

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )
COMMISSION, )
Plaintiff, )
vs. ) No. 2:07-cv-02621-JPM-tmp
786 SOUTH LLC, and )
TRIPOLI II, INC., )
Defendants. )

NOTICE OF DETERMINATION OF ORDER OF PROOF PURSUANT TO FEDERAL
RULE OF EVIDENCE 611

Based on the April 14, 2010 pretrial conference and the
arguments of the Parties, the Court finds that the question of
whether Tripoli II may be held liable as a successor is an
equitable determination to be made by the Court. See also Cobb
v. Contract Transp., Inc., 452 F.3d 543, 553-54 (6th Cir. 2006).
Pursuant to Federal Rule of Evidence 611, the Court hereby
determines that the successor liability issue will be tried to
the Court, sitting in equity, beginning on April 26, 2010. The
jury trial of the underlying Title VII claims is hereby
continued until further order of the Court. See EEOC v. Nichols
Gas & Oil, Inc., --- F. Supp. 2d ----, 2010 WL 175158 (W.D.N.Y.
2010) (determining prior to Title VII trial whether successor
may be liable for damages in the event that damages are awarded

at trial); Kennedy v. City of Zanesville, 505 F. Supp. 2d 456, 478-83 (S.D. Ohio 2007) (determining in advance of jury trial whether successor may be liable in the event that jury finds for plaintiffs on substantive discrimination claims). The Parties are excused from filing a proposed jury questionnaire pursuant to the Court's April 14, 2010 order.

IT IS SO ORDERED this 15th day of April, 2010.

/s/ Jon P. McCalla  
JON P. McCALLA  
CHIEF U.S. DISTRICT JUDGE