

No. 13-1019

IN THE
Supreme Court of the United States

MACH MINING, LLC,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed Feb. 21, 2014
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APPENDIX A

**District Court Docket Entries
in Civil Action No. 3:11-cv-00879-JPG-PMF**

- Sept. 27, 2011 – Complaint by Plaintiff EEOC
- Nov. 9, 2011 – Agreed Motion for Protective Order by Plaintiff EEOC
- Nov. 15, 2011 – Agreed Protective Order by Magistrate Judge Frazier
- Nov. 28, 2011 – Entry of Appearance by Defendant Mach Mining, LLC
- Nov. 28, 2011 – Defendant’s Answer and Affirmative Defenses by Defendant Mach Mining, LLC
- Nov. 28, 2011 – Entry of Appearance by Defendant Mach Mining, LLC
- Nov. 30, 2011 – Entry of Appearance by Plaintiff EEOC
- Dec. 8, 2011 – Uniform Trial Practice and Procedures by Clerk of Court
- Dec. 13, 2011 – Notice to Counsel by Clerk of Court
- Jan. 24, 2012 – Order For and Notice of Settlement Conference by Magistrate Judge Frazier
- Apr. 11, 2012 – Disclosure of Corporation Interests Certificate by Defendant Mach Mining, LLC

- May 25, 2012 – Plaintiff EEOC’s Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant by Plaintiff EEOC
- June 11, 2012 – Defendant’s Opposition to Plaintiff’s Motion to Deem Confidentiality of Conciliation Waived by Defendant Mach Mining, LLC
- June 21, 2012 – Entry of Appearance by Plaintiff EEOC
- June 27, 2012 – Defendant Mach Mining, LLC’s First Request for Admission Directed to Plaintiff by Defendant Mach Mining, LLC
- June 29, 2012 – EEOC’s Responses to Defendant Mach Mining, LLC’s Requests for Admission Directed to Plaintiff Regarding Each Claimant by Plaintiff EEOC
- July 13, 2012 – Order by Magistrate Judge Frazier
- July 16, 2012 – Motion for Extension of Time to Answer Discovery by Defendant Mach Mining, LLC
- July 30, 2012 – Plaintiff EEOC’s Motion for Summary Judgment on Defendant’s Failure to Conciliate Affirmative Defense by Plaintiff EEOC
- July 31, 2012 – Entry of Appearance by Plaintiff EEOC
- Aug. 31, 2012 – Minutes of Court and Minute Order by Deputy Clerk of Court
- Sept. 10, 2012 – Minutes of Court and Minute Order by Deputy Clerk of Court

- Oct. 11, 2012 – Entry of Appearance by Plaintiff EEOC
- Oct. 15, 2012 – Transcript of Discovery Dispute Conference by Clerk of Court
- Oct. 18, 2012 – Defendant Mach Mining, LLC’s Memorandum in Opposition to EEOC’s Motion for Partial Summary Judgment by Defendant Mach Mining, LLC
- Oct. 24, 2012 – Notice of Intent to Request Redaction by Defendant Mach Mining, LLC
- Oct. 30, 2012 – Plaintiff EEOC’s Reply in Support of EEOC’s Motion for Summary Judgment on Mach’s Failure to Conciliate Affirmative Defense by Plaintiff EEOC
- Oct. 30, 2012 – Plaintiff EEOC’s Motion to Strike “Section F” of Defendant Mach Mining’s Memorandum in Opposition to EEOC’s Motion for Partial Summary Judgment by Plaintiff EEOC
- Nov. 5, 2012 – Motion to Withdraw Defendant’s Notice of Intent to Request Redaction by Defendant Mach Mining, LLC
- Nov. 6, 2012 – Defendant’s Motion to Clarify the Court’s Discovery Order by Defendant Mach Mining, LLC
- Nov. 13, 2012 – Defendant Mach Mining, LLC’s Memorandum in Opposition to EEOC’s Motion to Strike by Defendant Mach Mining, LLC

- Jan. 4, 2013 – Minutes of Court and Minute Order by Deputy Clerk of Court
- Jan. 14, 2013 – Transcript of Discovery Dispute Conference by Clerk of Court
- Jan. 28, 2013 – Memorandum and Order by District Judge Gilbert
- Feb. 26, 2013 – EEOC’s First Set of Requests for Admissions to Defendant Mach Mining, LLC by Plaintiff EEOC
- Mar. 21, 2013 – Plaintiff EEOC’s Motion to Reconsider or to Certify Under 1292(b) This Honorable Court’s Opinion and Order of January 28, 2013 by Plaintiff EEOC
- Mar. 21, 2013 – Motion for Protective Order Regarding Discovery Related to Conciliation by Plaintiff EEOC
- Mar. 28, 2013 – Defendant Mach Mining, LLC’s Responses to EEOC’s First Set of Requests for Admissions by Defendant Mach Mining, LLC
- Mar. 28, 2013 – EEOC’s Motion for a Protective Order as to Subpoenas Directed to the Claimants’ Past and Current Employers by Plaintiff EEOC.
- Apr. 8, 2013 – Defendant’s Opposition to EEOC’s Motion to Reconsider or to Certify Under 1292(b) This Honorable Court’s Opinion and Order of January 28, 2013 by Defendant Mach Mining, LLC

