all persons within its employ whom the EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of the EEOC to enter ATMI and Waubonsee's premises for such purposes on five (5) business days advance notice by the EEOC.

13. Nothing contained in this Decree shall be construed to limit any obligation ATMI and Waubonsee may otherwise have to maintain records under Title VII or any other law or regulation.

REPORTING

14. ATMI and Waubonsee shall furnish to the EEOC the following written reports semi-annually for a period of three (3) years following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due sixty (36) months after entry of the Decree. Each such report shall contain:

a. A detailed summary of events recorded pursuant to paragraph 11, above, occurring within the six month period preceding the report;

b. A certification by ATMI and Waubonsee that the Notice required to be posted in Paragraph 10, above, remained posted during the entire six (6) month period preceding the report.

DISPUTE RESOLUTION

15. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

16. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of three (3) years immediately following entry of the Decree, provided, however, that if, at the end of the three (3) year period, any disputes under Paragraph 15, above, remain unresolved, the parties agree that the term of the Decree may be extended by order of the Court (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

17. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

18. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of ATMI and Waubonsee.

19. When this Decree requires the submission by ATMI and Waubonsee of reports,

certifications, notices, or other materials to the EEOC, they shall be mailed to: ATMI and Waubonsee Settlement, c/o Beth A. Miller, Trial Attorney, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois, 60661. When this Decree requires submission by the EEOC of materials to ATMI and Waubonsee, they shall be mailed to: Michael G. Cleveland, Vedder, Price, Kaufman and Kammholz, 222 North LaSalle St., Chicago, IL 60601.

For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

1801 L Street, N.W.
Washington, D.C. 20507

Nicholas Inzeo
Acting Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

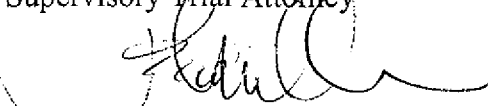
500 West Madison Street
Suite 2800
Chicago, Illinois 60661
(312) 353-7568



John C. Hendrickson
Regional Attorney



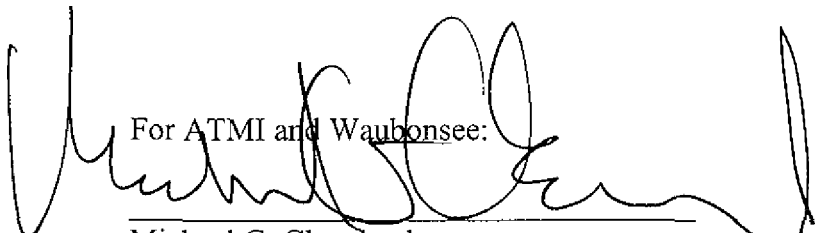
Noelle Brennan
Supervisory Trial Attorney



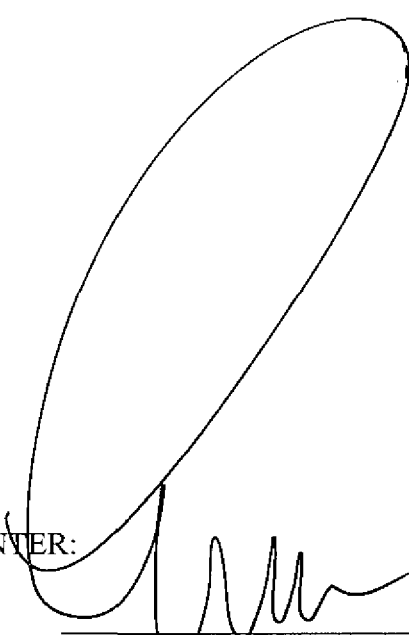
Beth A. Miller
Trial Attorney

DATE: 8/21/02

For ATMI and Waubensee:



Michael G. Cleveland
Vedder, Price, Kaufman and Kammholz
222 North LaSalle Street
Chicago, IL 60601.

