

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff/Counter-Defendant,

Civil Action No.: 2:06-cv-02478-JPM

v.

STEIN WORLD, LLC,

Defendant/Counter-Plaintiff.

STEIN WORLD, LLC,

Third-Party Plaintiff,

v.

RICKY BEE,

Third-Party Defendant.

ANSWER AND THIRD-PARTY COMPLAINT

COMES NOW the Defendant, Stein World, LLC ("Stein World"), and for its Answer to the Complaint filed in this cause states as follows:

**I.
Response to Complaint**

1. As to the Nature of the Action, same does not require a response, but as to the statement that Stein World breached an agreement, same is denied.
2. It admits the allegations contained in paragraph 1 of the Complaint.

3. It denies the allegations contained in paragraph 2 of the Complaint.
4. It admits the allegations contained in paragraphs 3, 4 and 5 of the Complaint.
5. It admits that on May 17, 2005 Ricky Bee filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging that it engaged in employment practices in violation of Title VII, which allegations it denies. For further answer, it denies that all conditions precedent to the institution of this lawsuit have been fulfilled.
6. It admits the allegations contained in paragraph 7 of the Complaint, but for further answer avers that said charge of discrimination speaks for itself.
7. It admits the allegations contained in paragraph 8 of the Complaint.
8. It denies the allegations contained in paragraph 9 of the Complaint as written.
9. It denies the allegations contained in paragraph 10 of the Complaint as written.
10. It admits the allegations contained in paragraph 11 of the Complaint.
11. It is without sufficient knowledge, information or belief to either admit, explain or deny the allegations contained in paragraph 12 of the Complaint, and therefore neither admits nor denies same and demands strict proof thereof.
12. It admits the allegations contained in paragraph 13 of the Complaint.
13. It denies the allegations contained in paragraph 14 of the Complaint as written, but it does admit that a mediation was held on July 6, 2005.
14. A copy of the Mediation Settlement Agreement was not attached to the Complaint as Exhibit A. However, Stein World is aware of the Settlement Agreement to which Plaintiff makes reference.

Stein World avers that said Settlement Agreement does not reflect the agreement reached during the mediation, and therefore it denies the allegations contained in paragraph 16 as written.

15. It denies the allegations contained in paragraph 17 as written.
16. It is without sufficient knowledge, information or belief as to the allegations contained in paragraph 18 of the Complaint, and therefore neither admits nor denies same and demands strict proof thereof. For further answer, it admits that it did receive a bill for the hospitalization of charging party.
17. It denies the allegations contained in paragraph 19 of the Complaint, but for further answer avers that it agreed to pay charging party the agreed amount of settlement in the amount of \$5,000.00, which charging party accepted.
18. For its answer to paragraph 20 of the Complaint, Stein World avers that the Mediation Settlement Agreement speaks for itself.
19. For its answer to paragraph 21 of the Complaint, Stein World avers that the Mediation Settlement Agreement does not reflect the meeting of the minds and therefore same is without any legal force or effect.
20. It denies the allegations contained in paragraph (*sic*) 21 of the Complaint.
21. It denies Plaintiff is entitled to the relief prayed for, or to any other relief, in law or in equity.
22. All other allegations neither admitted, explained, or denied are denied.

II.
Affirmative Defenses

23. For further answer, Stein World avers:
- a. The Complaint fails to state a cause of action upon which relief may be granted.
 - b. There has been a failure to exhaust administrative remedies.
 - c. There has been accord and satisfaction.
 - d. There has been a failure to join an indispensable party under Rule 19, F.R.C.P.
 - e. The action is barred by the applicable statute of limitations.
 - f. There is no meeting of the minds and hence no agreement.
 - g. The action is barred by the fraudulent acts and misrepresentations of the Third-Party Defendant, Ricky Bee ("Bee").

III.
Act of Fraud and Misrepresentations

24. Bee had a pre-existing medical condition which would make him ineligible for health insurance coverage provided by Stein World.
25. The failure to provide hospitalization coverage because of Bee's failure to timely apply is irrelevant to the issues raised in Bee's charge.
26. Plaintiff made no determination as to the merits of the underlying charges [and] but invited the parties to mediate, which they did.
- "Mediation focuses on a resolution of the underlying dispute - - -. It is not a forum for reaching a determination on whether discrimination occurred - - -." (EEOC

Form Letter; Exhibit A, attached)

27. At the mediation, Bee claimed he was hospitalized with pneumonia (*Complaint*, ¶ 12) and represented that his hospital and medical bills were but a few thousands of dollars.
28. During the mediation, Stein World agreed to pay those medical bills which were incurred within thirty (30) days after termination, not to exceed \$5,000.00, to which Bee agreed.
29. But contrary to Bee's representation, Bee had a lung transplant (with a hospitalization period from May 5, 2005 to June 4, 2005), incurring medical bills in an amount in excess of \$150,000.00, \$48,426.41 of which the MED seeks to recover from Stein World, and which Plaintiff seeks to force Stein World to pay.
30. Bee knew very well he had a lung transplant and that his medical bills were more than a "few thousand dollars".
31. Bee fraudulently and intentionally misrepresented the facts for the sole purpose of inducing and extorting monies from Stein World.

IV.

Counter Claim to Rescind Mediation Settlement Agreement and/or to Reform Said Agreement to Reflect the Actual Agreed to Terms

32. Stein World incorporates herein paragraphs 1 - 31, *supra*.
33. Stein World reached an agreement to pay Bee's medical expenses up to \$5,000.00.
34. This agreement with a cap of \$5,000.00 was accepted by Bee and made known to the Mediation Officer.
35. The EEOC Mediation Officer made the mistake in failing to reflect the \$5,000.00

cap in the agreement between the parties, with which Stein World has complied.