- Apr. 8, 2013 – Defendant’s Opposition to EEOC’s Motion for Protective Order Related to Conciliation Matters by Defendant Mach Mining, LLC
- Apr. 11, 2013 – Defendant Mach Mining, LLC’s Memorandum in Opposition to EEOC’s Motion for Protective Order as to Subpoenas Directed to the Claimant’s Past and Current Employers by Defendant Mach Mining, LLC
- Apr. 11, 2013 – Plaintiff EEOC’s Motion to Continue or the April 16, 2013 Discovery Dispute Conference or to Permit EEOC to Appear Telephonically by Plaintiff EEOC
- Apr. 15, 2013 – Plaintiff EEOC’s Reply in Support of Its Motion to Reconsider or to Certify Under 1292(b) This Honorable Court’s Opinion and Order of January 28, 2013 by Plaintiff EEOC
- Apr. 15, 2013 – Reply in Support of Motion for Protective Order Regarding Discovery Related to Conciliation by Plaintiff EEOC
- Apr. 16, 2013 – Plaintiff EEOC’s Motion for Oral Argument by Plaintiff EEOC
- Apr. 23, 2013 – Order by Magistrate Judge Frazier
- Apr. 25, 2013 – Entry of Appearance by Defendant Mach Mining, LLC
- Apr. 25, 2013 – Notice of Withdrawal by Defendant Mach Mining, LLC

Apr. 29, 2013 – Plaintiff EEOC’s Fed. R. Civ. P. 72
Objections to the Denial of EEOC’s Motion for a
Protective Order Regarding Discovery by Plaintiff
EEOC

May 6, 2013 – Defendant Mach Mining, LLC’s
Opposition to EEOC’s Rule 72 Objections to the
Denial of EEOC’s Motion for Protective Order by
Defendant Mach Mining, LLC

May 7, 2013 – Minutes of Court by Clerk of Court

May 8, 2013 – Minutes of Court by Clerk of Court

May 16, 2013 – Minutes of Court and Minute Order
by Deputy Clerk

May 16, 2013 – Minutes of Court by Deputy Clerk

May 20, 2013 – Memorandum and Order by District
Judge Gilbert

May 29, 2013 – Transcript of Discovery Dispute by
Clerk of Court

May 29, 2013 – Transcript of Motion Hearing by
Clerk of Court

June 4, 2013 – Defendant Mach Mining, LLC’s
Motion and Incorporated Memorandum in
Support of Its Motion to Stay Discovery Pending
Resolution of Interlocutory Appeal, and Motion
for Court-Supervised Settlement Conference by
Defendant Mach Mining, LLC

June 28, 2013 – USCA Order by Clerk of Court

June 28, 2013 – Notice of Appeal by Clerk of Court

- July 2, 2013 – Transmission of Short Record to US Court of Appeals Regarding Notice of Appeal by Clerk of Court
- July 2, 2013 – Notice of the Filing of a Notice of Appeal by Deputy Clerk of Court
- July 2, 2013 – Notice of Docketing USCA Case by Clerk of Court
- Sept. 27, 2013⁴ – Request from USCA to Transmit Record on Appeal by Clerk of Court
- Sept. 27, 2013 – Certified and Transmitted Record on Appeal by Deputy Clerk of Court
- Sept. 30, 2013 – Acknowledgment of Receipt of Transcripts by Clerk of Court
- Sept. 30, 2013 – Acknowledgment of Receipt of Record on Appeal by USCA
- Oct. 1, 2013 – Motion of the Equal Employment Opportunity Commission for Continuance Due to Government Shutdown by Plaintiff EEOC
- Oct. 2, 2013 – Order by District Judge Gilbert
- Feb. 11, 2014 – Notice of Issuance of Mandate of USCA by Clerk of Court
- Feb. 22, 2014 – Opinion of USCA by Clerk of Court
- Apr. 3, 2014 – Defendant Mach Mining, LLC's Motion and Incorporated Memorandum in Support of Its Motion for Protective Order by Defendant Mach Mining, LLC

