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Federal Judge Rules EEOC Suit Against Dial Soap Can Proceed As Class "Pattern or Practice" Case

Major Victory for Commission in Biggest Sexual Harassment Suit Since Mitsubishi

CHICAGO - The U.S. Equal Employment Opportunity Commission (EEOC) has released the decision of the federal court here holding that the agency's major class sexual harassment lawsuit against the maker of Dial soap will go ahead toward trial. In a 46-page written decision dated August 9, 2001, District Judge Warren K. Urbom denied virtually every argument advanced by The Dial Corporation in support of its Motion for Summary Judgment against EEOC. In the case, EEOC v. The Dial Corporation, N.D. Illinois No. 99 C 3356, EEOC alleges a wide-spread pattern or practice of sexual harassment of women at Dial's Aurora, Illinois, facility stretching back to 1988. According to EEOC, one of the most significant aspects of the decision was the determination that the case against Dial would go forward as a class "pattern or practice" case, similar to its class sexual harassment case against Mitsubishi Motors Manufacturing of America which was resolved three years ago for \$34 million.

In holding that EEOC had produced enough evidence to thwart Dial's effort to avoid a trial on the merits in the case, 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." EEOC v. The Dial Corporation, N.D. Ill. No. 99 C 3356, 8/9/2001 Mem. & Order, pp. 23-24, 30 (internal punctuation, citations omitted).

John C. Hendrickson, EEOC Regional Attorney in Chicago said, "A generation came of age with Dial's advertising jingles and its assurances that Dial stands for cleanliness and wholesomeness. EEOC's contention is that the reality at Dial was altogether different. Judge Urbom's decision means that our contention will be presented in open court. We expect to show that the maker of Dial soap, the sponsor of those messages, was subjecting its own female employees the very women who make the soap to a pattern or practice of sexual harassment which continued for years."

Hendrickson added, "At enormous cost, Dial pulled out all of the stops to prevent this case from going forward and to prevent EEOC's claims on behalf of Dial's female employees from being aired in court. It is clear from the

Court's decision, and Dial should have known from the beginning, that strategy was doomed. Sunlight is the best disinfectant. We are optimistic that sexual harassment at Dial is going to be cleaned up and that its victims are going to be made whole."

Noelle Brennan, EEOC Supervisory Trial Attorney, said "This is the largest sexual harassment case EEOC's Chicago District Office has litigated since Mitsubishi. We believe Judge Urbom's decision is extraordinarily important because it nails down many of the legal principles which we pursued and realized in Mitsubishi. These principles include that EEOC can litigate large sexual harassment cases by proceeding on behalf of the women victims as a group and by challenging the policies and practices of employers such as Dial which permit sexual harassment to continue as a routine way of doing business."

EEOC Trial Attorney John Knight said, "If you want to attack sexual harassment effectively, you have to be able to litigate what employers are doing and not doing in permitting it to continue. Prosecuting purely individual claims on a purely individual basis would take forever and preclude any real solution. That is why in cases such as this one against Dial the ability to proceed on behalf of all victims at the same time is important. Cases like this, and the multi-million dollar exposures they generate for recalcitrant employers are, in our judgment, the best way to do something serious about the problem."

EEOC noted that the Court did dismiss the claims of approximately one dozen women who the EEOC alleged had suffered "gender discrimination" rather than sexual harassment. Excluding those individuals, EEOC will proceed on behalf of approximately 90 remaining victims. EEOC said that if a jury were to award each of those women the \$300,000 compensatory and punitive damages maximum permitted under the Civil Rights Act of 1991, Dial's aggregate liability in the case could exceed \$25 million.

EEOC is responsible for enforcing Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on sex (including sex harassment), race, religion, and national origin, or on retaliation for asserting rights under Title VII; 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.

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