

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON DIVISION

CIVIL ACTION NO. 1-339

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

APPELLEE

v.

**OPINION AND ORDER**

WAL-MART STORES, INC.

APPELLANT

\* \* \* \* \*

The Equal Employment Opportunity Commission (“EEOC”) filed a Motion to Bifurcate the Trial and Discovery in this action.[R. 64] After reviewing both parties’ submissions on the issues, the court GRANTS the motion to bifurcate the trial, DENIES the motion to bifurcate discovery and continues the question as to the proper stage for considering punitive damages.

On August 24, 2001, the EEOC filed a complaint, alleging that Wal-Mart Stores, Inc. (“Wal-Mart”) had engaged in a pattern of hiring discrimination based on gender at its store in London, Kentucky in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). The EEOC is litigating this case as a “pattern and practice” action, and thus all trial considerations must be considered in light of this fact.

The EEOC has requested a number of alterations to the current trial schedule. One of their requests is that this court schedule a telephone conference in order to determine future scheduling issues. This motion for a conference is GRANTED, but the court will require the parties to appear by counsel in **FRANKFORT**, Kentucky on **July 24, 2006 at 10:00 a.m.** The Plaintiff EEOC has also requested that this court bifurcate the trial into two stages, a Stage 1 “liability” phase and a Stage 2 “damages” phase. In its response, Wal-Mart agrees that such a bifurcation should occur, and thus

the court will grant the motion to proceed at trial in two distinct stages.

The EEOC however also asks that discovery in this case be bifurcated, with class member discovery being stayed until after the Stage 1 liability trial is completed. The Commission contends that it is unnecessary for Wal-Mart to take discovery of or even know, the class as a whole. In addition, it argues that identification at this point would be impractical and that deposing these class members would be too costly. As support for this proposition, the EEOC cites *Teamsters v. United States*, 431 U.S. 324, 360-61, which holds that the Government is not required to offer evidence at the liability phase that each person in the class was a victim of the policy in question.

While the Commission is correct that it is not required to prove individual damages at Stage 1, that does not mean that defendants do not have a right to know the identity of the parties that the Commission claims were discriminated against. In a “pattern and practice” case, it is up to the plaintiff to provide proof by a preponderance of the evidence that an employer has regularly followed a policy of discrimination. *See Teamsters*, 431 U.S. at 336. In order for a defendant to counter the evidence, it must be able to show that the policy was not in place as the plaintiff contends. If defendant is limited to deposing only those individuals hand selected by plaintiff (and thus presumably favorable to its case), the defense is necessarily limited.

This is not to suggest that the defendant will be able to counter each individual plaintiff brought forward by the Commission at trial with evidence of the specific reason they were not hired or discharged. These individual determinations are Stage 2 questions and are not to be used to determine the initial liability. However the defendant is entitled to know what it is up against in terms of class size and potential claimants. This is essential not only for its defense, but for an understanding of the scope of the case before the Court.

Many of the Commission's worries, such as the abuse of the discovery process or the cost of multiple depositions by the defendant done in order to delay the case, will be monitored and controlled through this Court's supervision of the discovery process. Allowing the defendant to understand the scope of the class size does not give it carte blanche to delay the proceedings and obstruct the movement of the case. But at this point, defendant is entitled to know the full extent of the Commission's claims and the size of the potential class. These issues may not be relevant evidence at trial, but can be crucial in pre-trial preparation.

Because the nature of this case has changed, it is necessary to reschedule many of the dates and deadlines. [R. 66, 80, 81] Thus the Court GRANTS the motion of the plaintiff to set a scheduling conference. This conference will be part of a hearing, set for July 24, 2006. At that time, both parties should be prepared to argue the issue of punitive damages and their appropriate place in bifurcated proceedings.

The Motion to Bifurcate the trial is thus GRANTED, the Motion to Bifurcate discovery is DENIED and the issue of punitive damages will be determined at a later date. The Court notes that all counsel are located in Louisville, Kentucky and Indianapolis, Indiana. Accordingly, the status/scheduling conference will be conducted in **FRANKFORT, KENTUCKY**.

This the 30<sup>th</sup> day of March, 2006.



**Signed By:**

***Karen K. Caldwell***

Handwritten signature of Karen K. Caldwell, consisting of stylized initials "KCC".

**United States District Judge**