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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	Case No. 05 CV 0208
Plaintiff,	)	Honorable James B. Zagel
v.	)	Magistrate Judge Ashman
SIDLEY AUSTIN LLP,	)	
Defendant.	)	

SIDLEY AUSTIN LLP'S MEMORANDUM (A) ON COMPARATORS AND (B) OPPOSING EEOC MOTION REGARDING CLIENT COMPLAINTS

This memorandum is submitted by Defendant Sidley Austin LLP ("Sidley") in compliance with the Court's request at the January 25, 2007 hearing that Sidley provide, in addition to a response to the Plaintiff's ("EEOC") motion to compel information regarding client complaints, a memorandum addressing the larger issue of comparators.

I. INTRODUCTION AND BACKGROUND

On July 14, 2004, the EEOC issued an Age Discrimination in Employment Act ("ADEA") Notice of Determination Letter in this matter. In order to issue a Notice of Determination, the EEOC was required to have a reasonable basis on which to conclude a violation of the ADEA had occurred. The EEOC found that "for each and every one of the partners over 40 years of age who were downgraded or expelled *there were multiple other partners, including younger partners, who did not perform as well but who were not downgraded or expelled*." (Ex. A, 7/14/04 Notice Of Determination Letter (emphasis added).)[1]

[1] References are to exhibits attached to this Memorandum. Confidential information has been redacted from the exhibits and publicly-filed version of this Memorandum. In addition, pursuant to the Amended Protective Order in this case, Exhibits C, G, H, K and M have been filed under seal.

At the point in which it issued the Notice of Determination, the EEOC had been investigating Sidley for four years, first by voluntary compliance, then under a subpoena. The EEOC had received over 7,000 pages of documents and information and talked confidentially to several lawyers then working at Sidley. Since filing this suit, the EEOC has received, in addition, more than 40,000 pages of documents and charts prepared at the request or in response to EEOC discovery requests. Sidley has responded to ten sets of discovery requests. Sidley set forth in a 49-page interrogatory response the reasons for the decisions to change the status of all partners then identified by the EEOC. The EEOC has deposed nine current or former Sidley partners, including three members of its 1999 Management Committee. The EEOC has long had the following objective data for all Sidley partners during the years 1995-1999: hours; billings; date of birth; practice group; office location; date of joining the firm; date of separation from the Firm; and compensation.

Sidley, having no power to investigate before suit, began its discovery in 2005 by asking the EEOC to identify the "similarly situated younger partners" referenced in the July 14, 2004 Notice of Determination. The EEOC refused to provide any information except that "Investigation continues into the names and ages of the individuals who were similarly situated to these 31 people." (Ex. B, EEOC's 6/23/05 Resp. to First Set of Interrogatories, No. 2.) In September 2006, the EEOC provided a list of younger "individuals whom did not perform as well as the claimants in terms of hours and billings in the years 1997, 1998 and 1999." (Ex. C, EEOC's 9/8/06 Fourth Supplemental Resp. to First Set of Interrogatories, No. 2.) When Sidley tried to verify that all potential EEOC-selected "comparators" would come from this list, the EEOC refused to commit to that, saying "[i]nvestigation continues."

After receiving the EEOC's discovery responses, on September 15, 2006, Sidley moved to compel the EEOC to identify a final and reasonable list of comparators. The EEOC opposed the motion, stating that it had "*provided all comparators of which it is aware and will timely supplement* its discovery response *when it learns* of additional comparators." (Ex. D, EEOC's 9/25/06 Opp'n to Sidley's Motion to Compel at 4) (emphasis added.) Based on the EEOC's representation that it had identified all comparators of which it was currently aware, the Court gave the EEOC additional time in discovery to finalize its list, ordering it to do so by May 16, 2007. (Ex. E, Scheduling Order.) After the October 6 hearing, the EEOC for the first time stated that the listed "comparators" were not "comparators for all purposes" but were only "hours and billings comparators." (Ex. F, 10/17/06 Letter from M. Solís-Szukala to L. Elkin and J. Mulaire.)

Meanwhile, the EEOC has requested that Sidley produce evidence regarding "all client complaints received by Sidley about any partner of Sidley in the years from 1995 through 1999." (Ex. G, EEOC's Fifth Set of Requests for Production of Documents at No. 19 and EEOC's Sixth Set of Interrogatories at No. 19.) But Sidley had more than 300 partners in 1999, located in Chicago, New York, Los Angeles, Dallas and Washington, D. C., as well as London and four locations in Asia. Sidley objected to the huge burden of investigating and producing evidence on "client complaints" for those more than 300 individuals (not all still with Sidley). (Ex. H, Sidley's 9/28/06 Resp. to EEOC's Fifth Set of Document Requests at No. 19 and Sidley's 9/28/06 Resp. to EEOC's Sixth Set of Interrogatories at No. 19.) In an effort to avoid burdening the Court, Sidley proposed a compromise in which it would provide additional information on likely "comparators" for the six claimants for whom client complaints were a cited reason for the changes in status, if the EEOC would identify reasonable candidates to be such comparators.

(Ex. I, 10/23/06 Letter from M. Solís-Szukala to L. Elkin and J. Mulaire.) Sidley was hopeful of pursuing the same approach with regard to the other EEOC requests covering a large number of Sidley partners.[2] The EEOC, however, refuses to identify potential "comparators" until it gets all the information it seeks on all of the more than 300 partners, a position the EEOC repeated in Court.[3] (Ex. J, 1/25/07 Hearing Tr. at 10:6-10:9.) Based on the following statements by the EEOC at the January 25, 2007 hearing on the EEOC's motion to compel, it appears that the EEOC is attempting to expand its list of comparators as the written discovery cutoff draws near. "And if I may, hour Honor, we have already identified persons who we believe - *some* of the persons we believe are comparators in terms of hours, billing, et cetera . . . ." (Ex. J, Hearing Tr. at 10:25-11:3 (emphasis added).)

It is clear, therefore, that the Court's intervention is necessary.

