

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KIMBERLY McLAUGHLIN,

Plaintiff,

v.

PHILADELPHIA PHILLIES, a/k/a THE  
PHILLIES,

Defendant.

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: Civil Action No.: 04-cv-6003  
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**JOINT CASE REPORT**

Pursuant to the Court’s August 23, 2005 Order, the parties jointly submit the following:

**1. STATEMENT OF FACTS**

This Court has jurisdiction over this action under 28 U.S.C. § 1331. This action properly lies in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b), as the defendant resides in this judicial district and the events or omissions giving rise to the claim occurred, or are alleged to have occurred, in this judicial district.

Plaintiff Kimberly McLaughlin was employed by the defendant, The Phillies, as an usher to work at baseball games at Veterans Stadium in Philadelphia. In or about September 2003, plaintiff Kimberly McLaughlin claims to have been subjected to severe, pervasive and unwelcome sexual harassment by a co-employee, Raymond Solley, who worked as a security officer at Veterans Stadium (hereinafter the “security officer”).

Plaintiff avers that the security officer made unwanted and unwelcome sexual advances, unwanted and unwelcome sexual touching and unwanted and unwelcome verbal sexual advances directed at her. Plaintiff avers that she asked the security officer to stop the harassment and she informed both the security officer and her supervisors, whom she avers to be agents of defendant, of the unwanted and unwelcome sexual behavior of the security officer. At the time of the incidents complained of, Kimberly McLaughlin was 18 years old while the security guard was approximately 50 years old.

Plaintiff claims that defendant knew, or had reason to know, or should have known that the security officer was sexually harassing or was likely to sexually harass plaintiff and/or other employees.

At the time, plaintiff's mother was a long term employee of defendant, and worked at or near plaintiff's location at Veterans Stadium. Therefore, plaintiff avers she was forced to endure the sexual harassment while her mother witnessed the circumstances, including the alleged acts and omissions of the defendant that allegedly permitted the harassment even after plaintiff reported and complained about the security officer's behavior.

## **2. CAUSES OF ACTION**

Plaintiff is seeking damages for employment discrimination and sexual harassment under Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991. Title VII defines sexual harassment as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating,

hostile or offensive working environment. See Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

To establish a claim for sexual harassment, plaintiff must establish that there were severe, pervasive, unwanted and unwelcome sexual advances, verbal sexual advances and sexual touching all of which created a hostile work environment and that plaintiff informed the harasser that such advances were unwanted and unwelcome.

Plaintiff seeks an award of compensatory and punitive damages to be determined by a jury, as well as reasonable attorney's fees and costs.

### **3. STATEMENT OF DEFENSES**

The primary legal defenses of The Phillies are summarized below. Defendant contends as follows:

1. Plaintiff cannot satisfy the elements of her cause of action.

The Phillies' primary defense is that the largely undisputed facts of this case do not satisfy the essential elements of plaintiff's cause of action. Plaintiff alleges she was sexually harassed by a non-supervisory employee of The Phillies (a security guard) and that "[her] work environment became so intimidating, hostile and offensive that Plaintiff was forced out of her employment." Compl., ¶ 15.

In the Third Circuit, in order to assert a claim for a sexually hostile work environment when the plaintiff claims a non-supervisory co-worker sexually harassed her, the plaintiff must establish the following elements: (1) that she suffered intentional discrimination because of sex; (2) that the discrimination was pervasive and regular; (3) that the discrimination

detrimentally affected her; (4) that the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) that the defendant-employer may be held vicariously liable under the theory of *respondeat superior*. See Andrews v. Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990).

Plaintiff cannot satisfy the second, third, fourth or fifth of these elements. The discrimination, i.e., the harassment, was not pervasive and regular. The alleged incidents occurred on only a small handful of occasions that occurred during a short period of time. Specifically, the alleged harassment happened when the plaintiff and her alleged harasser worked in Veterans Stadium during Phillies home games in the single month of September 2003. Compl., ¶ 7. Further, the allegedly harassing acts were few and sporadic during these occasions when both the individuals were working in the stadium at the same time.

Also, it is doubtful that the plaintiff was detrimentally affected by the alleged harassment. Even assuming *arguendo* that she was detrimentally affected by it, a reasonable person would not have been. The alleged acts of harassment were not sufficiently severe to alter the working conditions of a reasonable woman.

Finally, The Phillies cannot be held liable under *respondeat superior* for the allegedly harassing acts of its non-supervisory employee because The Phillies had no actual or constructive knowledge of the security guard's offensive conduct until after it occurred. The Phillies took prompt, appropriate remedial action when confronted with plaintiff's allegations, separating the employees, conducting an investigation and warning the security guard that any further inappropriate conduct would be grounds for discipline, up to and including dismissal.

2. The Phillies exercised reasonable care to prevent and correct any sexually harassing behavior and the plaintiff unreasonably failed to take advantage of The Phillies' mechanisms for preventing and correcting such conduct or to otherwise avoid the harm.

Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998); Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998).

The Phillies had an appropriate sexual harassment policy, the plaintiff was aware of it, and she failed to take advantage of it by reporting all alleged incidents in a timely and appropriate manner. To the extent The Phillies were made aware of the alleged harassment, The Phillies promptly took appropriate remedial action to correct it and to prevent further occurrences. Further, plaintiff did not take reasonable action to avoid the alleged harassment.

3. The Phillies' remedial actions, including moving the plaintiff and the security guard to different locations in the stadium, were calculated to be effective without creating undue operational burdens. The movement of plaintiff to another location did not in any way constitute an adverse employment action and cannot be deemed a contributing factor to the plaintiff's allegedly hostile environment.

4. Plaintiff voluntarily resigned her employment.

5. Plaintiff has no damages because she voluntarily resigned her employment and refused The Phillies' offer to re-hire her.

**4. INITIAL DISCLOSURES (FED. R. CIV. P. 26(a)(1))**

Defendant served its initial disclosures on August 29, 2005. Plaintiff intends to provide her initial disclosures by September 21, 2005.

5. **DISCOVERY DEADLINE**

Discovery to be completed by February 1, 2006.

6. **JOINED PARTIES**

All necessary parties to the action have been properly joined.

7. **SETTLEMENT**

Plaintiff served a written demand. Defendant rejected the demand and made a counter offer, which plaintiff rejected. Negotiations are ongoing.

8. **COUNSEL**

Michael R. Luongo counsel for the plaintiff, Kimberly McLaughlin.

Richard L. Strouse counsel for the defendant, The Phillies.

Respectfully submitted:

Date: September 20, 2005 By: /s/  
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