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

SIDLEY AUSTIN BROWN & WOOD'S RESPONSE IN OPPOSITION TO THE EEOC'S MOTION TO COMPEL PRODUCTION

The EEOC's discovery requests seek private, sensitive and personal information relating to hundreds of individuals and proprietary and competitively sensitive information relating to the business operations of Sidley Austin Brown & Wood LLP ("Sidley" or the "Firm"). After extensive negotiations, four issues remain in dispute:

1) Disclosure Of Confidential Information To Alleged Class Members And Deponents: Sidley proposes that witnesses be allowed to review any confidential documents they have previously reviewed and that the partners affected by the 1999 decisions should have access to any documents that relate to their own performance. The EEOC proposes that a large undefined group of potential deponents and an undefined group of "class members" be permitted access to all Confidential Information, including, for example, all partner compensation information and Sidley's strategic planning documents.

2) Definition of Confidential Information:

   a) "Trade Secret" Information

   Sidley has proposed that certain defined categories of "private, proprietary or trade secret" information be considered confidential. Though the EEOC version identifies those same categories, the preamble limits the definition to "proprietary trade secret" information. Limiting Confidential Information to "trade secrets" does not fully protect the individuals' private or Sidley's proprietary information.

b) Policies, Procedures and Agreements

The EEOC will not agree to include Sidley's confidential policies or procedures within the definition of Confidential Information. The EEOC's definition of Confidential Information also excludes Sidley's Partnership Agreements and contracts with attorneys, which are treated as confidential within the Firm.

c) Names Of The Persons Affected By The 1999 Decisions

Sidley has never publicly named the people affected by the 1999 decisions. Several of them have requested confidentiality, and public disclosure prior to trial serves no rational purpose. The EEOC has insisted that the names of affected individuals cannot be protected as confidential.

3) Filing Documents Under Seal: The EEOC has insisted, and Sidley has agreed, that no document containing Confidential Information will be filed under seal except upon entry of a specific court order regarding confidentiality. Sidley has proposed two possible procedures for handling such filings, each designed to permit the parties to try to reach agreement (including potentially redacting or coding confidential documents), to notify any individuals whose private information might be made public, and to seek a court order if necessary. The EEOC has countered with a procedure that allows a party to file the other party's Confidential Information after providing only two or three days' notice to the other party and no notice to the individuals.

4) Notifying Individuals: Sidley wishes to voluntarily notify the individuals most affected by production of information of the protective order disputes. The EEOC has objected, claiming that it represents these individuals, and has insisted on briefing that objection.

Sidley is not trying to prevent the EEOC from obtaining relevant information in discovery. Quite the contrary, Sidley has already produced highly sensitive information and is prepared to continue to do so. What Sidley is seeking, and has proposed, is an order that protects limited categories of non-public information during discovery and provides for adequate notice to Sidley and the affected individuals before their Confidential Information is filed with the Court. (Exhibit A.) The proposed order does not affect admissibility of evidence at trial, does not provide for filing documents under seal except in limited circumstances and includes

challenge procedures to guard against over-designation. It thus properly balances Sidley's and the individuals' need for confidentiality with the realities of litigation. Sidley requests its entry pursuant to Federal Rule of Civil Procedure Rule 26(c).

BACKGROUND

In August and September 1999, after a thorough review and consideration of the partners throughout the Firm, Sidley determined that 32 partners should be offered positions as counsel or senior counsel to the Firm for non-age-based reasons. At the time of the decision, three of those partners were in their thirties, ten were in their forties, ten were in their fifties (seven under age 55) and nine were in their sixties. In September and October, 31 of those 32 partners were offered counsel or senior counsel positions with the Firm, which entailed lower chargeable hours and business generation expectations, and in some cases, slightly lower compensation. When asked, Sidley honored individuals' requests that the change in status not be implemented before they took other employment or retired. Although the EEOC has been told the names of the 31, Sidley has never publicly disclosed the names of any of these former partners. Ten of these attorneys remain with Sidley today.

The EEOC has issued broad discovery requests, seeking private information relating to these individuals and to hundreds of partners as to whom there is no possible claim of discrimination. For all Sidley partners from 1990 to the present, the EEOC requests seek social security numbers, dates of employment, addresses and retirement age. For more than 400 partners, the requests seek information on billing rates, hours billed, dollars billed and collected for a certain time period, and the date and reason for separation from Sidley. For the partners whose status was changed in 1999, the requests seek personnel files, performance reviews, disciplinary actions considered or taken and complaints made. The requests also seek proprietary and competitively sensitive information about Sidley's business, including all Sidley

Partnership Agreements and other governing documents since 1970, broad organizational information, financial statements, tax returns, voting records, compensation information, all documents relating to the October 1999 decisions, and documents relating to Sidley's defenses, which include its Management Committee meeting notes and other business planning documents.

Sidley has produced over 7,500 pages of responsive documents, subject to a temporary attorneys' eyes-only provision, while the Court considers the issues relating to the entry of a protective order. Sidley seeks entry of an order that fairly balances the need to protect clearly-defined categories of private, proprietary and competitively sensitive information with the discovery needs of the EEOC in this case.

ARGUMENT

I. THE EEOC SHOULD NOT BE PERMITTED TO DISCLOSE PRIVATE AND CONFIDENTIAL INFORMATION TO AN UNIDENTIFIED GROUP OF "CLASS MEMBERS" AND DEPONENTS.

The EEOC insists that it be permitted to provide admittedly Confidential Information, such as compensation and strategic plans, to undefined groups of "class members" and "witnesses." Such disclosure would violate the individuals' privacy interests, it would place Sidley's commercially sensitive information at risk, and it is not necessary to accomplish the goals of the litigation. In contrast, Sidley's proposed protective order strikes the appropriate balance between privacy and proprietary interests and the needs of the litigation.

A. Appropriate Disclosure Requires A Balancing Of Privacy Interests Against The Need For Public Disclosure.

Before deciding whether class members and witnesses should be permitted to see the Confidential Information, the cases indicate that the Court should balance the privacy and proprietary interests against the needs of the litigation. See, e.g., Fieldturf Intl., Inc. v. Triexe

Mgmt. Group, Inc., 2004 WL 866494 (N.D. Ill. April 16, 2004) (after balancing confidentiality concerns of defendants against plaintiffs' need for access to information, granting access to defendants' financial information on an "outside counsel attorneys' eyes only" basis); Aspen v. King World Productions Corp., 2001 WL 1403001 (N.D. Ill. Nov. 9, 2001) (same). Even when the balance does weigh in favor of disclosure, the scope of disclosure must be narrowly circumscribed. See San Diego Trolley, Inc. v. Superior Ct., 87 Cal. App. 4th 1083, 1097 (Cal. App. Ct. 2001) (no compelling need for confidential documents). Here, the EEOC's need to disclose this Confidential Information does not outweigh Sidley's and the individuals' privacy and proprietary rights, and the EEOC's proposed disclosure is not narrowly circumscribed.

1. Sidley And The Individuals Have Strong Privacy And Proprietary Interests In The Confidential Information.

As the Supreme Court recognized in Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35, 104 S.Ct. 2199, 2209 (1984), the government has a substantial interest in preventing the abuse of its processes by the public release of information that could be damaging to reputations and privacy. The partners whose information would be disclosed here have privacy rights under various state laws. California, for example, precludes even production of personnel files and performance reviews unless that information's relevance outweighs the privacy concerns. Article I, Section 1 of California Constitution ("All people are by nature free and independent and have inalienable rights. Among these [is] . . . privacy"); El Dorado Sav. & Loan Assn. v. Superior Ct., 190 Cal. App. 3d 342, 345 (1987) (denying release of non-party employee's personnel file because disclosure would violate the employee's constitutional right to privacy and party seeking discovery did not attempt less intrusive method of obtaining information).

Thus far there is no evidence of consent to production by any partner whose performance records and personnel files are sought by the EEOC. To the contrary, at least one of the former

partners affected by the 1999 decisions has asked the EEOC to cease representing him and to sever him from the action. The EEOC has refused, informing him that he is not a party to the case and cannot be severed. (Exhibit B.) Based on the EEOC's statement at the most recent hearing, that "there is no justification for notifying the individuals" (Exhibit C), it appears that the EEOC has not sought the consent of the former partners. Even to the extent that the EEOC can represent individuals without consent, it should not be able to obtain their private records through these Court proceedings and disclose them to others. In addition to the information relating to these former partners, the EEOC seeks compensation, billing, chargeable hour and other information for hundreds of Sidley partners who have little or no involvement in the decisions at issue. Those individuals include not only current Sidley partners, but former partners who are equally unlikely to authorize the disclosure of their private information to others.

