

# Les Schwab settles U.S. bias case

**Sex discrimination** | The Oregon-based company must pay a \$2 million penalty and change its hiring and training practices

BY ERIC MORTENSON  
THE OREGONIAN

Les Schwab Tire Centers are known for their hustling workers, who literally come running when customers roll up for new tires, brake jobs or other work.

Trouble is, the workers manning the air wrenches and vehicle lifts were just that — men. The Oregon-based company's service bays and sales ranks were no place for women, a federal lawsuit alleged, because the company persistently engaged in discriminatory hiring practices. As a result, women were denied Les Schwab management jobs because sales and service experience was a prerequisite for promotion.

On Thursday, the U.S. Equal Employment Opportunity Commission in Seattle announced Les Schwab will pay a \$2 million penalty and train the managers and employees of its 420 stores on the finer points of gender equity. The negotiated settlement ended a six-year legal fight that involved Les Schwab operations in seven Western states.

The company admitted no wrongdoing. In a prepared statement, human resources Vice President Jodie Hueske said the company was pleased to resolve litigation that "recognizes Les Schwab's continued commitment to equal opportunity practices in the workplace."

The EEOC put a different spin on the outcome.

William Tamayo, regional attorney for the EEOC in Seattle, said the commission determined that more than 200 women should have been hired between 2004 and 2007, the period of investigation. They included a woman who had worked at a Wal-Mart tire center and another who had been an Army helicopter mechanic, Tamayo said.

Please see **LES SCHWAB**, Page B4

The Oregonian  
MARCH 12, 2010

## Les Schwab: Case began at outlets in Washington

Continued from Page B1

"Some women never got interviewed, while in other cases, men with no relevant experience were hired," he said.

The case began in 2004 when two women who had worked at Les Schwab outlets in Washington state filed a class-action lawsuit alleging discrimination and retaliation. The EEOC picked it up from there, pursuing evidence of "failure to hire" cases as the original plaintiffs settled their individual claims, Tamayo said.

A settlement decree filed in the case orders Les Schwab to pay a \$2 million penalty, some of which will be used for back pay owed to women who were discriminated against. In addition, the company must provide a list of all women who applied for sales and service jobs after Dec. 1, 2007, plus a list of all men hired from that date.

The decree says all employees must be provided training on equal employment opportunity issues, including sex discrimination in hiring and promotion. The company was ordered to continue recruiting female applicants for sales and service positions, in part by contacting technical schools and community colleges and participating in job fairs.

Company founder Les Schwab was one of Oregon's best-known business owners. He founded the tire company in 1952 in Prineville, and built it

into an enterprise that produces \$1.6 billion in annual sales. He died in 2007 at age 89.

Schwab, by all accounts, was a product of his time, and clearly believed his store managers should be men. In a 2006 interview, an EEOC official said a sexist attitude "permeates" the company culture.

The settlement decree orders the company to include a disclaimer when it distributes copies of Schwab's autobiography, "Pride in Performance: Keep on Going!"

The disclaimer distinguishes between Schwab's life story and the company's current personnel policies. It concludes: "Our goal is to maintain a work environment that is open and welcoming to everyone regardless of background or gender."

Eric Mortenson, 503-294-7636,  
ericmortenson@  
news.oregonian.com



HIGHLAND PRODUCTS, INC. (A)

The envelope was marked "PERSONAL AND CONFIDENTIAL." Ray Kirk took out the letter and began to read what the morning's mail had brought this February 11, 1980.

February 7, 1980

Messrs: John A. Robie - Chairman and Chief Executive Officer,  
Highland Products, Inc. [HPI]

Raymond S. Kirk - Vice President and General Manager,  
Hampton Division

George D. Wilkes - Corporate Vice President of  
Personnel

CORPORATE POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY

Re: John A. Robie's letter of January 7, 1980 [Exhibit 1]  
Raymond S. Kirk's letter of January 14, 1980 [Exhibit 2]

The opening statements in both reference letters state "We will continue to recruit, employ, train and promote individuals without regard to race, color, religion, sex, age, national origin, physical or mental handicap or status as a disabled veteran or veteran of the Vietnam era. In other words, all applicants for employment and all current employees will be judged on the basis of their ability and skills alone".

