

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	1:04-cv-00623-B
and)	
)	
JANE DOE)	
)	
Intervenor-Plaintiff,)	PLAINTIFF EEOC'S MOTION
)	FOR PARTIAL JUDGMENT ON
v.)	THE PLEADINGS AS TO
)	HOWARD MILLER'S
BROOKLEY FURNITURE COMPANY and)	TENTH AFFIRMATIVE
HOWARD MILLER CLOCK COMPANY, an)	DEFENSE
integrated enterprise)	
)	
Defendants.)	

Comes now the Equal Employment Opportunity Commission (EEOC), and files this Motion For Partial Judgment On The Pleadings pursuant to Rule 12(c), Federal Rules of Civil Procedure, as to Defendant Howard Miller's Tenth Affirmative Defense. The EEOC's motion is due to be granted because the alleged defense is not a defense to an action by the EEOC for violations of Title VII of the Civil Rights Act of 1964, as amended. In support of its Motion the EEOC states:

1. The EEOC is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000. The EEOC is expressly authorized to bring actions to enforce this title by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

2. In its Complaint, the EEOC alleges that “[t]he Defendants, through the conduct of Dale Hiser, General Manager of Defendants’ Mobile facility, subjected Jane Doe to a sexually hostile environment.” Complaint, Paragraph 13.
3. The EEOC further alleges that Jane Doe suffered a tangible job detriment because of Dale Hiser’s treatment. Complaint, Paragraph 34.
4. Paragraph 29 of the EEOC’s complaint alleges that “[a]s a result of having to work under these conditions, Jane Doe suffered severe emotional and psychological injuries, requiring the treatment of a psychiatrist.” Complaint, Paragraph 29.
5. The EEOC has broad authority to enforce employment law as it sees fit, going beyond the rights of individual plaintiffs. EEOC v. Pemco Aeroplex, Inc., 383 F.3d 1280, 1292 (11th Cir. 2004), petition for cert. filed, 75 USLW 3595 (March 23, 2005) (No. 04-1292); 42 U.S.C. § 2000e-4(g); EEOC v. Waffle House, Inc., 534 U.S. 279
6. In addition to the relief authorized by Title VII, the EEOC, as a “complaining party” is authorized to SEEK both compensatory and punitive damages. This right is independent of any claims of private citizens or charging parties. 42 U.S.C. § 1981A(a)(1) and (b); EEOC v. Waffle House, Inc., 534 U.S. 279 (2002).
7. U.S. Const. Art. VI, § 2 provides that “the laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”
8. Defendant Howard Miller Clock Company has raised, as its Tenth Affirmative Defense, that “Charging Party’s claims are barred in whole or in part by the exclusivity provisions of the Alabama Worker’s Compensation Act.” Amended Answer of Defendant Howard Miller

Clock Company, Tenth Affirmative Defense, filed April 1, 2005.

9. For purposes of the Alabama Workers' Compensation Act, §25-5-1 et seq., Ala. Code 1975, an "injury does not include a mental disorder or mental injury that has neither been produced nor been proximately caused by some physical injury to the body." § 25-5-1(9), Ala. Code 1975.
10. "Under Alabama law, for an employee to recover for [mental injuries or] psychological disorders, the employee must have suffered a physical injury to the body and that physical injury must be a proximate cause of the psychological disorders." Ex parte Vongsouvanh, 795 So. 2d. 625, 628 (Ala. 2000); see also, Patterson v. Augat Wiring Systems, Inc., 944 F.Supp. 1509, 1527 (M.D. Ala. 1996).
11. The Alabama Workers' Compensation Act provides income and medical care for employees who sustain physical injuries in workplace accidents. It is the exclusive state law remedy for employees who suffer such workplace accidents.
12. The EEOC does not allege in its Complaint that the psychological damage suffered by Jane Doe flows from or is the result of any physical injury that she suffered during the course of her employment.
13. The EEOC is not and has never been an employee of Defendant Howard Miller Clock Company.
14. The EEOC should be granted Partial Judgment on the Pleadings with regard to Defendant Howard Miller's Tenth Affirmative Defense because:
 - a) Application of the Alabama Workers' Compensation Act to bar the claim of the United States Equal Employment Opportunity Commission, would interfere with

Congress' objective in authorizing the EEOC to file suit to enforce the provisions of Title VII.

