

CONFIDENTIAL INFORMATION HAS BEEN REDACTED FROM THIS PUBLIC FILING,
PURSUANT TO THE AMENDED PROTECTIVE ORDER ENTERED ON JUNE 20, 2006

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

UNITED STATES EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 05 cv 0208
v.)	
)	Judge James Zagel
SIDLEY AUSTIN, LLP,)	
)	
Defendant.)	

MOTION TO COMPEL INTERROGATORY RESPONSES

EEOC moves for entry of an order compelling Defendant, Sidley Austin, LLP, to fully respond to EEOC’s Tenth Set of Interrogatories. In support, EEOC states:

1. EEOC’s Tenth Set of Interrogatories contain seven requests, six of which are directly related to the reasons Sidley has proffered in this case for taking the adverse actions at issue. Sidley has objected to providing any answer whatsoever to these interrogatories. The remaining request is directly related to Sidley’s affirmative defense of failure to mitigate. Here, too, Sidley has objected to providing an answer.

2. Sidley has refused to answer any interrogatories regarding its proffered — or allegedly non-discriminatory — reasons for stripping the class members of their partnership status, thereby preventing EEOC from fully developing evidence of pretext. While Sidley refuses to answer interrogatories regarding its proffered reasons, it, at the same time, demands that EEOC state all reasons why EEOC believes the proffered reasons are false or pretextual.

Clearly, EEOC is entitled to probe and test Sidley's proffered reasons through discovery.

Moreover, Sidley should not be permitted to withhold evidence regarding pretext while at the same time demanding EEOC's evidence of pretext — evidence which by its very nature comes from information held by the employer. In addition to refusing to answer interrogatories regarding client complaint information (which is the subject of a pending motion to compel), Sidley has refused to answer the following interrogatories all related to its proffered reasons and to pretext:

a. Interrogatory No. 5: With respect to two class members (<redacted>), Sidley contends that the fact they had each been removed as group head at some prior time contributed to Sidley's decision to strip each of them of their partnership status in 1999. Amended Supplemental Exhibit D, attached as Exhibit A, at pp. 16, 28. To test whether this proffered reason actually motivated the decisions, EEOC asked how Sidley has treated other partners who have been removed as group head. Sidley has objected to answering this interrogatory. Answer to Interrogatory No. 5 of EEOC's Tenth Set of Interrogatories, attached as Exhibit B.

b. Interrogatory No. 4: Sidley further contends with respect to class member <redacted> that his status was changed in part because his client billings, which averaged over \$3,000,000 annually, had been obtained "from another attorney who had left the firm." Exhibit A, at p. 17. Having proffered this reason, EEOC asked Sidley to "[i]dentify all persons holding partnership status in 1999 who, at any time, had obtained client billings from another attorney who had left the firm" and the amount of billings so obtained. Sidley refused to answer this interrogatory. Exhibit B, Answer to Interrogatory no. 4.

c. Interrogatory No. 3: Sidley contends that the following contributed to its decision to strip class member <redacted> of his partnership status: "Sidley discovered that <redacted> had submitted questionable expense reports, improperly accounted for vacation time and attendance at seminars, improperly accounted for expenses for travel and meals." Exhibit A, at p. 37. To test whether this proffered reason motivated the decision to strip <redacted> of his partnership status, EEOC asked Sidley to identify other partners "who submitted questionable expense reports, improperly accounted for vacation time and/or attendance at seminars, and/or improperly accounted for expenses for travel or meals" and to state what disciplinary action, if any, had been taken against each such partner. Sidley refused to provide any answer whatsoever. Exhibit B, Answer to Interrogatory No. 3

d. Interrogatory No. 6: Sidley claims that at least three class members (<redacted>) were dependent on others for work and this contributed to Sidley's

decision to strip them of their partnership status. Sidley alleges that <redacted> “was dependent on others for work,” that <redacted> “required assistance from partners within his office and practice group to remain busy,” and that <redacted> was “unable to generate work on his own and needed the help of others to remain busy.” Exhibit A, at pp. 36, 42, 48. Despite having proffered these reasons, Sidley has refused to answer EEOC’s interrogatory seeking the identity of other partners who were dependent on others for work. Exhibit B, Answer to Interrogatory No. 6.

e. Interrogatory No.7: Sidley contends that it demoted class member <redacted> in part because of alleged errors he made in loan summaries in connection with an emergency due diligence project on which he was assisting. To probe and test this reason, EEOC asked Sidley to identify all partners who assisted on the project and whether each such partner prepared loan summaries. Sidley refused to answer. Exhibit B, Answer to Interrogatory no. 7.

f. Interrogatory No. 1: With respect to class member <redacted>, Sidley claims that it demoted him, in part, because he was the subject of a malpractice claim against the firm which the firm settled for a substantial amount. Exhibit A, p. 22. Having proffered this reason, EEOC asked Sidley to identify all malpractice claims brought against the firm of partners of the firm and to state what, if any, disciplinary action was taken against partners alleged to have engaged in malpractice. Sidley refused to answer. Exhibit B, at Answer to Interrogatory No 1.

4. For all the reasons stated in Plaintiff EEOC’s Reply Memorandum in Support of Plaintiff’s Motion to Compel Production of Client Complaint Information (“Client Complaint Brief”) at pp. 17-19, Sidley should be required to answer the above interrogatories, all of which are directly related to Sidley’s proffered reasons for taking the adverse actions at issue. EEOC incorporates as if fully set forth herein its Client Complaint Brief. It is settled law that an employer cannot put its articulated non-discriminatory reasons for an adverse action beyond the reach of discovery. To allow an employer to do so, would nullify the *McDonnell-Douglas* burden-shifting method of proof.

5. Interrogatory No. 2 asks Sidley to identify all facts which support the proposition that with the exercise of reasonable diligence, there was a reasonable chance that each class member might have found employment comparable to being a Sidley partner. Instruction No. 3.12 (Mitigation Instruction) of the Seventh Circuit Pattern Jury Instructions, makes clear that

the employer has the burden of proving that there was a reasonable chance that the employee could have found comparable employment. Despite the fact that defendant has the burden of proof on this issue, Sidley has refused to answer the interrogatory. Exhibit B, Answer to Interrogatory No 2. Because Sidley has asserted failure to mitigate as an affirmative defense, it must respond to this interrogatory.

6. For the foregoing reasons, Sidley should be compelled to respond fully to EEOC's Tenth Set of Interrogatories.

WHEREFORE, EEOC respectfully requests that the Court enter an order compelling Sidley to fully respond to EEOC's Tenth Set of Interrogatories.

Respectfully Submitted,

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