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

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	Case No. 05 CV 0208
Plaintiff,	)	Honorable James B. Zagel
v.	)	Magistrate Judge Ashman
SIDLEY AUSTIN BROWN & WOOD LLP,	)	
Defendant.	)	

SIDLEY'S OPPOSITION TO THE EEOC'S MOTION TO DETERMINE THE SUFFICIENCY OF RESPONSES TO REQUESTS TO ADMIT FACTS

Defense counsel will be prepared to argue this motion at the April 6, 2006 hearing. In the interim, the Court should be aware of three deficiencies in the EEOC's motion. First, the EEOC attaches a superceded version of Sidley's answers. The correct version is attached hereto.[1] Second, the EEOC does not correctly summarize the law governing requests for admissions, even as stated in the cases it cites. A more correct statement follows. Third, the EEOC has not fairly characterized Sidley's responses to the requests, for the reasons summarized below.

I. Under Rule 36, Sidley Was Entitled To Provide Necessary Context For Its Responses To The EEOC's Request.

The purpose of a request for admission under Rule 36 is to "clarify substantially the facts in dispute and those facts about which no dispute exists," *Meheta v. Baxter Travenol Labs.*, 1988 WL 71236, *1 (N.D. Ill. June 28, 1988), to "allow for the narrowing of issues," and to

[1] The EEOC attached as Exhibit D a copy of Sidley's original Responses to the Requests for Admission, although Sidley served Amended and Supplemental Responses on March 22, 2006 (see EEOC Motion at ¶ 3). A copy of Sidley's current response to the EEOC's Requests is attached.

"provide notification as to those facts, or opinions, that remain in dispute." *Lakehead Pipe Line Co., Inc. v. Amer. Home Assurance Co.*, 177 F.R.D. 454, 457 (D. Minn. 1997).

A party cannot use a request to admit to "bully" a party into forgoing its ability to explain a complicated matter. *See Tri-State Hospital Supply Corp. v. U.S.*, 226 F.R.D. 118, 138 (D.D.C. 2005) (since fact of which party sought admission was "clearly at issue in this litigation, the government should be able to explain its position and not be bullied into an admission it does not want to make"); *National Semiconductor Corp. v. Ramtron Int'l Corp.*, 265 F. Supp. 2d 71, 73 (D.D.C. 2003) ("if a request for admission is viewed as . . . a request that a certain fact be stipulated, then it has to be conceded that the common law has never required one party to stipulate to any fact").

Although the EEOC argues that Rule 36 does not permit a party to provide context for its responses, the case law that it cites establishes the contrary. *Bell v. Woodward Governor Co.*, 2006 U.S. Dist. LEXIS 6348, *4 (N.D. Ill. Feb. 17, 2006) held that admissions require explanation or qualification where, though technically true, they can otherwise be used to create unwarranted inferences. *Id.* at *5. Like the EEOC, plaintiff in *Bell* criticized defendant's "editorializing" in an admission. *Id.* at *7. However, the *Bell* court rejected this criticism and found defendant entitled to qualify its admission by specifically stating the extent to which the statement was true and the extent to which explanation was needed to avoid improper implications. *Id.*

The EEOC also cites *Diederich v. Dept. of the Army*, 132 F.R.D. 614, 619 (S.D.N.Y. 1990). This case expressly recognizes that qualification may be "permitted if the statement, although containing some truth, standing alone out of context of the whole truth . . . conveys

unwarranted and unfair inferences." While the *Diederich* court did order amended responses, it did so only because defendant objected without providing substantive answers.

The facts in *Meheta v. Baxter Travenol*, 1988 WL 71235, *1 are closely analogous to those in the present case. There, the plaintiff attached a copy of a contract and asked (1) whether the parties entered into the agreement; and (2) whether the attached copy of the agreement was "true and accurate." Defendant admitted each fact but added qualifying language. Plaintiff asked that the court strike the responses and limit the answers to "admitted." The court refused, finding the responses "sufficient and proper," explaining:

> [F]requently, a request may concern facts about which an unequivocal answer may not be possible because of the colorable interpretation which each party holds of that fact and consequently some qualification of the admission is necessary. In such instances, the party may offer in addition to the admission a qualification which further explains the facts surrounding the request.