In addition to the privacy interests, the EEOC also has requested competitively sensitive and non-public information of the type courts routinely protect from unnecessary disclosure. The alleged class members and witnesses include attorneys who have new positions with Sidley's competitors. Disclosure of strategic plans, partner compensation, information identifying Sidley's clients, and other sensitive information creates a substantial and unnecessary risk of competitive harm to Sidley.

Finally, disclosure of private information presents certain practical problems. Except as needed for management decisions, Sidley does not disclose the compensation of any one partner to any other partner. Disclosure of confidential compensation information would interfere with Sidley's long-standing and effective management practices. In addition, ten of the former partners continue to work at Sidley. None of them ever filed a charge or a lawsuit against Sidley,

but Sidley will be forced to discuss their individual data and performance in the context of this lawsuit. Moreover, the decisions being challenged were part of a process that involved consideration of all partners, without regard to age, and such considerations were never intended to be publicized. Providing performance-related information to the EEOC on the individuals affected by the 1999 decisions may be necessary, but unrestricted and unnecessary disclosure of performance reviews, assessments of strengths and weaknesses, individual data and client comments (if any) to other partners or current Sidley personnel serves no purpose except to disrupt the working environment.

2. The EEOC's Purported Need To Disclose This Confidential Information Is Unpersuasive And Outweighed By The Privacy And Proprietary Interests In The Information.

The EEOC contends that disclosure of performance reviews and performance-related information to similarly situated persons could lead those persons to conclude they had been discriminated against. In essence, it hopes to try to convince former (and possibly current) Sidley partners of the fact of discrimination. Those efforts are not calculated to lead to the discovery of admissible evidence, because an individual's own perception of discrimination is not admissible. See, e.g., Karazanos v. Navistar Intl. Transp. Corp., 948 F.2d 332, 337 (7th Cir. 1991) (in age discrimination case "employee's perception of himself is not relevant. It is the perception of the decision maker which is relevant"); Weihaupt v. American Med. Assn., 874 F.2d 419, 428 (7th Cir. 1989) (same). Moreover, providing such information to "class members" is not necessary where, as here, the information is produced to the attorneys representing the individuals. In Rossini v. Ogilvy & Mather, Inc., 798 F.2d 590, 601 (2d Cir. 1986), the court upheld an order granting plaintiffs' lawyers – and not the individual plaintiffs – direct access to the personnel files produced by the defendant in the course of discovery. The Court of Appeals reasoned that the order was a "proper attempt to balance the plaintiffs' desire

for full disclosure of relevant information against the defendant's desire to preserve the privacy of its employees" and "did not prevent [plaintiffs'] attorney from offering into evidence any relevant information the files might contain." Id.

The EEOC has never stated an adequate rationale for disclosure of information to class members; in addition, it has never articulated any reason why confidential information must be available to any deponent, nor has it cited any case supporting such a provision. The EEOC's desire to disclose the Confidential Information does not outweigh Sidley's and the individuals' privacy and proprietary interests in this case and should be rejected.

B. The EEOC Has Not Proposed A Narrowly Circumscribed Disclosure Designed To Minimize Privacy Concerns.

Sidley has proposed a Protective Order that is designed to provide the EEOC with access to the information while simultaneously protecting Sidley and the individuals from embarrassment, oppression, and undue burden. Specifically, Sidley has agreed that Confidential Information can be shared with anyone previously privy to such information, as needed for purposes of the litigation. Sidley has also agreed that any of the individuals affected by the 1999 decisions should have access to any documents relating to their own performance. Finally, Sidley has agreed to attempt to resolve any EEOC request for further disclosure in good faith.

In contrast, the EEOC has not "narrowly circumscribed" the disclosure of the Confidential Information, as demonstrated by EEOC v. Morgan Stanley & Co., Inc., 2002 WL 1431685 (S.D.N.Y. July 1, 2002), the case on which the EEOC relies. In Morgan Stanley, disclosure was to be made to a discrete number of class members. Here, the EEOC has not defined the "class members" who it insists must have access to all Confidential Information. The EEOC's complaint appears to suggest that any former Sidley partner over the age of 40 is a potential "class member" who must have access to all of the confidential information discussed

above. (Complaint at ¶ 6.)[1] The group of deponents to whom the Confidential Information could be shown is broader still.

The court in Morgan Stanley also limited the type of information to be disclosed to "compensation and promotion" information relating to "cohorts" (i.e., a unique group of individuals with shared characteristics, see Jenson v. Eveleth Taconite Co., 824 F. Supp. 847, 871 (D. Minn. 1993)). See also Gavenda v. Orleans County, 182 F.R.D. 17, 25 (W.D.N.Y. 1997) (requiring plaintiff seeking production of personnel files to provide "list of individuals whose personnel files are requested and a detailed description of the individual's relationship to the case," and "particularized statement of the specific information sought from each individual's personnel file and why that information is relevant to plaintiff's claims in the action.") The EEOC proposes no such limitation here, and its proposed disclosure would include all Sidley business plans, all partner compensation and all partner performance information.

Finally, the court in Morgan Stanley imposed procedural safeguards not proposed here: it required class members to sign a confidentiality agreement before viewing salary or promotion information, provided that the EEOC could not provide hard copies of the information to class members, and allowed the information to be viewed only in the presence of an EEOC attorney. None of these safeguards are present here. The EEOC's proposed order is not "narrowly circumscribed" to minimize privacy concerns.

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[1] In response to Sidley's request for identification of persons who the EEOC contends were subject to age discrimination, the EEOC listed only the partners whose status was changed in 1999. (Exhibit D at Resp. to Interrog. No. 2.) Sidley also asked the EEOC for a description of the facts supporting its contentions of age discrimination, but the EEOC's interrogatory response states only that it "believes each of these individuals was discriminated against on the basis or his or her age." (Id.) The EEOC's discovery responses also fail to identify a single partner who was forced to retire, stating only that "[a]ny partner who was mandatorily retired from Defendant was also discriminated against on the basis of age. Investigation continues to identify these individuals." (Id.)

II. SIDLEY'S PROPOSED DEFINITION OF CONFIDENTIAL INFORMATION PROTECTS LEGITIMATE CATEGORIES OF PRIVATE AND PROPRIETARY INFORMATION.

A. The EEOC Proposal Would Not Protect Private Or Proprietary Information Unless It Was Also A "Trade Secret."

After substantial negotiation, Sidley and the EEOC have agreed on certain categories of information that can be treated as confidential, specifically information regarding:

a. Sidley & Austin's revenues, profits and expenses;

b. individual chargeable and non chargeable hours, hourly billing rates, billings, collections and realization;

c. performance of individual partners and attorneys; and

d. Sidley & Austin's strategic plans, business goals, and partner participation/compensation criteria.

As to these categories, the dispute centers around the preamble. Sidley's introductory clause calls such information "private, proprietary or trade secret" information. The EEOC's introductory clause restricts it to "proprietary trade secrets," which would arguably allow disclosure of information regarding performance reviews, compensation, billing rates or strategic plans, for example, that do not meet the test for "trade secret" but that are nonetheless protectible under Federal Rule 26(c). See Fed. R. Civ. P. 26(c) (protective order may be entered to protect party or person from annoyance, embarrassment, oppression or undue burden or expense); Citizen's First Natl. Bank of Princeton v. Cincinnati Insur. Co., 178 F.3d 943, 946 (7th Cir. 1999) (protective orders permit parties to keep "legitimately confidential information" out of the public record); U.S. v. Zanfei, 2004 WL 2075439, * 1 (N.D. Ill. Aug. 30, 2004) (entering protective order marking "confidential" information including "product development, customer information, or other commercially sensitive information"); Owner-Operator Independent Drivers Ass'n, Inc. v. Bulkmatic Transport Co., 2004 WL 1212096, *1 (N.D. Ill. May 3, 2004)

(entering protective order classifying trade secrets and other proprietary information as "confidential – attorneys' eyes only"). Sidley's definition protects legitimate private and commercially sensitive information.