ENTER: 

The Honorable Harry D. Leinenweber
United States District Judge

EXHIBIT A

RELEASE AGREEMENT

I, _____, for and in consideration of the sum of \$ _____, payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. ATMI Precast, Inc. and Waubonsee Development Co., Inc., No. 01 C 7505 (N.D. Ill.), on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge ATMI Precast, Inc. ("ATMI") and Waubonsee Development Co., Inc. ("Waubonsee"), and all past and present shareholders, officers, agents, employees, and representatives and affiliates of ATMI and Waubonsee, as well as all successors and assignees of ATMI and Waubonsee, from any and all claims and causes of action which I now have or ever have had under Title VII of the Civil Rights Act of 1964 as a result of or arising from the conduct alleged by Plaintiff in its complaint, including underpayment of wages, which were or which could have been asserted in EEOC v. ATMI Precast Inc., and Waubonsee Development Co., Inc., No. 01 C 7505 (N.D. Ill.).

Date

EXHIBIT B

_____, 2002

Re: EEOC v. ATMI Precast Inc., and Waubensee Development Co., Inc.
No. 01 C 7505 (N.D. Ill.)

Dear Mr. :

A Consent Decree resolving the above-referenced lawsuit was signed by the parties and entered by the Court on _____, 2002. Pursuant to the terms of the Consent Decree, enclosed you will find a copy of a Release to be signed by you.

In order to obtain any monetary relief under the Consent Decree in this case, you must sign the Release and return it to me. Please mail the signed Release to me as soon as possible at the following address:

Beth A. Miller
Equal Employment Opportunity Commission
500 West Madison Street
Suite 2800
Chicago, Illinois 60661

I have enclosed a pre-addressed envelope for your convenience. You may, of course, wish to make and keep a copy of the signed Release for your own records.

If you have any questions about the Release or cannot sign and return the enclosed documents within seven days, please contact me at (312) 353-7722.

Sincerely,

Beth A. Miller
Trial Attorney

Encls.

EXHIBIT C

Jose Urbina	\$	40,000
Augustin Gonzalez	\$	40,000
David Marin	\$	40,000
Rodolfo Chavez	\$	12,500

EXHIBIT D

**NOTICE TO ALL ATMI PRECAST AND
WAUBONSEE DEVELOPMENT COMPANY EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. ATMI Precast, Inc., and Waubonsee Development Company, Inc., settling a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against ATMI Precast, Inc. ("ATMI") and Waubonsee Development Company, Inc. ("Waubonsee").

In its suit, the EEOC alleged that ATMI and Waubonsee discriminated against former or current employees due to their national origin (Hispanic) in violation of Section 703(a) and Section 704(a) of Title VII of the Civil Rights Act of 1964. ATMI and Waubonsee deny these allegations.

To resolve the case, ATMI and Waubonsee and the EEOC have agreed to and the Court has entered a Consent Decree which requires, among other things, that:

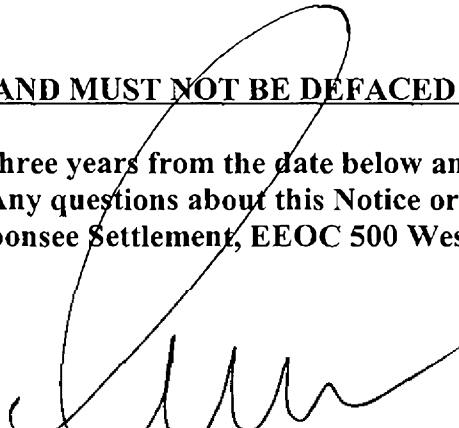
- 1) ATMI and Waubonsee will pay monetary relief to a class of former or current employees;
- 2) ATMI and Waubonsee will not unlawfully discriminate on the basis of national origin;
- 3) ATMI and Waubonsee will not retaliate against any person because s/he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree.

The EEOC enforces the federal laws against discrimination in employment on the basis of religion, race, color, national origin, sex, age and disability. If you believe you have been discriminated against, you may contact the EEOC at (312) 353-8195. The EEOC charges no fees and has employees who speak languages other than English.

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

This Notice must remain posted for three years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: ATMI and Waubonsee Settlement, EEOC 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

8/21/02
Date



The Honorable Harry D. Leinenweber
United States District Judge