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[2] The EEOC has also recently requested: (i) identification of all persons holding partnership status in 1999 who, at any time, obtained client billings from attorneys who left the firm; when the partner obtained the client billings; and the amount of the billings; (ii) identification of all partners who were dependent on others for work at any point in time from 1990 through 1999; (iii) the reasons why there was no change in partnership status of 176 partners; and (iv) the reasons for a change in compensation (or no change) for 176 partners.

[3] Although the EEOC claims that client complaints are also relevant to its argument that Sidley's stated changes were a pretext for age discrimination, the EEOC refuses to explain how that can be. In recently served discovery responses seeking the basis for the EEOC's pretext claim, the EEOC provides blanket responses providing little to no information specific to any putative claimant (for example, the EEOC relies on an alleged statement regarding an alleged retirement policy applying to 60 year olds as evidence of pretext for status change decisions involving putative claimants who were in their 30s, 40s and 50s at the time of the decision.) (Ex. K, EEOC's 2/9/07 First Supp. Resp. to Sidley Austin LLP's Third Set of Interrogatories and Requests for the Production of Documents, No. 2.)

II. ARGUMENT

A. The Seventh Circuit's Legal Standards Should Be Applied To Limit The EEOC's Discovery Requests.

Comparators evidence is part of the "circumstantial" evidence required when, as is typical, there is no "direct" evidence. *Balderston v. Fairbanks Morse Engine Div. of Coltec Indus.*, 328 F.3d 309, 321 (7th Cir. 2002) (citations omitted):

> Direct evidence usually requires an admission by the decisionmaker that his actions were based on age. . . . Where circumstantial evidence of discriminatory intent is relied on, generally the burden-shifting method of proof set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), is applied.[4]

Under the "*McDonnell Douglas*" test, the EEOC must establish that a person 40 years old or older, performing the job satisfactorily, suffered a significant adverse employment action and that there are one or more comparators – that is, (A) "substantially younger" (generally 10 years younger) (B) otherwise "similarly situated" persons (C) who were treated more favorably. *Franzoni v. Hartmarx Corp.*, 300 F.3d 767, 771-72 (7th Cir. 2002). If settled Seventh Circuit law on the meaning of (A) "substantially younger," (B) "similarly situated," and (C) "treated more favorably" were applied here, most Sidley partners would be eliminated as potential comparators for most putative claimants.

1. "Substantially Younger"

Seventh Circuit decisions regularly require a comparator to be "at least 10 years younger than the plaintiff." *Balderston*, 328 F.3d at 322. Although dicta in some decisions suggest 10 years is not an absolute rule, *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 619 (7th Cir. 2000) (because 9.5 years "just misses," other circumstances might warrant relaxation of 10-year

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[4] On direct evidence, *see generally*, *Hemsworth, II v. Quotesmith.com, Inc.*, No. 06-1885, 2007 WL 416984, at *3-4 (7th Cir. Feb. 8, 2007).

cutoff), other decisions make clear that relaxation will rarely be permitted. *Hartley v. Wisconsin Bell, Inc.*, 124 F.3d 887, 893 (7th Cir. 1997) ("In cases where the disparity is less [than 10 years], the plaintiff still may present a triable claim if she directs the court to evidence that her employer considered her age to be significant. In that instance, the issue of age disparity would be less relevant. Indeed, it may not be relevant at all because the employee's case likely would be one of direct evidence, not the burden-shifting indirect evidence framework set out in *McDonnell Douglas . . .*") *Cf. Cardenas v. Fleetwood, Inc.*, 406 F. Supp. 2d 998, 1006 (N.D. Ill. 2005) (six and seven year gaps are "'presumptively insubstantial'")(citation omitted).

The ten-year-younger rule eliminates many "comparators" suggested by the EEOC. For **< REDACTED >**, who was only 39 when the decision to change his status was made and announced to him, **< REDACTED >** the EEOC has listed seven "hours and billings comparators." Of these seven, the oldest is less than seven years younger than **< REDACTED >** and five of the seven are *less than two years younger*. The ten-year-younger rule (or even a nine-year-younger rule) would eliminate *all* comparators for **< REDACTED >**.

To take another example, **< REDACTED >** was 60 at the time of the decision. For **< REDACTED >**, the EEOC named five "hours and billings comparators," one of whom is one-year younger, another four years younger. A ten-year rule would diminish **< REDACTED >** potential comparators by 40%.

2. "Similarly Situated With Respect To Performance, Qualifications, And Conduct"

The decisions in *Balderston*, 328 F.3d at 322 and *Hemsworth*, 2007 WL 416984, at *4 lead to five principles that Sidley respectfully suggests can be used to screen out comparators who are plainly not similarly situated.

a. A part-time partner cannot be a comparator for a full-time partner, especially when a significant issue is hours worked. < **REDACTED** > five "comparators" include two mothers of young children who made arrangements with Sidley to work part-time. Not surprisingly, Sidley's part-time partners have fewer hours than its full-time partners. As the Seventh Circuit recognizes, "full-time employees are simply not similarly situated to part-time employees. There are too many differences between them. . . part-time employees work fewer hours and receive less pay and fewer benefits." *Ilhardt v. Sara Lee Corp.*, 118 F.3d 1151, 1155 (7th Cir. 1997). Based on the EEOC's newly-served discovery responses, it appears to agree with Sidley on the impact of part-time work. *See* Ex. K, EEOC's 2/9/07 First Supplemental Resp. to Defendant's Third Set of Interrogatories and Requests for the Production of Documents, No. 2 (" < **REDACTED** > hours were not low when viewed in the context of his part-time status.")

The same two part-time partners (since they are young and their hours are low) appear as comparators for many other claimants. Eliminating them as comparators in this case will simplify matters greatly. For < **REDACTED** > , the EEOC has listed nine part-time "comparators." If the Court makes clear that "part-time" and "full-time" partners are not "similarly situated" (at least for the purpose of being "*hours* comparators"), that one ruling will significantly simplify the case. *See Ilhardt*, 118 F.3d at 1155.

b. International offices. If we disregard the two part-time "comparators" for < **REDACTED** > and the "comparator" one year younger than he, his remaining two comparators are from London (four years younger than < **REDACTED** >) and Tokyo (less than ten years younger but more than nine). Those partners were spending time developing business, recruiting, and working on other matters necessary to develop an international practice

in a country where Sidley did not have a significant presence. In 1999, partners in those offices billed fewer hours than U.S. partners, as Sidley expected and accepted.

