IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, and LORI VAUGHN and BRENDA CONNELL, Plaintiffs-Intervenors, vs. KROGER FOOD STORES, INC., THE KROGER CO., and KROGER LIMITED PARTNERSHIP I, Defendants.	)	CIVIL NO. 99-4187-GPM

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This matter came before the Court on January 8, 2001, for a hearing on Defendants' motion for summary judgment directed against the Equal Employment Opportunity Commission (EEOC) (Doc. 123) and Defendants' motion for summary judgment directed against Plaintiffs-Intervenors (Doc. 124).

The facts of this case are set forth in the previous orders of the Court and the transcripts of court hearings. The Court finds that genuine issues of material fact preclude summary judgment on most of the claims presented. For this reason, the motions for summary judgment were denied on those issues. (See transcript of January 8, 2001, hearing for specifics).

With respect to the statute of limitations argument on the EEOC's claim for monetary damages, however, the Court is persuaded by Defendants' argument that a portion of the EEOC's claim is time-barred. The EEOC seeks injunctive relief which would (1) prohibit Defendants from engaging in sex discrimination, (2) require Defendants to institute policies, practices, and programs which provide equal employment opportunities and which eradicate the effects of past and present discrimination, and (3) require Defendants to provide training to their employees (See Doc. 102). Defendants also seek, however, to recover past and future pecuniary and non-pecuniary losses and punitive damages for not only Plaintiffs-Intervenors, but also a class of female employees.

In this "pattern or practice" suit, the EEOC is acting "both for the benefit of specific individuals who are subject to discrimination by the employer and 'to vindicate the public interest in preventing employment discrimination.'" *Equal Employment Opportunity Commission v. Mitsubishi Motor Mfg. of America, Inc.*, 990 F. Supp. 1059, 1076 (C.D. Ill. 1998) (*quoting General Tel. Co. of the Northwest, Inc. v. E.E.O.C.*, 446 U.S. 318 (1980)). Thus, "[w]hen the EEOC establishes pattern and practice liability, the federal district court is authorized to enjoin the discriminatory practices of an employer." *Id.* at 1077. But, as Judge McDade noted in the *Mitsubishi* case, injunctive relief does not compensate individuals who have been the victims of the discrimination. Thus, "[p]attern or practice cases have . . . been designed in a way that permit individual victims of an employer's pattern or practice of discrimination to obtain individual relief based on a presumption of liability that flows from the pattern or practice finding against the employer." *Id.*

So then the question arises concerning whether individuals whose claims would otherwise be time-barred can recover damages by virtue of the EEOC filing suit on their behalf. This Court

answers that question in the negative. The Court understands the continuing violation doctrine to apply to a series of discriminatory acts against an individual. Thus, it may revive stale claims for an individual when at least one of the discriminatory acts is not time-barred. In this circumstance, however, the EEOC seeks to use the continuing violation doctrine to revive stale claims for individuals where those individuals never filed a charge and were never subjected to a discriminatory act during the limitations period. As the Seventh Circuit has stated, "[a] continuing violation is one that could not reasonably have been expected to be made the subject of a lawsuit when it first occurred because its character as a violation did not become clear until it was repeated during the limitations period." *Dasgupta v. University of Wisconsin Board of Regents*, 121 F.3d 1138, 1139 (7th Cir. 1997). Here, there is no allegation that the individual class members could not have known that the allegedly discriminatory conduct could not have been the subject of a lawsuit until something later happened to someone else employed by Kroger. Thus, under the facts of this case, the Court finds that the continuing violation doctrine is not available to those class members who were subjected to allegedly discriminatory conduct prior to November 19, 1996.

Accordingly, for the foregoing reason and for the reasons stated on the record at the January 8, 2001, hearing, Defendants' motion for summary judgment directed against the EEOC (Doc. 123) is **GRANTED in part and DENIED in part**. The Court finds that the claims of all class members which accrued before November 19, 1996, are barred by the statute of limitations, and accordingly, those claims are **DISMISSED with prejudice**. This includes the claim for past and future pecuniary and non-pecuniary losses and punitive damages by class members **JAN HANNA, KATHY FREY, JETTA ANDERSON, ANN FRICK, JANEE RICHARDSON, CHERYL OSIFCIN, CHRISTY BROWN, KIM BASLER, and KIMBERLY MCROY**. In all other respects, the motions for

summary judgment (Docs. 123 and 124) are **DENIED**.

IT IS SO ORDERED.

DATED this 11th day of January, 2001.

G. PATRICK MURPHY
Chief United States District Judge