- May 21, 2014 – Transcript of Motion Hearing by Clerk of Court
- May 30, 2014 – Defendant Mach Mining’s Fed. R. Civ. P. 72 Objections to Denial of Defendant’s Motion for Protective Order by Defendant Mach Mining, LLC
- June 2, 2014 – Defendant Mach Mining’s Motion to Withdraw and Seal Exhibit B to Doc. 117 by Defendant Mach Mining, LLC
- June 4, 2014 – Plaintiff EEOC’s Response to Defendant’s Objections to Denial of Defendant’s Motion for Protective Order by Plaintiff EEOC
- June 16, 2014 – Defendant Mach Mining’s Reply in Support of Its Fed. R. Civ. P. 72 Objections to Denial of Defendant’s Motion for Protective Order by Defendant Mach Mining, LLC
- July 7, 2014 – Defendant Mach Mining, LLC’s Motion and Incorporated Memorandum in Support of Its Motion to Stay Discovery Pending Supreme Court Review by Defendant Mach Mining, LLC
- July 15, 2014 – Plaintiff EEOC’s Response to Defendant’s Motion for a Stay of All Discovery by Plaintiff EEOC
- July 25, 2014 – Defendant Mach Mining, LLC’s Reply in Support of Its Motion to Stay Discovery Pending Supreme Court Review by Defendant Mach Mining, LLC

July 25, 2014 – Defendant Mach Mining, LLC’s
Amended Reply in Support of Its Motion to Stay
Discovery Pending Supreme Court Review by
Defendant Mach Mining, LLC

August 5, 2014 – Order by Magistrate Judge Frazier

APPENDIX B

**Court Of Appeals Docket Entries
in Civil Action No. 13-2456**

May 30, 2013 – Petition of the Equal Employment Opportunity Commission for Interlocutory Appeal by Petitioner EEOC

June 5, 2013 – Notice to File Response

June 19, 2013 – Mach Mining, LLC's Answer in Opposition to the Petition of the Equal Employment Opportunity Commission for Interlocutory Appeal by Respondent Mach Mining, LLC

June 19, 2013 – Circuit Rule 26.1 Disclosure Statement by Respondent Mach Mining, LLC

June 28, 2013 – Order

July 31, 2013 – Brief of the Equal Employment Opportunity Commission as Plaintiff-Appellant by Appellant EEOC

Aug. 20, 2013 – Entry of Appearance by Appellee Mach Mining, LLC

Aug. 21, 2013 – Brief of Mach Mining, LLC as Defendant-Appellee by Appellee Mach Mining, LLC

Aug. 22, 2013 – Motion of the Equal Employment Opportunity Commission for an Extension to File Reply Brief by Appellant EEOC

Aug. 25, 2013 – Defendant-Appellee’s Response to Equal Employment Opportunity Commission’s Motion for an Extension to File Reply Brief by Appellee Mach Mining, LLC

Aug. 26, 2013 – Order

Aug. 26, 2013 - Circuit Rule 26.1 Disclosure Statement by Appellant EEOC

Aug. 26, 2013 – Brief of the Equal Employment Advisory Council and Society for Human Resource Management as *Amici Curiae* in Support of Defendant-Appellee and in Support of Affirmance by Equal Employment Advisory Council and Society for Human Resource Management

Aug. 28, 2013 – Brief for *Amici Curiae* Retail Litigation Center, Inc., Chamber of Commerce of the United States of America, and National Federation of Independent Business Small Business Legal Center in Support of Defendant-Appellee and Affirmance by Retail Litigation Center, Inc., Chamber of Commerce of the United States of America, and National Federation of Independent Business Small Business Legal Center

Aug. 28, 2013 – Circuit Rule 26.1 Disclosure Statement by Retail Litigation Center, Inc., Chamber of Commerce of the United States of America, and National Federation of Independent Business Small Business Legal Center

Sept. 27, 2013 – Notice of Oral Argument
Sept. 27, 2013 – Notice to District Court
Sept. 27, 2013 – Reply Brief of the Equal
Employment Opportunity Commission as
Plaintiff-Appellant by Appellant EEOC
Sept. 30, 2013 – Original Record on Appeal
Oct. 1, 2013 – Notice of Unavailability for Oral
Argument by Appellant EEOC
Oct. 10, 2013 – Oral Argument Confirmation by
Appellee Mach Mining, LLC
Oct. 11, 2013 – Disclosure Statement by Appellee
Mach Mining, LLC
Oct. 16, 2013 – Citation of Additional Authority by
Appellee Mach Mining, LLC
Oct. 19, 2013 – Oral Argument Confirmation by
Appellant EEOC
Dec. 20, 2013 – Opinion of the Court
Dec. 20, 2013 – Final Judgment
Feb. 11, 2014 – Mandate Issued
Feb. 12, 2014 – Entry of Appearance by Appellant
EEOC
Feb. 26, 2014 – Notice of Petition of Certiorari Filed
with the Supreme Court
June 30, 2014 – Order from Supreme Court

