The U.S. Equal Employment Opportunity Commission

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U.S. SUPREME COURT DENIAL OF REVIEW ENDS SIDLEY & AUSTIN BID TO AVOID MONETARY RELIEF ISSUE IN AGE BIAS CASE

High Court Denies Sidley's Petition for Certiorari and Seventh Circuit Decision Confirming EEOC's Ability to Seek Money, Reinstatement for Affected Partners Is Left Standing

WASHINGTON - In a closely watched case brought by the U.S. Equal Employment Opportunity Commission (EEOC) against the international law firm of Sidley Austin Brown & Wood, the U.S. Supreme Court today issued a written order denying Sidley's petition for high court review of the EEOC's ability to pursue monetary damages and other individual victim-specific relief in EEOC's ongoing age discrimination suit against the firm. (*EEOC v. Sidley Austin Brown & Wood*, N.D. Illinois No. 05 C 0208.)

Today's decision by the Court to deny Sidley's request for review means that the question of EEOC's ability to seek such relief will continue to be governed by the Feb. 17, 2006, decision of the U.S. Court of Appeals for Seventh Circuit on the issue. In that decision, the Seventh Circuit confirmed the EEOC's authority to seek individual relief such as money and reinstatement for partners who were downgraded from partner status by the firm in 1999 and others forced out because of an age-based retirement policy. (*EEOC v. Sidley Austin Brown & Wood LLP*, 406 F.Supp.2d 991 (N.D. Ill. 2005), 437 F.3d 695 (7th Cir. 2006), *cert denied* No. 05-1481 549 U.S. ___ (10/2/2006).)

"The Supreme Court's decision denying Sidley's request for review follows a pattern of Sidley's every attempt to avoid potential monetary liability being unequivocally rejected by the courts at every turn," said John Hendrickson, EEOC Regional Attorney in Chicago.

"Although the Supreme Court did not address the ultimate merits of the question," Hendrickson added, "the Court's decision to deny Sidley's request for review leaves the Seventh Circuit decision in our case standing as the controlling law for the duration of this case through a jury verdict, and there's not a shadow of a doubt about what that law is the EEOC can pursue monetary and other victim specific relief on behalf of the ousted Sidley partners."

In the ongoing litigation, the EEOC asserts that Sidley violated the Age Discrimination in Employment Act (ADEA) by downgrading a group of law firm partners to "senior counsel" or "counsel" status in the fall of 1999 and by maintaining an age-based retirement policy for partners. EEOC's lawsuit seeks monetary damages and reinstatement for these partners. The EEOC's case was filed in the U.S. District Court for the Northern District of Illinois in Chicago on January 13, 2005, and the case is pending before U.S. District Judge James Zagel.

The EEOC's case against Sidley arose out of an investigation by the Chicago District Office into Sidley & Austin's compliance with the ADEA. The investigation did not follow a formal Charge of Discrimination filed by an individual, but began after the agency received a confidential complaint from within the firm and Sidley's management itself made statements to the media that partners had been downgraded to create opportunities for younger lawyers and also referenced the firm's age-based retirement policy.

Sidley first pressed its position against individual relief (including monetary damages) with the District Court, arguing that because none of the individual partners filed a Charge of Discrimination with the EEOC, and therefore could not themselves file an action in court for individual relief, the EEOC could not seek monetary relief with respect to them. Like the Seventh Circuit, Judge Zagel twice rejected that position, first in June 2005 and then again in December 2005.

Relying on Supreme Court precedent, Judge Zagel said: "The EEOC's right to bring suit seeking individual relief goes beyond that of the individual and reaches the territory of public interest, thereby allowing EEOC to seek relief for individuals, like the affected Sidley partners in this case, who could not, for any variety of reasons, do so themselves." *EEOC v. Sidley Austin Brown & Wood, LLP*, 406 F. Supp. 2d 991, 994 (N.D. Ill. 2005).

Judge Zagel did not delay the case while Sidley's request for review of his decision was pending with the Seventh Circuit or the Supreme Court, so discovery has been ongoing. Twenty- seven of the 32 partners who were downgraded from partnership status in the fall of 1999 have asked to be represented by the EEOC in the litigation.

Today's decision follows other significant developments in the case including Sidley's counsel's resignation from its representation of the firm's former financial director, William White, who signed an Oct. 21, 1999, letter to the Social Security Administration stating "it is the general policy of Sidley & Austin not to permit a partner to continue as a partner commencing the first of the year following the year age 65 is reached." In a motion filed with the District Court, the EEOC argued that the representation created a conflict of interest because Sidley and its counsel had previously taken the position that Sidley had never maintained an age-based retirement policy.

In addition to Hendrickson, the EEOC is being represented in the District Court by Supervisory Trial Attorney Gregory Gochanour and Trial Attorneys Deborah Hamilton, Laurie Elkin, and Justin Mulaire, all of the agency's Chicago District Office. Sidley & Austin is represented by Grippo & Elden of Chicago.

Jennifer Goldstein and Carolyn Wheeler of the EEOC's Office of General Counsel Appellate Services in Washington represented the agency before the Seventh Circuit. The Solicitor General of the United States represented the EEOC in the Supreme Court. Carter Phillips of Sidley's Washington, D.C. office was on the brief for the law firm in the Supreme Court.

The EEOC is the federal government agency responsible for enforcing the nation's anti- discrimination laws in employment based on race, color, sex, religion, national origin, retaliation, age and disability. Further information about the agency is available on its web site at www.eeoc.gov.

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