

The U.S. Equal Employment Opportunity Commission

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FEDERAL COURT RULES AGAIN: ALL EEOC CLAIMS AGAINST SIDLEY & AUSTIN FOR AGE BIAS WILL GO FORWARD

Judge Says EEOC Ability to Seek Money for Expelled Partners is Derived from Public Interest

CHICAGO - U.S. District Judge James B. Zagel today, for the second time, denied a request of Sidley Austin Brown & Wood, the giant Chicago-based international law firm, that the U.S. Equal Employment Opportunity Commission (EEOC) be barred from obtaining monetary relief in the agency's class age discrimination lawsuit for attorneys expelled from the firm partnership.

Today's ruling came in response to a Sidley motion asking the Court to reconsider and reverse its June 9, 2005, ruling denying the firm's motion for summary judgement and holding that the EEOC could obtain monetary relief for "partners" expelled on account of their age or forced to retire (EEOC v. Sidley Austin Brown & Wood, N.D. Ill. No. 05 C 0208, filed January 13, 2005).

In holding that the EEOC may obtain monetary relief in the case as well as injunctions, Judge Zagel ruled that the U.S. Supreme Court's 2002 landmark decision in EEOC v. Waffle House, Inc. (534 U.S. 279) was controlling, writing: "Waffle House makes clear that EEOC's ability to seek monetary relief on behalf of individuals is derived from its own statutory rights to advance the public's interest and is unrelated to any individual's right."

The EEOC lawsuit is a "class" age discrimination case brought, first, with respect to 31 former Sidley & Austin partners who were involuntarily downgraded and expelled from the partnership in October 1999 on account of their age; and, second, with respect to other partners who were involuntarily retired from Sidley & Austin since 1978 on account of their age pursuant to a mandatory retirement policy. The Age Discrimination in Employment Act (ADEA) prohibits employers with 20 or more employees from making employment decisions, including decisions regarding the termination of employment, on the basis of age (over 40). The ADEA also prohibits such employers from utilizing policies or rules which require employees to retire when they reach a particular age (over 40).

The EEOC regional attorney in Chicago, John Hendrickson, said, "Our view has always been that Sidley's arguments about remedies in this case just cannot survive what the Supreme Court had to say in Waffle House. Judge Zagel has now ruled twice in our favor on this issue, so we think the writing is on the wall. At the end of the day, Sidley partners who fell to age discrimination are going to be receiving significant monetary relief from the jury."

Today's U.S. District Court decision entered by Judge Zagel was the fourth significant decision in the history of the case, all in favor of the EEOC. Zagel had ruled in favor of the EEOC on the same issue. During the EEOC administrative investigation which predated the suit, Sidley refused to comply with an agency subpoena and forced the EEOC to seek court enforcement. EEOC's position was upheld by the District Court in Chicago in February 2002 (EEOC v. Sidley & Austin, N.D. Illinois No. 01 C 9635 2/11/2002; District Judge Joan Humphrey Lefkow). Thereafter, Sidley elected to appeal, but the District Court decision was upheld in respects material to the EEOC. In an October 24, 2002, opinion written by U.S. Seventh Circuit Court of Appeals Judge Richard A. Posner, Sidley was ordered to comply in significant part with the EEOC subpoena (EEOC v. Sidley & Austin, 315 F.3d 696, 7th Cir. 2002).

Judge Zagel also ruled today, in response to a Sidley request, that he would certify his decision for appeal to the U.S. Court of Appeals for the Seventh Circuit, if Sidley wished to pursue an appeal and submits "a proposed order containing the question or questions to be certified. EEOC's Hendrickson said, "We certainly are not going to attempt to predict whether Sidley will in fact attempt an appeal. We do think, however, that with or without an appeal the result is going to remain the same."

Sidley Austin Brown & Wood is the law firm which resulted from the merger of Sidley & Austin and New York-based Brown & Wood in May 2001. According to its web site (www.sidley.com), Sidley & Austin describes itself as "a significant legal power in the international arena," with "about 1,500 lawyers practicing on three continents." The firm has offices in Chicago, Dallas, Los Angeles, New York, San Francisco, Washington, D.C., Beijing, Brussels, Geneva,

Hong Kong, London, Shanghai, Singapore and Tokyo.

In addition to enforcing the ADEA, the EEOC enforces Title VII of the 1964 Civil Rights Act, which prohibits employment discrimination based on race, color, religion, sex (including sexual harassment or pregnancy) or national origin and protects employees who complain about such offenses from retaliation; the Equal Pay Act of 1963, which prohibits gender-based wage discrimination; the Rehabilitation Act of 1973, which prohibits employment discrimination against people with disabilities in the federal sector; Title I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's web site at www.eeoc.gov.

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