MDC

CHARGE OF DISCRIMINATION		Charge Presented To:		Agency(ies) Charge No(s):
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input type="checkbox"/> FEFA		440-2008-03421
		<input checked="" type="checkbox"/> EEOC		
Illinois Department Of Human Rights State or Local Agency, if any and EEOC				
Name (Include Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)		Date of Birth
Ms. Brooke A. Petkas				
Street Address City, State and ZIP Code				
305 West Elm Street, West Frankfort, IL 62896				
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)				
Name		No. Employees, Members	Phone No. (Include Area Code)	
MACH MINING		500 or More	(618) 983-3020	
Street Address City, State and ZIP Code				
16468 Liberty School Road, Marion, IL, 62959				
Name		No. Employees, Members	Phone No. (Include Area Code)	
Street Address City, State and ZIP Code				
DISCRIMINATION BASED ON (Check appropriate box(es).)				
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> OTHER (Specify below.)				
THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):				
<p>On several occasions I have applied for a Coal Mine position with Respondent. Respondent has failed to hire Me.</p> <p>I believe I have been discriminated against because of my sex, female, In violation of Title VII of the Civil Rights Act of 1964, as amended.</p>				
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements		
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.		
13-27-08		SIGNATURE OF COMPLAINANT		
Brooke Petkas		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE		
Date		(month, day, year)		
Charging Party Signature				
		RECEIVED EEOC Apr 01 2008 CHICAGO DISTRICT OFFICE		

APPENDIX D

Determination Of Charge



**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

Chicago District Office

500 West Madison Street, Suite 2000

Chicago, IL 60661

Chicago Direct Dial: (312) 353-2714

ITY (312) 353-2421

FAX (312) 353-4041

Charge Number 440-2008-03421

Brooke Petkas
305 West Elm Street
West Frankfort, Illinois 62896

Charging Party

v.

Mach Mining, LLC
16468 Liberty School Road
Marion, Illinois 62959

Respondent

and

Cline Resource and
Development Company
430 Harper Park Drive
Beckley, West Virginia 25801

Respondent

and

Coal Field Transport, Inc. 430 Harper Park Drive Beckley, West Virginia 25801	Respondent
---	------------

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964 (Title VII), as amended.

The Respondents (herein collectively referred to as "Respondent") are employers within the meaning of Title VII, and all requirements for coverage have been met.

The Charging Party alleged that she was discriminated against because of her sex, female, in that she was denied an interview and was not hired, in violation of Title VII.

I have determined that the evidence obtained during the course of the investigation establishes reasonable cause to believe that Respondent discriminated against Charging Party and a class of female applicants, because of their sex, in that Respondent failed to recruit and hire them, in violation of Title VII.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 C.F.R. Part 1601.26).

A representative of this office will be in contact with each party in the near future to begin the conciliation process. When the Respondent declines to enter into conciliation discussions, or when the Commission's representative for any other reason, is unable to secure a conciliation acceptable to the Office Director, the Director shall so inform the parties in writing. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to

contact the assigned Commission representative. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission:

9/17/2010
Date

/s/ John P. Rowe
John P. Rowe
District Director

APPENDIX E

Conciliation Failure Notice



**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

Chicago District Office

500 West Madison Street, Suite 2000

Chicago, IL 60661

Chicago Direct Dial: (312) 353-2714

ITY (312) 353-2421

FAX (312) 353-4041

R Lance Witcher, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Attorney at Law
7700 Bonhomme Ave
Suite 650
St Louis, MO 63105

Re: Charging Party: Brooke A Petkas
Respondent: MACH MINING
EEOC Charge Number: 440-2008-03421

Dear Mr. Witcher:

The Equal Employment Opportunity Commission has determined that, with respect to the above referenced charge, such conciliation efforts as are required by law have occurred and have been unsuccessful. This letter constitutes the notice required by § 1601.25 of the Commission's Regulations which provide that the Commission shall notify a respondent in writing when it

determines that further conciliation efforts would be futile or non-productive.

Sincerely,

9/15/2011
Date

/s/ John P. Rowe
John P. Rowe
District Director

APPENDIX F

Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,	) CIVIL
	) ACTION
Plaintiff,	) NO.
)
v.	) <u>COMPLAINT</u>
)
Mach Mining, LLC,	) JURY
	) TRIAL
Defendant.	) <u>DEMAND</u>

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Brooke Petkas and a class of female applicants for non-office jobs who were adversely affected by such

practices. As stated more fully below, Mach Mining, LLC (“Defendant”) maintained a policy or practice of not hiring women for mining and related positions, or, in the alternative, had a neutral hiring policy which had a disparate impact on women applicants for mining and related positions.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-5(f)(1) and (3) and -6 (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were, and are now being, committed within the jurisdiction of the United States District Court for the Southern District of Illinois, Benton Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) and 707 of Title VII, 42 U.S.C. “§§ 2000e-5(f)(1) and (3) and -6.

