

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

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**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION**

**PLAINTIFF**

**V.**

**CAUSE NO. 3:05CV122**

**HILL BROTHERS CONSTRUCTION  
COMPANY, INC.,**

**DEFENDANT**

**SCOTT BEASLEY, JOEL GRAVES,  
and DOUGLAS SMITH**

**INTERVENORS**

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**ORDER**

This cause comes before the court on the multiple motions of Hill Brothers Construction Company, Inc. and the Equal Employment Opportunity Commission. After due consideration, the court finds as follows:

Hill Brothers has moved to sever claims for equitable relief made on behalf of the EEOC from claims of the charging parties. The court finds that severance in this instance would cause an unnecessary drain on judicial resources; accordingly, the defendant's motion [131] is DENIED.

Hill Brothers has moved to dismiss Scott Beasley's claim because he did not sign his initial charge of discrimination with the EEOC. In the first trial, Scott Beasley testified that he called EEOC investigator Dorothy Crawford to confirm that he had authorized Joel Graves to sign his initial charge of discrimination. Beasley later signed an EEOC affidavit supporting the initial charge of discrimination on November 15, 2002. Where a statute or supplemental rule requires an oath, courts have shown a high degree of consistency in accepting later verification as

reaching back to an earlier, unverified filing. *Edelman v. Lynchburg College*, 535 U.S. 106, 116 (2002). Accordingly, Hill Brothers' motion [133] in limine to dismiss Scott Beasley's claim is DENIED.

The court hereby RESERVES RULING on Hill Brothers' motions [135, 150] in limine to exclude all evidence and testimony of its position statement to the EEOC. The parties may reassert this motion at the commencement of trial.

Hill Brothers has moved to compel the testimony of EEOC investigator Dorothy Crawford, while the EEOC has moved to exclude her testimony. The government's deliberative process privilege protects predecisional materials reflecting deliberative or policy making processes, but not materials that are purely factual. *EEOC v. Fina Oil and Chemical Co.*, 145 F.R.D. 74, 75 (E.D.Tex. 1992). In this instance, Hill Brothers seeks information about the development of the EEOC's position with regard to the charges against the defendant, as well as the information regarding Scott Beasley's signature on his initial charge. The development of the EEOC's position is subject to the deliberative process privilege, and testimony from two witnesses other than Dorothy Crawford is available to establish the circumstances surrounding the signature on Scott Beasley's initial charge. Hill Brothers' motion [137] to compel is DENIED and the EEOC's motion [151] to exclude is GRANTED.

Hill Brothers has filed a motion [138] in limine to exclude testimony from Melanie Peacock, Ray McClendon, and Darren McLemore. The defendant objects on the grounds that evidence of similar acts is relevant only to the extent that the acts are the same or substantially the same as the acts or practices alleged to constitute discrimination. However, the defendant expects each witness to testify that they observed Mr. Witt engage in the behavior complained of by the plaintiffs. Accordingly, the motion to exclude testimony is DENIED.

Hill Brothers' motion [139] in limine to exclude reference to the outcome of litigation involving Melanie Peacock's disparate treatment discrimination claim and Jennifer Woodard's disparate treatment and harassment claim is GRANTED. These claims do not involve supervisor Greg Witt, and are unrelated to the instant action.

Hill Brothers' motion [140] in limine to exclude from evidence its sexual harassment policies procedures is DENIED. The EEOC remains a party to this action and is entitled to present evidence.

Hill Brothers' motion [141] in limine to bifurcate the trial of liability and punitive damages is GRANTED. In the event of a finding of liability, the jury will reconvene and assess punitive damages.

Hill Brothers' motion [143] in limine to preclude questions presuming sexual harassment is GRANTED. The plaintiff/intervenors are permitted to ask questions in order to develop the case, but may not phrase questions as to insinuate that the existence of sexual harassment has already been established.

The court RESERVES RULING on Hill Brothers' motion [145] in limine to prevent the implication that Plaintiff's Exhibit 14 was manufactured, concealed or otherwise the product of Hill Brothers' bad or ulterior motives. The parties may reassert this motion at the commencement of trial.

The court RESERVES RULING on Hill Brothers' motion [146] in limine to exclude testimony regarding alleged sexually harassing behavior by Greg Witt before he was a supervisor. The parties may reassert this motion at the commencement of trial.

Hill Brothers' motion [147] in limine to preclude reference to Kenneth Hill's conviction for failure to pay personal taxes in 1984 and 1985 is GRANTED. This conviction occurred more

than ten years ago and Mr. Hill since received a presidential pardon.

Hill Brothers' motion [148] in limine to exclude reference to Greg Witt's nine-year old conviction for forgery is DENIED. Pursuant to Fed. R. Evid. 609, evidence that a witness has been convicted of a crime within the past ten years is admissible for the purpose of attacking the truthfulness of the witness.

The EEOC's motion [153] to exclude unrelated evidence from the plaintiff-intervenors company personnel file, such as garnishments, unrelated civil suits, tax dependents claimed, and child support payments is GRANTED.

This the 2<sup>nd</sup> day of April, 2008.

**/s/ MICHAEL P. MILLS**  
**CHIEF JUDGE**  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF MISSISSIPPI**