- b) Under the Supremacy Clause of the Constitution, state law is preempted where it actually conflicts with federal law or frustrates the effectiveness of federal law. Perez v. Campbell, 402 U.S. 637 (1971); Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984). Application of the Alabama Workers' Compensation exclusivity provision to bar relief in this case would conflict with and frustrate the effectiveness of federal law.
- c) Defendant can cite to no authority, from any jurisdiction, to support the theory that Title VII claims are preempted by the exclusivity provisions of state workers' compensation statutes.
- d) The Alabama Workers' Compensation Act does not to claim of the EEOC, which is not an entity subject to the provisions of said act, either directly or indirectly.
- e) Even if theoretically applicable to a claim asserted by the EEOC, the Alabama Workers' Compensation Act does not apply to the facts of this case where damages for purely psychological injuries are being sought.

Based upon the above, the EEOC's Motion For Partial Judgment On The Pleadings is due to be granted.

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/Charles E. Guerrier
CHARLES E. GUERRIER
Regional Attorney
Ohio Bar #0023546

/s/ Prisca DeLeonardo
PRISCA M. DELEONARDO
Supervisory Trial Attorney
AL Bar # ASB-6536-D67P

/s/ Pamela Agee
PAMELA K. AGEE
Senior Trial Attorney
AL Bar # ASB-1713-A53P

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Birmingham District Office
Ridge Park Place, 1130 22nd Street South
Birmingham, Alabama 35205
(205)-212-2050

CERTIFICATE OF SERVICE

I hereby certify that on June 30, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Cecily L. Kaffer

ckafer@jacksonmyrick.com

Sandy G. Robinson

sgr@cabanissmobile.com

/s/ Pamela Agee

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)	PLAINTIFF EEOC'S BRIEF IN
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)	HOWARD MILLER CLOCK
BROOKLEY FURNITURE COMPANY and)	COMPANY'S TENTH
HOWARD MILLER CLOCK COMPANY, an)	AFFIRMATIVE DEFENSE
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)	
Defendants.)	

The EEOC files this brief in support of its motion for partial summary judgment as to Howard Miller Clock Company's Tenth Affirmative Defense.

I. INTRODUCTION

The United States Equal Employment Opportunity Commission ("EEOC") filed this suit on September 28, 2004. In its Complaint the EEOC alleged that Defendants Brookley Furniture Company and Howard Miller Clock Company violated Title VII of the Civil Rights Act of 1964, as amended, by subjecting Jane Doe to a sexually hostile work environment and sexual harassment which resulted in a tangible employment action. Jane Doe intervened in this lawsuit, joining in the federal claim brought by the EEOC and adding certain state law claims. In response, Defendants in

their answers asserted various affirmative defenses, including the defense which is the subject of this motion. The EEOC has moved for partial summary judgment with regard to Howard Miller Clock Company's Tenth Affirmative Defense: "Charging Party's claims are barred in whole or in part by the exclusivity provisions of the Alabama Workers' Compensation Act." Amended Answer of Defendant Howard Miller Clock Company, Tenth Affirmative Defense, filed April 1, 2005.

II. JUDGMENT ON THE PLEADINGS

Judgment on the pleadings is proper when no issues of material fact exist, and the movant is entitled to judgment as a matter of law. Ortega v. Christian, 85 F.3d 1521, 1524 (11th Cir. 1996). In the context of this case, judgment on the pleadings is appropriate when the defendant can prove no set of facts in support of its affirmative defense which would entitle it to relief or judgment in its favor. Cf., Moore v. Liberty Nat'l Life Ins. Co., 267 F.3d 1209, 1212 (11th Cir. 2001), cert. denied, 535 U.S. 1018 (2002). In considering the EEOC's motion for judgment on the pleadings, the court must view the facts presented, together with all reasonable inferences arising from the facts, in the light most favorable to the Defendant.

III. FACTUAL BACKGROUND

The EEOC is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000. The EEOC is expressly authorized to bring actions to enforce this title by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3). Should the EEOC prevail in its suit, the court may enjoin the defendant from engaging in the unlawful conduct and order such affirmative relief as may be appropriate, which may include reinstatement with back pay. In addition to the equitable relief authorized by Title VII, the EEOC, as a "complaining party" is authorized to

seek both compensatory and punitive damages. 42 U.S.C. § 1981A(a)(1) and (b).