4. At all relevant times, Defendant has continuously been a Delaware corporation doing

business in the State of Illinois and the City of Johnston and the City of Marion, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Brooke Petkas filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least on or about January 1, 2006, Defendant has engaged in a pattern or practice of unlawful employment practices at its Johnston, Illinois facility, in continuing violation of Section 703(a)(1) and Section 707 of Title VII, 42 U.S.C. § 2000e-2(a)(1), and 2000e-6. These practices include, but are not limited to failing or refusing to hire females into mining and related (non-office) positions because of their sex.

8. The effect of the practice complained of in paragraph seven (7) above has been to deprive Brooke Petkas and a class of female applicants of equal employment opportunities and otherwise adversely affect their status as applicants for employment, because of their sex.

9. Since at least January 1, 2006, Defendant has utilized hiring practices that cause a disparate impact on the basis of sex, in continuing violation of 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). These practices include, but are not limited to, hiring only applicants who are referred by current employees.

10. The effect of the practice complained of in paragraph nine (9) above has been to deprive Brooke Petkas and a class of female applicants of equal employment opportunities and otherwise adversely affect their status as applicants for employment, because of their sex.

11. The unlawful employment practices complained of in paragraph seven (7) above were and are intentional.

12. The unlawful employment practices complained of in paragraph seven (7) above were and are done with malice or with reckless indifference to the federally protected rights of Brooke Petkas and a class of female applicants.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in sex discrimination in hiring.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for Brooke Petkas and a class of female applicants, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Brooke Petkas and a class of female applicants, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to the rightful place hiring, or award of front pay and/or future lost earnings in lieu thereof, of Brooke Petkas and a class of female applicants.

D. Order Defendant to make whole Brooke Petkas and a class of female employees, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven (7) above, including relocation expenses, job search expenses, and medical expenses which would have been paid by Defendant's employee benefit plan, if any, in amounts to be determined at trial.

E. Order Defendant to make whole Brooke Petkas and a class of female applicants by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph seven (7) above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts

to be determined at trial.

F. Order Defendant to pay Brooke Petkas and a class of female applicants punitive damages for its malicious and reckless conduct described in paragraph seven (7) above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

David Lopez
General Counsel

Jerome Scanlan
Associate General Counsel

Equal Employment Opportunity
Commission
131 M Street, Ne
Washington, Dc 20507

s/ John C. Hendrickson
John C. Hendrickson
Regional Attorney

s/ Gregory Gochanour
Gregory Gochanour
Supervisory Trial Attorney

s/ Ethan M. M. Cohen
Ethan M. M. Cohen
Trial Attorney

Ethan M. M. Cohen
A.R.D.C. No. 6206781
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 W. Madison, Room 2000
Chicago, Illinois 60661
(312) 869-8104
ethan.cohen@eoc.gov

APPENDIX G

Answer

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,	) Case No. 11-
	) CV-879-JPG-
Plaintiff,	) PMF
)
v.)
)
Mach Mining, LLC,)
)
Defendant.)

**DEFENDANT’S ANSWER AND AFFIRMATIVE
DEFENSES**

For its Answer to Plaintiff’s Complaint (“Complaint”), Defendant Mach Mining, LLC (“Defendant”) states as follows:

JURISDICTION AND VENUE

1. Defendant denies violating either Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. or Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a but nevertheless admits that this Court has jurisdiction over this action. Defendant denies each and every remaining allegation of fact and conclusion of law, if any, set forth in paragraph 1 of Plaintiff's Complaint.

2. Defendant denies engaging in any unlawful employment practices but nevertheless admits venue is proper. Defendant denies each and every remaining allegation of fact and conclusion of law, if any, set forth in paragraph 2 of Plaintiff's Complaint.

PARTIES

3. Defendant admits the allegations set forth in paragraph 3 of Plaintiff's Complaint.

4. Defendant admits it is a Delaware Corporation with at least 15 employees at all relevant times and that it conducts business in the State of Illinois as well as in the cities of Johnston and Marion, Illinois. Defendant denies each and every remaining allegation of fact or conclusions of law, if any, set forth in paragraph 4 of Plaintiff's Complaint.

5. Defendant admits the allegations set forth in paragraph 5 of Plaintiff's Complaint.

STATEMENT OF CLAIMS

6. Defendant admits that Brooke Petkas filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant but denies each and every remaining allegation of fact and conclusion of law set forth in paragraph 6 of Plaintiff's Complaint.

7. Defendant denies engaging in any unlawful employment practices and therefore, denies each and every allegation of fact and conclusion of law set forth in paragraph 7 of Plaintiff's Complaint.

8. Defendant denies engaging in any unlawful employment practices or improperly depriving Brooke Petkas or any other female applicants of employment opportunities and therefore, denies each and every allegation of fact and conclusion of law set forth in paragraph 8 of Plaintiff's Complaint.

9. Defendant admits using a referral system for new hires but denies that such practice is unlawful and therefore, denies each and every allegation of fact and conclusion of law set forth in paragraph 9 of Plaintiff's Complaint.