36. Stein World has called upon Plaintiff to correct this omission and conform the Mediation Settlement Agreement to reflect the agreement reached and agreed to, but Plaintiff refuses to do so.

WHEREFORE premises considered, Stein World seeks to have the Mediation Settlement Agreement reformed so as to express the real agreement of the parties thereto, especially the mistake alleged to be corrected; additionally and/or alternatively, that said Mediation Settlement Agreement be rescinded and held for naught.

THIRD-PARTY COMPLAINT

JURY DEMANDED

COMES NOW the Defendant, Stein World, LLC ("Stein World") and assuming the role of Third-Party Plaintiff avers as follows:

37. It incorporates herein by reference its Answer, Affirmative Defenses and Counter Claim set forth above.
38. Ricky Bee ("Bee") is a resident citizen of Memphis, Shelby County, Tennessee, residing at 3865 Philsdale, Memphis, TN 38111.
39. Bee misrepresented facts and engaged in the fraudulent acts described in paragraphs 27, 28, 29, 30, 31 and 32, *supra*, resulting in Stein World being induced to agree to a mediated settlement, with a \$5,000.00 cap on medical and hospital expenses.
40. Bee is well aware that Stein World only agreed to pay up to \$5,000.00 for medical

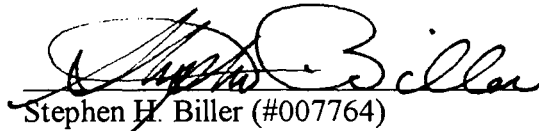
and hospital bills incurred within thirty (30) days of his termination.

41. But for Bee's fraudulent misrepresentations, Stein World would not have agreed to or entered into a Mediation Settlement Agreement.
42. Upon information and belief, Bee has taken no steps to advise Plaintiff that the Mediation Settlement Agreement does not reflect the agreement reached between the parties.
43. Should Plaintiff be granted judgment, Stein World is entitled to a judgment over/against Bee.

WHEREFORE premises considered, Stein World prays:

1. As to the Complaint, judgment be entered for it.
2. As to the Counter Claim, should judgment not be entered as to the Complaint, that the Mediation Settlement Agreement be reformed to correct the omission of the \$5,000.00 cap.
3. As to the Third-Party Complaint, should judgment not be entered for it as to the Complaint, that it have judgment over/against Bee for any sums found to be due and owing to Plaintiff.
4. That it have such other and further relief to which it may be entitled.
5. That a jury be empaneled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen H. Biller", written over a horizontal line.

Stephen H. Biller (#007764)
The Bogatin Law Firm, PLC
1661 International Pl. Drive, #300
Memphis, TN 38120
(901) 767-1234
(901) 767-2803

CERTIFICATE OF SERVICE

I, Stephen H. Biller, do hereby certify that a true and correct copy of the foregoing was served upon: Faye A Williams, Esq. and Darin B. Tuggle, Esq., Equal Employment Opportunity Commission, 1407 Union Avenue, Suite 621, Memphis, TN 38104 by placing a copy of same in the United States Mail, postage prepaid, this the 16 day of August, 2006.

A handwritten signature in black ink, appearing to read "Stephen H. Biller", written over a horizontal line.
Stephen H. Biller

H:\SHB\Stein World, LLC\Answer and 3rd Party Complaint. v1.wpd



**U.S. Equal Employment Opportunity Commission
Memphis District Office**

1407 Union Avenue
Suite 621
Memphis, TN 38104
(901) 544-0115
TTY (901) 544-0112
FAX (901) 544-0126
1-800-669-4000

May 23, 2005

Mr. Leon Benz
Human Resources Manager
STEIN WORLD LLC
1721 Latham Street
Memphis, TN 38106

EEOC Number: 250-2005-02404

Dear Mr. Benz:

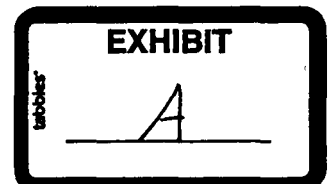
A charge of unlawful discrimination has been filed against your company, STEIN WORLD LLC, by Ricky Bee, the Charging Party. In an effort to expedite the charge resolution process, your charge has been selected for mediation by the Equal Employment Opportunity Commission (EEOC). Mediation is an informal process in which those involved in a dispute jointly explore and reconcile their differences. Mediation is offered as an alternative to the often lengthy investigative process traditionally used to determine the merits of charges of discrimination filed with EEOC. The purpose of mediation is to help the parties reach a fair and expeditious resolution of the charge prior to an investigation. The majority of mediations are completed in only one session. If the charge is resolved during the mediation process, the charge will be closed and the terms of the agreement will end further processing by the Commission.

Mediation focuses on a resolution of the underlying dispute by addressing the interests of both parties. It is not a forum for reaching a determination on whether discrimination occurred. Therefore, any agreement reached during mediation does not constitute an admission that discrimination occurred. However, the agreement will resolve the employment dispute.

Participation in the mediation program is completely voluntary. If you decide to participate in the mediation program, the individual representing your entity during the mediation session must have authority to settle the case at the scheduled mediation.


Two agreements are enclosed for your review - the "Agreement to Mediate" and the "Confidentiality Agreement." You should complete and return both agreements if you are interested in mediating this charge. Also enclosed is a Mediation Fact Sheet that answers many questions that you may have regarding this program.

If we do not hear from you within 15 days from the date of this letter, the charge may be assigned to an investigator and processed under normal charge processing procedures. (Please see the letter we sent you dated May 23, 2005 with the Notice of Filing of Charge.)



If you have any questions concerning the mediation program, please call Irma E. Boyce at (901) 544-0152.

Sincerely,


Robert L. Stevenson
ADR Coordinator

Enclosure(s)