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U.S. DISTRICT COURT

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

EQUAL EMPLOYMENT	:	
OPPORTUNITY COMMISSION,	:	
	:	Civil Action No. 03-cv-4404(FSH)
Plaintiff,	:	
and	:	
ROSEMARIE SKIFF,	:	
	:	<b>COMPLAINT IN</b>
Intervening Plaintiff,	:	<b>INTERVENTION</b>
v.	:	
CLIFFORD B. FINKLE, JR., INC. and	:	
DOUGLAS DOWLING,	:	<b>JURY TRIAL DEMANDED</b>
	:	
Defendants.	:	

**NATURE OF ACTION**

This is a Complaint in Intervention on behalf of the Intervening Plaintiff, Rosemarie Skiff (hereinafter, "Intervening Plaintiff"), the aggrieved party in the case of EEOC v. Clifford B. Finkle, Jr., Inc., Civil Action No. 2:03 - CV - 04404(FSH). That case alleges that the Intervening Plaintiff suffered sex harassment and a sexually hostile work environment in violation of Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, by defendant Clifford B. Finkle, Jr., Inc. This Complaint in Intervention joins in those claims, and adds both additional causes of action and defendants. Specifically, this Complaint in Intervention sets forth additional claims for violation of the New Jersey Law Against

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Discrimination; New Jersey and Indiana tort claims, including intentional infliction of emotional distress, negligent infliction of emotional distress, and assault and battery; and claims under arising under 42 U.S.C. § 1983, Bivens, and the Fifth Amendment to the United States Constitution. The Complaint in Intervention also adds as a defendant Douglas Dowling, defendant's director of operations. This action seeks compensatory damages, punitive damages, exemplary damages, emotional distress and mental anguish and humiliation damages, property damages, as well as costs of suit and attorneys' fees.

#### JURISDICITON AND VENUE

1. Jurisdiction in this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This Court has supplemental jurisdiction over Intervening Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. Venue lies in this court pursuant to 28 U.S.C. § 1132 and 1391(b). This is a Complaint in diversity and the amount in dispute exceeds \$75,000.

#### PARTIES

2. Intervening Plaintiff, Rosemarie Skiff, resides at 1246 East Thompson Road, Indianapolis, Indiana 46227. Intervening Plaintiff has been, and remains, an employee of Clifford B. Finkle, Jr., Inc. (hereinafter, "Finkle") for several years.

3. At all relevant times hereto, Finkle has had its principal place of business, and headquarters, at 435 Allwood Road, Clifton, Passaic County, New Jersey and has employed more than 15 employees.

4. At all relevant times, Finkle has been an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. § 2000e (b) (g) and (h). Finkle is also a contractor with a federal entity, the United States Postal Service ("USPS"), and provides and

performs functions and duties for the USPS that would otherwise be performed exclusively by the USPS. The USPS exercises substantial control over the employees of Finkle, including the Intervening Plaintiff, such as discipline and fines issued on government forms.

5. Defendant Douglas Dowling has been, at all relevant times, the Director of Operations of Finkle and has ultimate supervisory duty and responsibility for the Intervening Plaintiff's working conditions, and he is located at 435 Allwood Road, Clifton, New Jersey, and at the Finkle facility at 1001 Hopewell Avenue, Ocean Tp., New Jersey, 07712.

#### **ADMINISTRATIVE EXHAUSTION**

6. More than 30 days prior to the institution of this Complaint in Intervention, the Intervening Plaintiff filed a charge of discrimination with the EEOC alleging violations of Title VII by Defendants. All requisite conditions precedent to the institution of the suit have been met. There are no exhaustion requirements applicable to the any of the other federal and state law claims.

#### **FACTUAL ALLEGATIONS**

7. Defendant Finkle is an over the road trucking business which is under contract with the USPS to truck and transport U.S. mail.

8. The Intervening Plaintiff has been employed as a truck driver for Finkle, and she transports the US mail. She is primarily employed in Indiana, and works with several male co-workers and a male supervisor, who is, in turn, supervised by defendant Dowling.