10. Defendant denies engaging in any unlawful employment practices or improperly depriving Brooke Petkas or any other female applicants of employment opportunities and therefore, denies each and every allegation of fact and conclusion of law set forth in paragraph 10 of Plaintiff's Complaint.

11. Defendant denies each and every allegation of fact and conclusion of law set forth in paragraph 11 of Plaintiff's Complaint.

12. Defendant denies each and every allegation of fact and conclusion of law set forth in paragraph 12 of Plaintiff's Complaint. Defendant denies each and every allegation set forth in the WHEREFORE paragraph as well as all sub-parts thereto.

AFFIRMATIVE DEFENSES

1. Further answering, except as noted herein, Defendant denies each and every allegation contained in Plaintiff's Complaint.

2. Further answering, Defendant asserts that Plaintiff's Complaint must be dismissed because Plaintiff has failed to state a claim upon which relief can be granted.

3. Further answering, Defendant states Plaintiff's Complaint must be dismissed because Plaintiff failed to fulfill all conditions precedent before filing suit, including but not limited to, conciliating in good faith the allegations at issue herein.

4. Further answering, Defendant asserts that Plaintiff's Complaint must be dismissed because any actions taken by Defendant with respect to Brooke Petkas and all other female applicants were based on lawful factors and all such actions were for lawful and proper reasons.

5. Further answering, Defendant denies that any of its employees or agents, acting within the course and scope of their employment or agency, violated any statute or caused damage or injury to Brooke Petkas or any other female applicant.

6. Further answering, Defendant asserts that any unlawful conduct allegedly engaged in by its employees, supervisory or otherwise, which Defendant denies, was outside the scope of their employment and was contrary to Defendant's efforts to comply with any and all applicable laws, including but not limited to Title VII.

7. Further answering, Defendant asserts that Plaintiff's claims are barred for failure to properly and/or timely exhaust administrative remedies.

8. Further answering, Defendant states that Plaintiff's prayer for damages is barred to the extent Brooke Petkas or any other female applicant has failed to use reasonable means to mitigate their alleged losses and damages complained of in Plaintiff's Complaint.

9. Further answering, Defendant asserts that any damages claimed by Brooke Petkas or any other female applicant must be reduced to the extent they have, in fact, earned amounts in mitigation of their damages.

10. Further answering, Defendant asserts that its actions toward Brooke Petkas and any other female applicant were taken in good faith, and that it did not act intentionally or willfully.

11. Further answering, Defendant asserts that Plaintiff's claims are barred by the equitable doctrines of estoppel, laches, waiver and unclean hands.

12. Further answering, Defendant asserts that the claims of Brooke Petkas or any other female applicant may be barred, in whole or in part, by the after-acquired evidence doctrine.

13. Further answering, Defendant asserts that Plaintiff's claims are barred by applicable statutes of limitations or other periods of limitation.

14. Further answering, to the extent that the Complaint should be construed as seeking punitive damages, it violates Defendant's right to protection from excessive fines as provided by the Eighth Amendment to the United States Constitution and pertinent provisions of the Constitution of the State of Illinois, and it violates Defendant's right to substantive and procedural due process provided in the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Illinois.

15. Further answering, to the extent that punitive damages are sought in this action, Defendant cannot be held liable for any such punitive damages because any unlawful actions or decisions of its managerial agents or officers would be contrary to Defendant's policy and its good faith efforts to comply with applicable laws, and same

would therefore be outside the scope of their authority.

16. Further answering, to the extent that punitive damages are sought in this action, Defendant asserts that, in the absence of clear and convincing evidence of ill will, spite, malice and willful and wanton conduct, any award of punitive damages would violate the United States Constitution and the Constitution of the State of Illinois.

17. Further answering, Defendant asserts that Plaintiff's claims are barred for failure to exhaust administrative remedies to the extent the allegations contained in Plaintiff's Complaint exceed the scope of the underlying charge of discrimination and/or female applicants failed to timely and properly file charges themselves.

18. Further answering, Defendant expressly reserves the right to assert any additional defenses that become known during discovery. WHEREAS, having fully answered Plaintiff's Complaint, Defendant prays that this Court dismiss Plaintiff's Complaint and provide such other relief as the Court deems just and proper under the circumstances.

