

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. |) | |

**DEFENDANT'S OPPOSITION TO EEOC'S MOTION TO COMPEL
RESPONSES TO EEOC'S TENTH SET OF INTERROGATORIES**

The EEOC's motion to compel responses to the EEOC's Tenth Set of Interrogatories should be denied because (1) Interrogatories 1 and 3-6, which seek information about performance issues for all 300-400 Sidley partners in 1999 rather than those partners who were similarly situated and substantially younger than the putative claimants at issue, are overbroad and not reasonably calculated to lead to the discovery of admissible evidence;

(2) Interrogatory 2, which seeks Sidley's contention regarding whether claimants have mitigated their damages, is premature given the current state of the EEOC's discovery responses regarding the putative claimants' alleged damages; and (3) Interrogatory 7, which seeks the identification of Sidley partners who worked on an emergency due diligence project on which putative claimant < REDACTED > performed poorly, seeks information easily obtainable from the EEOC's own client and more appropriate for the upcoming depositions of the Sidley partners who worked with < REDACTED > on the project.

I. The EEOC's Interrogatories Seeking Information Regarding "All Partners" Is Overbroad.

The EEOC has issued several vastly overbroad interrogatories supposedly designed to identify comparators and to show that Sidley's stated reasons for changing the status of partners in 1999 were a pretext for age discrimination. For example, the EEOC seeks the identification of (i) all persons holding partnership status in 1999 who (like < REDACTED >) obtained client billings from attorneys who left the firm, when the partner obtained the client billings, and the amount of the billings (Interrogatory No. 4); (ii) all partners who (like < REDACTED > and < REDACTED >) were dependent on others for work (Interrogatory No. 6); (iii) all partners who (like < REDACTED >) were involved in an alleged malpractice claim (Interrogatory No. 1); (iv) all partners who (like < REDACTED > and < REDACTED >) were removed as a practice group head (Interrogatory No. 5); and (v) all partners who (like < REDACTED >) ever submitted questionable expense reports or improperly accounted for vacation time and travel and meal expenses (Interrogatory No. 3).

For the reasons set forth in Sidley's Memorandum On Comparators And Opposing EEOC Motion Regarding Client Complaints ("Comparators Memorandum"), filed on February 15, 2007, Sidley objects to these interrogatories as overly broad and not calculated to lead to the discovery of admissible evidence because the EEOC impermissibly seeks the identification of "all partners" from 1990 to the present who had any of these performance issues, rather than the identification of individuals who were similarly situated to and substantially younger than the specified claimants. As stated in Sidley's Comparators Memorandum, caselaw in this circuit makes clear that in attempting to identify comparators *or* to prove pretext by pointing to the treatment of another individual, a plaintiff must show that such individual is similarly situated in order for evidence relating to that individual to be deemed probative. *Balderston v. Fairbanks*

Morse Engine Div. of Coltec Industries, 328 F.3d 309, 320 (7th Cir. 2003); *Banks v. CBOCS West, Inc.*, No. 01 C 0795, 2003 WL 1888844, at *4 (N.D. Ill. Apr. 16, 2003). Thus, prior to requesting this information, the EEOC should first identify comparators who are similarly situated and substantially younger than the putative claimants at issue.

In a letter to the EEOC, counsel for Sidley stated that the issues relating to these interrogatories were “linked” with the issues raised in the Comparators Memorandum, and accordingly agreed to follow any ruling of this Court in further responses, if any, to these interrogatories. (Ex. A, February 19, 2007 letter from M. Solís to L. Elkin.) Although it did not respond to the letter, the EEOC appears to agree that the issues in its present Motion are duplicative of the issues in its Client Complaints Motion. *See* EEOC Motion to Compel at ¶ 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 . . .”). Accordingly, Sidley respectfully requests that the Court deny the EEOC’s motion for the reasons stated in Sidley’s Comparators Memorandum.

II. The EEOC’s Interrogatory Seeking Sidley’s Contention Regarding Whether The Putative Claimants Mitigated Their Damages Is Premature.

The EEOC has issued an interrogatory asking whether Sidley contends that 31 of the 34 former partners failed to mitigate his or her damages and requiring Sidley to provide all facts in support of Sidley’s contention. (Interrogatory No. 2 (10th Set).) The EEOC’s interrogatory is premature, not only because the EEOC has not yet identified the amount of damages it is seeking for each putative claimant (and will not do so until May 16, 2007), but also because the EEOC continues to resist answering Sidley’s interrogatories regarding the putative claimants’ 1) efforts to mitigate their damages, and 2) post-Sidley legal work, including their hours, billings and

compensation. (*See, e.g.*, Interrogatory Nos. 9 and 10 (Second Set) and 9 and 10 (Fourth Set). Sidley suggests that the Court set August 6, 2007 (21 days after the close of fact depositions) as the date on which Sidley must provide its contentions as to whether the above-named putative claimants mitigated their damages and the bases for any contention that a claimant failed to do so.