Because of their lower hours, partners in these international offices heavily populate EEOC lists for "hours and billings comparators." (**< REDACTED >** , for example, has six international comparators.) The Court should eliminate partners from the four international offices by applying the rule in such cases as *Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 680 (7th Cir. 2002) (not "similarly situated" if "held an entirely different position in another division of the company"); and *Balderston*, 328 F.3d at 321-22 (excluding several proposed comparators as not "similarly situated"; example: "Hall also had far more extensive experience with Latin American sales than Balderston"). *See also generally Hemsworth*, 2007 WL 416984 at, *4, quoting *Balderston*: "In order to be considered, the statistics [on comparators] must look at the same part of the company where the plaintiff worked . . . ."

c. Different areas of practice. The Court could further simplify the case by eliminating comparators from different practice areas, following *Kennedy v. Schoenberg, Fisher & Newman, Ltd.*, 140 F.3d 716, 727 (7th Cir. 1998) (in a law firm, a corporate associate was not "similarly situated" to a litigation associate "because she [corporate associate] was not a litigator nor did she ask to be considered for a position in the litigation department").

Sidley accepts that some practice areas may resemble others enough so that, at least for discovery purposes, the EEOC has some leeway on naming comparators. But

< REDACTED > is a patent lawyer and all of his proposed comparators are in highly dissimilar areas (regulatory litigator, investment products and derivatives, etc.)

< REDACTED > is a tax lawyer, but only one of his "hours and billings comparators" is in tax, and that lawyer is part-time. The others are in litigation, labor, banking and other areas

plainly different from anything < REDACTED > ever has done or can do. (Indeed, < REDACTED > admitted in his deposition that he was not competent to practice in these areas. Ex. L, 11/17/06 < REDACTED > Dep. Tr. at 45:17-48:5.)

d. Hours. The parties do agree on two things. In making the decisions at issue, Sidley relied in part on billable hours; and clear objective data about hours are available – and have been fully shared with the EEOC. Accordingly, a "comparator" should have lower, or at least similar, hours to the claimant being compared. *Sutherland v. Norfolk S. Ry. Co*, No. 01 C 2337, 2002 WL 1827630, at *4 (N.D. Ill. Aug. 9, 2002) (where objective data were relevant to the decision, individuals were not similarly situated if "they each scored significantly better than [plaintiff] on the [objective test at issue]"). We acknowledge the EEOC has at times followed this rule. Inexplicably, however, it has sometimes not done so. A clear statement of this rule would help to eliminate any remaining uncertainty on this issue.

e. Brown & Wood partners. In 2001, Sidley merged with a New York law firm, Brown & Wood. The EEOC lists as comparators partners at Brown & Wood in 1999. Plainly this makes no sense.

3. "Treated More Favorably"

Even if a plaintiff is able to identify "similarly situated" and "substantially younger" individuals, the comparison between them is irrelevant unless those individuals were "treated more favorably" than plaintiff. *See Peele v. Country Mut. Ins. Co.*, 288 F.3d 319, 331 (7th Cir. 2002). Thus, where the similarly situated individual was also terminated, or "on his way out for reasons akin to [plaintiff]," that individual is not a "comparator." *Id.*

4. Court's Authority to Adopt Guidelines Narrowing Discovery

Balderston affirmed a district court's limitation of discovery to "similarly situated" employees because if a purported comparator's circumstances are not "close enough to [the

plaintiff's] to make comparisons productive," evidence relating to that individual is not probative and therefore not discoverable.[5] 328 F.3d at 320. *Accord*, *Gehring v. Case Corp.*, 43 F.3d 340, 342 (7th Cir. 1994); *Banks*, 2003 WL 1888844, at *4 (discovery requests were "not relevant . . . because they expressly concern individuals not similarly situated"); *Chavez v. DaimlerChrysler Corp.*, 206 F.R.D. 615, 620 (S.D. Ind. 2002) (denying motion to compel because discovery extending to individuals not similarly situated is "not reasonably calculated to lead to the discovery of admissible evidence").

B. The EEOC Discovery Requests Are Overly Broad And Unduly Burdensome.

In light of the legal standards discussed above, the EEOC should be forced to narrow its requests, which are plainly overbroad and extremely burdensome. Sidley has identified "client complaints" (along with other reasons) as a secondary contributing factor in only 5 of the 34 employment decisions at issue here and as the main factor for one.[6] Sidley provided all documentation that exists concerning the "client complaints" for these six individuals.[7] Yet the EEOC refuses to limit discovery requests to the comparators for these six.

As explained to the EEOC, Sidley has no documentary source (such as a database) from which it could gather information relating to client complaints; to respond to the EEOC's discovery, Sidley would be forced (at a minimum) to interview more than 300 partners regarding their knowledge of their own and each others' relationships with tens, and probably hundreds of clients. The burden is further compounded because those who potentially have knowledge are

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5 The EEOC states that it needs the very broad discovery both to identify comparators and to prove pretext, but the standard is the same with both. As with comparators, in order to prove pretext by pointing to the treatment of another individual, that individual must be similarly situated in order for evidence relating to that individual to be probative. *Banks v. CBOCS West, Inc.*, No. 01 C 0795, 2003 WL 1888844, at *4 (N. D. Ill. Apr. 16, 2003).

6 **< REDACTED >**

7 For example, Sidley produced documents reflecting the **< REDACTED >** .

located in ten cities on three continents. In order to prepare the interrogatory response on the reasons for Sidley's decisions (Ex. M), Sidley had to interview 34 members of its 1999 Executive Committee, which took seven weeks and hundreds of hours of attorney time. The EEOC's present request would require effort greater by one or two orders of magnitude even if limited to the hundreds of partners.

In addition, the EEOC phrase "client complaints" is vague and overly broad. *Banks*, 2003 WL 1888844, at *3 (two employees not similarly situated because "'complaints about their conduct differed - Hill's work quality and bossiness are not comparable to Connolly's rudeness to customers and employees'") (citation omitted). *Balderston*, 328 F.3d at 322 (an employee is not similarly situated if he is not subject to "the same complaints, such as tardiness and personnel difficulties, that [supervisor] Martin had found with Balderston, therefore, making Balderston materially different . . . .").

