

KANSAS DISTRICT COURT PROVIDES DIRECTION ON DISCOVERY DISPUTES

CAPTION: In *Owens v. Sprint/United Management Co.*, 221 FRD 649 (D. Kansas 2004), the district court provided guidance to resolving discovery disputes that often occur in employment discrimination cases. In particular, the court addressed objections as to relevancy and temporal and geographical scope of the requests.

Plaintiff Cami Owens brought suit against Sprint/United Management Company asserting claims for sex discrimination under Title VII of the Civil Rights Act of 1964, and age discrimination under the Age Discrimination in Employment Act ("ADEA"). Plaintiff claims that Defendant demoted her from her position as Senior Director of International Service Management ("ISM") to a lower-grade managerial position based upon her sex and age when it relocated her Director's position to Virginia and filled it with a younger, male employee.

On November 24, 2003, Owens served Defendant with her Opening Interrogatories and First Request for Production of Documents. Defendant served its initial answers and objections to Plaintiff's discovery requests on December 23, 2003. On January 19, 2004, Defendant served its First Supplemental Answers and Objections to Plaintiff's Opening Interrogatories. After attempting to confer with Defendant to resolve the issue without court action, as required by Fed.R.Civ.P. 37(a)(2)(A) and local rules, Owens filed a motion to compel on January 22, 2004.

After Owens filed the motion to compel, the parties were able to resolve many of their discovery disputes; however, the court still had to resolve one remaining conflict. It dealt with whether defendant had to disclose information relating to any other charges of age and sex discrimination filed against it. Specifically, the plaintiff inquired whether defendant, at any time since March 2000 to the present date, has been the subject of any investigation by any local, state, or federal agency as to its employment practices, including any charges of age discrimination and sex discrimination, other than those filed by plaintiff. Owens supplemented that interrogatory with a similar request for production of documents: Please provide "[a]ny and all documents relating to other charges of age discrimination and/or sex discrimination filed against defendant with any state or federal regulatory body or court, from January 2000 to present.

Defendant objected to the interrogatory stating that it seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objected on the grounds that the scope of the interrogatory is overly broad and seeks information which is shielded from discovery under the attorney client privilege and/or the attorney work product doctrine. Defendant objected to the document request to the extent the request seeks information

that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

In response to defendant's objection, Owens argued that the testimony of other employees about their treatment by defendant is relevant to the issue of the employer's discriminatory intent. In making its determination on the issue, the court noted that the scope of discovery is broad in a Title VII case and "an employer's general practices are relevant even when a plaintiff is asserting an individual claim for disparate treatment." *Gomez v. Martin Marietta Corp.*, 50 F.3d 1511, 1520 (10th Cir.1995)(citing *Scales v. J.C. Bradford & Co.*, 925 F.2d 901, 906 (6th Cir.1991)). More specifically, when the motive or intent of a defendant employer is at issue, information concerning its conduct towards employees other than the plaintiff is relevant. The court thus required the defendant to respond to the discovery requests.

The matter, however, did not end there as the defendant contended that the discovery requests should be limited in scope to the geographic location in which Owens worked and the work unit within Defendant that employed Owens. Defendant states that at the time of the alleged discrimination Owens was employed in its Business Support Services unit. It argues that Owens' discovery requests seeking information relating to other sex and age discrimination charges and investigations should be restricted to its Business Support Services, the work unit within which Owens was employed at the time of the alleged discrimination. Of course, Owens responded that the discovery should not be limited to such a small unit. Instead, she should be allowed discovery of other charges and investigations of discrimination originating from the "business unit" that employs her, *i.e.*, Defendant's Global Markets Group.

The court responded by stating the general rule that in non-class action employment discrimination cases, the standard for determining the geographic scope of discovery focuses on "the source of the complained discrimination--the employing unit or work unit." In the absence of any evidence that there were hiring or firing practices and procedures applicable to all the employing units, discovery may be limited to plaintiff's employing unit. The court looked to what supervisors were responsible for the employment decision and, after determining that, what business units employed those supervisors. Plaintiff's discovery would be limited to the business unit that was within the scope of the relevant decision-makers. In this case, the key decision-makers belonged to the Business Support Services unit, and the court limited Owens' discovery to that unit.

Defendant also contended that the time frame of the discovery requests is too broad as Owens must have arbitrarily picked the date of January 2000 and that a charge filed at

that time would not be relevant to her claim. Defendant suggested that the time period should be two years and not four.

In response the court acknowledged that discovery of information both before and after the liability period within a Title VII lawsuit may be relevant and/or reasonably calculated to lead to the discovery of admissible evidence and courts commonly extend the scope of discovery to a reasonable number of years both prior to and following such period. It's job was to balance the clear relevance of the information against the burden on the defendant. The court determined that defendant's allegedly discriminatory conduct occurred after September 2002. Owens had asked for discovery dating back to January and March 2000. Failing to give a clear test of what time frame would be too broad, the court simply stated that discovery seeking information starting two and a half years prior to the discriminatory conduct is a reasonable period of time and in line with the majority of cases addressing this discovery issue.

In making or responding to discovery requests, the district court provided valuable guidance on the subjects of relevancy and geographical and temporal scope. Considerations of employer's motives, the work unit associated with the decision-maker and the date of the first discriminatory act respectively come into play. Plaintiffs will want to form their discovery requests and defendants, their responses, with those issues in mind.