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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

5:98-CV-1772 (FJS/GLS)

CARROLS CORPORATION,

Defendant.

APPEARANCES **OF COUNSEL**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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JOHN D. GIANSELLO, ESQ.

SCULLIN, Chief Judge

ORDER

Plaintiff, the United States Equal Opportunity Employment Commission ("EEOC"), brings the present employment discrimination action pursuant to Sections 703, 704 and 707 of Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e-2(a), 3(a) and 6. The EEOC brings the present action on behalf of aggrieved employees of Carrols Corporation pursuant to Section 701(f)(1) of Title VII, as amended, 42 U.S.C. § 2000e-5(f)(1).

Plaintiff's complaint alleges that Defendant Carrols Corporation engaged in an unlawful pattern or practice of sex-based discrimination. Specifically, Plaintiff alleges that Defendant (1) subjected female employees to a hostile work environment, (2) failed to remedy alleged instances of sexual harassment and retaliated against employees who complained of sexual harassment, and (3) constructively discharged employees by failing to remedy the hostile work environment.

Presently before the Court is Defendant's motion for summary judgment and Plaintiff's cross-motion for a continuance to permit additional discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure. The Court heard oral argument in support of, and in opposition to, the instant motions on November 13, 2002, and reserved decision at that time. The following constitutes the Court's determination of the pending motions.

The gravamen of Defendant's argument in support of its motion for summary judgment is that Plaintiff has failed to adduce sufficient evidence to sustain a *prima facie* pattern or practice claim based on a hostile work environment theory.[1] In opposition, Plaintiff contends that it has had an insufficient opportunity to conduct discovery. Specifically, Plaintiff contends that it requires an opportunity to depose approximately fifty of Defendant's present and former managers in an effort to uncover evidence of the manner in which Defendant handled complaints of sexual harassment. Plaintiff's counsel conceded at oral argument that Plaintiff is currently unable to make out a *prima facie* pattern or practice claim and will not be able to do so without

[1] Specifically, Defendant argues that (1) there is no single work environment in this case to support a pattern or practice claim, (2) Plaintiff cannot make out a prima facie case of intentional pattern or practice discrimination, (3) proof of a pattern or practice is irrelevant to individual claims of sexual harassment, (4) the claims underlying Plaintiff's case exceed the scope of the EEOC charge, and (5) the proof contemplated by the EEOC requires bifurcation of the jury trial, which will violate the Seventh Amendment.

the requested discovery.[2]

The Court has conferred with the Magistrate Judge regarding the status of discovery in the instant case. While the deadline to complete written discovery has passed, the Court is advised that several discovery disputes remain unresolved, including two pending motions to compel. *See* Dkt. Nos. 29, 31. Because it appears that that written discovery has not been completed and in view of the fact that the Magistrate Judge has not had the opportunity to pass on the necessity, if any, for discovery by deposition, the Court concludes that Defendant's motion for summary judgment is premature. While Defendant's arguments would support a grant of summary judgement based on the record before the Court at this time, Plaintiff should be allowed additional limited discovery on the issue of whether Defendant engaged in a pattern or practice of intentional discrimination. Accordingly, the Court hereby

ORDERS that Defendant's motion for summary judgment is **DENIED** without prejudice and with leave to renew; and the Court further

ORDERS that Plaintiff's cross-motion for a continuance is **DENIED** as moot; and the Court further

ORDERS that this case is recommitted to the Magistrate Judge with instructions to set new discovery deadlines and to allow additional limited discovery on the issue of whether

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[2] Plaintiff strenuously argues that it need not produce statistical evidence to support its claim of intentional discrimination. While it may be true that statistical evidence is not required as a matter of law, *cf. Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 158-159 (2d Cir. 2001) (citing *Ardrey v. United Postal Serv.*, 798 F.2d 679, 684 (4th Cir. 1986)) (other citation omitted), statistical evidence often forms the cornerstone of a pattern or practice case, *see id.* at 158 n.5; *EEOC v. Morgan Stanley & Co., Inc.*, 206 F. Supp. 2d 559, 563 (S.D.N.Y. 2002) (collecting cases and noting heavy reliance on statistics in pattern or practice cases to establish requisite "gross disparity" in treatment of protected class members).

Defendant engaged in a pattern or practice of intentional discrimination; and the Court further

ORDERS that the parties are to initiate contact with the Magistrate Judge within ten (10) days of the date of this Order; and the Court further

ORDERS that the parties shall renew or file dispositive motions within sixty (60) days of the close of discovery.

IT IS SO ORDERED.

Dated: November 20, 2002
Syracuse, New York

Frederick J. Scullin, Jr.
Chief United States District Judge