I am a woman, and as a woman, I thought I should fit into one of the above mentioned categories; but, the North Haven Plant personnel has found many loopholes in this statement.

This case was prepared by Richard O. von Werssowetz, Associates Fellow, under the direction of Michael Beer, Lecturer, as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

© Copyright

1981

by the President and Fellows of Harvard College.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means - electronic, mechanical, photocopying, recording, or otherwise - without the permission of Harvard Business School.

Distributed by HBS Case Services, Harvard Business School, Boston, Mass. 02163.

All rights reserved to the contributors. Printed in the USA.

I am writing to say that I am a minority who is "made as hell". The discriminating practices that are practiced at the North Haven, Connecticut, plant against women are barbaric. Do you Messrs. Robie, Kirk and Wilkes just issue these Corporate Policies to pacify the branches of governments who set these guidelines (Federal, State and Local); thinking that your responsibility ends by issuing this type of letter once a year? You gentlemen certainly can't be naive enough to think that because it is a Corporate Policy, signed by yourselves, that it then becomes a standard operating procedure. Because here in the North Haven plant your letters on Equal Opportunity are known as the "joke-of-the-year".

How can an organization that employs approximately 1,375 employees, 390 of which are women, justify itself as an Equal Opportunity Employer to government regulated agencies, when there are no women in any supervisory positions. There also are no women in any training programs for supervisory positions. The same old excuse is always applied - "We just don't have any qualified women". Of course the women aren't as qualified as the men, because the men are given all the opportunities. I am attaching a copy of the last wonderful opportunity that was offered to the women here. [Exhibit 3]. If you read it, and don't see that it is a sham, and one of the most hypocritical actions that could be practiced, then I know what actions will have to be taken.

The real farce of the attached opportunity, was that the position was filled, before the job was posted. Naturally, the position was filled by a man who is over qualified for the position, and naturally he is no Level 4.

The women here in the North Haven plant are told, "You must have a technical degree in the specialized field you wish to enter, if you want anything other than secretarial related jobs". But, many of the men are holding prominent jobs - some are even in supervisory positions and they do not possess a degree. They may be in the process of getting their degrees, but they certainly didn't have them before they entered their positions. Upon questioning the Personnel Manager about this I was told "That may be what was said, but it certainly wasn't meant that way". Well, the women have been told this for years, and will continue to be told this lie and many, many more of the deceitful practices that go on around here unless Baltimore HPI personnel or a Federal Labor Group comes in here and straightens this mess out. Of course, we are also told that they are only following the orders that Baltimore has issued.

The women in union jobs, who wish to come into the office and work, they tell me that they are told the same thing, and also they are told that should they become a salaried employee instead of union, they stand to lose as much as \$400/ per month in income. Well, I don't need a degree in math, to figure that what they stood to lose in a year, was more than 1/2 of what I make a year. So, if you feel that this feeling of unrest and unfairness exists just within the office areas, again you are being blind to a fact. It is plant wide.

We are also told "No lateral moves". So, if you are unhappy with your job, supervisor or etc. "tough luck"! You can either leave the company, hope that your supervisor gets transferred, or learn to enjoy being treated without respect, like an indentured servant or a second class citizen. If you apply for a job that has the same level rating as yours, the Personnel Department takes it upon themselves to see that you do not receive an interview for the job. But, the men are moved in lateral moves all the time. Almost like checkers on a checkerboard, sometimes to block a job that woman might want to enter. But, the Personnel Department will leave no stone unturned to find a more "qualified" man to fill the higher paying positions. The men also receive a pay raise when they make a lateral move, because they must learn a new job. One woman told me when she had to take a lateral move, that she had to wait till the following year when her annual raise was due and then got no more than what her normal raise would have been. Another woman, who was willing to drop a level rating to get away from her supervisor - had to take a cut in pay.