< REDACTED > That Sidley considered this a major negative for < REDACTED > does not warrant the EEOC asking whether, during a 5-year period, anyone complained about any of the more than 300 partners in less significant and entirely unrelated respects. Sidley recognizes that in discovery there must be some leeway but even discovery should be limited to "comparable" complaints (the word used in *Banks*, *supra*). Though such a standard requires some judgment to apply, from knowledge of the facts here, few problems will arise if the Court imposes such a standard.

C. The Following Guidelines Should Be Applied By The Court To Define Qualifications Of Potential "Comparators"

Without necessarily making a final ruling on every potential comparator, discovery (on the client complaints issue and in general) should be limited to potential comparators who, relative to any putative claimant, are:

a) at least ten years younger (unless the EEOC can make a showing of circumstances that makes nine years appropriate; alternatively, the Court could adopt, for discovery purposes, a nine-year cutoff);

b) full-time (or part-time, whatever the status of the putative claimant);

c) in the same country (a comparator must be in one of Sidley's four domestic offices – Chicago, New York, Los Angeles, or Washington, D.C.);

d) in the same practice group or a closely-related or reasonably similar specialty (the EEOC should be required to state and explain its basis for use of comparators in different practice groups);

e) with the same or lower hours or billings if hours or billings were a criterion identified as a reason for Sidley's decision to change status; and

f) at Sidley in 1999 (*i.e.*, not at Brown & Wood).

In addition, when the EEOC seeks discovery on such issues as "client complaints," the information sought:

g) must have been within the knowledge of at least one person on Sidley's Management or Executive Committee in 1999 (that means that Sidley need only ask 34 partners – not more than 300 partners – to respond to a discovery request); and

h) must be "comparable" to – that is, "of the same general type or magnitude" – as those identified as reasons for the pertinent status change in 1999.

III. CONCLUSION

For the reasons set forth above, Sidley respectfully requests that the Court enter an order (1) limiting discovery on comparators to partners who are similarly situated, substantially younger, and were treated more favorably; and (2) on that basis, denying the EEOC's motion to compel.

Dated: February 15, 2007

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Maile H. Solís
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Maile H. Solís, an attorney, hereby certify that on **February 15, 2007**, I caused a true and complete copy of the foregoing **SIDLEY AUSTIN LLP'S MEMORANDUM (A) ON COMPARATORS AND (B) OPPOSING EEOC MOTION REGARDING CLIENT COMPLAINTS** to be served by Electronic Mail Transmission via ECF as to Filing Users upon the following:

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/s/ Maile H. Solís
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EXHIBIT A

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ADEA Directed Investigation
EEOC Charge No. 210-A0-3557

Sidley Austin Brown & Wood
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Chicago, Illinois 60603

Respondent

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Attorney for Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following Determination on the merits of the subject of the Directed Investigation under the Age Discrimination in Employment Act of 1967 (the "ADEA"), 29 U.S.C. §621, et seq. I have considered all of the evidence disclosed during the investigation.

By letter dated July 5, 2000, I informed Respondent that the Commission was investigating Respondent in order to determine Respondent's compliance with the ADEA. I caused this matter to be assigned EEOC Charge No. 210-A0-3557.

The record of the investigation shows, among other things, that Respondent is one of the world's largest law firms with its principal office in Chicago. In July 2000, when Respondent was informed of the investigation, Respondent conducted business and was known as "Sidley & Austin." In May 2001, Sidley & Austin merged with another law firm which conducted business and was known as "Brown & Wood." Respondent Sidley Austin Brown & Wood is the successor of Sidley & Austin. Prior to the merger, Sidley & Austin employed approximately 900 attorneys worldwide. The merged firm employs more than 1,400 attorneys.

The record also shows, among other things, that Respondent has been governed and controlled by two wholly self-perpetuating committees, an Executive Committee and a Management Committee. The Executive Committee, which includes all members of the Management

Committee, has approximately 35 members. Members of the Executive and Management Committees control and make the decisions with respect to every significant aspect of Respondent's business and operations and distribution of profits, and they concentrate the distribution of the profits of Respondent in themselves. Although Respondent describes itself as a partnership, none of the "partners" of Respondent except those on the Executive and Management Committee have ever been permitted to vote upon or consent to or reject the admission or expulsion of partners, the allocation of profits, or the appointment of members of the Executive and Management Committees. With the single exception of the recent merger, there has never been a firm-wide vote of all the partners of Respondent. (Partners not on the Executive or Management Committees did vote on the merger of Sidley & Austin with Brown & Wood; that vote occurred after Respondent received notice of this investigation.)

The record also shows, among other things, that in 1999 and 2000, in repeated public statements and in an open letter to clients and others published on Respondent's internet website, Respondent stated that it had utilized and was continuing to utilize a mandatory retirement age (which it was lowering) and associated a downgrading or expulsion of 32 "partners" in October 1999 with their age.

The record also shows, among other things, that all but one of the 32 partners who were downgraded or expelled in 1999 were in the protected age group under the ADEA, that most of them were more than 50 years old, and that they were among the oldest members of their respective practice groups within Respondent. The record also shows that for each and every one of the partners over 40 years of age who were downgraded or expelled there were multiple other partners, including younger partners, who did not perform as well but who were not downgraded or expelled.

The foregoing is merely a brief summary of some parts of the investigative record. It does not constitute a summary of the whole investigative record.

The Respondent is an employer within the meaning of the ADEA and all requirements for coverage have been met.

I have determined that the evidence obtained in the investigation establishes reasonable cause to believe that in maintaining and implementing an age-based mandatory retirement policy (which may have been in effect since 1978) Respondent has discriminated against a class of employees on account of their age in violation of the ADEA. The class of persons aggrieved includes Respondent's employees who were adversely affected by the mandatory retirement policy.

