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Professional Corporation

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY	:	CIVIL ACTION	
COMMISSION,	:	JURY TRIAL DEMANDED	
	:		
Plaintiff	:		
	:		
v.	:	No. 04-3331	
	:		
JOYCE JOHNSON-CLAYTER,	:		
	:		
Intervenor	:		
	:		
ENCOMPASS INSURANCE, INC., a	:		
subsidiary of ALLSTATE	:		
CORPORATION,	:		
	:		
Defendant	:		
	:		
and	:	Assigned to:	J.

COMPLAINT

JURISDICTION AND VENUE

1. This Court has jurisdiction over Intervenor’s/Plaintiff’s claims pursuant to 28 U.S.C. Sections 2201, 2002, 1331(a), 1343; 42 U.S.C. Section 2000e, *et seq.* as amended by the Civil Rights Act of 1991, 42 U.S.C. Section 1981, *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. Section 1981, 42 U.S.C. Section 200e-5(f); and Title VII of the Civil Rights Act of

1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991.

2. Intervenor has complied with all jurisdiction prerequisites, including those set forth in 42 U.S.C. Section 2000e-5(f), and has exhausted all required state and federal administrative remedies, including proceeding before the Pennsylvania Human Relations Commission and the United States Equal Employment Opportunity Commission.

3. The amount in controversy exceeds One Hundred and Fifty Thousand Dollars and 00/100 (\$150,000.00) exclusive of interest and costs.

4. Defendant transacts business within the Commonwealth of Pennsylvania; is engaged in interstate and intrastate commerce; employs in excess of fifteen (15) individuals; and the acts in question were committed at Defendant's facility in Pottstown, Montgomery County, Pennsylvania.

PARTIES

5. Plaintiff, Equal Employment Opportunity Commission is an administrative agency of the United States Government, with an address of 1801 L Street NW, Washington, D.C. 20507.

6. Intervenor, Joyce Johnson-Clayter, is a female citizen of the United States of America and, during all relevant time periods, has resided in the Commonwealth of Pennsylvania, with an address of 819 Weiser Street, Reading, Berks County, Pennsylvania, 19601.

7. Defendant, Encompass Insurance, Inc., a subsidiary of Allstate Corporation is a corporation registered and authorized to conduct business in the Commonwealth of Pennsylvania, having an address of 401 Penn Street, Reading, Berks County, Pennsylvania, 19601.

8. Defendant is engaged in the business of insurance.

9. Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. Section 2000e(b), (g), and (h).

FACTUAL BACKGROUND

10. Intervenor was hired by Defendant's predecessor, CNA Personal Insurance in July of 1987. On or about January 1, 2000, Defendant acquired CNA Personal Insurance and later renamed the company "Encompass Insurance."

11. During her employment, from July of 1987 through May 7, 2002, Intervenor worked as a customer service representative, last holding the job title of "Senior Customer Service Representative" and carried out all other required duties for employer.

12. Beginning in January of 2000, and continuing until May 7, 2002, Intervenor was continuously subjected to offensive, racially based comments, and disparate treatment based upon race by her supervisor, David Hugenbrach.

13. The disparate treatment by Hugenbrach included, but was not limited to:
- a) excessive scrutiny of performance;
 - b) excessive and unwarranted criticism of Intervenor's work;
 - c) threats to terminate Intervenor's employment on a regular basis, without legitimate business or disciplinary justification;
 - d) restricting Intervenor's lunch schedule;
 - e) telling Intervenor that she was "too ethnic" and "too animated" in a manner clearly referring to her race (African-American) Black; and,
 - f) demanding that Intervenor not speak at staff meetings, because she was "too frightening," "too loud," and "too negative."

14. Intervenor complained to Hugenbrach regarding the conduct in question.

15. Intervenor complained to Defendant's Human Resource Manager, Wayman Clark, regarding the conduct of Hugenbrach, and its offensive nature. Clark replied that he was "tired of Black employees thinking he would agree with them."