B. Policies, Procedures And Partnership Agreements Should Be Protected.

Sidley also seeks to protect as confidential, information relating to Sidley's confidential policies and procedures and its agreements with its partners. Not every policy or procedure is confidential, and Sidley has not identified its non-discrimination policy, for example, as confidential. However, certain policies are competitively sensitive and treated as confidential within the Firm, such as the Firm's billing practices and procedures. Sidley also treats its general partnership agreements and agreements with specific partners as confidential. These are not distributed outside the Firm, and should be treated as confidential for purposes of discovery.

C. The Names Of Affected Individuals Should Not Be Disclosed At This Stage.

Sidley has never publicly disclosed the names of any of the former partners whose status changed in August and September of 1999. Sidley did so to protect the privacy interests of these individuals. See, e.g., Cook v. Yellow Freight Sys., 132 F.R.D. 548, 557 (E.D. Cal. 1990) (protecting names and addresses of female employees who worked for defendant during a specific period), overruled on other grounds by Jaffee v. Redmond, 518 U.S. 1, 116 S.Ct. 1923 (1996); Morales v. Superior Ct., 99 Cal. App. 3d 283, 292 (Cal. App. Ct. 1979) (plaintiff not required to disclose names, addresses or telephone numbers in response to interrogatories). Sidley also maintained the names of the affected individuals in confidence to honor the requests of those partners who asked that the change not be implemented pending other employment or retirement.

The individuals themselves have the right to tell the EEOC or the public about a status change and the circumstances of that change if they so desire.[2] On the other hand, they also have the right to keep this information private and Sidley objects to being forced to publicly identify, without the individuals' consent, the names of those whose status was changed.

The EEOC is likely to ultimately concede that at least a subset of the former partners whose status was changed in 1999 were not the victims of discrimination. Two, for example, were 39 years old at the time of the decision, and not covered by the ADEA. Six more were in their early- or mid-40s, younger than the average law firm partner at Sidley or elsewhere. To identify these individuals publicly may needlessly embarrass some of them. This result seems particularly harsh in light of the fact that Sidley believes it can establish non-age-based reasons for the decision, none of these former partners filed a complaint with the EEOC, and at least one individual has explicitly informed the EEOC he has no interest in participating in this litigation.

In an effort to protect these individuals' privacy rights while simultaneously permitting the EEOC to pursue the discovery it believes it needs to conduct this litigation, Sidley proposed to the EEOC that the names of these former partners be kept confidential, at least until the EEOC has had sufficient time to review the discovery materials. If, after reviewing the discovery, the EEOC contends that all or a group of these partners are, indeed, class members, the names of those who consent could be released as non-confidential and the other individuals (or Sidley) could ask the Court for continuing confidentiality. The EEOC's refusal of this request and its insistence that this information be made public is unreasonable and unnecessary under the circumstances.

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[2] Martindale Hubbell and Sidley's website contain certain information about counsel or senior counsel status, and Sidley does not, of course, contend that such information is confidential.

Finally, as the Court noted, there may be a continuing issue relating to the impact on the EEOC's contentions of the absence of any individual claims for relief. EEOC v. North Gibson Sch. Corp., 266 F.3d 607 (7th Cir. 2001). In addition, there are serious questions relating to laches and the EEOC's factual basis for bringing these alleged class claims. On June 16, 2005, the Court acknowledged that "it may very well be by the time we are done with some of the preliminary stages of this there won't be individual claims that they can present – maybe there will and maybe there won't." If any of these individual claims fail to survive these preliminary stages, public disclosure of the identities of these and other individuals will have proven unnecessary and embarrassing to the individuals involved.

III. SIDLEY'S PROPOSAL FOR FILING CONFIDENTIAL INFORMATION UNDER SEAL IS APPROPRIATE AND PROTECTS LEGITIMATE INTERESTS.

The parties have been unable to reach an agreement on the procedure by which Confidential Information may be filed with the Court. Initially, Sidley offered a provision by which Confidential Information would be filed under seal subject to challenge, with the party supporting confidentiality bearing the burden of proof upon challenge. In an attempt to reach agreement, however, Sidley agreed (in Section II(C) of its proposed Order) that nothing would be filed under seal (by the EEOC or Sidley) without a Court Order as long as the EEOC would give Sidley 21 days' notice (or shorter, upon agreement of the parties or Court order) of its intention to file Sidley's Confidential Information in the public record. This would provide the parties an opportunity to confer about whether the documents could be redacted to protect Confidential Information and to notify any individual whose information might be included and who might want an opportunity to be heard. In the event that they could not reach agreement, the parties would have sufficient time to move the Court for a decision on these issues. When the EEOC raised practical concerns about being able to provide advance notice, Sidley proposed

alternatively that pleadings could be filed under seal, with the seal to be automatically lifted after a 21-day time period in the absence of a further Court order.

The EEOC rejected both alternatives, preferring instead a vague provision in which a party may file another party's Confidential Information without seal as long as it gives "the other party sufficient time to comply with the Court's notice of motion requirements to file a motion seeking leave to require the information to be filed under seal." The EEOC's proposal could mean that Sidley would be forced to support confidentiality with two or three days' notice. Even to the extent Sidley could do so, the proposal does not provide notice or opportunity for an individual to object to the filing of his or her private information.[3]

The EEOC's proposal should be rejected because it is unclear as to timing and fails to provide notice to individuals whose private information may be included as be part of a public filing.

IV. SIDLEY HAS BEEN PREVENTED FROM VOLUNTARILY NOTIFYING ITS FORMER PARTNERS OF THESE PROTECTIVE ORDER DISPUTES.

As a custodian of private personnel information, Sidley has a legal duty to resist disclosure of that information. See Board of Trustees v. Superior Ct., 119 Cal. App. 3d 516, 525-26 (Cal. App. Ct. 1981) ("The custodian [of private information] has the right, in fact the duty, to resist attempts at unauthorized disclosure . . .") (citations omitted); see also Denari v.

[3] Once information is filed with the Court, it is likely to be widely disseminated. In just the last six months, the EEOC has generated substantial publicity for this lawsuit, often suggesting that Sidley fired or terminated these attorneys. See Group Exhibit E, EEOC Press Release January 13, 2005 "Federal Agency Says Chicago-Based International Law Firm Chose Attorneys For Expulsion Because of Their Age," stating erroneously that the attorneys "were fired" and that Sidley made "unlawful age-based selections for termination." Chicago Tribune April 24, 2005, in which the captioned picture of the two top Chicago EEOC officials describes the EEOC v. Sidley case as a "high profile case." National Public Radio, May 2, 2005, EEOC Regional Director Hendrickson states "turns out that they thought they didn't need to comply with the law" and that people at the top decided to "kick [ ] these guys out." June 9, 2005 EEOC Press Release "Commission Authority Confirmed In High Profile Case To Seek Individual Relief For Former Law Firm Partners Demoted And Mandatorily Retired," stating "there really was no legal basis for Sidley's argument that the EEOC's litigation authority is the same as an individual's litigation authority . . . ."

Superior Ct., 215 Cal. App. 3d 1488, 1498-99 (Cal. App. Ct. 1989). Indeed, an uncontested disclosure, in the absence of a court order, could expose Sidley to liability. Cook, supra, 132 F.R.D. at 551 n.2 ("the court is of the view that an uncontested and unwarranted disclosure of [the names and addresses of a party's employees] may expose the party who releases such information without a court order to potential liability.")

Sidley has articulated what it believes are the individuals' likely privacy concerns, but it cannot predict those concerns with certainty. For that reason, Sidley has expressed a desire to notify individuals whose personnel files and performance reviews might be disclosed in discovery to provide them with an opportunity to object. Sidley's proposed order also provides notice and an opportunity to object to the extent previously confidential information is filed with the Court and thereby made public. The EEOC has rejected those proposals.

CONCLUSION

The information Sidley seeks to protect has been protected in many other cases. Its proposed protective order narrowly defines the categories of confidential information, and offers opportunities for challenge if the EEOC believes it has designated too liberally. Sidley respectfully submits that a general preference for public disclosure does not outweigh the important privacy and business interests at stake here, particularly at this stage of the litigation. For all these reasons, Sidley asks that the Court enter the proposed Protective Order, attached hereto as Exhibit A.

Dated: July 28, 2005

Respectfully submitted,

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EXHIBIT A

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 BROWN & WOOD LLP,	)	Magistrate Judge Ashman
Defendant.	)	

[PROPOSED] PROTECTIVE ORDER

This matter came before the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for the entry of a Protective Order governing the disclosure of documents and information pertaining to confidential matters. It appears to the Court that entry of this Order is appropriate.

