

The U.S. Equal Employment Opportunity Commission

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EEOC Charges Sidley & Austin With Age Discrimination

Federal Agency Says Chicago-Based International Law Firm Chose Attorneys for Expulsion Because of Their Age

CHICAGO - The U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit in federal court here today alleging that Sidley Austin Brown & Wood, the giant Chicago-based international law firm, violated the Age Discrimination in Employment Act (ADEA) when it selected "partners" for expulsion from the firm on account of their age or forced them to retire. 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.

The EEOC case 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 of 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 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).

Eric Dreiband, General Counsel of the EEOC, said, "The Age Discrimination in Employment Act makes it unlawful for employers to discriminate against any individual with respect to employment because of such individual's age. The United States Equal Employment Opportunity Commission determined that Sidley, Austin, Brown & Wood violated the Age Discrimination in Employment Act, and the Commission looks forward to proving its case to a jury."

Today's lawsuit grew out of an EEOC administrative investigation managed by John P. Rowe, Director of EEOC's Chicago District Office. Sidley & Austin was given notice of the investigation in July 2000. Although there was media coverage of the October 1999 changes at Sidley & Austin, the EEOC matter did not come into public view until Sidley & Austin refused to honor an EEOC subpoena, and the agency took the firm to court to enforce the subpoena.

EEOC's position was upheld by the District Court in Chicago in February 2002. (Case citation: *EEOC v. Sidley & Austin*, N.D. Illinois No. 01 C 9635 (2/11/2002; District Judge Joan Humphrey Lefkow), 2002 WL 206485, 88 Fair Empl. Prac. Cas. (BNA) 64.) Thereafter, Sidley & Austin 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. (Case citation: *EEOC v. Sidley & Austin*, 315 F.3d 696 (7th Cir. 2002).)

In July 2004, Chicago District Director Rowe made an administrative determination that there was reasonable cause to believe that Sidley & Austin has violated the ADEA in connection with the October 1999 expulsions and downgrades and in implementing its mandatory retirement policy since 1978. Thereafter, the EEOC and Sidley engaged months of discussions in an attempt to resolve the case through conciliation without litigation. However, those negotiations proved futile.

EEOC's Regional Attorney in Chicago, John C. Hendrickson, said that in resisting the EEOC investigation and in forcing the EEOC to obtain judicial enforcement of its subpoena, "Sidley's unwavering position has been that the matters involving how the law firm dealt with those it referred to as 'partners' and whether it

engaged in discrimination were simply way beyond the reach of the ADEA and EEOC." However, according to Hendrickson, the EEOC administrative investigation revealed that, "except for a very few controlling partners at the very top, Sidley's lawyers appeared to be ordinary employees not unlike their colleagues at parallel levels in the business community and, therefore, covered by the ADEA."

Hendrickson said, "Whatever titles Sidley had decided to give these lawyers partner, counsel, or otherwise our investigation indicated that they had no voice or control in governance of the firm and that they could be and were fired just like any other employees without notice and without the vote or consent of their fellow attorneys. A small self-perpetuating group of managers at the top ran everything, and that was it end of story."

"Of course," added EEOC Trial Attorney Deborah Hamilton, "having the power to fire an employee does not mean that a law firm or any other covered employer can do so because of the employee's age, if the employee is over 40. That is a violation of the ADEA and that the making of unlawful age-based selections for termination is precisely what EEOC is targeting in this lawsuit."

The lawsuit filed was filed today in the U.S. District Court for the Northern District of Illinois, Eastern Division, located in Chicago. It is captioned *EEOC v. Sidley Austin Brown & Wood*, and is Civil Action No. 05 C 0208. The case has been initially assigned to U.S. District Judge James B. Zagel.

On its Internet web site (www.sidley.com), Sidley & Austin describes itself as "a significant legal power in the international arena," with "about 1500 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 Age Discrimination in Employment Act of 1967, which protects workers age 40 and older from discrimination based on age, EEOC enforces Title VII of the Civil Rights Act of 1964, 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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