16. No supervisor, manager, office or director of Defendant investigated or stopped the conduct.

17. Hugenbrach engaged in the above-cited conduct on a continuous and regular, if not daily basis from January of 2001 through May 7, 2002, despite being told repeatedly by Intervenor to cease and desist from the offensive behavior in question.

18. On May 7, 2002, Intervenor's employment was terminated for unlawful and reasons, including but not limited to Intervenor's race, and/or in retaliation for having made complaints of discrimination.

19. At all times material and relevant hereto, Defendant had no equal employment opportunity policy or policy against race-based harassment and discrimination in place in their workplace. Alternately, any such policy which Defendant may claim to have in place was at all times material and relevant hereto inadequate, incomplete, ineffective, and legally insufficient.

20. At all times material and relevant hereto, Defendant conducted no "sensitivity training" or anti-harassment training on the subject of racial discrimination and/or harassment. Alternatively, any such training conducted by Defendant or purporting to be such training, was inadequate, incomplete, ineffective, and legally insufficient.

21. At all times material and relevant hereto, Defendant had no complaint or investigative procedures in place by which an employee subjected to racial harassment and/or discrimination could reasonably complain to Defendant for remedy; or cause a complaint of racial harassment and/or discrimination to be investigated promptly.

22. Intervenor, on or about September 3, 2002 filed a Complaint with the United States Equal Employment Opportunity Commission, claiming employment discrimination on the basis of her race (African American/Black) Defendant in violation of federal and state civil rights laws.

23. Subsequently, the Equal Employment Opportunity Commission subsequently reached a "determination" that Intervenor had been repeatedly subjected

to race-based discrimination by Defendant's owners and supervisors while employed by Defendant.

24. The Equal Employment Opportunity Commission subsequently filed a Complaint against Defendant on July 15, 2004, which was amended on or about August 13, 2004, alleging race-based discrimination against Intervenor and other female employees of Defendant.

25. Intervenor filed a Motion for Intervention in the instant case, based, *inter alia*, upon intervention as a matter of right conferred by 42 U.S.C. 2000e-5(f)(1).

26. This Court subsequently granted the Motion for Intervention, and permitted the intervention in this case by Intervenor.

CLAIMS

COUNT I

RACE-BASED HARASSMENT UNDER SECTION 706 OF TITLE VII, 42 U.S.C.

2000e5(f)

27. The averments set forth in Paragraphs 1 through 26, above, are incorporated by reference as if the same were set forth more fully at length herein.

28. The above-referenced acts by Intervenor's/Plaintiff's supervisors and co-workers all of whom were employees of Defendants, were pervasive, severe and regular.

29. The acts in question detrimentally affected Intervenor, and caused physical and psychological injury.

30. The offensive remarks, overbearing scrutiny, and unwarranted criticism, disciplinary actions, restrictions, and ultimate retaliation for making legitimate complaints of discrimination, up to and including termination of employment, would detrimentally affect a reasonable person of the same race as Intervenor (African-American/Black) in that position.

31. Hugenbrach, one of the perpetrators of this conduct, during all times relevant to this action was an employee of Defendant, giving rise to liability to Defendant under the doctrine of *respondeat superior*.

32. The conduct in question by Hugenbrach and by Clark of making racially discriminatory remarks, criticisms, disciplinary actions, restrictions, and retaliatory behavior, created a hostile and offensive work environment for Intervenor.

33. Defendant knew or had reason to know of the conduct of its employee toward and in the presence of Intervenor, based upon reports of the conduct by Intervenor and other employees on the same shift and job site and working at the same time as Intervenor to her managers and supervisors, but failed to take action sufficient to stop this offensive conduct.

34. The acts in question were not isolated incidents.

35. The above-referenced actions constituted hostile work environment racial discrimination and harassment.

36. Intervenor, by the conduct set forth at length above, was harassed and discriminated against because of her race (African-American/Black), and suffered retaliation for making complaints of the same.

