IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, et al.,

Plaintiffs,

v.

NO. CIV-01-763-HE

TOUCHSTAR AMERICAS, et al.,

Defendants,

ORDER

Plaintiffs Equal Employment Opportunity Commission ("EEOC") and Raul Cantu have filed a motion for partial summary judgment related to certain affirmative defenses asserted by defendants Touchstar Americas ("Touchstar") and The Williams Companies, Inc. ("Williams") in their answers to plaintiffs' complaints. Touchstar and Williams have responded to the motion. Upon review, the Court concludes plaintiffs' motion for partial summary judgment should be granted.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). When applying this standard, the court "view[s] the evidence and draw[s] all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Martin v. Kansas, 190 F.3d 1120, 1129 (10th Cir. 1999)

overruled on other grounds Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Martin, 190 F.3d at 1129.

Plaintiffs' assert in their motion that they are entitled to summary judgment on three affirmative defenses asserted by Touchstar and Williams. These include a claim that plaintiff Cantu failed to exhaust his administrative remedies, a claim that the Oklahoma at-will employment doctrine bars plaintiffs' Title VII claims and a claim that plaintiff Cantu failed to mitigate his damages.

In response to plaintiffs' motion, defendants Touchstar and Williams have conceded that plaintiff Cantu attempted to mitigate his damages and that the employment at-will doctrine does not bar plaintiffs' claims under Title VII. Therefore, plaintiffs' motion for summary judgment on these defenses is GRANTED.

With regard to the exhaustion of administrative remedies, defendants assert that plaintiff Cantu failed to exhaust his administrative remedies against defendants Touchstar Americas, The Williams Companies, Inc., Williams Energy Services, L.L.C. and Williams WPC-Inc. because he failed to name them in his charge of discrimination. Typically, a plaintiff must file a charge against a party with the EEOC before suing that party under Title VII. Knowlton v. Teltrust Phones, Inc., 189 F.3d 1177, 1185 (10th Cir. 1999). However, a Title VII action may proceed against an unnamed party when there is a clear identity of interest between the unnamed party and the party named in the EEOC charge. Id. "This

identity of interest exception satisfies a Title VII purpose that the defendant have notice of the charge and the EEOC have an opportunity to attempt conciliation." Knowlton, 189 F.3d at 1185.

The Tenth Circuit has identified four factors to consider when addressing the identity of interest exception:

> (1) whether the role of the unnamed party could have been ascertained at the time of the filing of the EEOC complaint through reasonable efforts; (2) whether the interests of a named party are so similar to the unnamed party's that it would be unnecessary to include the unnamed party in the EEOC proceedings for the purpose of obtaining voluntary conciliation and compliance; (3) whether the unnamed party's absence from the EEOC proceedings resulted in actual prejudice; and (4) whether the unnamed party has in some way represented to the complainant that its relationship with the complainant is to be through the named party.

Knowlton, 189 F.3d at 1185 n. 9. See also Romero v. Union Pacific R.R., 615 F.2d 1303, 1312 (10th Cir. 1980).

Applying these factors to the instant case, the Court concludes the unnamed defendants had a sufficient identity of interest with the named party such that it was unnecessary to include them in the charge of discrimination. Defendants admit that Touchstar Americas "is not an actual entity," rather it is simply a "division" of Touchstar Technologies, L.L.C. which was named in plaintiff Cantu's charge of discrimination.[1] Furthermore, The Williams Companies, Inc., which wholly owns Williams Energy Services,

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[1]*Until it was sold, Touchstar Technologies, L.L.C. was wholly owned by MAPCO, Inc. MAPCO is wholly owned by Williams Energy Services, L.L.C. which in turn is wholly owned by The Williams Companies, Inc. See Defendants' Corporate Disclosure Statement filed September 28, 2001.*

L.L.C. and Williams WPC-Inc.,[2] responded through in-house counsel to the charges and submitted documents to the EEOC pertaining to the investigation of the charges, including correspondence from plaintiff Cantu to personnel at Williams Energy Services regarding his claims. Based on the close relationship between these entities, the unnamed defendants knew or should of known of the charges made by plaintiff Cantu and have suffered no actual prejudice in defending this action as a result of not being named in the charge. Therefore, the purpose of Title VII has been satisfied and plaintiffs are not precluded from naming Touchstar Americas, The Williams Companies, Inc., Williams Energy Services, L.L.C., and Williams WPC-Inc. as defendants in this suit. Accordingly, plaintiffs' motion for summary judgment on the defense of failure to exhaust is GRANTED.[3]

IT IS SO ORDERED this 24 day of February, 2003.

JOE HEATON
UNITED STATES DISTRICT JUDGE

[2]*Plaintiff Cantu's W-2 form lists Williams WPC-Inc. as his employer.*

[3]*The question of whether the unnamed defendants should be considered the employer of plaintiff Cantu is addressed in a separate Order.*