III. The EEOC's Interrogatory Seeking More Information On Due Diligence Project On Which < REDACTED > Performed Poorly Is More Appropriate For Deposition.

The EEOC has moved to compel a response to Interrogatory No. 7, which seeks identification of all partners who assisted in the emergency due diligence project on which putative claimant < REDACTED > provided unsatisfactory performance, as referenced in Sidley's Supplemental Amended Exhibit D. Interrogatory No. 7 also requires Sidley to "identify the nature of the work done by each such partner, including whether each such partner prepared loan summaries." In response, Sidley identified partners < REDACTED > and

< REDACTED > and former Sidley partner < REDACTED > as having knowledge of the project.¹ Indeed, < REDACTED > and < REDACTED > are the partners who supervised < REDACTED > work on the project (something that < REDACTED >, the EEOC's own client, could have told the EEOC). Additionally, Sidley partner

< REDACTED > worked on the project with < REDACTED >. The EEOC is taking < REDACTED > (and < REDACTED >) depositions on April 25, 2007, and Sidley is in the process of scheduling < REDACTED > deposition. < REDACTED > and < REDACTED > will be prepared to describe their knowledge of the emergency due

¹ < REDACTED > knew about the emergency due diligence project through < REDACTED >, < REDACTED > knew about the project through < REDACTED >, and < REDACTED > knew about the project through < REDACTED >. Neither < REDACTED > nor < REDACTED > worked on the project.

diligence project at their upcoming depositions. In light of the fact that the EEOC has exceeded the number of interrogatories permitted by Fed. R. Civ. P. 33 by 50, it would be wasteful and unnecessary to require Sidley to respond to this interrogatory.

CONCLUSION

Wherefore, for the foregoing reasons, Sidley respectfully requests that the Court deny the EEOC's motion to compel.

Dated: April 5, 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 **April 5, 2007**, I caused a true and complete copy of the foregoing **DEFENDANT'S OPPOSITION TO EEOC'S MOTION TO COMPEL RESPONSES TO EEOC'S TENTH SET OF INTERROGATORIES** 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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February 19, 2007

VIA ELECTRONIC MAIL

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

Re: EEOC v. Sidley Austin LLP

Dear Laurie:

This will respond to your February 15th, 2007 letter.

We received your request for a meet and confer on Sidley's Responses to the EEOC's 10th Set of Interrogatories and Interrogatory No. 4 of the EEOC's Third Set. The EEOC appears to be seeking "comparator" discovery in both sets of interrogatories (*e.g.*, (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).

As with the EEOC's "client complaints" discovery requests, these requests are overbroad because they are not limited to similarly situated, substantially younger partners, as set forth in Sidley's Memorandum filed on February 15, 2007. We believe the issues raised with respect to the EEOC's 10th Set of Interrogatories and Interrogatory No. 4 of the EEOC's 3rd Set of Interrogatories are linked with those issues currently in front of Judge Zagel. Accordingly, we agree to follow any ruling that Judge Zagel issues on the EEOC's motion to compel regarding "client complaints" as a guideline to a further response, if any, to these interrogatories. If you believe it would still be productive to talk in advance of Judge Zagel's ruling, we are available to talk on Thursday when we are both in Los Angeles for the depositions.

On February 8th, 2007 I proposed that, in lieu of serving subpoenas on the current law firms of (and on the law firm where practiced

REDACTED



Laurie S. Elkin
February 19, 2007
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), those putative claimants could provide a verified statement of their hours and billings in any legal position that they have held from the date of leaving Sidley to the present. You indicated in your letter that you were "looking into this" and would get back to us "as soon as" you know whether they could provide this information. It has already been more than a week since I made this proposal, which should be more than enough time to talk to your clients to discuss whether this is an acceptable alternative. Please let us know by Friday, February 23, 2007 or we will assume we are at an impasse, and will seek leave of court to serve subpoenas on the putative claimants' current law firms. Please consider this letter three days' notice of our intent to do so.

In response to your question about whether Sidley intends to take the depositions of _____ and _____ that issue is still under consideration. We will let you know when we have made a decision.

You also requested production of all documents received from the above-mentioned individuals pursuant to our subpoenas. All documents received pursuant to Sidley's subpoenas have been produced, with the exception of documents produced by _____ and _____ which, as we previously stated (see my September 18, 2006 letter to Justin Mulaire), we understand were simultaneously produced to both the EEOC and Sidley. As I said in my September 18th letter, if that is not correct, please let us know.

Finally, with regard to your decision to not provide a deposition date for _____ until the "advice of counsel" issue is resolved, please see my February 16, 2007 email to Deborah Hamilton. As I indicated in that e-mail, it would be helpful, given the length of time it is taking to get depositions scheduled given the witnesses' busy schedules, if you could get dates while we are working to resolve the remaining issues rather than waiting to do so. We are open to setting a date in late March, for example, to give us time to resolve privilege issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maile H. Solis-Szukala', with a long horizontal flourish extending to the right.

Maile H. Solis-Szukala

MHS-S/db

REDACTED