Also, when men are hired into the Company they do not hire in at the minimum of their level rate pay scale, but 20 out of 20 females when asked where they started in their job's group rating pay, started at the minimum or below minimum. The men start at mid-point, or somewhere in between min. and mid. One woman told me that she and a man both started a new job at the same time, he was a Level 4 and she was a Level 5, he was started a mid-point in his pay range and she was started a minimum. When she questioned this, she was told that he is a man and that he needs more money because he has a family. Of course, he has since been promoted out of his lowly Level 4 job, and onto greener pastures. The woman who didn't get the job he now holds would also like to speak to someone who will listen.

The highest paid female here in this office, when she was promoted to her new job (previously held by a man) was told that she would not receive a promotional raise, because she had just received a yearly raise 3 months before in her

previous job. Therefore, she worked one (1) whole year at below the minimum at her new job. When she found out that her supervisor had lied to her, it came down to this - That's the breaks, take it or leave it! Naturally, she had no choice, and he knew it; she needs her job.

Why is a woman told, that has gone to night school for many years, and has finally gotten her degree in English, that Highland Products doesn't need English teachers. But, the Plant Manager's degree is in Sociology, the Superintendent of Technical Products has his degree in Elementary Education, the previous plant manager has his degree in English. How did these men ever get to these positions? The reason is, the Company was willing to take a chance on them, work with them, train them and promote them? These men all have been an asset to the Company, without a technical degree before they came to work here. Why can't the same thing be done for the women? Why? Why? Why? Are men so immature and insecure in their positions, their knowledge, and their qualifications that got them their positions that they fear women? I was told that even if I changed my career objectives and got a technical degree, that I probably wouldn't get promoted; because women do not excell or succeed in technical fields. I would love to have you hear what position he holds with this organization. If you are a woman, to get anywhere in this Company, you must - think like a man, act like a woman, and be willing to work like a dog!

Why must there still be "double standards"? Why the lies? Why the deceitful practices? Why motivate by fear? Why not equal pay for equal work? Instead it is who you work for not what you do that determines your pay. Why is it that if there is a change in personnel, and your new supervisor is not as high-ranked as your old one, the secretaries job is re-evaluated and down-graded, but the men in the department, their jobs and pay rates remain the same. Why is it that if a man retires from a good paying job, and they know that the women will be applying for the job they immediately down grade it, and also heap on more requirements and responsibilities?

Why are the women employed here, forced to live by a federal freeze on their wages, but Highland Products doesn't have to promote women? Just because there are lots of women in the office is no defense against having none in higher-paying supervisory positions and production-line jobs.

Well, as you can see I have been questioning the system, demanding and seeking answers, and wanting to know the how's and why's of the system. Then I was told what happens to women who question the happenings around here. I was told that should I continue my raises and promotions would be affected, the Company would be looking for any reason to fire me. Also, I was asked about how I would feel about a character slander? My husband, I was told is promotable material and how will I feel and more importantly, how would he feel when he is not considered or passed over because of my actions. His raises could also be affected, we both would be made to suffer. I was also told that the Company is too big to try to fight them, I couldn't possibly win! Upon reporting this threat, I was told "Yes, this will probably happen."

Well gentlemen, you are now reading a letter from a woman who you cannot motivate by fear. If I have nothing to gain as a Highland Products employee, then I certainly have nothing to lose. Should your actions be to fire me, that doesn't worry me either because I can make almost as much in the unemployment line as I make working here. If you are thinking of ostracism, you are too late. The latest one I just heard about was - the supervisor who told his female employees to stay away from me, because if they didn't they would be known as trouble makers also, and that he didn't need to tell them what happens to trouble makers. He also told them that associating with me could harm their chances for promotion. This one still has us laughing. Chances for promotion - the women in this department average 30 years of service, at the same job and in the same level rating! Come talk to them about equal opportunity.