9. Beginning in about 2000, and continuing to date, Intervening Plaintiff was and is subjected to extreme, persistent, and pervasive, sex harassment and a sexually hostile work environment. This conduct consists of actions and conduct including, but not limited to:

- a) continual verbal abuse based upon her sex, such as repeatedly being called "bitch," "cunt," and other similar sexually derogatory phrases and insults;

- b) removing the air hose from her truck;
- c) lowering the trailer of her truck cabin, thereby requiring Intervening Plaintiff to repeatedly manually raise the cabin;
- d) repeatedly placing foul and offensive odors, and dangerous chemicals, in the vent of the cab of her truck, making the cab unsafe, unbearable and intolerable, causing physical harm to Intervening Plaintiff and damage to her truck;
- e) draining antifreeze and other fluids from her truck;
- f) removing the seal on the brakes of her truck;
- g) commenting that they hoped that she died, or was unable to return to work, as a result of an operation unique to females, and that if she would return to work, they would have to take additional measures to insure that she did not work;
- h) commenting that they hoped that by forcing her to manually raise her cabin, they had caused the physical harm for which she needed surgery;
- i) vandalizing, sabotaging and tampering with her brake line;
- j) making repeated and continual derogatory comments about her sex;
- k) causing bodily harm, or attempting bodily harm, to Intervening Plaintiff;
- l) causing harm to Intervening Plaintiff's property;
- m) assigning Intervening Plaintiff to less favorable truck runs in violation of her seniority, thereby ignoring rules that it had traditionally followed;
- n) providing inferior equipment upgrades to Intervening Plaintiff as compared to those provided to the male drivers;
- o) directing Intervening Plaintiff to take a drug test when no male driver was directed to take such a test;
- p) failing to respond to, comply with, and provide FMLA leave as required by law.

10. All of the foregoing conduct was intentional, deliberate, malicious, based upon her sex, and/or in retaliation for filing a discrimination charge.

11. All of the foregoing conduct was encouraged by, and directly and actively participated in, by her supervisor, who had authority over her employment.

12. All of the foregoing acts, and others, were persistent, severe and pervasive, and were for the purpose of, and had the effect of, harassing the Intervening Plaintiff and causing a hostile work environment based upon gender.

13. As a result of these actions, and others, the Intervening Plaintiff was in fear for her safety, life, and in fear of bodily harm, and in fact she suffered harm to herself and her property.

14. As a result of the foregoing actions, and others, the Intervening Plaintiff's work environment was rendered unbearably hostile based upon her sex, and she suffered sex harassment.

15. The Intervening Plaintiff was unable to complain to her superior as he was an active participant in the harassment. Intervening Plaintiff complained to defendant Dowling about the conduct, but he took no remedial action. Plaintiff again complained to Dowling, and he again took no remedial action.

16. In addition, a co-worker of Intervening Plaintiff, who was witness to many of the incidents and comments, complained to Dowling about the conduct, but no remedial action was taken.

17. Finally, Intervening Plaintiff filed a charge with the EEOC, and it was only when that charge was served on the defendant Finkle that Dowling investigated the charges and took some remedial steps. However, Dowling and Finkle have continued to harass and discriminate against Intervening Plaintiff, and/or have allowed others to do so, since that time.

18. After the Intervening Plaintiff filed a charge with the EEOC, retaliatory actions were taken against her that adversely affected her work environment and duties.

19. The defendants did not have appropriate sex harassment and hostile work environment policies in existence, or available to the employees and supervisors, and did not conduct training of employees or managers.

### **COUNT ONE**

#### **Title VII**

20. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 19 as if fully set forth at length herein.

21. Defendant Finkle engaged in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964 and 1991 by subjecting Intervening Plaintiff to a sexually hostile work environment, subjecting her to sex harassment, without taking remedial action, despite having actual and/or constructive knowledge of the conduct that was actively participated in by a superior deemed to be upper management, and despite repeated complaints by Intervening Plaintiff and a co-worker to other upper management officers.

22. Defendants failed to comply with the legal requirements to adopt and publicize a policy prohibiting sex harassment and a sexually hostile work environment.

23. Defendants further violated Title VII by retaliating against the Intervening Plaintiff for filing a Title VII charge.

24. Defendants' conduct was based upon gender, and the failure to remediate patently illegal conduct was based upon gender.

## **COUNT TWO**

### **New Jersey Law Against Discrimination**

25. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 24 as if fully set forth at length herein.

