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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

SIDLEY AUSTIN LLP,

Defendant.

Case No. 05 CV 0208

Honorable James B. Zagel

Magistrate Judge Ashman

SIDLEY AUSTIN LLP'S OPPOSITION TO THE EEOC'S MOTION FOR AN EXTENSION OF DISCOVERY SCHEDULE

After five years of investigation and two years of discovery on a schedule suggested by the EEOC and approved by the Court, the EEOC now seeks an additional 90 days – 100 days before the discovery cut-off – in which to conduct discovery. Rule 1 of the Federal Rules of Civil Procedure provides for "the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. There is no exception for governmental agencies; indeed, one would expect the government to adhere closely to the rule. This is a case that cries out for its application.

As discussed below, the reasons cited by the EEOC are demonstrably erroneous. An additional extension will only cause increased costs and waste the time of many witnesses who had no involvement in the events at issue. Indeed, this Court has already noted that it was "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." (Ex. A at 8.) Sidley believes that the parties should, as the Court previously advised, "move speedily toward resolution . . . ." (*id.* at 9), and accordingly, the Court should deny the EEOC's motion. In support of Sidley's Opposition, Sidley states as follows:

Dockets.Justia.com

1. To date, the EEOC has issued 11 sets of discovery requests, including 114 interrogatories (well beyond the 25 allowed by rule) and 101 document requests. Sidley has produced more than 41,000 pages of documents, resulting from a review of its files and over 95,000 electronic documents. The EEOC has been forced to file remarkably few discovery motions because Sidley has been cooperative in the discovery process. The few motions the EEOC has brought have either been withdrawn (*e.g.*, EEOC's Motion to Compel Deponent **< REDACTED >** to Answer Questions Regarding his Conversations with Sidley Management and for Completion of his Deposition), denied (*e.g.*, Plaintiff's Motion to Determine the Sufficiency of Responses to Requests to Admit Facts), or granted in part and denied in part (*e.g.*, Plaintiff's Motion to Compel a Fed. R. Civ. P. 30(b)(6) Deposition Regarding the Reasons Sidley Partners Were Changed in Status from "Partner" to "Senior Counsel" or "Counsel").

2. In late 2006, the parties submitted competing scheduling orders. (*Compare* Ex. B to Ex. C.) The Court ultimately adopted the EEOC's proposed discovery schedule, setting a fact discovery deadline of July 16, 2007, two months later than the cut-off Sidley had proposed. Although the Court adopted the EEOC's more protracted schedule, in February 2007, the EEOC suggested extending discovery beyond the proscribed time limits, asking if Sidley intended to seek an extension. (Ex. D.) Sidley made clear that it did not believe an extension was necessary or desirable. (Ex. E.) Consistent with that view, Sidley has worked diligently to avoid unnecessarily prolonging what is now almost a seven-year process.

3. By the beginning of March 2007, the EEOC had noticed approximately 30 depositions. On March 14, 2007, the EEOC noticed an additional 51 depositions.[1] Sidley

---

[1] The EEOC has since noticed two additional depositions, for a total of 53 newly-noticed depositions.

considered seeking a protective order based on a reasonable extension of the 10-deposition limit set forth in Federal Rule of Civil Procedure 30, particularly given the minimal potential relevance of many of these deponents. For example, 23 proposed deponents are neither members of the Executive Committee nor identified by Sidley as persons with knowledge. Seven were part-time partners who did not sit on any of the decision-making bodies in 1999 and are also inappropriate "comparators" for the 34 persons selected for a status change by virtue of their part-time status. (*See* Sidley Brief on Comparators at 7.) Sidley decided, however, that, rather than waging a discovery battle, the best way to conclude this litigation was to schedule the depositions of each and every witness the EEOC had requested. Sidley informed the EEOC that it would do so. Sidley has scheduled virtually every EEOC-requested deposition to take place within the fact discovery period. (Ex. F, April 5, 2007 e-mail from M. Solís to D. Hamilton.) While there are a handful of depositions that are not yet scheduled, even those will be arranged within the next few days.

4. The cost and disruption of this massive deposition discovery is significant. Sidley accepts those consequences as part of the litigation process where, unlike here, the discovery is designed to obtain relevant information. Particularly given the deponents the EEOC is now noticing, however, that is not the case. Sidley is entitled to have the litigation process brought to a conclusion on the schedule already established by the Court at the EEOC's request. The EEOC's broad allegations and its refusal to narrow the issues suggest that the EEOC is conducting a discovery fishing expedition and unnecessarily prolonging discovery.

