IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *

v. * Civil Action No.: JFM:04CV3114

THE GREAT ATLANTIC & PACIFIC TEA CO., INC. t/a/ EIGHT O'CLOCK COFFEE, *

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and among (1) THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., its present and former subsidiaries, divisions, affiliates, predecessors, successors and assigns, including EIGHT O'CLOCK COFFEE; its and their past and present officers, directors, or trustees, employees, agents, attorneys and shareholders (hereinafter throughout collectively "the Company"), and (2) the UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. Its purpose is to resolve all issues raised by the Commission's Complaint against the Company, referenced below, without the time and expense of contested litigation and to promote and effectuate the purposes of Title VII. This Agreement shall not be construed as an admission by the Company of any discriminatory practice. Furthermore, this Agreement does not constitute a disavowal by EEOC of the allegations of the Complaint.

I. GENERAL RECITALS:

On September 29, 2004, The Equal Employment Opportunity Commission ("the Commission"), filed a Complaint alleging that The Great Atlantic & Pacific Tea Company, Inc., ("the Company"), violated Section 704(a) of Title VII of the Civil Rights

Act of 1964, as amended, 42 U.S.C. §2000e-3, by discharging Shirley Taylor in retaliation for opposing unlawful employment practices. *See, e.g.*, *Equal Employment Opportunity Commission v. The Great Atlantic & Pacific Tea Company, Inc.*, Civil Action No. JFM:04CV3114, USDC, D. Md.

This Settlement Agreement resolves all issues and claims alleged or which could have been alleged in the Commission's Complaint against the Company in Civil Action No. JFM:04cv3114 based on the charge of discrimination filed by Shirley Taylor on or about September 26, 2003, EEOC Charge No. 120-2003-06466C.

II. EFFECTIVE DATE AND DURATION

The effective date of this Settlement Agreement shall be the date upon which this Settlement Agreement is fully executed by the parties hereto. For purposes of the training and reporting set forth in Section IV, this Settlement Agreement shall continue in force and effect for a period of two (2) years from its effective date after which time it shall be void. Counsel for the Commission shall file this Settlement Agreement for the Court's approval. The parties agree that this Court retains jurisdiction for the purpose of enforcing this Agreement.

III. RELIEF TO THE CHARGING PARTY

Within twenty-one (21) days after the execution of this Settlement Agreement by all parties, the Company shall pay to Shirley Taylor claimed back pay in the amount of thirty-eight thousand ($38,000.) less lawful deductions. Said amount shall be paid by check to the order of Shirley Taylor. In addition, contingent on Ms. Taylor's completion of the IRS Form W-9 attached hereto as Exhibit 1 and submission of the W-9 to the undersigned counsel for the Company, the Company shall pay to Shirley Taylor claimed non-wage compensatory damages in the amount of forty seven thousand dollars ($47,000.) which sum shall be reported by the Company to the Internal Revenue Service on IRS form 1099. Both checks shall be sent to Shirley Taylor by first class mail, postage prepaid, return receipt requested to an address to be supplied by the Commission. A copy of each check shall be forwarded to counsel for the Commission.

The Company shall: (a) expunge from its personnel records information critical of Shirley Taylor, her character, competence or performance; (b) cause its personnel records to reflect that Shirley Taylor's separation from employment with the Company was by Ms. Taylor's resignation; and (c) designate an individual to respond to reference inquiries and to inform any individual who contacts the Company for a reference or recommendation with respect to Shirley Taylor that she performed her duties competently and that her separation from employment with the Company was by her resignation.

In consideration of payment of the foregoing sums and of the other commitments of the Company hereunder, this Settlement Agreement constitutes a full discharge and satisfaction of any and claims that have been alleged in the Complaint, Civil Action No. JFM:04CV3114, based on the EEOC's determination of retaliation for the charge of discrimination filed by Shirley Taylor, EEOC Charge No. 120-2003-06466C.

IV. <u>NON-RETALIATION</u>:

The Company, its officers, agents, servants, employees and all persons acting or claiming to act in its behalf and interest agree that the Company shall not engage in retaliation of any kind against any person because of opposition to any practice made unlawful under Title VII or because of the filing of a charge, the giving of testimony, assistance or participation in any investigation, proceeding or hearing under Title VII.

V. TITLE VII TRAINING

A. To implement the Company's Equal Employment Opportunity ("EEO") policy, the Company has provided equal employment opportunity training for its managers and supervisors to equip them to deal with employees in a non-discriminatory manner. Future training shall consist of at least two workshops within two years from the date of the execution of this Agreement for corporate management at corporate headquarters. The person(s) who conduct the training shall address the prohibitions of retaliation against employees who assert EEO claims.

