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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	No. 05 C 0208
Plaintiff,	)	Honorable James B. Zagel
v.	)	Magistrate Martin C. Ashman
SIDLEY AUSTIN BROWN & WOOD LLP,	)	
Defendant.	)	

DEFENDANT'S RESPONSE TO EEOC'S MOTION FOR ENTRY OF SCHEDULING ORDER AND CROSS-MOTION FOR ENTRY OF SCHEDULING ORDER

Defendant Sidley Austin LLP ("Sidley") submits the following response to the EEOC's Motion for Entry of Scheduling Order and respectfully requests the Court enter Sidley's Proposed Scheduling Order, attached hereto as Exhibit A.

1. During the October 6, 2006, hearing on Sidley's Motion to Compel, Sidley raised the need for a scheduling order and the Court requested the parties work together to "start setting dates." (Tr. of Oct. 6, 2006, Hr'g at 13-14, attached as Exhibit B.) The Court emphasized its concern that the case move "speedily toward resolution," and indicated that it was troubled by certain EEOC press comments relating to the time it might take to complete the discovery. (Ex. B at 8-9 (quoting EEOC statements: "whether it takes six months or whether it takes ten years ...").)

2. In early November, Sidley proposed a scheduling order to the EEOC. (Ex. A.) Under Sidley's initial proposed schedule, written discovery would be completed by January 2007, fact depositions would be complete by May 2007 and expert discovery and

summary judgment briefing would be complete by early October 2007. The case would be ready for trial by November 15, 2007.

3. The EEOC responded by suggesting a schedule that extended all dates by at least two months, asserting that it needed more time for discovery. The EEOC, however, has had seven years (five years of investigation, two of litigation) to pursue written discovery. During that time, the EEOC has served 10 sets of interrogatories and 9 sets of document requests, requiring Sidley to respond to 97 separate interrogatories (not including subparts) and 100 separate document requests. In response to the EEOC's discovery requests, Sidley has produced at least 40,000 pages of documents and dozens of pages of narrative descriptions of the process and criteria applied in making decisions and the reasons for the decisions.[1]

4. After many years of investigation and discovery, the EEOC should be ready to bring written discovery to a close, to proceed expeditiously with deposition discovery, and to bring this case to trial.

5. In the interest of reaching an agreement that avoided the need for Court involvement on scheduling issues, and in the spirit of compromise, Sidley offered to split the difference and extend all dates in its proposed schedule by 30 days. The EEOC refused that offer.

6. Sidley stands ready to comply with whatever schedule the Court deems appropriate for the case and its own calendar. Sidley submits that its proposed schedule is

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[1] In its motion, the EEOC cites to instances where Sidley amended or supplemented its nine or ten sets of discovery responses, often in response to EEOC requests. The EEOC has done the same in response to Sidley's two sets of discovery requests, amending certain sets five and six times. The EEOC produced most documents in response to Sidley's June 2006 subpoena in late September, and continues to produce others into November. Rather than pointing fingers about the pace of discovery to date, however, Sidley proposes that the parties focus their efforts on reaching a reasonable schedule to complete discovery and preparing for trial.

reasonable, will result in an earlier trial date and will more fully address the concerns the Court recognized during the October 6, 2006 hearing.

WHEREFORE, Sidley respectfully requests that the Court enter the Proposed Scheduling Order attached as Exhibit A.

Dated: November 13, 2006

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Michael P. Conway
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Michael P. Conway, an attorney, hereby certify that on **November 13, 2006**, I caused true and complete copies of the foregoing **NOTICE OF MOTION and DEFENDANT'S RESPONSE TO EEOC'S MOTION FOR ENTRY OF SCHEDULING ORDER AND CROSS-MOTION FOR ENTRY OF SCHEDULING ORDER** to be served by Electronic Mail Transmission via ECF as to Filing Users upon the following:

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/s/ Michael P. Conway

EXHIBIT A

Proposed Scheduling Order

Due / Completion Date	
January 31, 2007	All written discovery complete, to be supplemented as required under Rule 26(e).
March 16, 2007	EEOC identifies damage contentions, to be supplemented as allowed by Federal Rules. EEOC identifies comparators, to be supplemented as allowed by Federal Rules.
May 15, 2007	Fact depositions complete.
June 1, 2007	Expert reports for issues where the party bears burden of proof or production due.
July 2, 2007	Responsive expert reports due.
August 15, 2007	Expert depositions completed.
August 20, 2007	Dispositive motions due.
September 20, 2007	Responses to dispositive motions due.
October 5, 2007	Replies to dispositive motions due.
November 1, 2007	Pretrial order due.
November 15, 2007	Ready for trial.

