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CLASS ACTIONS ARE CRITICAL TO REMEDY WORKPLACE RACIAL DISCRIMINATION

Title VII of the Civil Rights Act of 1964 prohibits discrimination "against any individual with respect to … compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." Yet discrimination persists. In 2014, the Equal Employment Opportunity Commission (EEOC) reported that of the 93,727 workplace discrimination charges it received in 2013, 33,068 or 35.3 percent involved racial discrimination.[1] Title VII litigation has been critical not only to remedy past and prevent future racial discrimination but also to compensate employees whose rights have been violated.

Yet there are many reasons why filing an individual lawsuit under Title VII (as opposed to joining a class action) is an unrealistic option for anyone experiencing workplace discrimination. First, class actions may be the only way to prove or remedy "systemic discrimination." As explained by the NAACP Legal Defense & Educational Fund, Inc. (LDF), "Without a broad discovery of company-wide statistical and other data that class actions facilitate, it is difficult for civil rights plaintiffs to prove a pervasive pattern and practice of discrimination."[2]

In addition, it is extremely expensive to prove institutional discrimination. Notes LDF, "In many civil rights cases, most, if not all, pertinent information is within the exclusive province of the defendant—through its agents, employees, records, and documents. Discovery of this evidence—especially in challenges to institution-wide practices of large corporate defendants—is expensive; thus, the ability to spread the costs over a class is key to obtaining redress."[3]

Today, the rights secured by Title VII are in jeopardy as a result of forced arbitration clauses with class action bans in employment contracts. These clauses make private litigation against violators virtually impossible. In addition, they threaten the ability of the EEOC to do its job.[4] They allow corporations and businesses to ignore civil rights laws and operate with impunity.

The following are examples of recent class action settlements won on behalf of racial minorities in the workplace who have suffered discrimination. They are all contained in CJ&D's extensive class action compilation, *First Class Relief*.[5] These cases illustrate just how critical class actions are, and what is at risk by the increasing use of forced arbitration clauses and class action bans in employment contracts.

Cogdell et al. v. The Wet Seal, Inc., (2013), Case No. 8:12-cv-01138 (C.D. Cal.)
Clothing retailer Wet Seal agreed to settle a nationwide class action filed by a class of African Americans alleging discrimination in pay, promotions and terminations. Wet Seal agreed to $7.5

million, with $5.58 million going to class members, as well as injunctive relief to end future discrimination.[6]

Davis v. Eastman Kodak Co., (2010), Case Nos. 6:04-cv-6098, 6:07-cv-6512 (W.D.N.Y.)
Eastman Kodak agreed to settle a class action filed by a class of about 3,000 current and former African-American employees who alleged discrimination in "compensation, promotions, wage classifications and job assignments" as well as "harassment and creat[ing] a hostile work environment" including retaliation "against certain employees."[7] Kodak agreed to a settlement of $21.4 million, including $9.7 million in fees and costs. Notably, the Court said, "the Court would be remiss if it did not commend class counsel and all those who worked for firms representing the thousands of current and former employees of Kodak for the outstanding job they did in representing the interests of responsibilities were shared by Shanon Carson and Bruce Gerstein. Their legal work in an extraordinarily complex case was exemplary, their tireless commitment to seeking justice for their clients was unparalleled and their conduct as officers of the court was beyond reproach."[8]

Tucker v. Walgreen Company, (2008), Case No. 3:05-cv-00440-GPM-CJP (S.D. Ill.)
In 2005, a nationwide class action was brought against Walgreens for racial discrimination in the hiring, promotion and store assignment practices of African-American employees. In 2007, the EEOC filed a similar lawsuit. The cases were consolidated and Walgreens settled both for $25 million,[9] approximately $20 million of which was allocated among roughly 10,000 class members.[10] The consent decree also provided injunctive relief to end the company's discriminatory practices.

Wynne v. McCormick & Schmick's Seafood Restaurants, Inc., (2008), No. 06-3153 (N.D. Cal.)
The upscale seafood restaurant chain, McCormick& Schmick's Seafood Restaurants Inc., settled with a class of African-American employees who charged discrimination in their hiring and pay.[11] The settlement required McCormick & Schmick's to pay $1.1 million to the class and change company practices to prevent future discrimination.

Warren et al. v. Xerox Corp., (2008), Case No. 1:01-cv-02909, (E.D.N.Y.)
Xerox settled with about 1,300 African-American sales representatives who charged that the company discriminated regarding assigned sales territory and by denying sales commissions as well as having an unfair promotion policy.[12] The settlement totaled $12 million, with each class member to receive between $2,000 and $4,000, and also included equitable relief requiring Xerox to evaluate sales disparities.