The court upheld the responses because defendant had:

> not eluded the plaintiff's request for clearly the defendant has admitted the request. But the defendant has gone ahead to place that admission within the contextual dispute evolving from the contract. This response, therefore, is an attempt to preserve defendant's defenses to the contract claims and to preclude numerous broad implications that may be raised if such qualifying language were not added. When the request touches upon the core of the dispute . . . it is not unreasonable that a request will elicit an admission with some additional language.

Id.

II. Sidley's Responses To The Specific Requests Were Appropriate.

We will be prepared to discuss fully any of Sidley's specific responses as requested by the Court at Thursday's hearing on the EEOC's motion. What follows is a short overview of Sidley's position.

A. Responses to Requests Nos. 21 and 23

Requests Nos. 21 and 23 excerpt two statements from a 10 page document and ask Sidley to admit the truth of those statements out of context. The document as a whole is accurate, in the sense that it appropriately informed its intended audience. However, transplanting two excerpted statements into legal admissions without explanation could "convey unwarranted and unfair inferences." Accordingly, Sidley did what the case law recommends and admitted the requests but then qualified the admissions with the explanation needed to place the admissions in context. *Diederich*, 132 F.R.D. at 619. Indeed, because the document as a whole is admissible (under Fed. R. Evid. 801(d)), the EEOC would only need admissions on the excerpted statements for the purpose of taking them out of context.

Far from providing "extraneous" material, Sidley's response accomplishes exactly the purposes of Rule 36 (as discussed in the above cases) by putting the EEOC on precise notice as to Sidley's contentions concerning the statements at issue.

B. Responses to Requests Nos. 8, 10 and 12-16

Each of these requests seeks an admission as to whether Sidley partners "voted" on certain issues without defining the term "vote," to which the dictionary assigns several meanings. Sidley was concerned that the failure to define the term "vote" was intentional and designed to create the erroneous impression that partners had no input in certain management decisions.

Sidley responded to the requests by supplying a definition of the term "vote," answering the requests based on that definition, and then providing an explanation as to the nature of the input that Sidley partners had on the management decision at issue in each request. Each response thereby meets the substance of the request, provides notice as to how Sidley will dispute the EEOC's contention that Sidley partners did not participate in firm management, and thereby achieves the objective of Rule 36.

C. Responses to Requests Nos. 3 and 6

Requests Nos. 3 and 6 essentially duplicate Request No. 1. Accordingly, Sidley incorporated its response to Request No. 1 as its answer to Nos. 3 and 6. Repeating the same language verbatim would accomplish nothing.

CONCLUSION

For the foregoing reasons, Sidley requests that the Court deem Sidley's Responses to EEOC's First Set of Requests for Admission sufficient and deny the EEOC's motion.

Dated: April 5, 2006

Respectfully submitted,

SIDLEY AUSTIN LLP

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

Gary M. Elden
Michael P. Conway
Maile H. Solís
GRIPPO & ELDEN LLC
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 704-7700
Facsimile: (312) 558-1195

CERTIFICATE OF SERVICE

I, Maile H. Solís, an attorney, hereby certify that on **April 5, 2006**, I caused a true and complete copy of the foregoing **SIDLEY'S OPPOSITION TO THE EEOC'S MOTION TO DETERMINE THE SUFFICIENCY OF RESPONSES TO REQUESTS TO ADMIT FACTS** to be served by Electronic Mail Transmission via ECF as to Filing Users upon the following:

John C. Hendrickson (john.hendrickson@eeoc.gov)
Gregory M. Gochanour (gregory.gochanour@eeoc.gov)
Deborah L. Hamilton (deborah.hamilton@eeoc.gov)
Laurie Elkin (laurie.elkin@eeoc.gov)
Justin Mulaire (justin.mulaire@eeoc.gov)
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661

/s/ Maile H. Solís