

The U.S. Equal Employment Opportunity Commission

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## JUDGE IN DIAL SEXUAL HARASSMENT CASE DENIES SOAP MAKER'S 'EVE OF TRIAL' BID ON PUNITIVE DAMAGES ISSUE

*Trial Begins Monday; Jury To Determine Punitive Damages On Class Basis As Sought By EEOC*

CHICAGO - The U.S. Equal Employment Opportunity Commission (EEOC) has received an Order from Senior District Judge Warren K. Urbom denying The Dial Corporation's request that the Court reconsider and reverse a February 14, 2003, Order providing for the jury in the EEOC's sexual harassment case against Dial to determine punitive damages on a class-wide basis at the end of the opening "pattern or practice" phase of the trial (4/22/03 Memorandum and Order, *EEOC v. The Dial Corporation*, N.D. Illinois No. 99 C 3356).

The federal court jury trial in the EEOC class case challenging a pattern or practice of sexual harassment of female employees at Dial's facility in suburban Aurora, Illinois, begins Monday in Chicago. Dial is the internationally known soap manufacturer associated for years with the slogan "*Aren't you glad you use Dial? Don't you wish everybody did?*" The Aurora plant is the United States facility for manufacturing bar soaps bearing the company's flagship "Dial" brand, and other brands including "Coast," "Tone," and "Pure & Natural."

Punitive damages, according to EEOC, are money damages awarded to victims of misconduct *not* to compensate the victim for the harm suffered but, rather, to *punish* the wrong-doer for reprehensible conduct and to *deter* the wrong-doer and others from engaging in such conduct in the future.

In its motion, Dial had relied upon the recent decision of the United States Supreme Court in *State Farm Mutual Automobile Insurance Co. v. Campbell* to argue that punitive damages could only be awarded on an individualized basis in a later stage of the case and not in an aggregate amount to the entire class of victims of the claimed pattern of harassment.

In denying Dial's contention, Judge Urbom wrote that the original jury empaneled in the case will render its decisions in two phases:

"Phase I should result in a finding by the jury of whether and when a pattern or practice of tolerating sexual harassment existed. \* \* \* Phase II, if Phase I ends in [EEOC's] favor, would end with a verdict of whether the pattern or practice was done with malice or reckless indifference to the federally protected rights of class members, including an amount to be awarded to the aggrieved persons of the

class. \* \* \* In Phase II . . . the remaining question for this jury is to determine what amount, if any, is needed for purposes of punishment and deterrence of [Dial] and others."

Judge Urbom said that additional juries in later separate "Phase III" proceedings may also make individualized findings as to both compensatory and punitive damages and "this means there may be jury findings of amounts of punitive damages in both Phase II and Phase III [and that] Phase IV may consist of the judge's deciding what distribution should be made of punitive damages guided by both the verdicts in Phase II and Phase III."

In an August 9, 2001, decision *denying* Dial's Motion for Summary Judgement - that is, denying Dial's effort to have the case decided in its favor without a trial - Judge Urbom wrote:

"Taking the EEOC's version of the facts as true, it appears that the work environment at Dial was sexually charged in a way that was offensive and demeaning to women. Several women testified that they were subjected to physically-invasive behavior by male employees. This alleged behavior ranged in severity from men touching women's breasts and buttocks to an incident where a male co-worker grabbed a class member by the crotch and jerked upward. In addition, male employees allegedly exposed themselves to their female co-workers or touched their genitals while making suggestive or threatening remarks. Dozens of women also indicated that they were the targets of repeated comments and conduct of a sexual nature. Finally, many women testified as to open displays of sexually offensive materials in the workplace, including pornographic magazines, pornographic calendars, pictures of nude women, pictures of scantily-clad women, and sexual cartoons."