In order to preserve and maintain the confidentiality of certain documents and information to be produced in this litigation, the Court hereby orders as follows:

I. CONFIDENTIAL INFORMATION

A. The term "Confidential Information" is defined as any of the following types of information:

1) names of the 31 former Sidley & Austin partners who were informed of a change to counsel or senior counsel in late 1999;

2) social security numbers;

3) unlisted home address and telephone numbers;

4) financial information stating any individual information that is not available to the public, including information regarding an individual's participation or compensation, capital accounts and retirement payments.

5) private, proprietary or trade secret information that Sidley & Austin has maintained as Confidential and that has not been disclosed outside of Sidley & Austin, which includes information regarding:

(a) Sidley & Austin's revenues, profits and expenses;

(b) individual chargeable and non chargeable hours, hourly billing rates, billings, collections and realization;

(c) personnel files and information regarding the performance of individual partners and attorneys;

(d) Sidley & Austin's policies and procedures;

(e) strategic plans and business goals;

(f) partner participation/compensation criteria;

(g) confidential agreements between and with Sidley & Austin's partners; and

(h) any other information that the parties expressly agree may be treated as Confidential Information or that is deemed Confidential Information by order of Court.

B. The term "Confidential Document" refers to a document that contains any of the above types of information defined as "Confidential Information," including but not limited to memoranda, databases, compilations and discovery responses that incorporate such Confidential Information.

C. As used herein, "disclosure" or "to disclose" shall mean to divulge, reveal, describe, summarize, paraphrase, quote, transmit, or otherwise communicate directly or indirectly Confidential Information or compilations derived therefrom.

II. RESTRICTION ON USE OF CONFIDENTIAL INFORMATION

A. During the pendency of this litigation, Confidential Information shall be retained solely in the custody of the parties' attorneys and shall not be placed in the possession of or disclosed to any other person, except as otherwise allowed by this Order, as agreed upon by the parties, or as ordered by the Court. Confidential Information shall be utilized only for the purpose of this litigation (including any appeals).

B. Confidential Information protected by this Order shall not be disclosed in any manner, directly or indirectly, to any persons except as follows, provided that any such person agrees to abide by the terms and conditions of this Order by signing Exhibit A.

1) Confidential Information may be used by the parties, their attorneys, actively engaged in the conduct of this litigation, and any clerks, paralegals, secretaries, data processors and other support staff in the employ of or retained by such parties or attorneys for the purpose of this litigation.

2) Confidential Information may be reviewed by an expert witness or consultant expressly employed or retained by counsel or a party to this litigation to whom it is necessary or appropriate to disclose Confidential Information for the purpose of prosecuting or defending this litigation, provided that these persons agree to be subject to the terms of the Protective Order by signing Exhibit A.

3) Any court of competent jurisdiction and its staff.

4) The authors, addressees, copy recipients, originators of the Confidential Information or other persons (a) who have previously seen the Confidential Information; and (b) to whom it is necessary to make such disclosure in connection with the preparation for the prosecution or defense of this action provided they agree to be subject to the terms of this Protective Order by signing Exhibit A.

5) Confidential Information pertaining to one of the 31 former Sidley & Austin partners who were informed of a change to counsel or senior counsel in late 1999 may be disclosed to that individual, provided that the individual agrees to be subject to the terms of the Protective Order by signing Exhibit A. If a party seeks to disclose other Confidential Information to such persons, the parties shall work in good faith to resolve any disputes and allow disclosure of relevant information as necessary for purposes of this litigation. If the parties are unable to resolve issues relating to such disclosure, the affected party will be afforded an opportunity to seek a Court order before disclosure of the Confidential Information.

6) Confidential Information may be disclosed to a court reporter during the course of a deposition.

C. A party desiring to file another party's Confidential Documents or Information with the Court shall give the producing party twenty-one (21) days' notice of such request. A party desiring to file an individual's Confidential Documents or Information with the Court shall

give the individual twenty-one (21) days' notice of such request. The other party shall make reasonable efforts to reach agreement as to such filing, including agreement as to appropriate redactions of Confidential Documents. If the parties and affected individuals cannot resolve any disagreement with respect to the disclosure of any Confidential Documents, then the producing party may petition the Court for a determination of these issues. Such Confidential Information shall remain confidential as stipulated by this Order until the Court rules on the party's specific petition.

D. Nothing shall prevent disclosure of Confidential Information beyond the terms of this Order if both parties, and any individual whose Confidential Information is to be disclosed, consent in writing to such disclosure, or if the Court, after notice to all affected parties, permits such disclosure.

E. If Confidential Documents are subpoenaed by a third party or requested pursuant to a request under the Freedom of Information Act, the EEOC Compliance Manual, or otherwise, the party subpoenaed or to whom the request is directed will provide the producing party ten days' notice when feasible, but no less than five days' notice prior to production to enable that party to seek a Protective Order from the Court.

III. DESIGNATION

A. A document or portion of a document that a party determines in good faith to contain Confidential Information as defined in paragraph I may be designated as Confidential by (1) stamping the word "CONFIDENTIAL" on the document, (2) otherwise indicating that it contains Confidential Information, (3) employing other means provided by this order, or (4) using any other reasonable method agreed upon by the parties.

B. A party may, on the record of a deposition or oral hearing or by written notice to opposing counsel not later than fourteen (14) days after receipt of the transcript of such

deposition or oral hearing, designate any portion(s) of the deposition as confidential if the party determines in good faith that the designated portion(s) contain(s) Confidential Information as defined in paragraph I. Until expiration of the above fourteen (14) day period, all transcripts will be deemed "Confidential Documents" under this Protective Order and information therein will be deemed "Confidential Information" under this Protective Order unless otherwise agreed to in writing by the parties. After expiration of this period, any portion of a transcript that has not been designated as Confidential shall not be subject to this Protective Order.

C. If a party inadvertently fails to designate Discovery Material as Confidential Information, it may make the designation belatedly so long as it does so promptly after learning of the oversight. Counsel for the receiving parties shall take reasonably necessary steps to ensure the confidentiality of the Confidential Information, including reasonable efforts to secure return of the Confidential Information from individuals to whom disclosure was made but would not have been permitted by this Protective Order had the Discovery Material been originally designated as Confidential Information.

IV. MISCELLANEOUS

A. This Order does not limit the right of any party to object to the scope of discovery in this case.

B. This Order does not constitute a determination of the admissibility or evidentiary foundation for the documents or a waiver of any party's objections thereto.

C. Within 90 days after the final completion of the litigation (including any appeals) the parties shall return to each other or (upon request) destroy all copies of Confidential Documents, except as required by applicable law and regulations. All retained documents will remain subject to this Order.

D. The designation of documents or information as Confidential Information or as Confidential Documents shall not be construed as a waiver of any applicable privilege or other immunities from discovery (including without limitation the attorney-client privilege and the attorney work product doctrine) or as a concession by the designating party that such information is relevant or material to any issue or is otherwise discoverable.

E. This Order shall continue indefinitely during and after this litigation, unless modified or terminated by order of this Court.

F. The restrictions set forth in any of the preceding paragraphs shall not apply to Confidential Information that was, is, or becomes public knowledge in a manner other than by violation of this Order.

IT IS SO STIPULATED.

Dated: _____, 2005

PLAINTIFF UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

By:_____
One of Its Attorneys

Laurie Elkin
Deborah Hamilton
Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

DEFENDANT SIDLEY AUSTIN BROWN & WOOD LLP

By:_____
One of Its Attorneys

Gary M. Elden
Lynn H. Murray
Gregory C. Jones
John E. Bucheit
Amanda McMurtrie
Grippo & Elden LLC
111 South Wacker Drive
Chicago, Illinois 60606

ORDER

IT IS ORDERED.

Dated:_____, 2005

_____
James B. Zagel, United States District Judge
United States District Court

Dated: _____, 2005

EXHIBIT B

June 24, 2005

Ms. Deborah L. Hamilton, Esq.
U.S. Equal Employment Opportunity Commission
500 W. Madison Street, Suite 2800
Chicago, Illinois 60661-2511

Re: EEOC v. Sidley Austin Brown & Wood
Case No. 5 C 0208

Dear Ms. Hamilton:

Thank you for your correspondence dated June 9, 2005.