5. On April 4, 2007, the EEOC informed Sidley that it would seek a 90-day extension of the discovery period based on two supposed grounds: (1) the need for a court ruling and production of client complaint materials before proceeding with depositions, and (2) the fact

that Sidley has produced documents since the time of certain depositions. Both of these grounds are pretextual and neither provide a legitimate basis for extending the discovery cut-off.

6. First, the parties reached an impasse on the client complaint issue on October 30, 2006, but the EEOC did not file a motion regarding this issue until January 23, 2007. (Ex. G.) Given this timing, and considering that Sidley long ago offered to provide client complaint information relating to "comparators" of those putative claimants for whom Sidley had identified client complaints as a reason for status change, any delay in obtaining this information is solely the fault of the EEOC. In addition, the EEOC routinely asks every deponent about his or her knowledge of client complaints, and no deposition will have to be redone on the basis of any ruling by the Court on the client complaints issue.

7. Second, Sidley produced only approximately 500 pages of documents in 2007, or approximately 4 inches of material. With five EEOC lawyers working on this case, each of them could easily read and analyze 100 pages of materials in a few days, if not a few hours. Contrary to the EEOC's statements in its motion, moreover, none of the documents produced in 2007 even arguably "goes to the heart of the litigation." The EEOC fails to explain that the "key" document it attaches to its motion is simply a draft of an earlier produced document containing identical language in the section relating to the change in status. (Ex. A to EEOC's Motion, Bates Nos. SA041363-041371.) It also fails to point out that the author and recipient of the other "key" document attached as Exhibit A (SA041187-041191), < **REDACTED** > , are not even scheduled to be deposed until late June and early July, respectively. As for Exhibit C, the EEOC fails to explain that that document (< **REDACTED** >) was produced prior to < **REDACTED** > deposition in early February, that the EEOC questioned < **REDACTED** > thoroughly about it and that < **REDACTED** > , with whom

< REDACTED > was planning to meet, are not scheduled to be deposed for more than two months. (*See* Ex. H, **< REDACTED >** at 69:03-83:05.) Finally, the EEOC fails to acknowledge that Sidley already agreed to confirm production of all arguably responsive documents, has produced such documents, and has agreed to re-present the only previously-deposed witness whose deposition the EEOC has suggested it might need to reopen. (Ex. I, March 30, 2007 letter from M. Solís to D. Hamilton.)[2] The EEOC has thus failed to establish any valid reason for an extension of the fact discovery cut-off.

8. The upcoming discovery schedule in this case is indeed a busy one, based in large part on the EEOC's decision to wait until mid-March to notice two-thirds of the deponents and to notice depositions of many witnesses with no knowledge of the events at issue. Sidley is more than willing to work with the EEOC to obtain specific information from any witness in admissible form without the need for a deposition. If the EEOC insists on taking this many depositions of this many marginal witnesses, however, it should do so within the Court-directed time period, which is the very period the EEOC requested.

9. Finally, for no articulated reason, the EEOC also appears to be requesting an extension of other dates, such as the date by which it must provide a statement of the putative claimants' supposed damages or by which it must identify comparators. There is similarly no valid reason for the Court to extend these dates, as the EEOC has had more than enough time and discovery to provide this critical information. Accordingly, the Court should deny the EEOC's motion.

---

[2] Given the breadth of the EEOC's discovery requests, it is understandable that isolated documents may be discovered and produced as the litigation proceeds. For example, the EEOC produced more than 200 pages of documents related to putative claimants after their depositions, including tax returns and subsequent employment data and evaluations. However, unlike the EEOC, Sidley has not sought to re-depose the putative claimants, since those documents (like these) were largely self-explanatory or cumulative.

WHEREFORE, for all of the foregoing reasons, Sidley respectfully requests that this Court deny the EEOC's motion for an extension of discovery schedule.

Dated: April 6, 2007

Respectfully submitted,

SIDLEY AUSTIN LLP

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

Gary M. Elden (#0728322)
Lynn H. Murray (#6191802)
Maile H. Solís (#6256696)
GRIPPO & ELDEN LLC
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 704-7700
Email: msolis@grippoelden.com

CERTIFICATE OF SERVICE

I, Maile H. Solís, an attorney, hereby certify that on **April 6, 2007**, I caused a true and complete copy of the foregoing **SIDLEY AUSTIN LLP'S OPPOSITION TO THE EEOC'S MOTION FOR AN EXTENSION OF DISCOVERY SCHEDULE** to be served by Electronic Mail Transmission via ECF as to Filing Users upon the following:

Deborah L. Hamilton (deborah.hamilton@eeoc.gov)
Laurie Elkin (laurie.elkin@eeoc.gov)
Justin Mulaire (justin.mulaire@eeoc.gov)
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661

/s/ Maile H. Solís
Maile H. Solís