Should you start to harass my husband, who is a blue collar supervisor, who has worked for Highland Products for almost 15 years, please remember that none of the college boys employed here are willing to work and report for work 24 hours a day, seven days a week, be on call and willing to report for work every day of the year. He spends approximately 55 to 60 hours a week at his job, brings work home with him, and works with conditions and heat that he does, for the wages that he is payed. New IE's, whose value to the Company is still trying to be decided, are hired in fresh from college at \$100 less a month than he now works for. Then after they have been on the job 6 months they receive a promotional raise.

Well Messrs., I have been warned not to proceed with this, but proceed I must, and proceed I will. Therefore, my first attack is launched this letter to you. What can we expect from from the Corporate leaders of this organization? Are

Corporate Policies and Federal Laws going to be initiated and upheld? Or are they the "joke-of-the-year"? Do you truly represent the Corporation, and all employees or are you too just figureheads, collecting large incomes, totally unconcerned and uncaring about the women employed here. I think not, I hope not, because within one (1) week of my sending this letter, Step #2 will be taken, if I have not heard from you. (Step #2 attached [Exhibit 4]). The women employed here are a force that must be recognized sooner or later; and being as the Civil Rights Bill was passed in 1964, you have gotten away with and ignored the fact for 15 years. --There once was a President of the United States and his Staff, who thought they were above the law also.

As you can see, gentlemen after reading Step # 2 and giving a little thought to what I have said, and wonder what I have left unsaid, you will decide that I am a woman who will take no more of this. I am asking you, your staff members and the people that you employ in the positions to see that I am given equal rights and equal pay, to investigate the procedures here. It has become a situation that I cannot put aside and be content with. So, what action is taken depends upon you. - See I believe in equal opportunity, I'm willing to give you a chance to prove yourselves! That is all that the women of HPI have asked for too. The women of Highland Products are tired of Highland Products are tired of being oppressed.

Looking Forward to Hearing From You,

Susan E. Lesley.

#### Company Background

Highland Products, Inc. (HPI), is a large, U.S.-based manufacturer of a wide variety of low-technology products. Sales for 1979 totaled over \$2 billion, with about 20% of sales from non-U.S. subsidiaries. Corporate headquarters were located in Baltimore, Maryland, but management was strongly decentralized with HPI's 97 U.S. plants, organized into six major divisions by product groups. Most of these divisions competed in maturing markets that were often regional and usually very price competitive. A number of these divisions sold to U.S. military and civilian agencies.

The Hampton Division had 10,000 employees in seven manufacturing plants located in the Eastern United States. These included almost 3,000 women and 2,000 members of minority groups. Hampton's plants made standard rubber, plastic and metal fixtures used in commercial and institutional kitchens and food processing areas. Each plant had product sales and marketing support groups, product development, plant accounting, and plant engineering staffs.

The North Haven, Connecticut plant made metal components primarily from sheet metal and wire stock. An assortment of punches, presses, lathes, welders and grinders were used in the process, including some computer-driven numerically controlled machines. The production work force was represented by the United Engineering Workers Union. This relationship was one of long standing and was generally cooperative and cordial. Michael Benson, the plant manager, was 54 years old and was a long-time HPI employee. He had been plant manager for nine years, was active in the local community and had not been a strong supporter of social change.

#### Affirmative Action at Hampton

As Ray Kirk finished reading Susan Lesley's letter, he began to consider what it meant and what actions he should consider. First Ray recalled a briefing of affirmative action requirements that had been prepared by HPI's corporate legal staff (Exhibit 5). There was no question that there were serious responsibilities in this area. Each of the plants and the division had had affirmative action programs (AAP) for some time. However, Ray knew that his plants' AAP hiring performances were only modest at best. North Haven's latest Affirmative Action Goals for salaried personnel showed considerable progress to be made (Exhibit 6). Although Ray knew he had several women managers and foremen at other plants, Susan's assertion about North Haven supervisors seemed to be correct.