Please be advised that I respectfully request that you and your client cease any representation of me in the above captioned matter. Please also take whatever steps are appropriate to sever me from this action. In the event that you can not or do not, please be further advised that I authorize Mr. Gregory C. Jones of the firm of Garripo & Elden to do so on my behalf.

Thank you, in advance, for your acknowledgement of receipt of this request and your compliance with it at your earliest opportunity.

Regards,

REDACTED

cc: Gregory C. Jones, Esq.
Garripo & Elden

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Chicago District Office

500 West Madison Street, Suite 2800
Chicago, IL 60661
(312) 353-2713
TTY (312) 353-2421
FAX (312) 353-4041

June 29, 2005

REDACTED

Re: *EEOC v. Sidley Austin Brown & Wood*
Case No. 05 C 0208

This letter acknowledges receipt of your June 24, 2005 letter to Deborah Hamilton.

In EEOC employment discrimination actions such as *EEOC v. Sidley Autsin Brown & Wood*, the U.S. government is the party plaintiff, not the affected class members for whom EEOC may ultimately obtain relief. Since you are not a party in the case, we cannot "sever" you from the case. Further, and with respect to the issue of relief, when the EEOC brings an action under the ADEA, the agency may seek relief for affected individuals even where those individuals do not consent to the lawsuit and in fact believe that the practices complained of in the lawsuit are not discriminatory. *See Johnson &Higgins, Inc.*, 91 F.3d 1529, 1536-37 (2d Cir. 1996)(holding that EEOC enforcement authority permits a lawsuit be the agency where no affected individual "has filed a charge with the EEOC, and indeed, none supports the lawsuit"); *See also EEOC v. Waffle House*, 534 U.S. 279 (2002)(recognizing that EEOC acts in the public interest even when it seeks victim-specific relief). Although it is much too early in the litigation to assess whether any relief may be obtained with respect to Sidley's change in your status, you may be assured that in the event that such relief is obtained, you will not be required to accept it.

Accordingly, although we are aware of your present view regarding the lawsuit, it is not necessary for you or us to take any further action at this time.

Very truly yours,

Laurie S. Elkin

Laurie S. Elkin
Trial Attorney

Cc: Gregory C. Jones
Grippo & Elden

EXHIBIT C

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
vs.	)	No. 2005 C 208
SIDLEY AUSTIN BROWN & WOOD, LLP,	)	Chicago, Illinois Thursday, July 21, 2005 10:00 o'clock a.m.
Defendant.	)	Room 2503

REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

APPEARANCES:

For the Plaintiff: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661
BY: MS. DEBORAH LOIS HAMILTON
MS. LAURIE S. ELKIN

For the Defendant: GRIPPO & ELDEN, LLC
227 West Monroe Street
Suite 3600
Chicago, Illinois 60606
BY: MR. GREG C. JONES
MS. LYNN H. MURRAY

Court Reporter: MR. ANTHONY W. LISANTI
United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604
(312) 939-2092

THE CLERK: 2005 C 208. EEOC versus Sidley Austin Brown & Wood, LLP.

MS. MURRAY: Good morning, your Honor. Lynn Murray and Greg Jones on behalf of the defendant, Sidley Austin.

MS. HAMILTON: Good morning, your Honor. Deborah Hamilton and Laurie Elkin on behalf of the EEOC.

MS. MURRAY: Your Honor, this is the EEOC's motion to compel. It involves the confidential data --

THE COURT: I have read the motion.

MS. MURRAY: It is more than four hundred Sidley partners --

THE COURT: I have read the motion.

MS. MURRAY: This morning we have made a proposal to the EEOC that we will produce the information on an "attorneys' eyes only" basis on Monday, so that briefing on this protective order doesn't hold up the discovery going on.

What we have here is the law in a variety of different States relating to privacy rights for personnel files and performance reviews and compensation data and other documents and information that the EEOC has requested.

We would like several days to brief it. In particular, what we have offered to the EEOC is that

we will be able to produce everything on Monday except certain data relating to California partners because California has a constitutional State privacy right that we need to deal with in terms of notifying those people and obtaining consent, or else getting a Court order requiring the production of their files.

We would like to setup a practical option so that discovery can keep going and we can raise these privacy issues --

THE COURT: I think I understand what you are saying.

MS. HAMILTON: We are certainly happy to find out that we will receive the documents. We have been waiting for them for quite some time.

That obviously doesn't resolve all of the issues because right now that will be for "attorneys' eyes only", and part of our job is to be able to look at the documents with the knowledge that the individuals who were affected by the decisions can bring to them. So we want to get the protective order issues resolved.

We have submitted a protective order to you that we drafted in light of extensive discussions with the defendant and we are well aware of the concerns they have raised. We think that the protective order that we have drafted actually reflects the law and takes

into account those concerns.

THE COURT: Swell. The EEOC has, from almost in a completely direct way, not quite -- the EEOC has said in an almost completely direct way, but not quite, that they will take the "attorneys' eyes only" so they can start doing the work. After you respond -- you wanted seven days to respond?

MS. MURRAY: Seven days to respond, your Honor, next Thursday.

THE COURT: You believe you have, by virtue of your proposal, anticipated most of what their concerns are, since even to me, who has never worked in a law firm --

MS. HAMILTON: Pardon me?

THE COURT: Even to me, who has never worked in a law firm, their concerns seem to be fairly obvious.

What I think we will do, after we hear from them in seven day, we will hear from you in seven days. What is twenty-one days from today?

THE CLERK: Twenty-one days is August 11.

THE COURT: We will talk about it at noon on August 11.

MS. MURRAY: Your Honor, one housekeeping issue and it is really for the Court. We feel that we have an obligation to notify the people whose personnel files

are going to be turned over. The thirty-two people who are most affected by the 1999 decisions. We would like to go ahead and make them aware that this is going on with the EEOC's motion and be able to do that simultaneously so that they have an opportunity to object if they want to.

What we propose to the EEOC is if they represent that these people have consented or that they are representing them in this matter, we won't notify those people. But for people who don't have notice and don't have representation --

THE COURT: Okay, I got you.

MS. HAMILTON: We strongly object. That is an attempt to create a whole new legal requirement that has never been in place before. We routinely get personnel files in a wide array of cases. To all of a sudden have the requirement that the individuals have to be notified will be wholly --

THE COURT: Stop - stop - stop. That is not what she is saying. She is not saying that this is a requirement. She is saying they want to do it. And then the question is, you object to their voluntarily doing this -- for their own purposes, not for you.

MS. HAMILTON: We do object. First of all, the individuals who they would like to notify are the

individuals who are included in the class of individuals for whom we represent, that we do represent. And particularly, given the fact that we are going to be getting these documents on an "attorneys' eyes only" basis, there is no justification for notifying the individuals.

THE COURT: My one concern with this is, and I think it is their concern, too -- I am assuming that at least some of these individuals, and almost certainly the vast majority of them, did not depart from their association with the defendant -- I am picking a particularly neutral word "association" --

MS. ELKIN: Actually, two-thirds have, your Honor.

THE COURT: I take it that many of them are not enormously happy with the defendant in this case. There may be some reservoir of ill will. And what I think the defendant fears, and I think that their fear might be reasonable, is that they turn the stuff over and then another lawsuit, another complaint arises because somebody said -- well, you shouldn't have turned it over. It is my file. Then we have a satellite litigation; perhaps in another Court, in another jurisdiction, which unduly complicates my life and your life.

MS. HAMILTON: We have discussed this issue with the defendants. They pointed us toward the case law that they believe could potentially prevent that issue. We reviewed it. In light of our analysis of the cases, we don't think there is a supportable claim. So I think we would ask that there at least be an opportunity to brief this issue.

MS. ELKIN: Perhaps, your Honor, if I may suggest that there not be any -- I understand you are saying it is not a requirement, but that they turn the documents over on Monday for "attorneys' eyes only", leaving the issue of notifying the thirty-one to be discussed in the context of the briefing.

THE COURT: The problem is these are, according to what I have been dealing with in prior motions, people who are perhaps not in classic privity with the EEOC. Some of them may very well not be happy that the lawsuit was filed. So I don't think that its "attorneys' eyes only" is going to solve this particular problem. And while I believe that the chance of liability for Sidley in this circumstance is minimal, at best -- I think your reading of the case law is probably correct. What we have learned in this country is minimal chances of success do not seem to prevent lawsuits from being filed, which means further costs and

further complication. And it is a source of some concern to me, particularly if you are talking about people whose attitudes toward the defendant are almost certainly not neutral.