26. Defendants Finkle and Dowling engaged in conduct violative of the New Jersey Law Against Discrimination, N.J.S.A.10:5-1 et seq., by subjecting Intervening Plaintiff to a sexually hostile work environment and to sex harassment.

27. Defendant Dowling further violated the Law Against Discrimination by unlawfully engaging in, and aiding and abetting in, the sex harassment and creation of a sexually hostile work environment to which the Intervening Plaintiff was subjected.

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28. Defendants further violated the New Jersey Law Against Discrimination by retaliating against the Intervening Plaintiff for having filed a charge alleging violation of her civil rights.

29. Defendants' actions were deliberate, intentional, malicious, or were recklessly indifferent.

**COUNT THREE**

**Intentional Infliction of Emotional Distress  
(Indiana and New Jersey Tort Law)**

30. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 29 as if fully set forth at length herein.

31. Defendants Finkle and Dowling, themselves and through their agents and supervisors, intended to and did inflict severe emotional distress upon Intervening Plaintiff through the pattern of sexually hostile and harassing conduct set forth above, and through direct physical impact, placing Intervening Plaintiff in fear for her life, causing severe emotional distress and anguish, and damaging and harming her property.

32. Defendants knew, or should have known, that their illegal, outrageous and extreme conduct, and that of their agents, involving and including direct physical impact to her, and damage to her property, would result in emotional distress and mental anguish.

**NEGLIGENT INFLICTION OF EMOTINAL DISTRESS**

**(Indiana and New Jersey)**

33. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 32 as if fully set forth at length herein.

34. The defendants negligently inflicted severe emotional distress and harm on the Intervening Plaintiff and damage to her property.

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**ASSAULT AND BATTERY**

**(Indiana and New Jersey Law)**

35. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 34 as if fully set forth at length herein.

36. The defendants' conduct in sabotaging the Intervening Plaintiff's brake lines and seals, and contamination of her truck cabin, constituted an assault and battery of the Intervening Plaintiff, causing her to be in fear for her life and safety.

37. The defendants' other tampering with Intervening Plaintiffs' truck constituted an assault and battery, rendering her afraid for her life and safety, and causing direct physical harm to her and her property.

38. A co-worker cautioned Intervening Plaintiff that her co-workers were putting her life and safety in jeopardy, confirming the fear that Intervening Plaintiff was experiencing as a result of the physical acts taken by the defendants and their agents.

**VIOLATION OF 42 U.S.C. § 1983,  
BIVENS, AND FIFTH AMENDMENT**

39. Intervening Plaintiff realleges and incorporates herein paragraphs 1 through 38 as if fully set forth at length herein.

40. The defendant Finkle is under contract with the USPS to provide transport of the US mail, thereby performing an otherwise exclusively governmental activity. On information and belief, the contract provides that the USPS controls the operation of the services performed by Finkle and its employees, thereby creating a nexus and interdependence between the defendants and the governmental entity.

41. By way of example only, the Finkle employees, including Intervening Plaintiff, are provided with, and must comply with, a list of work rules to be followed not only when



performing work in the USPS facilities, but also while on the road transporting the mail for and on behalf of the USPS. Violation of any of these rules and procedures shall, and does, result in the direct discipline and punishment of the employees by the USPS, including but limited to fines and discipline, on USPS governmental forms.

42. Based upon the foregoing, and additional factors, defendants, corporate and individual, were and are acting under color of federal law and are governmental actors.

43. The defendants' conduct violates the Intervening Plaintiff's rights under Section 1983, Bivens, and the Fifth Amendment to the United States Constitution.

**WHEREFORE**, the Intervening Plaintiff respectfully prays for an Order and Judgment determining and finding the defendants to be guilty of all of the Counts set forth above, and seeks the following relief against them, separately and/or jointly:

- a) punitive and exemplary damages
- b) compensatory damages
- c) pain and humiliation damages
- d) costs of suit and attorneys' fees
- e) such other relief that the Court and Jury may deem fair and equitable.

**JURY TRIAL DEMAND**

Intervening Plaintiff requests a jury trial on all questions of fact raised by this complaint.

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By: 

Kenneth I. Nowak

DATED: April 21, 2004

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