As Ray Kirk thought about North Haven, he felt that one of the factors slowing their progress might be the values of the community. The plant work force was drawn heavily from several strong ethnic communities that had culturally defined roles for men and women. Ray's new personnel manager, Alfred Kraft, had put it this way:

At home it's Mama in the kitchen and Papa head of the household. Mama serves Papa dinner. The people bring these attitudes to work. Many employees of both sexes relate to male and female jobs. The manager's job is a male job.

This bias was no excuse under the law, but the attitudes did help to explain some "footdragging" he had felt from the plant management.

Susan Lesley's comments about the posting program were especially disturbing. Posting of hourly job openings under union labor agreements had been common for years in many HPI plants. It seemed to work quite well. Posting of office and clerical jobs was more recent, starting in the late 1960s. In the mid-1970s, posting was extended to include the lower-level specialists, analysts and coordinators. (Candidates for management, supervising, engineering, and other professional jobs were identified by management recommendations, internal salaries, advertising and employment agencies). One of the important objectives of the posting program had been to open up opportunities within the plant for minorities and women.

The Chairman's Message

One thing was certain: John Robie was not going to be happy to receive Susan's complaint. The board of directors had recently been shocked by the major risks and exposures companies faced in light of a number of highly publicized multi-million dollar judgments in such areas as corporate political activity, product liability, antitrust and discrimination. This was just the kind of problem they wouldn't want.

As Ray began to develop a plan of action, the telephone rang. It was the Chairman of the Board. John Robie too had gotten Susan's letter that morning and was very disturbed. He said that George Wilkes and his staff were at Ray's disposal to use as Ray saw fit. But the message was clear: "Fix it".

Exhibit 1

HIGHLAND PRODUCTS, INC. (A)

January 7, 1980

CORPORATE POLICY STATEMENT ON  
EQUAL EMPLOYMENT OPPORTUNITY

This will reaffirm that Highland Products is strongly committed to a continuing policy of equal employment.

We will recruit, employ, train and promote individuals without regard to race, color, religion, sex, age, national origin, physical or mental handicap or status as a disabled veteran or veteran of the Vietnam era.

To insure full compliance with this policy, all applicants for employment and all current employees will be judged on the basis of their ability and skills alone. The only criteria for evaluating applicants and candidates for promotion are those basic qualifications which bear a direct relationship to job performance. Consideration of any other criteria is inconsistent with our merit employment policy.

We will re-evaluate and monitor our policies, practices and procedures to comply with the applicable laws and to guarantee that all positions within our organization are open to qualified women, minorities, veterans and handicapped individuals.

Further, the Company will continue its Affirmative Action efforts in seeking and recruiting women, minorities, veterans and handicapped applicants both internally and externally for positions at all levels and in all career disciplines within the Company.

All officers, managers and supervisors will be held responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment and compliance within the framework of this policy.

The corporate manager of Equal Opportunity Programs is responsible for developing, coordinating and directing programs of equal opportunity throughout Highland Products and will report to me on a quarterly basis. But every employee is obligated to make equality of opportunity a reality in Highland Products.

John A. Robie  
Chairman and  
Chief Executive Officer

Exhibit 2

HIGHLAND PRODUCTS, INC. (A)

January 14, 1980

CORPORATE POLICY STATEMENT ON  
EQUAL EMPLOYMENT OPPORTUNITY

I want to reaffirm that Hampton will continue to recruit, employ, train and promote individuals without regard to race, color, religion, sex, age, national origin, physical or mental handicap or status as a disabled veteran or veteran of the Vietnam era. In other words, all applicants for employment and all current employees will be judged on the basis of their ability and skills alone.

While all Hampton managers and supervisors are responsible for implementing this policy, Nancy Hobbs, Salaried Personnel Administrator for the Hampton Division, will continue to be responsible for coordinating and monitoring our program. Please give her any assistance she needs in this extremely important area.

I want to make additional progress in 1981 in hiring and promoting females and minorities. It is morally and legally right to do so and it also makes good business sense.