I have also determined that the evidence obtained in the investigation establishes reasonable cause to believe Respondent has discriminated against a class of employees age 40 years and older by downgrading or expelling them on account of their age in or about October 1999 in violation of the ADEA.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful employment practices by informal methods of conciliation. Therefore, I invite Respondent to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement; that proposal should be provided to the Commission representative with 14 days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make identified victims whole and to provide corrective and preventive relief. These remedies may include an agreement by the Respondent to cease engaging in unlawful employment practices, placement of identified victims in the positions they would have held but for the discriminatory actions, back pay, restoration of lost benefits, liquidated damages, injunctive relief, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or non-productive.

7/14/04
Date

On behalf of the Commission,

John P. Rowe
District Director

EXHIBIT B

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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. SIDLEY AUSTIN BROWN & WOOD, Defendant.	Civil No. 05 cv 0208 Judge Zagel Magistrate Ashman

PLAINTIFF EEOC'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") hereby responds to Defendant's First Set of Interrogatories and Document Production Requests.

GENERAL OBJECTIONS

EEOC objects to these Interrogatories and Document Production Requests to the extent that they seek information which is protected from disclosure by the attorney-client privilege; the attorney work-product doctrine; the governmental deliberative process privilege; Section 706(b) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S. C. § 2000e-5; Section 709(e) of Title VII, 42 U.S.C. § 2000e-8; 29 C.F.R. 1626.4 or any other privilege or immunity from discovery.

EEOC also objects to these Interrogatories and Document Production Requests as premature to the extent that they are Contention Interrogatories or Document Production Requests that require an answer that involves an opinion or contention that relates to facts or the

operations of Defendant, Defendant's maintenance of a mandatory retirement age for partners, and Defendant's decision to dismiss or to downgrade a group of partners to counsel or senior counsel status in the fall of 1999. Defendant should have a complete list of these individuals, and EEOC's investigation continues to identify them and to determine what knowledge (if any) each possesses.

During EEOC's administrative investigation, Defendant identified 31 attorneys in the protected age group who were dismissed or downgraded. Each of the 31 attorneys in the protected age group who was downgraded in the fall of 1999 has been made available to Defendant for an interview, provided that individual consented to such an interview.

2. Identify all Sidley attorneys you contend were discriminated against on the basis of age in violation of the ADEA and, for each person identified, describe all facts you believe support your contention, including the names and ages of any similarly situated individuals you contend were treated more favorably.

RESPONSE

As part of its Rule 26(a)(1) disclosures, EEOC provided Defendant with a list of 31 partners in the protected age group under the ADEA who were downgraded from partner status at Defendant in the fall of 1999. This list of 31 is the group identified to EEOC during its administrative investigation. EEOC believes each of these individuals was discriminated against on the basis of his or her age. Investigation continues into the names and ages of individuals who were similarly situated to these 31 people and whether other individuals were also downgraded or terminated based on their ages. Any partner who was mandatorily retired from Defendant was

also discriminated against on the basis of age. Investigation continues to identify these individuals.

3. With respect to each person identified in response to Interrogatory No. 2. state whether you are seeking individual relief for the person identified and, if so, describe the relief you are seeking.

RESPONSE

EEOC is seeking backpay, reinstatement or front pay, and liquidated damages on behalf of all individuals identified in response to Interrogatory No. 2 and all other individuals who were either mandatorily retired or downgraded or terminated from partnership status based on their age.

4. Identify all Sidley partners between January 1, 1978 and the present the EEOC contends were or are "employees" within the meaning of the ADEA and, for each person identified, describe all facts supporting your contention, including the relevant period(s) during which you contend the person was an "employee" and the reasons you believe the person was an "employee" during that period.

RESPONSE

EEOC contends that the 31 individuals within the protected age group under the ADEA and identified in EEOC's Rule 26(a)(1) disclosures as having been downgraded from partner to counsel or senior counsel status were employees under the ADEA at the time that they were downgraded. EEOC also contends all partners who were mandatorily retired from Defendant

EXHIBIT C

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EXHIBIT D

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

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

EEOC'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES, COMPLAINCE WITH SUBPOENAS, AND SUPPLEMENTATION OF DISCOVERY RESPONSES

Despite Sidley's lengthy motion to compel, there are only two categories of documents and/or information in dispute. The first is the discoverability of tax returns where interim earnings are available from other sources and the second is the discoverability of information (other than interim earnings) about *subsequent* employment of class members who are no longer at Sidley. As demonstrated below, none of the other issues raised in Sidley's motion are in dispute as EEOC has fully responded to Sidley's discovery requests regarding such issues with all information presently available. With regard to tax returns and performance in subsequent employment, Sidley's requests are intrusive, harassing and not reasonably calculated to lead to the discovery of admissible evidence.[1]

I. EEOC Has Provided Responsive Information on Damages, on Comparators, on Sidley's Age-Based Retirement Policy, and on Liquidated Damages

It is curious that Sidley has moved to compel EEOC to provide its *contentions* on damages, on "comparators", on Sidley's age-based retirement policy, and on liquidated damages

[1] The names of individuals have been redacted from the publicly-filed version of this Memorandum pursuant to the protective order in this case. The unredacted version of this Memorandum is being filed under seal. Additionally, exhibits in support of this Memorandum are being filed under seal because they contain confidential information.

as EEOC has never objected to providing this information[2] and indeed, has provided all responsive information it has at the present time. As is necessarily so with responses to contention interrogatories served before the close of discovery, EEOC's responses are based on its current opinion of the relevance of information discovered to date. As discovery progresses, EEOC will no doubt learn of additional evidence supporting its various contentions in this case. EEOC's view of the relevance of evidence it has received to date may also change as EEOC learns more about the case through the discovery process. It is for this reason, that courts often defer contention interrogatories until after the close of discovery. Rather than asking the Court to defer these interrogatories, however, EEOC has been willing from the outset to answer Sidley's contention interrogatories and has continually supplemented its interrogatory answers as it has learned information through discovery.[3]

In short, to date, EEOC has fully responded to Sidley's contention interrogatories based on information available and will continue to supplement those answers throughout the discovery process. EEOC is not withholding any responsive information and simply cannot be compelled to provide information it does not have.