"I have already concluded that the EEOC has presented sufficient evidence for a reasonable jury to find that Dial either knew or should have known of a plant-wide sexual harassment problem. I have also determined that there is little, if any, evidence demonstrating that Dial took steps to determine whether individual incidents, which occurred frequently and continuously, were indicative of a larger problem requiring a company-wide response. In light of these conclusions, I am not persuaded that Dial's efforts to prevent harassment on a plant-wide basis were reasonable as a matter of law." 8/9/2001 Memorandum & Order, *EEOC v. The Dial Corporation*, N.D. Illinois No. 99 C 3356, at pages 23-24, 30 (internal punctuation, citations omitted).

With respect to this week's Order, EEOC's Regional Attorney in Chicago, John Hendrickson, said, "EEOC has always sought two things in this case: An open and visible jury trial of the issues - sunlight continues to be the best disinfectant - and a trial process assuring that the determination of punitive damages is inextricably tied to the broadest possible record of evidence."

Hendrickson continued, "For EEOC, that has meant that the same jury which hears the full body of evidence regarding Dial's pattern and practice of sexual harassment - if it finds that Dial is liable - should also render a verdict on the issue of punitive damages due the victim class as a whole. That was the process the Court adopted in its February 14 decision Accordingly, EEOC welcomes Judge Urbom's decision not to reverse himself on this issue, as well as his further refinement of the punitive damages procedures for trial."

Noelle Brennan, the EEOC Supervisory Trial Attorney leading the government litigation effort at trial, added, "This important decision clears away the last significant procedural hurdle before trial. EEOC is ready to go. The women who work and have worked at Dial and who have waited for their day in court are ready to go. Judge Urbom's decision sets the stage for what we believe will be a complete and fair public airing of the issue of sexual harassment at Dial in the most appropriate place of all, a court of law, in which all sides, including Dial, will have the chance to present their case directly to the jury."

The trial of the case will begin with jury selection and, possibly, opening statements this **Monday, April 28, 2003, at 9:00 a.m., in Courtroom 1725 of the Dirksen Federal Court Building at 219 South Dearborn Street in Chicago's Loop**. The litigation is the largest class sexual harassment case brought by EEOC since the *Mitsubishi* case which was ultimately resolved by a Consent Decree

providing for the distribution of \$34 million to 486 female employees and former employees of Mitsubishi's automobile assembly plant in "downstate" Bloomington-Normal, Illinois.

John Hendrickson, Noelle Brennan, and EEOC Chicago District Office Trial Attorney John Knight will conduct the trial of the *Dial* case before Judge Urbom. The litigation follows an administrative investigation of a 1996 charge of discrimination filed against Dial with the EEOC in Chicago, and an administrative finding by the agency's District Director in Chicago, John P. Rowe, that there was "reasonable cause" to believe that Dial had violated Title VII of the Civil Rights Act of 1964 by sexual harassment of its female employees. After EEOC's efforts to voluntarily conciliate the matter with the company proved futile, the lawsuit was filed May 20, 1999. The agency's investigation and conciliation efforts were overseen by District Director Rowe. Hendrickson, Brennan and Rowe are all veterans of the *Mitsubishi* case.

Dial's corporate headquarters are located in Scottsdale, Arizona. On its internet web-site ([www.dialcorp.com](http://www.dialcorp.com)), the company describes itself as a \$1.3 billion corporation with 2,300 employees worldwide. The web-site has also stated that "over 1 million Dial bars are sold in the U.S. every day."

In an April 8, 2003 presentation to the Bank of America Securities 4th Annual Consumer Conference, Herb Baum, the President, Chairman, and Chief Executive Officer of Dial, said that "Dial is sitting with a lot of cash." Baum stated that Dial ended the year 2002 with \$220,000,000 in cash and expected to add another \$100,000,000 in cash during the year 2003.

Dial is represented by the Seyfarth Shaw law firm in Chicago.

EEOC is the federal agency responsible for enforcing Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on sex (including sexual harassment), race, religion, color or national origin. The EEOC is also responsible for enforcing the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963, and Title I of the Americans with Disabilities Act. Further information about the Commission is available on the agency's web site at [www.eeoc.gov](http://www.eeoc.gov).

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[Return to Home Page](#)