B. The Company shall continue its policy of posting at its facilities Company policies advising managers and supervisors of their obligation not to retaliate against any employee who opposes any practice made an unlawful employment practice under Title VII.

C. In each of the two years following the execution of this Settlement Agreement, the Company shall submit an annual written report to the EEOC which provides the following information:

1. Copies of all writings which document the Company's fulfillment of its obligations under this Section V.

2. A list of the employees who attend the training described in Section V (A) and an outline of the topics discussed during the training together with the name(s) and credentials of the person(s) who conduct the training.

COSTS

The parties shall bear their own costs and attorney's fees incurred in this action. The undersigned counsel of record in the above-captioned action hereby consent, on behalf of their respective clients, to the entry of this Settlement Agreement.

FOR DEFENDANT:

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August 17, 2005

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EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Baltimore District Office
10 S. Howard Street, 3rd Flr.
Baltimore, MD 21201
(410) 962-4220

 Taxpayer Identification Number Request Rev. Sept. 2003 • B-Notice Response

Please complete all three parts below.

Part 1 – Tax Identification:

Name: ______________________________

If you are a SOLE PROPRIETOR or SINGLE-OWNER LLC
- Required: Personal name of owner of the business: ______________________________
- Optional: Business name if different from above: ______________________________

Enter your TIN in the appropriate box.
For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN).

Social Security Number	OR	Employer Identification Number
___ ___ ___ – ___ ___ – ___ ___ ___ ___		___ ___ – ___ ___ ___ ___ ___ ___ ___

Part 2 – Exemption: If exempt from Form 1099 reporting, check your qualifying exemption reason below:

☐ Corporation
Note that there is no corporate exemption for medical and healthcare payments or payments for legal services.

☐ Tax Exempt Entity
under 501(a) *(includes 501 (c)(3))*, or IRA

☐ The United States
or any of its agencies or instrumentalities

☐ A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or agencies

☐ A foreign government or any of its political subdivisions or an international organization in which the United States participates under a treaty or Act of Congress

Part 3 – Certification: I certify under penalties of perjury that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), **and**
2. I am not subject to backup withholding because: **(a)** I am exempt from backup withholding, or **(b)** I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or **(c)** the IRS has notified me that I am no longer subject to backup withholding **and**
3. I am a U.S. person (including a U.S. resident alien).

Certification Instructions—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Person completing this form: ______________________________

Signature: ______________________ Date: ______________ Phone: (________) ______________________

Address: ______________________________ City: ______________ State: __________ ZIP: ____________

Instructions: We are about to pay you an amount that may be reported to the **Internal Revenue Service** (IRS). The IRS will match this amount to your tax return. In order to avoid additional IRS scrutiny, we must provide the IRS with your name and Taxpayer Identification Number. The name we need is **the name that you use on the tax return** that will report this amount. We are required by law to obtain this information from you.

U.S. person. This form may be used only by a U.S. person, including a resident alien. Foreign persons should furnish us with the appropriate Form W-8.

Exempt from backup withholding. On page 2 of this form is a chart showing who is exempt from backup withholding. If you are exempt from backup withholding, indicate the reason why in part 2 of this form, and we will not send you a Form 1099.

Penalties: Your failure to provide a correct name and Taxpayer Identification Number may subject your payments to 28% federal income tax backup withholding. If you do not provide us with this information, you may be subject to a $50 penalty imposed by IRS under section 6723. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 civil penalty. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Confidentiality: If we disclose or use your Taxpayer Identification Number in violation of Federal law, we may be subject to civil and criminal penalties.

Instructions continued on Page 2

EXHIBIT
tabbies®
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Please return this form in the enclosed envelope. Thank you for your cooperation

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note: *If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.*

Exempt payees. Backup withholding is **not required** on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
5. An international organization or any of its agencies or instrumentalities. Other payees that **may be exempt** from backup withholding include:
6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;
9. A futures commission merchant registered with the Commodity Futures Trading Commission;
10. A real estate investment trust;
11. An entity registered at all times during the tax year under the Investment Company Act of 1940;
12. A common trust fund operated by a bank under section 584(a);
13. A financial institution;
14. A middleman known in the investment community as a nominee or custodian; or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through **15**.

If the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over $600 required to be reported and direct sales over $5,000 [1]	Generally, exempt recipients 1 through 7 [2]

1 See **Form 1099-MISC**, Miscellaneous Income, and its instructions.

2 However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are **not exempt** from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

Instructions continued from Page 1

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes. If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a **nonresident alien or a foreign entity** not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions above and on the reverse.

Privacy Act Notice

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply. Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.