

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

CHRISTINE ROMERO,

Plaintiff in Intervention

v.

CIV. NO. 02-1090 WJ/ACT

BELL GAS INCORPORATED, et al.,

Defendants.

ORDER

THIS MATTER comes before the Court upon eleven motions filed by the parties all of which are discussed below.

Plaintiff filed a Complaint (Docket No. 1) entitled “Nature of the Action” (“Complaint”) on August 20, 2002. In the Complaint Plaintiff states that:

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Christine Romero who was adversely affected by such practices while by employed by [Defendants]. The Commission alleges that Christine Romero was subjected to verbal and physical sexual harassment by her immediate supervisor, Ray Hidalgo, which created a hostile work environment. The Commission also alleges Christine Romero was retaliated against by the Defendants for complaint about the sexual harassment. As a result, Christine Romero was either discharged or constructively discharged by the Defendant.

In the prayer for relief, Plaintiff seeks a permanent injunction, a change in policies, as well as monetary relief. The monetary relief sought is back pay, compensation for past and future pecuniary losses, compensation for past and future non-pecuniary losses, punitive damages and costs.

Complaint, p.4-5.

The Court held an initial scheduling conference on March 17, 2003. Docket No. 37. An Amended Initial Pretrial Report was entered on May 16, 2003. Docket No. 45. Defendant Raymond Hidalgo filed a notice of filing bankruptcy on May 23, 2003. Docket No. 47. Counsel for Defendants Bell Gas, Incorporated, A-X Propane, Inc., Cortez Gas Company, Black Gold Energy Corporation d/b/a A-X Express Mart and Conoco #155 (“Corporate Defendants”) filed a Motion to Withdraw as Counsel July 31, 2003. Docket No. 93. Mark E. Komer and Nancy Ruth Long filed an entry of appearance for the Corporate Defendants on July 31, 2003. Docket No. 94.

The Corporate Defendants filed an Opposed Motion for Thirty Day Stay and Extension of Time for Defendants to Retain New Counsel on July 16, 2003. Docket No. 85. As grounds the Corporate Defendants states that counsel gave notice on July 3, 2003 that the firm was going to withdraw as counsel and that Defendants needed to obtain new counsel. The Corporate Defendants further stated that depositions were scheduled and responses to discovery were due July 17, 2003. Plaintiff and Plaintiff in Intervention opposed the motion. Plaintiff stated that it opposed the motion because it would extend the discovery deadlines. Plaintiff in Intervention stated it opposed the motion because counsel for the Corporate Defendants continued to represent the Corporate Defendants and the Corporate Defendants had delayed in retaining new counsel. The Court finds that the Opposed Motion for Thirty Day Stay and Extension of Time for Defendants to Retain New Counsel is well taken and will be granted in part. The following deadlines will govern this case:

1. The case will be stayed until **August 18, 2003**.
2. The termination date for discovery is **January 15, 2004**.
3. All discovery motions must be filed by **January 26, 2004**; responses must be filed by **February 9, 2003**; and replies must be filed by **February 23, 2003**.
4. Plaintiff and Plaintiff in Intervention must identify their experts and submit expert

- reports by **October 17, 2003**.
5. Defendants must identify their experts and submit expert reports by **November 17, 2003**.
 6. All pre-trial motions must be filed by **March 4, 2004**; responses must be filed by **March 18, 2004**; and the replies must be filed by **April 1, 2004**.
 7. Plaintiff and Plaintiff in Intervention must submit the pre-trial Report to the Defendant on or before **April 8, 2004**. Defendants must submit the pretrial Report to the Court on or before **April 19, 2004**.

Based on these new deadlines and the new representation by the Corporate Defendants, the Court will make the following rulings on other pending motions:

Plaintiff's Opposed Motion to Compel Responses to Plaintiff Equal Employment Opportunity Commission's First Set of Non-Uniform Interrogatories and First Request for Production of Documents filed June 30, 2003 is denied with permission to refile. Docket No. 67. Counsel for Plaintiff and Counsel for the Corporate Defendants shall confer in good faith within the next twenty (20) days regarding the discovery requests at issue as required by Fed.R.Civ.P. 37(a)(2)(A). If there are any remaining issues to be resolved by the Court, Plaintiff may file a motion to compel no later than thirty (30) days after the entry of this Order.

Corporate Defendants' Motion to Quash Subpoena and Notice of Non-Appearance of Barbara Parks is granted. Docket No. 79. Corporate Defendants Motion for Protective Order and Notice of Non-Appearance for Taxis Baggs (Docket No. 87) and Debra Chittenden (Docket No. 88) are granted. Plaintiff's Opposed Motion to Compel Depositions is denied. Docket No. 89. Plaintiff may take these depositions during the new discovery period.

Corporate Defendants' Motion for Extension of Time for Defendants to Provide Expert Reports will be granted. Docket No. 86. Corporate Defendants state they have not received the raw data on which Plaintiff's expert psychologist has relief on to give to the Corporate Defendants expert.