WHEREAS, having fully answered Plaintiff's Complaint, Defendant prays that this Court dismiss Plaintiff's Complaint and provide such other relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART

/s/ R. Lance Witcher
R. Lance Witcher, #6279646
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Attorneys for Defendant

APPENDIX H

EEOC Letter May 16, 2012



**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

Chicago District Office

500 West Madison Street, Suite 2000
Chicago, IL 60661

Ann Henry
Trial Attorney
Ann.henry@eEOC.gov

Direct Dial: (312) 869-8104
TTY: (312) 869-8001
Facsimile: (312) 869-8124

VIA ELECTRONIC MAIL

May 16, 2012

R. Lance Witcher
lance.witcher@ogletreedeakins.com
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
7700 Bonhomme Ave Suite 650
St. Louis, MO 63105

Re: *EEOC v. Mach Mining*, 11-879-JPG/PMFF

Dear Lance:

I am writing to follow up on EEOC's request that Mach Mining agree to waive Title VII's confidentiality provisions with respect to conciliation. On January 26, 2012, Ethan Cohen requested that Mach waive confidentiality regarding conciliation, as

Defendant has raised the issue of EEOC's conciliation obligations as a defense to the complaint. That day, you responded that Mach wanted to explore the possibility of early settlement, so there was no need for Mach to raise the issue of the adequacy of conciliation, and that you wanted to wait until after a settlement conference or settlement discussions took place. On April 24, 2012, I renewed EEOC's request that Mach waive confidentiality regarding conciliation because it was evident that settlement was not imminent, and Mach had objected to a number of EEOC's discovery requests on the basis that EEOC allegedly failed to give Mach an opportunity to conciliate claims of class members other than Brooke Petkas. Mach has not responded directly to my April 24, 2012 letter, but in a May 4, 2012 letter regarding EEOC's discovery responses, you wrote that Mach has not waived Title VII's confidentiality provisions.

Unless Mach informs us by Friday, May 18, 2012, that it has agreed to waive confidentiality regarding conciliation, EEOC will file a motion requesting that the Court deem Mach to have waived confidentiality by putting conciliation at issue through its Answer to EEOC's Complaint.

Sincerely,

/s/ Ann Henry
Ann Henry

APPENDIX I

Mach Letter May 21, 2012

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May 21, 2012

Ann Henry
EEOC Trial Attorney
500 W. Madison, Suite 2000
Chicago, Illinois, 60661

Re: *EEOC v Mach Mining, LLC*
Case No. 3 11-CV-879-JPG-PMF

Dear Ms. Henry,

We are writing in response to your May 16, 2012 letter. Please be advised that Defendant does not waive the confidentiality that attached to the

conciliation process in the matter of *Brooke Petkas v. Mach Mining, LLC*, Charge No.: 440-2008-03421. The request that Defendant waive confidentiality is premature. Defendant has not yet filed a motion to dismiss regarding the Equal Employment Opportunity Commission's ("EEOC") failure to conciliate in good faith. Instead, Defendant is merely seeking information about EEOC's conciliation efforts through the discovery process. As I am sure you know, Defendant is entitled to information from the conciliation process that may ultimately support a failure to conciliate in good faith argument.

That said, if Defendant files its motion to dismiss, Defendant will not object to the EEOC's efforts to oppose the motion with what may be confidential information from the conciliation process provided that the EEOC does not disclose any more than is reasonably necessary to oppose the motion and that such opposition is filed under seal. Defendant is not now, and will not in the future, agree to the use of such information for any other purpose during or after this litigation.

Sincerely,

/s/ R. Lance Witcher

R. Lance Witcher

APPENDIX J

**Notice of Deposition of
Equal Employment Opportunity Commission**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

**EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,) Case No. 3:11-
) CV-879-JPG-
Plaintiff,) PMF
)
)
 v.)
)
Mach Mining, LLC,)
)
Defendant.)**

**NOTICE OF DEPOSITION OF EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION
PURSUANT TO RULE 30(B)(6)**

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiff Defendant Mach Mining, LLC (“Mach Mining”), by counsel, gives notice that it will take the deposition upon oral examination of

Plaintiff Equal Employment Opportunity Commission (“EEOC”) at 9:30 a.m. on July 25, 2012, at the offices of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 155 N. Wacker Drive, Suite 4300, Chicago, Illinois 60606. The matter on which examination is contemplated are described in Attachment A. EEOC shall designate one or more officers, directors, managing agents, or other persons to testify on its behalf regarding each of the matters designated in Attachment A. This deposition will be videotaped and recorded stenographically before a Notary Public or other officer authorized to administer oaths, and will be for the purpose of discovery of evidence, for use at trial, and for other lawful purposes. The deposition will continue from day to day until completed.

Dated: May 30, 2012

Respectfully submitted,
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART

/s/ R. Lance Witcher

R. Lance Witcher, #6279646

Sarah Swatosh, # 56633MO

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Attorneys for Defendant

ATTACHMENT A
TO NOTICE OF DEPOSITION OF
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION PURSUANT TO FEDERAL
RULE CIVIL PROCEDURE 30(B)(6)

I. DEFINITIONS

A. “Document” or “documents” shall be construed in its broadest sense, including any writing, record, e-mail, computer stored or generated data (whether it is stored on a server, PDA, hard drive, retrievable file, or on a disk of any kind) or other graphic matter of any type or description including, but not limited to, originals (or if you lack the original, whatever type of copy you have) of any agreements, correspondence, purchase orders, invoices, receipts, contracts, letters, electronic mail, telegrams, office communications, memoranda, reports, records, instructions, activity reports, handwritten notes, notebooks, scrap books, journals, diaries, appointment books, photographs, photocopies, charts, motion pictures, video tapes, audio tapes, records, published or unpublished speeches or articles, publications, files, filing systems, file cards, and descriptions of telephone conversations in your possession, custody or control, wherever located, however produced or reproduced, including any identical or non-identical copy whether a draft or a final version.