Raymond S. Kirk  
Vice President and General Manager,  
Hampton Division

Exhibit 3

HIGHLAND PRODUCTS, INC. (A)

Job Posted

HIGHLAND PRODUCTS

CAREER OPPORTUNITY

Date: January 15, 1980

JOB TITLE: Technician - Technical Service Department  
Hampton Engineering

DESCRIPTION:

- Prepare samples for durability tests
- Prepare samples for particulate and flake tests
- Make physical measurements
- Make hydraulic tests on vials or bottles
- Run moisture permeation tests
- Test ampules for break force characteristics
- Prepare materials for factory use
- Run thermal shock tests
- Prepare sketches as needed
- Perform other miscellaneous tasks as needed

REQUIREMENTS:

- Associate Science Degree Preferred
- Manual dexterity desirable
- Knowledge of Hampton products and plant processes desirable.

CONTACT: Fred Strapp - Personnel

Rate Level 4

Exhibit 4

HIGHLAND PRODUCTS, INC. (A)

List from Susan Lesley

STEP #2

Letters are prepared for mailing to:

Members of the Board of Directors, Hampton Products, Inc.  
The President of the United States  
The Attorney General of the United States  
Federal Agencies  
Federal Committees on Equal Rights  
Senators  
Congressmen  
Assemblymen  
The Governor of Connecticut  
State Agencies  
Labor Departments  
Wage and Hour Control Boards - (Both Federal and State)  
Connecticut Civil Rights Bureau  
The Attorney General of Connecticut  
Local Mayors  
Local Civic Leaders  
Local Civil Rights Agencies  
The National Organization for Women, Washington, D.C.  
The National Organization for Women, Connecticut's branch  
N.A.A.C.P.  
Chair of the Equal Employment Opportunity Commission  
Project Manager of Equal Employment Opportunity Commission  
Director of the Office of Affirmative Action at the  
University of Washington  
U.S. Assistant Attorney General  
President of the National Organization for Women  
The Department of Health, Education, & Welfare  
The New Haven Register  
The New York Times  
The Wall Street Journal  
The Hartford Courier  
The Boston Globe  
Working Woman Magazine  
New Woman Magazine  
Newsweek Magazine  
Area Colleges and Universities  
Labor Department's Office of Federal Contract Compliance  
and last -  
The Federal Trade Commission

To have the words "Equal Opportunity Employer" removed  
from all advertising and etc.

Exhibit 5

HIGHLAND PRODUCTS, INC. (A)

Affirmative Action Requirements

The HPI legal staff summarized several areas of employment law:

EEO Distinctions

Equal Employment Opportunity (EEO) involves two distinct, though occasionally overlapping, concepts: nondiscrimination and affirmative action, the former encompassing a set of "passive" obligations and the latter requiring certain "active" responsibilities.

Congress has prohibited employment discrimination through the enactment of several laws: The Equal Pay Act of 1963 (equal pay for equal work for men and women); The Civil Rights Act of 1964 (equal opportunity in all aspects of the employment relationship without discrimination because of race, color, religion, national origin or sex); The Age Discrimination in Employment Act of 1967 (protecting persons between ages 40 and 70); and statutes protecting handicapped persons and Vietnam-Era veterans enacted in the early 1970s. Parallel laws exist also in most states.

President Johnson promulgated Executive Order 11246 in 1965 to require employers who contract with the government to adopt "affirmative action programs" (AAPs) designed to improve the utilization of minorities and women without regard for whether or not discrimination had ever occurred against them.

While achievement of affirmative action programs will generally eliminate exposure to claims of discrimination, "underutilization," i.e., failure to achieve fully AAP objectives, does not amount per se to discrimination.

EEO Litigation Timetable

Since July 1, 1979, The Equal Employment Opportunity Commission (EEOC) has had enforcement authority over discrimination claims under the Equal Pay, Civil Rights, and Age Discrimination Acts. The date on which an EEOC discrimination charge is filed by a complainant establishes the parameters of discrimination litigation:

- a. Only employment actions which occurred within 180-300 days before the charge was filed will be "actionable."
- b. Back pay exposure is limited to the period two years before the charge was filed (or three years for "willful" violations of the Equal Pay and Age Acts) until the personnel action is corrected.

