

United States District Court, Northern District of Illinois

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| Name of Assigned Judge or Magistrate Judge | Joan B. Gottschall | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 01 C 4427 | DATE | 9/2/2005 |
| CASE TITLE | EEOC vs. Int'l Profit Assocs, Inc. | | |

DOCKET ENTRY TEXT:

EEOC's motion to bifurcate [315-1] is denied without prejudice for the reasons stated below.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Plaintiff EEOC has moved for the entry of an order bifurcating the trial of this case into four phases: (1) liability; (2) punitive damages; (3) individual compensatory damages; (4) apportionment of punitive damages. Because the EEOC has not made adequately clear to this court the issues that it intends to present in this case or the length of time it will take to try them, and has not replied to any of the substantive legal arguments made by IPA in its response brief, the motion to bifurcate is denied without prejudice to its renewal once the final pretrial order has been filed. While the court is generally sympathetic to the idea of dividing the proceedings in some way to make the trial of this case more manageable, the court has been given vastly insufficient information to allow it to begin to create an architecture by which the claims will be resolved.

From the start of this case, there has been confusion about the statutory basis upon which the EEOC is proceeding. Ultimately, in connection with EEOC's request for leave to file a second amended complaint, EEOC made plain that 42 U.S.C. §2000e-6 ("§707"), the section which authorizes EEOC to bring pattern or practice suits for equitable relief, is not involved in this case. Rather, EEOC is proceeding under 42 U.S.C. §2000e-5 ("§706"), which authorizes the EEOC to bring suit on behalf of individual aggrieved claimants. EEOC maintains, however, that as part of its §706 case, it can prove a pattern and practice of discrimination and, because it is proceeding under §706, it can seek individual compensatory and punitive damages for the aggrieved individuals on whose behalf it is suing.

In its bifurcation motion, however, EEOC places substantial reliance on §707 cases such as *EEOC v. Dial Corp.*, 156 F. Supp. 2d 926, 930 (N.D. Ill. 2001) ("In its complaint, the EEOC alleges that '[Dial] has engaged in a pattern and practice of unlawful employment practices . . . in violation of . . . Section 707 of Title VII"). Normally, "[t]he goal of vindicating the public's interest in eradicating systemic discrimination by private employers is central to the purpose of a pattern or practice action," *EEOC v. Mitsubishi Motor Mfg. of America*, 990 F. Supp. 1059, 1076 (C.D. Ill. 1998), and liability can be established without the subjective proof necessary

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to the determination of an individual case. *Id.* Thus, pattern and practice cases can easily be bifurcated to try the pattern and practice liability issues first. But in this case, where the EEOC denies that it is bringing a §707 case, it is not clear what the limits of the liability issue are or to what extent the liability issues are common to all claimants. Moreover, while EEOC proposes trying non-individualized pattern and practice liability issues first, it proposes, at phases 2 and 3, to prove punitive and compensatory damages as to a large class of individuals. IPA argues that this procedure is impermissible: that a pattern and practice cause of action cannot be paired with individual §706 damages. EEOC has not replied to this argument. Presumably, it will assert that its action is brought under §706, but that begs the question of how much of EEOC's liability case will in fact be common as to all the individual aggrieved persons.

Nor is it clear why the EEOC requests that liability for a pattern and practice of discrimination be tried separately from punitive damages, which EEOC argues “overlaps” with liability evidence. IPA argues that punitive damages must be established with reference to each individual aggrieved party; EEOC has quoted language from caselaw that the punitive damages inquiry focuses *primarily* on the defendant's conduct, EEOC's Motion to Bifurcate at 5, but “primarily” hardly establishes that there are no individual issues. As in the case of the liability evidence, the court cannot begin to determine the order of proof without a clear idea of what evidence is common and what is not. EEOC has also requested that the court bifurcate and try separately the issue of the apportionment of punitive damages, but it has not given the court any idea of what it believes will be involved in the apportionment of punitive damages, nor why this is an appropriate issue for the court, rather than the jury. In short, EEOC has not presented the court with sufficient information—about its case or about the law—for the court to assess what issues will be common, what issues will be individual, and how to group the various issues to try the case most efficiently.

Determining the order of issues for trial requires a thorough understanding of what evidence will be presented, what legal instructions govern the determination of the legal effect of that evidence and how long the trial of each issue will take. The parties' presentations fail to clarify these issues adequately. The motion to bifurcate is therefore denied without prejudice. Once the final pretrial order is prepared and the court is more familiar with the nature and quantity of evidence EEOC plans to introduce, the court will revisit the issue of bifurcation.