In its Complaint, the EEOC alleges that “[t]he Defendants, through the conduct of Dale Hiser, General Manager of Defendants’ Mobile facility, subjected Jane Doe to a sexually hostile environment.” Complaint, Paragraph 13. The EEOC further alleges that Jane Doe suffered a tangible job detriment because of Dale Hiser’s treatment. Complaint, Paragraph 34. Paragraph 29 of the EEOC’s complaint alleges that “[a]s a result of having to work under these conditions, Jane Doe suffered severe emotional and psychological injuries, requiring the treatment of a psychiatrist.” Complaint, Paragraph 29.

Defendant Howard Miller Clock has raised, as its Tenth Affirmative Defense, that “Charging Party’s claims are barred in whole or in part by the exclusivity provisions of the Alabama Worker’s Compensation Act.” Amended Answer of Defendant Howard Miller Clock Company, Tenth Affirmative Defense, filed April 1, 2005.

IV. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 PRE-EMPTS THE ALABAMA WORKERS’ COMPENSATION ACT

A. Application Of The Alabama Workers’ Compensation Act Would Frustrate The Overall Purposes of Title VII And Related Acts.

Article VI, Section 2 of the United States Constitution provides that “the laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” There are a number of ways in which state laws may be preempted by federal law. First, Congress may preempt state law by so stating in express terms. E.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977). Second, congressional intent to preempt state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that

Congress “left no room” for supplementary state regulation.

As a third alternative, in those areas where Congress has not completely displaced state regulation, federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law. Such a conflict can occur when the state law stands “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” Hines v. Davidowitz, 312 U.S. 52 (1941); California Federal Savings and Loan Association v. Guerra, 479 U.S. 272 (1987). Any state law which frustrates the effectiveness of federal law is invalid under the supremacy clause of the United States Constitution. Perez v. Campbell, 402 U.S. 637 (1971).

This third basis for pre-emption exists in this case. Two sections of the 1964 Civil Rights Act address the issue of preemption. Section 708 of Title VII provides that “[n]othing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.” 42 U.S.C. § 2000e-7. In addition, Section 1104 of Title XI, applicable to all titles of the Civil Rights Act, states that “[n]othing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.” 42 U.S.C. § 2000h-4. These provisions recognize the importance which Congress placed upon the preservation of existing civil rights laws. “The narrow scope of pre-emption available under §§ 708 and 1104 reflects the importance Congress attached to state antidiscrimination laws in achieving Title VII’s goal of equal

employment opportunity.” California Federal Savings, 479 U.S. at 282-283. Nothing in the legislative history of Title VII, however, suggests that these provisions were intended to preserve state laws which restrict the relief available under Title VII.

Title VII of the Civil Rights Act of 1964, as amended, permits recovery of specific types of relief in order to make injured individuals whole. 42 U.S.C. § 2000e-5(g)(1). In addition, pursuant to 42 U.S.C. §1981A, a complaining party is authorized to seek both compensatory and punitive damages for certain violations of Title VII. Compensatory damages, while not defined under Section 1981A, include at least damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses. 42 U.S.C. § 1981A(b)(3). Neither Title VII nor § 1981A contain any reference to state law or suggest that state law would in any way limit the scope of the relief authorized by Congress.

Defendant, in its Tenth Affirmative Defense, asserts that Jane Doe’s claims “are barred in whole or in part by the exclusivity provisions of the Alabama Workers’ Compensation Act.” To the extent that this defense seeks to limit the scope of relief authorized by Title VII and related statutes, it is preempted by federal law and not a valid defense. John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank, 510 U.S. 86 (1993) (where a state law stands as an obstacle to the complete purposes and/or objectives of Congress, the state law is pre-empted). Defendant’s Tenth Affirmative Defense, if applied in this case, would limit or bar relief expressly authorized by Title VII, thereby frustrating Congress’ purposes in passing said statutes.

B. Application Of The Alabama Workers’ Compensation Act Would Frustrate Congress’ Objective In Authorizing The EEOC To Enforce The Provisions Of Title VII.