A. EEOC's Response to Interrogatory No. 7 of Sidley's Second Set of Interrogatories Seeking Information of Damages

Interrogatory No. 7 reads as follows:

> Describe for each Alleged Claimant each element or item of damages you contend the Alleged Claimant suffered as a result of Sidley's alleged discrimination. For each element or item of damages identified, state: (i) the type (e.g., back pay, front pay, liquidated damages, etc.) and the amount of each element or item of alleged damages you contend were suffered; (ii) how each element or item of damages was calculated;

[2] EEOC has objected to these interrogatories on the basis that they are premature, but has never contended that Sidley is not entitled to the information sought.

[3] To date, EEOC has served four supplemental responses to Sidley's first set of contention interrogatories and one supplemental response to Sidley's second set of interrogatories. EEOC has provided these supplemental responses in a timely manner as it has discovered new information. *See* EEOC's Interrogatory Responses, attached as Exhibit A.

(iii) all facts supporting EEOC's contention that the Alleged Claimant suffered such damages; and (iv) all documents you believe support EEOC's contention.

In response to this interrogatory, EEOC stated that it is seeking back pay (including benefits), front pay (including benefits) or reinstatement, and liquidated damages. As back pay is calculated by subtracting interim earnings from the amount each class member would have earned if he or she had remained a partner at Sidley, EEOC has been in the process of producing the interim earnings of each class member it represents. To date, EEOC has provided this information for all but seven of the class members it represents and anticipates providing the interim earnings of five of the remaining class members by September 29, 2006. EEOC will provide the information for the remaining two class members shortly thereafter.

What EEOC does not know and cannot provide at this point in the litigation is what each class member would have earned had he or she remained a partner at Sidley. Indeed, it is Sidley who possesses this information. Through oral discovery of Defendant's witnesses, EEOC intends to learn how annual increases for partners have been calculated from 1999 (*i.e.*, the time of the challenged demotions) through the present in terms of both units and percentages. EEOC also needs information on the value and cost of lost benefits and has indicated to Sidley that it will be issuing discovery on these questions. Given the complexity of damages in this case, EEOC will likely retain a damages expert but has not done so yet. As it has done in the past, EEOC will continue to supplement its interrogatory responses as information is discovered.[4]

B. EEOC's Response to Interrogatory No. 2 of Sidley's First Set of Interrogatories Seeking the Identity of Comparators

Interrogatory no. 2 of Sidley's First Set of Interrogatories seeks the names and ages of any

[4] In an effort to reach a compromise or resolution on Sidley's Motion to Compel, EEOC sent a letter to Sidley's counsel on September 20, 2006, setting forth what it has agreed to or is willing to agree to produce in discovery. On September 25, 2006, Sidley responded to that letter. The letter and response are attached as Exhibit B.

individuals similarly situated to the class members whom EEOC contends were treated more favorably. On September 8, 2006, in its Fourth Supplemental response to Sidley's First Set of Interrogatories, EEOC provided a list of all comparators of whom it is currently aware. As EEOC explained in its Fourth Supplemental Response, based on the information obtained from Sidley through discovery, EEOC was able to identify younger partners whom did not perform as well as the class members in terms of hours and billings.

EEOC will continue to identify additional comparators as information becomes available through discovery. Sidley previously identified client complaints as a reason for the demotion of some of the class members. Accordingly, in order to identify comparators, EEOC issued discovery to identify other partners about whom clients complained. EEOC is awaiting Sidley's response to this discovery. Upon receipt of such response, EEOC will supplement its interrogatory responses to identify additional comparators. Additionally, on September 14, 2006, less than 10 days ago, EEOC received from Sidley its final and complete recitation of alleged reasons for downgrading the class members. Now that EEOC has this recitation, EEOC can engage in discovery to identify partners who had the same performance "deficiencies" that Sidley alleges the class members had.

In summary, EEOC has provided all comparators of which it is aware and will timely supplement its discovery responses when it learns of additional comparators. Sidley's suggestion that the Court should set a date by which the EEOC must identify all comparators simply does not make sense as it is through the discovery process that a plaintiff learns of such information.

Sidley perhaps may be thinking that turnabout is fair play – since it had to identify by a date certain all proffered reasons for the change in status of the class members, EEOC should

have to identify all comparators by a date certain. That, however, does not make sense. Sidley was aware of all the reasons in 1999 when it made the decisions and obviously, did not need to learn of the reasons through the discovery process.

C. EEOC's Response to Interrogatory No. 6 of Sidley's First Set of Interrogatories Regarding Evidence of an Age-based Retirement Policy

As the EEOC explained in its September 20, 2006 letter to Sidley, EEOC has set forth all facts (in its initial and supplemental responses) of which it is currently aware supporting its contention that Sidley maintained an age-based retirement policy. These facts include, for example, statements to partners that they had to retire because they were 65. See Exhibit A. EEOC will continue to supplement its interrogatory answers in a timely fashion as it learns of more facts supporting its contention that Sidley maintained an age-based retirement policy.

D. EEOC's Response to Interrogatory No. 8 of Sidley's Second Set of Interrogatories Regarding Liquidated Damages

EEOC has objected to this contention interrogatory as premature, but has answered with the facts discovered to date. Thus far, EEOC has taken the deposition of only one member of the 32 member Executive Committee that made the decisions at issue. In the depositions of the Executive Committee members, EEOC will probe what each member's knowledge of the ADEA was at and before the decisions at issue were made. These depositions may likely yield additional information responsive to Sidley's contention interrogatory. In addition, EEOC has noticed the deposition of Sidley's labor and employment attorney who provided the Executive Committee with advice on the decisions. This deposition also may likely reveal additional responsive information. Again, here Sidley's attempt to preclude the EEOC from relying upon any documents or information that EEOC currently has in its possession but which it has not

EXHIBIT E

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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

SIDLEY AUSTIN BROWN & WOOD LLP,

Defendant.

Case No. 05 cv 0208

Judge James Zagel

ORDER

IT IS HEREBY ORDERED that the parties complete pretrial activities in this action as follows:

Completion Date	Activity
March 30, 2006	All written discovery complete, to be supplemented as required by Rule 26(e).
May 16, 2007	EEOC identifies damage contentions, to be supplemented as permitted by Federal Rules of Civil Procedure. EEOC identifies comparators, to be supplemented as permitted by Federal Rules of Civil Procedure.
July 16, 2007	Fact depositions complete.
August 13, 2007	Expert reports on issues for which the serving party bears burden of proof or production due. Responses to Requests for Admission due.
September 10, 2007	Responsive expert reports due.
October 15, 2007	Expert depositions complete.
October 22, 2007	Dispositive motions due.
November 19, 2007	Responses to dispositive motions due.
December 3, 2007	Replies in support of dispositive motions due.
January 15, 2008	Proposed pretrial order due.
February 1, 2008	Ready for trial.