MS. HAMILTON: I would think, if I could say one point -- by sending this letter with the notification that may well invite the type of litigation that we are concerned. I think it is something that we would definitely want the opportunity to brief before it happens.

THE COURT: Okay. Then the short answer is -- you are concerned about thirty-two of them?

MS. MURRAY: Yes, your Honor.

THE COURT: Don't give the thirty-two. Give all of the rest of them and we will brief the other issue.

MS. MURRAY: We will do that, your Honor.

MS. ELKIN: So that means that any of the personnel files of any of the comparables we will get on Monday?

MS. MURRAY: You haven't asked for the personnel files of the comparables. You have asked for data, spreadsheets -- excuse me for talking directly, your Honor.

THE COURT: The answer is you will get whatever

they are going to give you on Monday. If it turns out that you feel you have been misled, you can come in here, you can scream, you can yell -- figuratively screaming and yelling -- and we will deal with it at that time and you can come in on short notice, if you like.

So that is that -- when do you want to tell me what you think about notification?

MS. HAMILTON: I think we would just do it as part of the briefing on the issue.

THE COURT: That's fine. I would also appreciate the views of the Commission, but I am not mandating that. I would also appreciate the views of the Commission of the policy underlying the Commission's concern with notification.

MS. MURRAY: Thank you, your Honor.

THE COURT: See you on whatever date I said.

MS. ELKIN: August 11.

THE COURT: Thanks.

MS. HAMILTON: Thank you.

MR. JONES: Thank you.

MR. ELDEN: Very good. Thank you.

THE COURT: Thanks --

MS. HAMILTON: Thank you.

I certify that the foregoing is a correct transcript of the original shorthand notes of proceedings in the above-entitled matter.

A. Lisanti 7-25-05

Anthony W. Lisanti Date
Official Court Reporter

EXHIBIT D

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

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

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

application of law to facts and have been issued prior to EEOC receiving any discovery in the case or conducting any depositions in the case. Such Interrogatories or Document Production Requests cannot be answered without discovery materials from Defendant.

EEOC responds to these Interrogatories and Document Production Requests without waiving, as to each Interrogatory and Document Production Request, the right to object to the competence, relevance, materiality, and/or admissibility of any response or its content as evidence for any purpose in any proceeding or in the trial of this action.

EEOC responds to these Interrogatories and Document Production Requests without waiving the right to revise, correct, supplement or clarify any of the responses propounded herein.

Each of the following responses is provided subject to and without waiving EEOC's General Objections.

INTERROGATORY RESPONSES

1. Identify each person you contend has knowledge of (i) the allegations of your complaint or (ii) the employment decisions by Sidley you believe were unlawful and, for each person identified, describe the facts known to that person.

RESPONSE

EEOC believes that each person identified in its Rule 26(a)(1) Disclosures has knowledge of facts underlying the claims against Defendant. *See* EEOC's Rule 26(a)(1) Disclosures and the documents produced therewith for the substance of each person's knowledge. EEOC also believes that any other attorney who had the title "partner" while working at Defendant at any time from 1978 to the present may have knowledge regarding 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

GROUP EXHIBIT E

EEOC News

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

(312) 353-8551
TDD (312) 353-2421
FAX (312) 353-8555

FOR IMMEDIATE RELEASE
January 13, 2005

CONTACT: John C. Hendrickson
Regional Attorney
(312) 353-8551
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Deborah Hamilton
Trial Attorney
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Trial Attorney
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EEOC CHARGES SIDLEY & AUSTIN WITH AGE DISCRIMINATION

* * *

Federal Agency Says Chicago-Based International Law Firm Chose Attorneys for Expulsion Because of Their Age

* * *

CHICAGO The U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit in federal court here today alleging that Sidley Austin Brown & Wood, the giant Chicago-based international law firm, violated the Age Discrimination in Employment Act (ADEA) when it selected "partners" for expulsion from the firm on account of their age or forced them to retire. Sidley Austin Brown & Wood is the law firm which resulted from the merger of Sidley & Austin and New York-based Brown & Wood in May 2001.

The EEOC case is a "class" age discrimination case brought, first, with respect to 31 former Sidley & Austin partners who were involuntarily downgraded and expelled from the partnership in October of 1999 on account of their age, and, second, with respect to other partners who were involuntarily retired from Sidley & Austin since 1978 on account of their age pursuant to a mandatory retirement policy. The ADEA prohibits employers with 20 or more

employees from making employment decisions, including decisions regarding the termination of employment, on the basis of age (over 40). The ADEA also prohibits such employers from utilizing policies or rules which require employees to retire when they reach a particular age (over 40).

Eric Dreiband, General Counsel of the EEOC, said, "The Age Discrimination in Employment Act makes it unlawful for employers to discriminate against any individual with respect to employment because of such individual's age. The United States Equal Employment Opportunity Commission determined that Sidley, Austin, Brown & Wood violated the Age Discrimination in Employment Act, and the Commission looks forward to proving its case to a jury."

Today's lawsuit grew out of an EEOC administrative investigation managed by John P. Rowe, Director of EEOC's Chicago District Office. Sidley & Austin was given notice of the investigation in July 2000. Although there was media coverage of the October 1999 changes at Sidley & Austin, the EEOC matter did not come into public view until Sidley & Austin refused to honor an EEOC subpoena, and the agency took the firm to court to enforce the subpoena.

EEOC's position was upheld by the District Court in Chicago in February 2002. (Case citation: *EEOC v. Sidley & Austin*, N.D. Illinois No. 01 C 9635 (2/11/2002; District Judge Joan Humphrey Lefkow), 2002 WL 206485, 88 Fair Empl. Prac. Cas. (BNA) 64.) Thereafter, Sidley & Austin elected to appeal, but the District Court decision was upheld in respects material to the EEOC. In an October 24, 2002 opinion written by U.S. Seventh Circuit Court of Appeals Judge Richard A. Posner, Sidley was ordered to comply in significant part with the EEOC subpoena. (Case citation: *EEOC v. Sidley & Austin*, 315 F.3d 696 (7th Cir. 2002).)

In July 2004, District Director Rowe made an administrative determination that there was reasonable cause to believe that Sidley & Austin has violated the ADEA in connection with the October 1999 expulsions and downgrades and in implementing its mandatory retirement policy since 1978. Thereafter, the EEOC and Sidley engaged months of discussions in an attempt to resolve the case through conciliation without litigation. However, those negotiations proved futile.

EEOC's Regional Attorney in Chicago, John C. Hendrickson, said that in resisting the EEOC investigation and in forcing the EEOC to obtain judicial enforcement of its subpoena, "Sidley's unwavering position has been that the matters involving how the law firm dealt with those it referred to as 'partners' – and whether it engaged in discrimination – were simply way beyond the reach of the ADEA and EEOC." However, according to Hendrickson, the EEOC administrative investigation revealed that, "except for a very few controlling partners at the very top, Sidley's lawyers appeared to be ordinary employees not unlike their colleagues at parallel levels in the business community and, therefore, covered by the ADEA."

Hendrickson said, "Whatever titles Sidley had decided to give these lawyers –partner, counsel, or otherwise–our investigation indicated that they had no voice or control in governance of the firm and that they could be and were fired just like any other employees–without notice and without the vote or consent of their fellow attorneys. A small self-perpetuating group of managers at the top ran everything, and that was it–end of story."

"Of course," added EEOC Trial Attorney Deborah Hamilton, "having the power to fire an employee does not mean that a law firm or any other covered employer can do so because of the employee's age, if the employee is over 40. That is a violation of the ADEA and that–the making of unlawful age-based selections for termination–is precisely what EEOC is targeting in this law suit."

The lawsuit filed was filed today in the U.S. District Court for the Northern District of Illinois, Eastern Division, located in Chicago. It is captioned *EEOC v. Sidley Austin Brown & Wood*, and is Civil Action No. 05 C 0208. The case has been initially assigned to U.S. District Judge James B. Zagel.

On its internet web site (www.sidley.com), Sidley & Austin describes itself as "a significant legal power in the international arena," with "about 1500 lawyers practicing on three continents." The firm has offices in Chicago, Dallas, Los Angeles, New York, San Francisco, Washington, D.C., Beijing, Brussels, Geneva, Hong Kong, London, Shanghai, Singapore and Tokyo.