“Under the procedural structure created by the 1972 amendments, the EEOC does not

function simply as a vehicle for conducting litigation on behalf of private parties; it is a federal administrative agency charged with the responsibility of investigating claims of employment discrimination and settling disputes, if possible, in an informal noncoercive fashion.” Occidental Life Ins. Co., v. EEOC, 432 U.S. 355, 368 (1977). However, when such means do not succeed in resolving a case, Congress intended the EEOC “to bear the primary burden of litigation”. General Telephone Company of the Northwest v. EEOC, 446 U.S. 318, 326 (1980); EEOC v. Waffle House, Inc., 534 U.S. 279, 286 (2002) . Under the procedure contemplated by Congress, the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties. Even if the EEOC acts at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination. General Telephone, 446 U.S. at 326. Further, the EEOC can proceed with its claim even if a bar should exist as to the claim of the specific individual at whose behest the action was brought. EEOC v. Waffle House, Inc., 446 U.S. 279 (2002); EEOC v. Pemco Aeroplex, Inc., 383 F.3d 1280, 1291 (11th Cir. 2004).

As discussed above, the EEOC can seek each element of relief available to a private individual, including compensatory and punitive damages. Application of Defendant’s Tenth Affirmative Defense to limit the scope of relief available to the EEOC in its litigation would frustrate Congress’ purpose in conferring litigation authority on the EEOC.

C. The EEOC Is Not An Entity Subject To The Exclusivity Provisions Of The Alabama Workers’ Compensation Act.

The exclusivity provisions of the Alabama Workers’ Compensation Act are found in two separate sections of the Act. Ala. Code, Section 25-5-52 provides: “No employee or any employer subject to this article, nor the personal representative, surviving spouse or next of kin of any such

employee shall have any right to any other method, form or amount of compensation or damages for any injury or death occasioned by any accident proximately resulting from and while engaged in the actual performance of the duties of his employment and from a cause originating in such employment or determination thereof other than as provided in this article.” Ala. Code, Section 25-5-53 provides, in part: “The rights and remedies herein granted to an employee shall exclude all other rights and remedies of said employee, his personal representative, parent, dependents or next of kin, at common law, by statute or otherwise on account of said injury, loss of services or death.” Obviously, for these provisions of the Alabama law to act as a bar to the claim of the EEOC, the EEOC must have been an employee of Defendant or the personal representative, parent, surviving spouse, dependent, or next of kin of such employee.

The EEOC is not and has never been an employee of Defendant. Further, there is no privity between the EEOC and Jane Doe such as to make the EEOC her personal representative. Finally, the EEOC is not Jane Doe’s parent, surviving spouse, dependent, or next of kin. Consequently, whatever effect such exclusivity provisions may or may not have, they do not limit the claim of the EEOC in any way.

D. The Alabama Worker’s Compensation Act Does Not Preclude A Claim For Damages Which Are Purely Psychological

The Alabama Workers’ Compensation Act expressly excludes psychological or psychiatric injuries from the list of covered “injuries”. Ala. Code, 25-5-1(9) (“Injury” does not include “a mental disorder or mental injury that has neither been produced nor proximately caused by some physical injury to the body.”) “Read literally, the Act provides compensation only for physical injuries to the body and does not provide recovery for purely psychological injuries . . .” Busby v. Truswal

Systems Corporation, 551 So.2d 322, 325 (Ala. 1989). “No Alabama case has recognized emotional or mental stress that causes a psychological manifestation to be compensable as a nonaccidental injury under the Act. Although the Act is to be liberally construed, the Alabama Legislature has explicitly excluded a mental injury not caused by a physical injury from the definition of a compensable injury under the Act.” Eldeco, Inc. v. Romines, 884 So.2d 867, 876 (Ala. Civ. App. 2003).

Jane Doe has made no allegation that she suffered any physical injury as a result of her employment with Defendant, nor any claim for damages for a physical injury. The EEOC makes no allegation that Jane Doe has suffered any physical injury and is not seeking damages for any such injury. Consequently, even if the Alabama Workers’ Compensation Act were not pre-empted by Title VII, and even if the exclusivity provisions applied to the EEOC, those provisions would not bar any of the relief being sought by the EEOC.

IV. CONCLUSION

Based upon the above, the EEOC’s Motion For Judgment On The Pleadings as to Defendant Howard Miller Clock Company’s Tenth Affirmative Defense is due to be granted.

ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

/s/Charles E. Guerrier
CHARLES E. GUERRIER
Regional Attorney
Ohio Bar #0023546

/s/ Prisca DeLeonardo
PRISCA M. DELEONARDO
Supervisory Trial Attorney
AL Bar # ASB-6536-D67P

/s/ Pamela Agee
PAMELA K. AGEE
Senior Trial Attorney
AL Bar # ASB-1713-A53P

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Cecily L. Kaffer

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