37. The acts, failures to act, practices, and policies of Defendant, its owner, supervisors, manager, and employees, as set forth above constitute racial discrimination and race-based harassment in violation of Section 706 of Title VII, 42 U.S.C. Section 200e-5.

38. Defendant has no defense to these claims, as it has failed or refused to take all reasonable steps required by law to prevent and/or remedy the hostile workplace environment described herein.

WHEREFORE, Intervenor, Joyce Johnson-Clayter, respectfully requests judgment in her favor, and against Defendant, and an award granting her relief including but not limited to the following:

a) Back pay and all other benefits, perquisites, and compensation which Plaintiff would have received since May 7, 2002 had she maintained her employment with Defendant, including but not limited to lost wages, pay increases, and bonuses;

b) Front pay;

- c) Reimbursement for all costs, expenses, and financial losses Plaintiff has incurred as a result of the above-described actions;
- d) Reasonable attorneys' fees and costs;
- e) Compensatory damages;
- f) Punitive Damages; and,
- g) Such other relief as the Court may deem appropriate.

COUNT II

RACE-BASED DISCRIMINATION UNDER SECTION 706 OF TITLE VII, 42

U.S.C. SECTION 2000e-5

39. The averments set forth in Paragraphs 1 through 38, above, are incorporated by reference as if the same were set forth more fully at length herein.

40. The conduct of owners, employees, supervisors and managers, as set forth above, is attributable to Defendant under the doctrine of *respondeat superior*.

41. The conduct in question was directed to Intervenor due to her race (African-American/Black).

42. The termination of Intervenor's/Plaintiff's employment by Defendant was the direct and proximate result of Intervenor's/Plaintiff's race and/or complaints of racial discrimination and harassment and in retaliation therefore.

43. The acts, failures to act, practices, and policies of Defendant, as set forth above, constitute unlawful and intentional discrimination against Plaintiff because of her race, i.e., African-American/Black, in violation of Title VII of the Civil rights Act of 1964, as amended by the Equal Opportunity Act of 1972, and the Civil Rights Act of 1991, 42 U.S.C. 2000e-5.

WHEREFORE, Intervenor, Joyce Johnson-Clayter, respectfully requests judgment in her favor, and against Defendant, and an award granting her relief including but not limited to the following:

- a) Back pay and all other benefits, perquisites, and compensation which Plaintiff would have received since May 7, 2002 had she maintained her

employment with Defendant, including but not limited to lost wages, pay increases, and bonuses;

b) Front pay;

c) Reimbursement for all costs, expenses, and financial losses Plaintiff has incurred as a result of the above-described actions;

d) Reasonable attorneys' fees and costs;

e) Compensatory damages;

f) Punitive Damages; and,

g) Such other relief as the Court may deem appropriate.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

44. The averments set forth in Paragraphs 1 through 43, above, are incorporated by reference as if the same were set forth more fully at length herein.

45. David Hugenbrach, from January 1, 2000 through May 7, 2002, continuously made blatant, offensive, racially discriminatory remarks toward and in the presence of Intervenor, in spite of being told by Intervenor that she found such remarks to be offensive.

46. Owners, managers and supervisors of Defendant, Wayman Clark, routinely, during the time period between January 1, 2000 to May 7, 2002, turned a blind eye to the discrimination and harassment to which Intervenor was subjected as described herein.

47. All the above-mentioned individuals, including owners, supervisors and managers, continued in the described course of conduct, in spite of being told repeatedly by Intervenor to cease and desist from such conduct, and Intervenor's/Plaintiff's repeated complaints.

48. Intervenor repeatedly complained to owners, supervisors, and managers of this conduct, but her complaints were ignored, scoffed at, and were not investigated, and the perpetrators were not stopped from continuing this course of conduct.

49. The statements and actions in question were made by supervisory and managerial personnel of Defendant, and by its employees, managers, and supervisors, in the regular course and scope of employment.

