

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

PLAINTIFF

V.

CASE NO. 09-CV-1042

GREAT LAKES CHEMICAL CORPORATION

DEFENDANT

**ORDER**

Before the Court is the Report and Recommendation filed March 3, 2011, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 37). Judge Bryant recommends that Defendant's Motion for Summary Judgment (ECF No. 14) be denied in its entirety. Defendant has responded with timely objections. (ECF No. 38). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

First, Defendant notes that the Report and Recommendation fails to address two summary judgment issues raised by Defendant: (1) any claims brought by the Equal Employment Opportunity Commission ("EEOC") based on a pattern and practice are outside the scope of the underlying EEOC charges filed and (2) even if pattern and practice claims are not outside the scope of the underlying EEOC charges, the EEOC has not produced evidence sufficient to support any pattern and practice claims of discrimination. Further, Defendant notes that Judge Bryant found that Defendant's summary judgment argument based on after-acquired evidence is not ripe for determination. The Court will permit Defendant to file a second partial summary judgment motion addressing only the arguments mentioned above: (1) whether any claims brought by the Equal

Employment Opportunity Commission based on a pattern and practice are outside the scope of the underlying EEOC charges filed; (2) even if pattern and practice claims are not outside the scope of the underlying EEOC charges, the EEOC has not produced evidence sufficient to support any pattern and practice claims of discrimination; and (3) whether employee Dunn's damages are limited by the after-acquired evidence defense.

The remainder of Defendant's objections deal with Judge Bryant's finding that a reasonable jury could find that Defendant discharged four of its employees because of their race. The Court agrees with Judge Bryant's findings that fact questions remain as to whether the employees met Defendant's legitimate job expectations, whether similarly situated employees outside the protected class were treated differently, and whether Defendant established a legitimate, non-discriminatory reason for the discharge of the employees. The Court has conducted the required de novo review of the portions of the Report and Recommendation corresponding with Defendant's objections. Accordingly, these objections are overruled. The Court agrees with Judge Bryant's finding that a reasonable jury could find that Defendant discharged four of its employees because of their race.

For reasons stated herein and above, as well as those contained in the Report and Recommendation (ECF No. 37), Defendant's Motion for Summary Judgment (ECF No. 14) is **DENIED**. However, Defendant is permitted to file a second partial motion for summary judgment regarding the specific issues addressed in the second paragraph of this order.

**IT IS SO ORDERED**, this 16th day of March, 2011.

/s/ Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge