

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

v.

ENCOMPASS INSURANCE, INC.,

Defendant.

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CIVIL ACTION

NO. 04-3331

ORDER

AND NOW, on this 12th day of December, 2005, upon consideration of the Defendant's Motion to Dismiss (Doc. 12), the Intervenor's Response in Opposition (Doc. 13), and Defendant's Reply (Doc. 18), **IT IS HEREBY ORDERED** that the Motion is **GRANTED IN PART** ¹ and **DENIED IN PART.** ²

¹ Johnson-Clayter's claim for Intentional Infliction of Emotional Distress ("IIED") is dismissed as time barred. In Pennsylvania, the statute of limitations for an IIED claim is two years. *See* 42 PA. CONS. STAT. ANN. § 5524. Allstate terminated Johnson-Clayter's employment on May 7, 2002. Compl. ¶ 18. Johnson-Clayter filed her motion to intervene on September 29, 2004. *See* Doc. 5. The EEOC filed its complaint on July 15, 2004. Compl. ¶ 25. Therefore, this Court must decide whether the statute of limitations was tolled while the EEOC reviewed Johnson-Clayter's complaint. Courts in this district have held that the Pennsylvania Supreme Court would not toll the statute of limitations for related state tort claims because of the pendency of a discrimination charge before the EEOC. *See e.g. Hartman v. Sterling*, 2003 U.S. Dist. LEXIS 18140 (E.D. Pa. Sept. 10, 2003) (Van Antwerpen, J.). This Court also finds that the statute should not toll. Consequently, Defendant's Motion to dismiss the IIED claim is granted.

² The Court finds that the Complaint sets forth a valid claim for Title VII discrimination. To state a claim for hostile work environment discrimination "a plaintiff must show: (1) that he or she suffered intentional discrimination because of race; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same race in that position; and (5) the existence of respondeat superior liability." *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1081 (3d Cir. 1996). The Plaintiff has an obligation to establish "by the totality of the circumstances, the existence of a hostile or abusive *environment* which is severe enough to affect the psychological stability of a minority employee." *Id.* at 1081 (citing *Andrews v. City of Phila.*, 895 F.2d 1469, 1482 (3d Cir. 1990) (quoting *Vance v. S. Bell Tel. & Tel. Co.*, 863 F.2d 1503, 1510 (11th Cir. 1989))). Johnson-Clayter's Complaint does allege the required demonstrable criteria required by the Third Circuit. She claims she was intentionally discriminated against because of her race (African American) by an employee of Allstate, on a regular and unyielding basis, to a

IT IS FURTHER ORDERED that Defendant shall file an Answer to the Intervenor's Complaint within twenty (20) days of the date of this Order.

BY THE COURT:

/S/ Petrese B. Tucker

Hon. Petrese B. Tucker

point where it caused her physical and psychological harm and could have done so to anyone else in her position. *See* Compl. ¶¶ 12-21, 28-36. Moreover, it is possible that the harassment did severely affect her and impede her ability to do her job. Therefore, Defendant's Motion to Dismiss the hostile work environment claim is denied.