DATED: _____

SO ORDERED:

_____
James B. Zagel
United States District Judge

EXHIBIT F

G&E

&

GRIPPO & ELDEN LLC
[illegible]
[illegible]
[illegible]
FAX [illegible]
[illegible]

To Call Writer Direct
[illegible]
[illegible]

October 17, 2006

Via Electronic Mail

Laurie S. Elkin
Justin Mulaire
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

Re: **EEOC v. Sidley Austin LLP**

Dear Laurie and Justin:

This letter will confirm our discussion during our October 16, 2006, meet and confer respecting the issues laid out in my October 9, 2006 letter. Please let me know right away if this does not accurately reflect our conversation.

A. **Interrogatory No. 1 (1st Set)**
(Persons with Knowledge)

The EEOC will supplement its response to this interrogatory by October 31, 2006.

B. **Interrogatory No. 3 (1st Set) and Interrogatory No. 7 (2nd Set)**
(Relief/Damages Sought for Each Putative Claimant)

You stated that the EEOC is not seeking back pay, front pay, reinstatement, or liquidated damages on behalf of You also stated that the EEOC is not seeking damages on behalf of "at this time."

The EEOC will supplement its response to this interrogatory by October 31, 2006 to specify the types of damages it is seeking for each putative claimant.

REDACTED

C. **Interrogatory No. 9 (1st Set) and Document Request No. 7 (1st Set)**
(Communications with Former Sidley Partners)

You agreed to supplement the EEOC's responses to these discovery requests by October 31, 2006 and to produce written communications with those former Sidley partners whom the EEOC does not represent.

D. **Interrogatories No. 10 and 16 (1st Set) and Document Request No. 17 (1st Set)**
(Communications with Members of the Media)

You stated that the EEOC has kept no records of communications with members of the media and that you are aware of only one e-mail between any EEOC attorney and a member of the media. The EEOC will not produce copies of its press releases relating to this case and will not search its e-mails or other written documents for communications with the media.

E. **Interrogatory No. 1 (2nd Set)**
(Persons who did not perform as well as the Putative Claimants)

You stated that the EEOC is not aware of any comparators at this time other than the "hours and billing comparators" it has previously identified.[1] You will supplement the EEOC's response to this interrogatory after you receive information regarding client complaints and after the EEOC issues additional discovery to identify other comparators.

F. **Interrogatories No. 2 and 3 (2nd Set)**
(Statements the EEOC Contends Are Untrue in Sidley's Supplemental Amended Exhibit D and 30(B)(6) Objections and Responses)

The EEOC will not supplement its responses to these interrogatories and will stand on its previously stated objections.

G. **Interrogatory No. 5 (2nd Set)**
(Coverage Under ADEA)

The EEOC agreed to supplement this interrogatory by October 31, 2006 to state that are covered by the ADEA because Sidley's decision to change their status took effect when each of them was 40 years old.

---

[1] As we stated on the phone, we do not agree that the law allows for different sets of comparators, such as "hours and billings" comparators and "client complaint" comparators.

REDACTED

G&E

&

II. **Document Request No. 1 (1st Set)**

You will confirm that the EEOC has produced all non-privileged documents that are responsive to this document request and will produce any additional non-privileged responsive documents by October 31, 2006.

I. **Privilege Logs**

You agreed to provide a log of those written communications with putative claimants the EEOC does not represent and over which it claims a privilege.

You stated that you would not be logging privileged communications between the EEOC and any putative claimant that it represents created after the formation of the purported attorney-client relationship with the EEOC.

You agreed to discuss and let us know whether the EEOC will provide to Sidley the date on which each putative claimant represented by the EEOC formed an attorney-client relationship with the EEOC, which will serve as a cut-off date for logging privileged documents. Please provide us a response by October 31, 2006.

J. **Document Production Regarding Sidley's Motion To Compel**

As we discussed, we sent a letter last Tuesday, October 10, 2006, laying out a proposed procedure for documents whose production Judge Zagel compelled on October 6, 2006 and seeking production by October 23, 2006. We have received no response to this letter. You agreed to provide us by the end of this week an update as to when the EEOC will begin producing the documents that were the subject of Judge Zagel's recent ruling on Sidley's motion to compel.

* * *

We look forward to receiving your supplemental responses on October 31, 2006 and hearing from you regarding the production of documents you have been compelled to produce by the end of this week. In the meantime, please contact me if you want to discuss any of the above.

Sincerely,

Maile H. Solis-Szukala

MHS/db

EXHIBIT G

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EXHIBIT H

FILED UNDER SEAL

EXHIBIT I

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To Call Writer Direct
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msolis@grippoelden.com

October 23, 2006

VIA ELECTRONIC MAIL

Laurie Elkin
Justin Mulaire
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

Re: **EEOC v. Sidley Austin LLP**

Dear Laurie and Justin:

This will follow up on our discussions regarding the EEOC's Document Request Nos. 7 and 8 (6th Set), asking for inspection and copying of Sidley's Peoplesoft and other administrative databases, and Interrogatory No. 19 (6th Set), asking for "all client complaints received by Sidley regarding any Sidley partner in the years 1995-1999." Sidley has objected to these requests as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving these objections, Sidley is willing to offer the following compromises.

Sidley will agree to provide within 14 days: (1) a written description of the contents of its Peoplesoft, Elite and Partner Accounting databases (the three databases containing administrative, personnel financial and other information for partners); and (2) a list of fields that contain data. Sidley will then make one or more of its IT personnel available to meet with someone from the EEOC's IT department to answer any questions the EEOC may have about that information.

are the individuals with client-related issues identified in Supplemental Amended Exhibit D. If the EEOC is willing to identify comparators for these individuals, based on its and the putative claimants' current information, Sidley will provide, within 21 days, any information possessed by the Executive Committee or Management Committee regarding client complaints for those comparators. We assume the EEOC will

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identify comparators as similarly-situated individuals, discussed in *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612 (7th Cir. 2000).