Exhibit 5 (continued)

- c. EEOC has exclusive control over a charge for at least 180 days (60 days for an Age Act charge and none for an Equal Pay Act charge) following its filing, before which time EEOC may sue but a private complainant may not sue.

In the event a private party is dissatisfied with EEOC disposition of the charge, the complainant may request a "right to sue" letter after receipt of which suit must be filed in Federal Court within 90 days or it is barred as untimely. The earliest date by which a suit will come to trial is generally from two to five years after it is filed.

AAP performance, on the other hand, is solely the responsibility of the employer subject to "compliance review" (usually every three years) by the U.S. Department of Labor, Office of Federal Contract Compliance (OFCCP). Private complainants may not sue to enforce an AAP! In the event OFCCP determines, after a compliance review, that an employer has failed to achieve its AAP "goals" within a reasonable time frame, OFCCP will issue a "show cause" notice whereupon the employer may voluntarily correct the deficiency by conciliation agreement. Should no agreement be achievable, OFCCP then may institute a debarment proceeding - an administrative trial. Back pay is restricted to a period two years before the date of the compliance review.

...Private claimant suits may be filed as individual actions or as "class action," i.e., on behalf of claimant and others "similarly situated." Class actions are not permitted under the Equal Pay or Age Discrimination Acts (EPA or ADEA). EEOC, which has enforcement authority for all federal law discrimination claims since July 1, 1979 can sue on behalf of "similarly situated" persons; however, making a government action somewhat like a private class action. Because class action suits can result in damages to all affected individuals, judgments in these cases can be large.

...Substantial concern has arisen over what is often referred to as "reverse discrimination." In a series of decisions since 1971, the U.S. Supreme Court has intimated how it will decide the "reverse discrimination" issue. First the Court held:

Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has prescribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate individually to discriminate on the basis of racial or other impermissible classification.

Exhibit 5 (continued)

Later Court decisions held that race discrimination prohibitions protected whites as well as minorities but did allow numerical quotas based on race in certain very limited situations. These required manifestly imbalanced ratios in traditionally segregated job categories, a voluntary plan enacted by private parties, no displacement of nonminorities from their jobs, no exclusion of nonminorities from participation in such a program, no setting aside of existing job expectations of nonminorities, and a temporary nature that would end when parity is met. The Court held that Title VII imposes no obligation to "maximize" the utilization of minorities, only to refrain from discriminating. However, Federal contractors are required to improve statistical "underutilization" by Executive Orders.

Two important concepts emerged:

- a. "disparate impact" occurs when any "systemic" personnel practices, e.g., hiring, initial job assignment, seniority systems, access to apprenticeship programs and salaried job vacancies, testing, or job evaluation systems uniformly applied, adversely affect minorities or women to a disproportionately greater extent than whites or males;
- b. "disparate treatment" occurs when an individual is intentionally victimized because of race, color, religion, sex, or national origin, e.g., a "pretextual" discharge.

The complaining party must prove discriminatory motive to prevail in a "disparate treatment" case, but need not prove motive, only effect, in a "disparate impact" case.

The Court also sanctioned the use of statistical proof in employment discrimination litigation so that a complaining party may establish a prima facie case for relief on the basis of the absence of minorities or women from particular job classifications. The burden then shifts to the employer to come forward with a nondiscriminatory reason for the particular personnel action or "system" based upon safety or efficiency. The employer must prove that it could have used "no other reasonable alternative" system.

Based upon the evolution of the foregoing Supreme Court precedents, Highland Products believes that equal employment opportunity is not to be measured on the basis of equality of results or statistical parity: "goals and timetables" realistically sought to be achieved through nondiscriminatory "affirmative action" designed to improve "underutilization" of qualified minorities and women is the proper objective.