50. Defendant is liable for the acts of its owners, employees, managers, and supervisors within the scope of employment under the doctrine of *respondeat superior*.

51. The acts and omissions, were extreme, outrageous, and highly offensive to Intervenor as an African-American/Black of normal sensibilities and sensitivity.

52. Defendant knew, had reason to know, or should have known that the conduct in question would cause severe emotional, physical and psychological harm to Intervenor.

53. As a direct and proximate result of this conduct, Intervenor has been and is greatly injured in her good name, credit, and reputation, to her great financial loss and detriment.

54. As a direct and proximate cause of this conduct, Intervenor has suffered severe emotional distress, pain, anguish, humiliation, and embarrassment, and injury resulting from this emotional distress.

55. Solely as a result of the aforesaid injuries, Intervenor has been and in the future will be forced to incur significant expenses in seeking and securing medical and psychological treatment and counseling in an effort to cure herself of these injuries.

56. Solely as a result of the aforesaid injuries, Intervenor has been and in the future may be prevented from attending to her usual and customary occupation and duties, to her great financial detriment and loss.

WHEREFORE, Intervenor, Joyce Johnson-Clayter, respectfully requests judgment in her favor, and against Defendant, and an award granting her relief including but not limited to the following:

a) Back pay and all other benefits, perquisites, and compensation which Plaintiff would have received since May 7, 2002 had she maintained her employment with Defendant, including but not limited to lost wages, pay increases, and bonuses;

- b) Front pay;
- c) Reimbursement for all costs, expenses, and financial losses Plaintiff has incurred as a result of the above-described actions;
- d) Reasonable attorneys' fees and costs;
- e) Compensatory damages;
- f) Punitive Damages; and,
- g) Such other relief as the Court may deem appropriate.

COUNT IV

VIOLATION OF PENNSYLVANIA HUMAN RELATIONS ACT

57. The averments set forth in Paragraphs 1 through 67, above, are incorporated by reference as if the same were set forth more fully at length herein.

58. The above-referenced actions violate the Pennsylvania Human Relations Act, which prohibits discrimination in employment, including but not limited to, adverse employment action, based upon race.

WHEREFORE, Intervenor, Joyce Johnson-Clayter, respectfully requests judgment in her favor, and against Defendant, and an award granting her relief including but not limited to the following:

- a) Back pay and all other benefits, perquisites, and compensation which Plaintiff would have received since May 7, 2002 had she maintained her employment with Defendant, including but not limited to lost wages, pay increases, and bonuses;
- b) Front pay;
- c) Reimbursement for all costs, expenses, and financial losses Plaintiff has incurred as a result of the above-described actions;
- d) Reasonable attorneys' fees and costs;
- e) Compensatory damages; and,

f) Such other relief as the Court may deem appropriate.

KOZLOFF STOUDT

Professional Corporation

_____/s/_____

Jeffrey R. Elliott, Esquire

Attorneys for Intervenor

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v.	:	No. 04-3331
	:	
ENCOMPASS INSURANCE, INC., a	:	
subsidiary of ALLSTATE	:	
CORPORATION,	:	
	:	
Defendant	:	
	:	
and	:	
	:	
JOYCE JOHNSON-CLAYTER,	:	
	:	
Intervenor	:	Assigned to: J.

CERTIFICATE OF SERVICE

I, JEFFREY R. ELLIOTT, ESQUIRE, and Kozloff Stoudt, Attorneys for Intervenor, Joyce Johnson-Clayter, certify that on March __, 2005, the foregoing **Complaint** was served upon the following party via U.S. First Class Mail:

Marisol Ramos, Esquire
U.S. Equal Employment Opportunity Commission
21 South 5th Street, Suite 400
Philadelphia, PA 19106-2515

Marjorie A. George, Esquire
Ballard, Spahr, Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
Attorneys for Encompass Insurance/Allstate Insurance Company

This Certificate is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

KOZLOFF STOUDT
Professional Corporation

_____/s/_____
Jeffrey R. Elliott, Esquire