In addition to enforcing Title VII, which prohibits employment discrimination based on race, color, religion, sex (including sexual harassment or pregnancy) or national origin and protects employees who complain about such offenses from retaliation, the EEOC enforces the Age Discrimination in Employment Act of 1967, which protects workers age 40 and older from discrimination based on age; the Equal Pay Act of 1963, which prohibits gender-based wage discrimination; the Rehabilitation Act of 1973, which prohibits employment discrimination against people with disabilities in the federal sector; Title I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's web site at www.eeoc.gov.

APRIL 24, 2005 SUNDAY BUSINESS

Chicago EEOC vets go to bat for rights

Experienced lawyers 'know how to win'

By Barbara Rose
Tribune staff reporter

John Rowe's callback list is days old, paperwork is piling up in stacks around the floor of his office and he's running 30 minutes late for a meeting.

Standing in his Spartan office at the U.S. Equal Employment Opportunity Commission in Chicago, the longtime district director looks like an overworked bureaucrat at a cash-strapped agency with waning political influence.

But looks can be deceiving.

Despite budget constraints and shifting political winds, he and regional attorney John Hendrickson—both outspoken civil rights lawyers—manage to make employers sit up and take notice with headline-grabbing actions aimed at deterring discrimination.

Chicago is among the most aggressive of the EEOC's 23 district offices, going beyond mediating or investigating the thousands of complaints it receives annually to litigate a handful of high-profile cases with broad potential impact.

Sexual harassment suits against major automakers and Dial Corp. in the late 1990s "revolutionized the relationship between men and women on the factory floor," said attorney George Galland, an independent monitor in several key cases.

"Every company worth its salt is spending money making sure there's no monkey business going on in their plants. There's been an enormous cultural change."

The Chicago EEOC office recently sued a large law firm, Sidley Austin Brown & Wood, alleging age discrimination, an action that could extend civil rights protections to hundreds of thousands of professionals who are partners at big firms. Chicago-based Sidley vigorously denies any bias.

Defense attorneys complain the Chicago office is prone to find bias where there is none and too eager to push the boundaries of the EEOC's authority.

"Most of us would put Chicago at the top of the list of offices that try to extend the application of Title VII and test how far it can go," said Mark Dichter, who heads the labor and employment practice at Morgan, Lewis & Bockius LPP, which defends employers.

Title VII of the Civil Rights Act prohibits discrimination on the basis of race, religion, sex or national origin.

Employee advocates view Rowe and Hendrickson as the best of an old guard at an agency that is too passive and stretched too thin.

Resources are scarce

In Chicago, "the will to enforce is there, but the resources aren't," said attorney L. Steven Platt, president of the National Employment Lawyers Association in Illinois.

A perennial hiring freeze has reduced Rowe's staff of investigators to 38 from 50 four years ago, despite no decline in the more than 5,000 complaints the office processes annually.

Since January, Rowe has been commuting to cover vacant director posts in Milwaukee and Minneapolis, overseeing Wisconsin, Minnesota and Iowa in addition to his active Illinois territory. Meanwhile, the agency is considering a long-awaited national reorganization.

Rowe, a 32-year agency veteran, sees a drift away from furthering the goals of the landmark 1964 Civil Rights Act, which created the EEOC.

"Day by day it's going more in the direction, 'Everybody's close enough to equal,' so how can we have as a national concern the advancement of minorities and women workers?" Rowe said.

Women and minorities have made progress in landing higher and better-paying jobs, but they still face substantial risk of job discrimination, according to a 2002 study based on EEOC data by Rutgers Law School professor Alfred Blumrosen and his late wife, Ruth Blumrosen.

In Illinois, minorities faced a risk of intentional discrimination 34 percent of the time they sought opportunities such as getting hired, promoted or escaping a layoff, the study found. Women risked discrimination 25 percent of the time.

"It's ironic that we've maybe lessened discrimination in hiring, but there's more opportunity to discriminate once we've got them at work," Blumrosen said.

Rowe and Hendrickson, both 62, came of age in an era when the agency attracted lawyers who approached their work as a mission.

As a student at Notre Dame Law School, Rowe volunteered during the historic voter registration drives in Mississippi in the summer of 1967.

He chokes up when recalling a conversation with Rev. Martin Luther King Jr. nine months before the civil rights leader was slain. When Rowe expressed doubts about whether a white student had a legitimate role to play in a movement aimed at empowering blacks, King replied that the civil rights movement was as much about "the freeing of white men's souls" as about emancipating blacks, Rowe recalled.

"I knew then this is what I would do for the rest of my life," he said.

Hendrickson volunteered at a legal clinic in Harlem while attending Columbia Law School in the late 1960s. He practiced corporate and securities law in Chicago after graduation before switching to civil rights.

"When I thought about waking up when I was 60 and wondering whose interests I had used my talents to serve, I wanted it to be something more directly attuned to the public interest," he recalled.

Rowe hired him at the EEOC in 1981 as a trial lawyer, when Rowe was a regional attorney.

"They're experienced and they know how to win," said Melissa Josephs, director of equal opportunity policy at the Chicago-based non-profit Women Employed.

The EEOC's sexual-harassment suit against Mitsubishi Motor Manufacturing of America in 1996 alleged that harassment was not an isolated incident but part of the normal course of business at Mitsubishi's plant in Normal. Rulings in the case established the agency's right to bring charges on behalf of a large group of women, paving the way for subsequent class actions.

Mitsubishi settled in 1998 for $34 million, the third-biggest payout in the agency's history.

The Sidley suit, which also seeks class-action status, would extend civil rights protection to partners who normally would be exempt because they are owners rather than employees.

The EEOC argues Sidley's older partners were employees in every sense of the word because they had no control over the firm's management.

"It's a good example of trying to push the limits of the law," said Dichter, of Morgan Lewis.

> *'Charges of overreaching would prompt us to be that much more sure of our legal footing.'*
>
> Noelle Brennan, former EEOC trial attorney

He and others view the case as overzealous enforcement. Rather than taking up the cause of professionals who could afford to defend themselves, they argue, the EEOC should stick to representing workers with no other recourse.

"What they're really saying is, 'Why should the EEOC go to bat for rich white guys?' " Hendrickson replied. "Discrimination is where you find it. Nobody gets a pass, whether you're big or small, black or white, rich or poor."

Tribune photo by Chuck Berman

In a recent high-profile case, Equal Employment Opportunity Commission attorney John Hendrickson (left) and Chicago district director John Rowe filed charges against law firm Sidley Austin Brown & Wood, alleging age discrimination. Sidley denies any bias.

Even highly paid workers are afraid to challenge discrimination for fear retaliation will ruin their careers, he added.

"Charges of overreaching would prompt us to be that much more sure of our legal footing," said Noelle Brennan, a former EEOC trial attorney who worked on the Mitsubishi case before leaving for private practice.

"What it sometimes meant was extended discussions with headquarters staff," she added. "There was a lot of politics involved in making sure the Chicago office remained autonomous."

Mitsubishi sent busloads of workers to picket in Chicago, carrying signs saying, "EEOC go home" and "I can take care of myself."

"My friends in Washington had an awful lot of visitors who wanted to tell them their Chicago office was a renegade office," Rowe recalled. Some suggested the office was a tool in an attack against foreign ownership of U.S.-based plants.

"It had no effect at all," Rowe said. "We weren't delayed. Nobody asked to look at our investigative record. They were happy to leave that to careerists."

Likewise, Hendrickson said he has never been told to drop a case.

Grateful Dial employee

Ruby Martinez Gordon, a mechanic at Dial's soap factory near Aurora, is grateful for the office's activism. She is one of 100 women who received payments after Dial settled EEOC charges in 2003 of sexual harassment that included name-calling and groping for more than a decade.

Dial, without admitting wrongdoing, agreed to pay $10 million and submit to 2¼ years of independent monitoring.

"Working there is much better now, even though some people still give me the cold shoulder," said Gordon, a potential witness if the case had gone to trial. "I'm just glad they were there."

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Some recent cases

The Equal Employment Opportunity Commission's Chicago district office files about 20 suits annually alleging violations of anti-discrimination laws. Some recent examples:

Charge: Sexual harassment affecting 120 women
Employer: International Profit Associates, Buffalo Grove
Status: Pending. IPA denies the charges.

Charge: Religious harassment, retaliation against American Muslim midwife
Employer: Norwegian American Hospital, Chicago
Status: Hospital agreed to pay midwife $40,000, train midwife supervisors.