Exhibit 5 (continued)

Enforcement of "affirmative action" obligations is a three-phase program. Phase I requires the employer to:

1. Promise, as a condition of eligibility to contract with the Federal government, to engage in "affirmative action" with respect to employment practices so as to improve the "utilization" of minorities, women, and the handicapped;
2. Develop a written "affirmative action plan" (AAP) which includes at least:
  - a. Written "affirmative action" policy statements by appropriate management officials;
  - b. Work force composition analysis by department, job classification, race and sex;
  - c. Job grouping of work force by EEO categories;
  - d. Statistical comparison of existing work force utilization corresponding to "availability" in the "relevant labor market with requisite qualifications" to determine areas of "underutilization" and explanations of those areas;\*
  - e. Projections of anticipated vacancies in "underutilized" areas and good faith "goals and timetables" for improvement over the next 12 months and 5 years;
  - f. Identification of "problem areas" expected and plans to overcome them.
3. Consult the AAP goals and timetables before any vacancy is filled which presents an opportunity to improve "underutilization";
4. Periodic internal audit procedures to review AAP performance.

Phase II requires submission of the AAP plan to audit, including on-site compliance reviews with access to all personnel files, records, and interviews of supervisory personnel and hourly employees.

Phase III involves conciliation or litigation of AAP deficiencies found during the review process.

---

\*"Relevant labor market" refers essentially to the source from which persons are generally selected to fill vacancies in particular jobs, i.e., within the existing work force, from the local labor market, or on a national basis.

Exhibit 5 (continued)

The use of a job posting system is often an excellent component of an AAP. Not only is it a good management tool that benefits all employees, but the discipline and documentation imposed by such a procedure can be very useful. Such a procedure shifts to the complaining party the burden of proving discrimination where he or she failed to apply for the vacancy, rather than requiring the company to reconstruct years later its reason(s) for a particular personnel action. It also compels the selecting supervisor to substantiate his or her selection before the vacancy is filled. In the hourly unionized jobs, this procedure has long worked well; and, where we have been challenged in EEO litigation, we have won largely on the basis of posting evidence. In fact, improvement to and extension of posting systems has been the major remedial action required by several court decisions to correct instances where discrimination had been found.

Exhibit 6

HIGHLAND PRODUCTS, INC. (A)

North Haven Plant Affirmative Action Goals

|                        | <u>Females</u>    |  |               |      |                   |      |
|------------------------|-------------------|--|---------------|------|-------------------|------|
|                        | 12/31/79          |  | 12/31/79      |      | Ultimate Goals    |      |
|                        | Plant             |  | Plant         |      | Based on 12/31/79 |      |
|                        | <u>Population</u> |  | <u>Female</u> |      | <u>Population</u> |      |
|                        | #                 |  | Population    |      | (Parity)          |      |
|                        | #                 |  | #             | %    | #                 | %    |
| Officials and Managers | 21                |  | 0             | 0    | 3                 | 16.4 |
| Foremen                | 17                |  | 0             | 0    | 5                 | 30.5 |
| Professionals          | 19                |  | 3             | 15.8 | 5                 | 25.1 |
| Technical              | 5                 |  | 1             | 20.0 | 2                 | 33.4 |
| Sales                  | 7                 |  | 1             | 14.3 | 1                 | 15.0 |

|                        | <u>Minorities</u> |  |                 |     |                   |      |
|------------------------|-------------------|--|-----------------|-----|-------------------|------|
|                        | 12/31/79          |  | 12/31/79        |     | Ultimate Goals    |      |
|                        | Plant             |  | Plant           |     | Based on 12/31/79 |      |
|                        | <u>Population</u> |  | <u>Minority</u> |     | <u>Population</u> |      |
|                        | #                 |  | Population      |     | (Parity)          |      |
|                        | #                 |  | #               | %   | #                 | %    |
| Officials and Managers | 21                |  | 1               | 4.8 | 2                 | 8.3  |
| Foremen                | 17                |  | 1               | 5.9 | 3                 | 16.8 |
| Professionals          | 19                |  | 1               | 5.3 | 2                 | 8.1  |
| Technical              | 5                 |  | 0               | 0   | 1                 | 13.2 |
| Sales                  | 7                 |  | 0               | 0   | 1                 | 8.0  |