EXHIBIT B

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

UNITED STATES OF AMERICA	
Plaintiff,	No. 05 CV 208
vs.	Chicago, Illinois
SIDLEY, AUSTIN, BROWN & WOOD, L.L.P.,	October 6, 2006
Defendants.	10:13 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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was a decision of nothing. And what Mr. Hendrickson's comments caused, the concern it caused me, was the belief that if Mr. Hendrickson does not understand what a denial of certiorari is, it may signal a certain lack of understanding in him and perhaps in the EEOC as to what their obligations are under other aspects of the law such as discovery. It was a foolish statement and an inaccurate statement and it caused me pause.

Another statement he made and the reason I'm concerned about time, is the,

> "... whether it takes six months or whether it takes ten years, we will go on ..."

so on and so forth. Which is fine. Not quite as fine as a comment on a Court decision, but something which he's entitled to say. The only thing that bothered me about it is, I'm beginning to get the distinct feeling from the postures of the parties in discovery that it is not Sidley that is stopping it at six months, it's the EEOC that's making it go ten years, and that concerns me.

And what concerns me about this case is, this case presents novel and very interesting issues of law. You're talking, in essence, about a substantial variation from the formalism for which the law has addressed corporate and partnership organizations for many years. And the position of the EEOC and perhaps the position of courts has been the time

has come when a closer look has to be taken as to what these forms of business organizations really mean. And accountants have been discussing this for years and the lawyers started discussing this for years particularly when you got to the LLC's and the LLP's, and not just in the context of your concerns here but in the broader context of liability.

I can understand why it is that the EEOC bringing this case, which it does and should regard as an important matter, wants to cross every "t" and dot every "i," but I don't think the EEOC should be talking about ten years in the context that clearly implies that it is not they, the EEOC, that are going to be responsible for the ten years.

So when you discuss this with your various authorities at the EEOC, you should emphasize my concern that we move speedily toward resolution, and we can't move speedily toward resolution until you stop saying "investigation continues" and give them the answers.

Now, ordinarily I wouldn't care at all what Mr. Hendrickson said. It's certainly not going to influence the decision in this case. In all honesty, I don't think any significant even measurable public relations damage has been done to Sidley. If some government lawyer or some nongovernment lawyer wants to stand on the table and thump its chest and say the equivalent of "we're never going to go away, we're the champion, we're number one," so be it, but it

MS MURRAY: And the last point that I had, your Honor, was on the damages contention. We do not have from the EEOC a damage contention. And, in particularly, there are two things that are within their possession that we simply can't investigate and that is how long they contend that these folks would have continued to work and whether or not each of the individuals seeks reinstatement. Those are important things for us to be able to access the case right now on a going-forward basis and to be able to ask folks about in their depositions which are coming up fairly soon.

MS. HAMILTON: I think that with regard to those issues, as we've already heard from Sidley, there is a whole variety of factors that go into what an individual's performance is, what an individual's compensation is, and I think once we've gotten some more information about that we'll be able to provide Sidley with more concrete numbers and answers, but until we have more information ourselves, we're not able to fully answer those questions.

We've indicated to Sidley that we do intend to engage a damages expert, and so we just can't, at this point, provide more information, but we will.

THE COURT: Given the nature of this case, I think actually they do have a problem which is going to take them some time to address. So I will give them the time, but the truth is is this very discussion is the reason that I'm asking

you to start setting dates.

MS. HAMILTON: Your Honor, if I could, I'd like to respond to a couple of issues that have been raised. I certainly don't want to leave you with the impression that the EEOC is dragging its heels. I'll give you an example. We know that we need to identify comparators. On September 14th we received from the defendants a statement of the reasons that individuals' status was changed or they were downgraded from partnership.

That list of reasons included, for example, client complaints. We issued discovery to the defendants asking them to identify other lawyers who also had client complaints leveled against them. The defendant refused to respond to our discovery. So then we are in a situation where we simply can't answer their questions and where discovery is protracted and is delayed because we're not able to sit down with our people because we don't have the information we need.

We feel, in some sense, despite the thousands of pages that Sidley has provided, they haven't actually answered many of our questions and we are likely to find ourselves before you again. We don't want to delay. There's lots of benefit for us of moving forward as quickly as we can, at the same time we can't do it without the information. So I just want to make that clear to you.

Then I wanted to respond on a couple of other things