Charge: Discriminatory hiring practices affecting 300 blacks, women
Employer: Carl Buddig & Co., Homewood
Status: Buddig agreed to pay victims $2.5 million. EEOC praised company for taking steps to eliminate future bias.

National Public Radio
Morning Edition

May 2, 2005

Analysis: Age discrimination case against Chicago-based law firm

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RENEE MONTAGNE, host:

This is MORNING EDITION from NPR News. I'm Renee Montagne.

STEVE INSKEEP, host:

And I'm Steve Inskeep.

One of the nation's largest law firms is being sued. The Equal Employment Opportunity Commission accuses the Chicago-based firm Sidley Austin Brown & Wood of age discrimination. It's accused of demoting and pushing out older partners in violation of federal law. As NPR's David Schaper reports, this case could have a far-reaching effect.

DAVID SCHAPER reporting:

In October of 1999, 18 years after he was hired to be a founding partner of the New York office of the powerhouse law firm Sidley & Austin, David Allen Richards(ph) was summoned to a meeting with two members of the firm's management committee. In that meeting, Richards says, he was told he was being demoted.

Mr. DAVID ALLEN RICHARDS (Attorney): I was 54, and they made it clear it was because I was a `seniorish' lawyer.

SCHAPER: He was given a choice: stay at Sidley as senior counsel doing the same amount of work for the same clients but for less money or leave. And Richards says he later found out he wasn't alone; about 30 other partners were being demoted, too.

Mr. RICHARDS: It ended up being the five oldest real estate lawyers, the two oldest corporate lawyers, the oldest and I think second-oldest litigation lawyers.

SCHAPER: In addition, Sidley lowered its mandatory retirement age from 65 to a sliding range of 60 to 65. At the time the chairman of the firm's executive and management committees were quoted in newspapers and law journals saying the new structure would create greater opportunities for the firm's younger lawyers down the road.

Mr. JOHN HENDRICKSON (Attorney, EEOC): Just sort of the most `in your face' admissions of age discrimination that we've seen.

SCHAPER: John Hendrickson is regional attorney for the Chicago office of the EEOC.

Mr. HENDRICKSON: Turns out that they thought that they didn't need to comply with the law; that for some reason they were exempt.

SCHAPER: The law firm argued it should be exempt from the federal Age Discrimination in Employment Act because the demoted attorneys were equity partners, or essentially owners, and not employees and that the law doesn't protect owners. The EEOC's Hendrickson says that may be true in most other law firms, where partners vote on policies like a retirement age and on most other management decisions. But he says the agency's investigation found all but a few of Sidley's partners had no say in any decisions whatsoever.

Mr. HENDRICKSON: People at the very top of the firm and a very few people at the top of the firm made all of the decisions about everything, including about kicking these guys out.

SCHAPER: The 7th US Circuit Court of Appeals agreed. Sidley's partners may be considered employees in a 2002 ruling, ordering the firm to comply with EEOC subpoenas. Judge Richard Posner noted there had been just one firmwide partnership vote in the previous quarter century. It was on Sidley & Austin's merger with the New York firm Brown & Wood in 2001 after the EEOC began its investigation.

While this hypercentralization of power may be rare, many law firms and other professional service partnerships, like accounting firms and medical practices, will still be watching this case closely. As firms merge and grow larger, they are consolidating more management decision-making power into the hands of a few. And a cultural shift over the last decade or so is placing greater emphasis on boosting profits per partner, especially in the megafirms, many of which have mandatory retirement ages. As a result, Chicago Kent College of Law Professor Howard Eglit says firms favor young go-getters than rainmakers, making more experienced, gray-haired lawyers vulnerable.

Professor HOWARD EGLIT (Chicago Kent College of Law): The money they are generating by way of billing isn't as favorable, in terms of a ratio, as the money they're being paid. And so they're likely the first ones to go.

SCHAPER: Sidley Austin Brown & Wood did not return phone calls seeking comment, though the company did issue a statement at the time the lawsuit was filed saying the firm has always been committed to a policy of equal opportunity and non-discrimination and that the firm will vigorously defend against the EEOC action, which it contends has no merit. David Schaper, NPR News, Chicago.

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The U.S. Equal Employment Opportunity Commission

FOR IMMEDIATE RELEASE
June 9, 2005

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COURT REJECTS SIDLEY & AUSTIN'S ATTEMPT TO AVOID MONEY DAMAGES IN EEOC AGE BIAS SUIT

Commission's Authority Confirmed in High Profile Case to Seek Individual Relief for Former Law Firm Partners Demoted and Mandatorily Retired

CHICAGO – The U.S. District Court for the Northern District of Illinois today issued a written opinion by Judge James Zagel decisively rejecting the attempt of international law firm Sidley & Austin to avoid any possible liability for individual relief in a closely watched age discrimination lawsuit by the U.S. Equal Employment Opportunity Commission (EEOC).

In the ongoing litigation, the EEOC asserts that Sidley violated the Age Discrimination in Employment Act (ADEA) by downgrading a group of law firm partners to "senior counsel" or "counsel" status in the fall of 1999 and by maintaining a mandatory retirement age for partners. EEOC's court-filed complaint seeks monetary damages and reinstatement for these partners. The EEOC's lawsuit was originally filed in the U.S. District Court for the Northern District of Illinois in Chicago on January 13, 2005. The parties are now engaged in the discovery process, and a trial date has not yet been set.

"Today's decision is a complete rejection of Sidley's attempt to avoid the possibility of payment of monetary damages or other individual relief if it is found liable," said EEOC Trial Attorney Laurie Elkin, who is working on the government's case. "But it is more than that, it is confirmation that in any case brought by the EEOC, the Commission is empowered to seek relief for the victims of discrimination – whether or not the victims could seek relief on their own behalf."

In the EEOC's case against Sidley, the agency's Chicago District Office began its investigation into Sidley & Austin's compliance with the ADEA not as a result of a Charge of Discrimination filed by an individual but after Sidley & Austin made statements to the news media that it had demoted partners to create opportunity for younger lawyers and referenced its mandatory retirement age.

In its motion, Sidley argued that because none of the individual partners filed a Charge of Discrimination with the EEOC, and therefore could not themselves file an action in court for individual relief, the EEOC could not seek monetary relief on their behalf.

Relying on Supreme Court precedent, Judge Zagel, said: "The EEOC's right to bring suit seeking individual relief goes beyond that of the individual and reaches the territory of public interest, thereby allowing EEOC to seek relief for individuals, like the affected Sidley partners in this case, who could not, for any variety of reasons, do so themselves."

EEOC Chicago Regional Attorney John C. Hendrickson, who is lead counsel for the government in the case, said: "Sidley's motion was the legal equivalent of a 'Hail Mary' pass in football – one that is thrown at the end of a game to avoid a loss, and has little chance of success. There really was no legal basis for Sidley's argument that the EEOC's litigation authority is the same as an individual's litigation authority under the federal anti-discrimination laws."

Hendrickson continued: ""We are very pleased that Judge Zagel recognized the EEOC's unique role in protecting the public interest by pursuing claims for individual relief and that we will be able to continue to pursue our claims for money damages and reinstatement on behalf of partners affected by Sidley's discriminatory practices."

EEOC Trial Attorney Deborah Hamilton, who is also working on the case, said, "The Commission will now proceed vigorously in this case, with the assurance that if the suit is successful, the affected individuals will be made whole via monetary relief."

EEOC Supervisory Trial Attorney, Gregory Gochanour noted, "Today's decision is part of a pattern of case law that has developed in the wake of the Supreme Court's decision in EEOC v. Wafflehouse. This line of cases holds that the EEOC's ability to bring claims for relief is not dependent on whether an affected individual could bring a claim for relief."

The EEOC is the federal government agency responsible for enforcing the nation's anti-discrimination laws in employment based on race, color, sex, religion, national origin, retaliation, age and disability. Further information about the agency is available on its web site at www.eeoc.gov.

This page was last modified on June 9, 2005.


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CERTIFICATE OF SERVICE

I, Maile H. Solís, an attorney, hereby certify that on **July 28, 2005**, I caused a true and complete copy of the foregoing **DEFENDANT SIDLEY AUSTIN BROWN & WOOD'S RESPONSE IN OPPOSITION TO THE EEOC'S MOTION TO COMPEL PRODUCTION AND MOTION FOR ENTRY OF A PROTECTIVE ORDER** to be served via Electronic Mail and Messenger Delivery upon the following:

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