Please let us know if you will agree to the terms of our proposed compromise.

Sincerely,

Maile H. Solis-Szukala

MHS/db

EXHIBIT J

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

UNITED STATES OF AMERICA)
)
) No. 05 CV 208
)
Plaintiff,)
)
vs.) Chicago, Illinois
)
SIDLEY, AUSTIN, BROWN &)
WOOD, L.L.P.,) January 25, 2007
)
Defendants.) 10:13 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Plaintiff:
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BY: Justin Mulaire
Laurie S. Elkin
500 West Madison Street
Suite 2800
Chicago Illinois 60661

For the Defendant:
GRIPPO & ELDEN
BY: Maile Solis-Szukala
Amanda Helen McMurtrie
111 South Wacker Drive
Chicago Illinois 60606

Blanca I. Lara, CSR, RPR
219 South Dearborn Street
Room 2504
Chicago, Illinois 60604
(312) 435-5895

variety of other respects, but had a lot of client complaints.

So I think that that would be a valid purpose in terms of trial preparation. I think that what Sidley might be saying to you is, you can't possibly be considering everybody, tell us who you might be considering.

MS. ELKIN: We don't know -- the problem, your Honor, is we don't know who we might be considering until we know who received client complaints. They're putting the cart before the horse.

THE COURT: Well, complaint cannot be your only criteria.

MS. ELKIN: Oh, it certainly is not, your Honor, but in order to know who we can compare has had client complaints, we need to know who --

MS. SOLIS-SZUKALA: May I respond to that, your Honor, just so you have a fuller picture of the objective data they have. They have for the partners, the 1995 through 1999 partners, they have objective data on those partners: Hours, billings, what practice groups they were in, their office that they practiced out of, the ages. So our position would be that they have information to at least narrow the group.

MS. ELKIN: If I may, your Honor --

THE COURT: Well, that I actually believe was going to be your argument.

MS. ELKIN: Right. And if I may, your Honor, we have

already identified persons who we believe -- some of the persons we believe are comparators in terms of hours, billing, et cetera, but Sidley has not given us the client complaint information for those comparators.

THE COURT: Well, I think that may not be an issue for them, and it may not be an issue for me.

MS. SOLIS-SZUKALA: That's never been raised as a proposed compromise --

THE COURT: My concern --

Yes, you were going to say something?

MR. MULAIRE: One other piece of context here is that, you may remember from an earlier hearing that this is not a case in which the defendant has been able to identify a relative weighting of the various criteria. So even though we may have some data about a particular class member, we don't have any way of knowing right now whether the claim is going to be later on that, "well, really it was mostly client complaints" or "really it was mostly hours," and so identifying potential comparators based on the information we have right now could lead us to a situation where those really aren't the most appropriate comparators because it turns out that the weight that is attributed to the client complaints factor is much more significant.

THE COURT: Well, let me tell you one of the ways that I would approach this, and that is there can be only so

EXHIBIT K

FILED UNDER SEAL

EXHIBIT L

11/17/2006

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

UNITED STATES EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,)
vs.) No. 05 CV 0208
SIDLEY AUSTIN BROWN &)
WOOD LLP.,)
Defendant.)

The deposition of called for examination, taken pursuant to notice and the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before REGINA MARIE JAMELL, CSR No. 084-3217, a Certified Shorthand Reporter of said state, at Suite 5100, 111 South Wacker Drive, Chicago, Illinois, on the 17th day of November, A.D., 2006, at 10:30 a.m.

There were present at the taking of this deposition the following counsel:

REDACTED

Q. How about for a matter that required international law, would you view yourself as competent to handle that kind of matter?

A. Depending on what the issue was.

Q. If it was not related to taxes?

REDACTED

A. Oh, if it was not related to taxes? No.

Q. Okay. How about employment and labor law? Did you view yourself as competent to handle an employment matter or a labor matter?

A. No. Only the tax aspects.

Q. How about employee benefits, did you have any experience outside of the tax area in employee tax benefits?

A. Uh-uh.

Q. Would you consider yourself competent to handle an employee benefit matter?

A. Depends -- not really.

Q. Sidley had a group that handled investment groups and products and derivatives?

A. Yes.

Q. Do you know what kind of work they did in that group?

A. Well, I know my little exposure to it.

Q. What was your "little exposure to it"?

A. I can't really get into the -- into the details of that.

Q. Do you think you could have jumped into the investment product and derivative group and operated at partner level based upon your --

REDACTED

A. Well, I --

MS. ELKIN: I'm just going to object to form and lack of foundation. He just said he's only been exposed to it.

BY THE WITNESS:

A. Yeah. I don't have enough exposure that I would really feel comfortable, except the one issue I was working on.

BY MR. CONWAY:

Q. How about the banking and financial transaction department?

A. No, I'm not competent in that area.

Q. How about civil, criminal, and constitutional litigation?

A. I'm not competent to.

Q. Just for the record, I wouldn't expect you to be as a tax lawyer.

MS. ELKIN: Then why are you asking?

BY MR. CONWAY:

Q. How about financial and securities litigation?

A. No.

Q. You wouldn't be competent to handle a financial and securities litigation matter?

During your tenure at Sidley, other than

ancillary tax work that you might have done for a group outside the tax department, did you handle any nontax matters at all during your entire tenure at Sidley?

A. No, not to my recollection. Other than private foundation governance issues.

Q. Right.

After you -- did you ever approach any private foundation about doing work for them?

A. Oh, I -- my recollection is I met with many organizations from time to time, trying to get their private foundation work.

Q. And other than the Stone Foundation, were you able to bring any of that work to Sidley?

A. I tried to get a larger portion of the MacArthur foundation work, but we were unsuccessful. I was unsuccessful.

Q. And the MacArthur Foundation was an existing client of Sidley? I'm asking because you mentioned you were trying to get a larger portion.

A. Yeah.

No. The -- one of my partners was friendly, my recollection is, the general counsel of MacArthur. And we went over the pitch.

Q. And you weren't successful in bringing that

EXHIBIT M

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