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**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 B. Zagel  
Magistrate Judge Ashman

**FILED**  
MAY 24 2005  
MICHAEL W. BOBBINS  
CLERK, U.S. DISTRICT COURT

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S RULE 56.1(b)(3)(B) STATEMENT OF UNDISPUTED FACTS**

Sidley responds to the EEOC's Rule 56.1(b)(3)(B) Statement of Additional Facts as follows:

The Court should strike the EEOC's Statement of Additional Facts ("Statements") 1-8 and 11-17, along with their accompanying exhibits, in their entirety. Sidley's motion for partial summary judgment asks the Court to rule on the purely legal issue of whether, as a matter of law, the Seventh Circuit's decision in *EEOC v. North Gibson*, 266 F.3d 607 (7<sup>th</sup> Cir. 2001) bars the EEOC's prayer for individual relief given that no charge of discrimination has ever been filed in the case. The only factual issue material to this motion, therefore, is whether any of the individuals for whom the EEOC seeks individual relief filed a charge. All facts pertinent to this one issue are undisputed, making Statements 1-8 and 11-17 immaterial and unnecessary. In addition, those statements contain inadmissible hearsay which, because it has nothing to do with the issue being briefed, is an unfair attempt to disparage Sidley and prejudice the Court or anyone else who reads the publicly-filed document. The EEOC's use of the Rule 56.1 device for this purpose is improper and should not be allowed.

Because Statements 1-8 and 11-17 disparage Sidley, Sidley will next respond even though the statements are not properly before the Court at this time. Sidley denies any allegation, either implicit or explicit, in EEOC Statement Nos. 1-8 and 11-17 that: (i) Sidley maintains a mandatory retirement age; or (ii) that Sidley's decision in October 1999 to ask 32 partners to relinquish partnership status was based on any individual's age. The *only* sworn testimony taken in the case thus far is by David Richards, one of the 32 Sidley attorneys asked in October 1999 to relinquish their partnership status, who testified in an *ex parte* deposition conducted by the EEOC without notice to Sidley that he did *not* see any "evidence of age bias at Sidley as it related to [the "Plan"] or its implementation." (EEOC Ex. 6, Richards Deposition at 77-78.) Nor will anyone else. Sidley can offer considerable evidence, most beyond dispute, that the decisions regarding the 32 partners were based solely on issues unrelated to age.

Insofar as EEOC Statements 9-10 and 18-19 appear to relate to the EEOC's argument that its "directed investigation" satisfied *North Gibson's* charge-filing requirement, Sidley will respond to these Statements individually:

9. On July 5, 2000 the EEOC served Defendant with a letter informing Defendant that "the Commission is investigating your organization in order to determine its compliance status with the ADEA." See Exhibit E, Declaration of John P. Rowe at Attachment 1.

**RESPONSE:**

Sidley admits that on July 5, 2000 the EEOC sent Sidley a letter stating that "the Commission is investigating your organization in order to determine its compliance with the ADEA." Sidley denies, however, that either the letter or the fact of the EEOC's "directed investigation" is material to the issue of whether *North Gibson* precludes prayer for relief C. (See Reply Br. at 4-7.) The letter did not charge Sidley with a statutory violation, but stated merely that the EEOC was gathering "evidence necessary to its investigation." Fifteen months

later, the EEOC sent Sidley another letter which reinforced the fact that the EEOC was not, at that time, alleging a violation of the ADEA. *See* Oct. 23, 2001 letter from Investigator Akbar to Sidley, attached as Exhibit D to Sidley's Reply Br. ("In the absence of complete responses . . . the EEOC is unable to analyze fully . . . whether there has been a statutory violation").

10. That July 5, 2000 letter was accompanied by a Request for Information ("RFI") seeking information about "all demotions, terminations, changes in status, and changes in retirement policy, which were decided upon, announced, implemented, or occurred at [Defendant] between June 1, 1999 and December 31, 1999" and specifically requested information about the retirement age for partners and the demotion of partners. *See* Exhibit E Declaration of John P. Rowe at Attachment 2.

**RESPONSE:**

Sidley admits that the July 5, 2000 letter the EEOC sent to Sidley was accompanied by a Request For Information. Sidley denies, however, that the Request For Information, which the EEOC sends *every* respondent in connection with *every* investigation it conducts, is material to the issue of whether *North Gibson* precludes prayer for relief C. (*See* Reply Br. at 4-7.)

18. On July 14, 2004, EEOC issued its Letter of Determination ("LOD") finding there is reasonable cause to believe that Defendant violated the ADEA by demoting partners to counsel and senior counsel status in or about October of 1999 and by maintaining a mandatory retirement age. *See* Exhibit E, Declaration of John P. Rowe, Attachment 7.

**RESPONSE:**

Sidley admits that on July 14, 2004 – over four years after it initiated its investigation – the EEOC sent Sidley a "Letter of Determination" stating that the EEOC had determined there was "reasonable cause" to believe a violation of the ADEA had occurred. Sidley denies, however, that the EEOC's determination was correct.

19. Conciliation discussions between the parties did not result in an agreement, and on September 29, 2004, the EEOC issued to Defendant a Notice of Failure of Conciliation. *See* Exhibit E, Declaration of John P. Rowe, Attachment 8.


**RESPONSE:**

Sidley admits that what the EEOC calls "conciliation discussions" did not result in an agreement, but denies that the EEOC otherwise satisfied its statutory duties.

Dated: May 24, 2005

Respectfully submitted,

SIDLEY AUSTIN BROWN & WOOD LLP

By:   
One of Its Attorneys

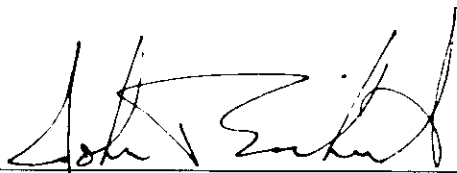
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**CERTIFICATE OF SERVICE**

I, John E. Bucheit, an attorney, hereby certify that on May 24, 2005, I caused a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S RULE 56.1(b)(3)(B) STATEMENT OF UNDISPUTED FACTS** to be served via U.S. Mail and e-mail transmission upon the following:

John C. Hendrickson  
Gregory M. Gochanour  
Deborah L. Hamilton  
Laurie Elkin  
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John E. Bucheit