Satchell v. FedEx Express, (2007), WL 2343904 (N.D. Cal.)
FedEx settled with African-American and Latino workers for the western region (hourly employees and operations managers) over discrimination in pay, promotions and employment conditions for $54.85 million.[13] FedEx was also required to implement several policy changes to prevent future discrimination.

Smith, Keith et al. v. Nike Retail Services, Inc., (2007), Case No. 03-C-09110 (N.D. Ill.)
Nike settled with about 400 African-American employees working in Niketown Chicago over allegations of race discrimination in pay and working conditions. In addition to a settlement totaling $7.6 million, the class obtained company changes to prevent future discrimination.[14]

McReynolds v. Sodexho Marriott Servs., Inc., (2005), Case No. 1:01-cv-0510 (D.D.C.)
Sodexho Marriott Servs. agreed to settle a class action filed by a class of African Americans alleging discrimination in managerial, salaried positions. Sodexho Marriott agreed to pay up to $80 million and take steps to prevent future discrimination.[15]

Gonzalez v. Abercrombie & Fitch Stores, Inc., (2005), Nos. 3:04-cv-2817, 3:04-cv-4730, #:04-cv-4731 (N.D. Cal.)
In 2003, a nationwide class action was brought against Abercrombie & Fitch for racial discrimination with respect to hiring, job assignment, firing, compensation and other employment matters. In 2004, the EEOC filed a similar lawsuit. Then in 2004, a private class action was filed against Abercrombie alleging gender discrimination. The cases were consolidated, and Abercrombie settled for $40 million as well as injunctive relief to end future race and gender discrimination.[16]

NOTES

[1] http://www.eeoc.gov/eeoc/newsroom/release/2-5-14.cfm
[2] Amicus brief filed by the NAACP Legal Defense & Educational Fund, Inc. in Support of Respondents in the case, *AT&T Mobility LLC v. Concepcion,* 131 S. Ct. 1740 (2011), p. 19; http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_RespondentAmCuNAACPLDEF.authcheckdam.pdf
[3] *Ibid*.
[4] See, e.g., http://susanantilla.com/not-even-the-eeoc-was-allowed-at-this-sex-discrimination-hearing/. ("On Feb. 26, eight women who had sued Sterling Jewelers, Inc. were ushered into a private hearing room in midtown Manhattan with their lawyers, lawyers for Sterling, and an arbitrator. The door was shut behind them. Like an increasing number of disputes between employees and employers, this one would be heard in a forum where the public and the press were forbidden. I asked to attend the late February hearings on this sex discrimination case that could wind up including 44,000 women in 50 states, but the arbitrator declined my request. More important is that the Equal Employment Opportunity Commission – the agency in charge of enforcing federal civil rights laws – also asked, and also was declined.")
[5] http://centerjd.org/content/first-class-relief-how-class-actions-benefit-those-who-are-injured-defrauded-and-violated
[6] Settlement Agreement, *Cogdell et al. v. The Wet Seal, Inc.*, No. SACV 12-01138 AG (ANx) (May 8, 2013).
[7] Tara Buck, "Kodak to pay $21.4M to settle discrimination claims," *Daily Record*, September 3, 2010, http://nydailyrecord.com/blog/2010/09/03/kodak-to-pay-21-4m-to-settle-discrimination-claims/.
[8] Decision and Order, *Davis v. Eastman Kodak Co.*, (2010), Nos. 6:04-cv-6098, 6:07-cv-6512 (W.D.N.Y.) (December 17, 2010), http://scholar.google.com/scholar_case?case=14540855334445292882&hl=en&as_sdt=6&as_vis=1&oi=scholarr.
[9] Consent Decree, *Tucker v. Walgreen Company*, Case No. 05-cv-440-GPM (consolidated with 07-CV-172-MJR-CJP), (March 24, 2008).
[10] *Tucker v. Walgreen Company*, 2008 Mealey's Jury Verdicts & Settlements 122 (March 24, 2008).
[11] Consent Decree, *Wynne v. McCormick & Schmick's Seafood Restaurants, Inc.*, Case No. C-06-3153-CW (August 8, 2008).
[12] Memorandum and Order, *Warren et al. v. Xerox Corporation*, 2008 U.S. Dist. LEXIS 73951 (September 19, 2008).
[13] *Satchell, et al. v. FedEx Express*, 2007 Mealey's CA Jury Verdicts & Settlements 829 (April 9, 2007).
[14] *See* Settlement Agreement and Consent Decree, *Smith v. Nike Retail Services, Inc.*, Case No. 03-cv-09110 (July 31, 2007).
[15] *See* Case Profile, Civil Rights Litigation Clearninghouse, University of Michigan Law School, http://www.clearinghouse.net/detail.php?id=10624.
[16] Consent Decree, *Gonzalez v. Abercrombie & Fitch Stores*, Case Nos. 03-2817 SI, 04-4730, and 04-4731 (April 11, 2005); http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1022&context=condec