Within five days of entry of this Order, Counsel will submit a stipulated order requiring Dr. Linda Daniels to submit all her raw data to the expert psychologist retained by the Corporate Defendants.

The remaining pending motions concern Defendant Raymond Hidalgo (“Hidalgo”). Hidalgo’s Motion for Protective Order on June 20, 2003 (Docket No. 60) and Motion for Protective Order, Quash Subpoena and Notice of Non-Appearance (Docket No. 61) will be granted in part and denied in part. The Corporate Defendants’ Motion for Protective Order filed on July 31, 2003 will be granted. Docket No. 98. Plaintiff and Plaintiff in Intervention are seeking discovery against Hidalgo. Plaintiff in Intervention has filed a motion in the U.S. Bankruptcy court seeking relief from the automatic stay. Plaintiff asserts that it is not subject to the automatic bankruptcy stay.

Under the automatic stay provision, a petition filed in bankruptcy “operates as a stay, applicable to all entities of – (1) the commencement or continuation...of a judicial, administrative, or other action or proceeding against the debtor that was or could have commenced before the commencement of the [bankruptcy] case...” 11 U.S.C. §362(a). However, the “filing of a petition...does not operate as stay---(4)...of the commencement of an action or proceeding by a governmental unit to enforce such governmental unit’s police or regulatory power...” 11 U.S.C. §362(b).

Not all agency actions against a debtor are exempt from the automatic stay. The courts have used two tests to determine whether an action fits into the exception. *Eddleman v. United States Department of Labor*, 923 F.2d 782, 791 (10thCir. 1991). The first is the ‘pecuniary purpose’ test. The Court “asks whether the government’s proceeding relates primarily to the protection of the government’s pecuniary interests in the debtor’s property and not to matters of public policy.” *Id.*

The issue is whether the action is “primarily for the purpose of protecting a pecuniary interest.” *Id.* If the proceeding relates to pecuniary interest, the exemption does not apply. Under the “public policy” test, the issue is whether the action is “aimed at effectuating public policy” or “those aimed at adjudicating private rights.” *Id.* Actions whose primary purpose is aimed at advancing private rights are not exempt from the automatic stay. Courts have taken the position that EEOC’s request for money damages under Title VII is different from other actions seeking money damages and thus are exempt from the automatic stay. *EEOC v. Rath Packing Co.*, 787 F.2d 318, 325-26(8th Cir.), *cert. denied*, 479 U.S. 910 (1986)(“when the EEOC acts, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination.”)(citation omitted); *EEOC v. McLean Trucking Company*, 834 F.2d 398 (4th Cir. 1987).

Given the present posture of this case, Plaintiff may proceed against Hidalgo but Plaintiff in Intervention may not. Since the Court has extended the discovery deadlines, the Court will stay all discovery against Hidalgo pending a ruling by the Bankruptcy court on Plaintiff in Intervention’s Motion. If the Bankruptcy court has not ruled on Plaintiff in Intervention’s Motion for Relief from Stay by October 15, 2003, the parties are to notify this Court and a status conference can be scheduled. Plaintiff’s Opposed Motion for Order to Show Cause Why Raymundo Hidalgo Should Not Be Held in Contempt of Court filed July 2, 2003 is denied. Docket No. 72.

IT IS THEREFORE ORDERED THAT:

1) Corporate Defendants’ Opposed Motion for Thirty Day Stay and Extension of Time for Defendants to Retain New Counsel (Docket No. 85) is granted in part and denied in part and that this matter is stayed until August 15, 2003 and the deadlines above will govern the subsequent pre-

pretrial proceedings in this matter;

2) Plaintiff's Opposed Motion to Compel Responses to Plaintiff Equal Employment Opportunity Commission's First Set of Non-Uniform Interrogatories and First Request for Production of Documents (Docket No. 67) is denied;

3) Corporate Defendants' Motion to Quash Subpoena and Notice of Non-Appearance (Docket No 79) and Motions for Protective Order and Notice of Non-Appearance (Docket No. 87 and 88) are granted;

4) Plaintiff's Opposed Motion to Compel Depositions (Docket No. 89) is denied;

5) Corporate Defendant's Motion for Extension of Time for Defendants to Provide Expert Reports (Docket No. 86) is granted pursuant to the deadlines given and that the parties shall submit a stipulated order requiring Dr. Daniels to submit all her raw data to the expert psychologist retained by the Corporate Defendants;

6) Hidalgo's Motion for Protective Order (Docket No. 60) and Motion for Protective Order, Quash Subpoena and Notice of Non-Appearance (Docket No. 61) is granted in part and denied in part and a stay is imposed for all discovery against Hidalgo until October 15, 2003 or sooner if the Bankruptcy court lifts the automatic stay;

7) Corporate Defendant's Motion for Protective Order (Docket No. 98) is granted; and

8) Plaintiff Equal Employment Opportunity Commissioner's Opposed Motion for Order to Show Cause Why Raymundo Hidalgo Should Not be Held in Contempt of Court (Docket No. 72) is denied.


ALAN C. TORGERSON
UNITED STATES MAGISTRATE JUDGE