B. “Evidencing,” “concerning,” “constituting,” “relating to,” “in connection with” or “referring to” (or

any form thereof) shall mean constituting, reflecting, respecting, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or any other manner relevant thereto.

C. As used herein, “and,” “or,” “and/or,” “any,” and “each” all have interchangeable meanings, and these terms are to be read and responded to in the most inclusive and expansive fashion possible.

D. “Person” and “persons” as used in these discovery requests means any individual, firm, partnership, corporation, committee, association, political action group, or other entity.

E. The terms “communication” and “communicated” mean the transmittal of information by any means.

F. The term “EEOC” means the Equal Employment Opportunity Commission and all representatives, agents, and all persons acting on its behalf.

G. The term “Mach” means Mach Mining LLC, its affiliates, predecessors, present and former agents, employees, attorneys and representatives, and all other persons acting for or on behalf of Mach Mining.

H. The term “EEOC Claimants” means the individuals identified in Plaintiff’s Initial and Amended Rule 26 Disclosures as follows: Vivian J. Beasley, Dixie J. Beavers, Susan J. Blades, Carla

Bozarth, Holly Brooks, Andrea L. Bruington, Kathryn E. Carney, Julie Carter, Heather C. Clark, Carrie Ann Cox, Amanda Davis, Wendy J. DalMonte, Debbie Edwards, Sandra Finney, Karen Gerl, Pamala L. Grimsley-Bynum, Kimberly Hall-Seagraves, Jacquelynn D. Harris, Tonya M. Herron, Kitty Hitt, Carrie Johnson, Benita C. Jordan, Elizabeth Kilman, Christina Laskowski, Jenna N. Massa, Arleen M. Meracle, Sandra Pagliai, Brooke Petkas, Amy Pritchett, Paula Pyle, Judy Rains, Debbie Rasor, Sherry Robinson, Leslie R. Rolla, Dawn Sanders, Donnita K. Shaw, Amanda Smith, Bobbi Jo Smith, Christi L. Tarr, Julie A. Threet, Janice L. Vancil, Dana A. Webb, Kathi Wolf-Starnes, Delana J. Yates, any future claimants, and all of their representatives, agents, and all persons acting on her behalf.

I. Whenever a noun appears, it shall be construed either to be singular or plural to bring within the scope of these discovery requests any information that may otherwise be construed to be outside their scope.

II. DEPOSITION SUBJECTS

1. The scope of the investigation conducted by the EEOC with regard to Brooke Petkas' March 2008 Charge of Discrimination (Charge No. 440-2008-03421) filed against Mach Mining (the "Charge of Discrimination");

2. The identity of all individuals interviewed by the EEOC throughout the course of its investigation

with regard to the Charge of Discrimination, as well as their knowledge of this matter;

3. The documents, declarations, or other evidence collected by the EEOC during its investigation of the Charge of Discrimination;

4. Any and all facts which support the EEOC's determination that "the evidence obtained during the investigation establishes reasonable cause to believe that [Mach Mining] discriminated against [Petkas] and a class of female applicants, because of their sex" as contained in the EEOC's September 17, 2010 Letter of Determination regarding the Charge of Discrimination;

5. The identity and title of all employees or interns of the EEOC who investigated the Charge of Discrimination;

6. Factual findings of the Field Investigator(s) who investigated the Charge of Discrimination;

7. The identity of all individuals the EEOC communicated with regarding the EEOC and Mach Mining's conciliation efforts.

8. The identity of each EEOC Claimant the EEOC communicated with regarding the EEOC and Mach Mining's conciliation efforts.

9. The substance of each discussion with each EEOC Claimant regarding the EEOC and Mach Mining's conciliation efforts.

10. Factual information and documents that support or rebut Plaintiff's allegation in the Complaint that Mach Mining "maintained a policy or

practice of not hiring women for mining and related positions, or, in the alternative, had a neutral hiring policy which had a disparate impact on women applicants for mining and related positions.”

11. Factual information and documents that support or rebut Plaintiff’s allegation in the Complaint that Mach Mining’s “practice[] . . . has been to deprive Brooke Petkas and a class of female applicants of equal employment opportunities and otherwise adversely affect their status as applicants for employment, because of their sex.”

12. Factual information and documents that support or rebut Plaintiff’s allegation in the Complaint that Mach Mining’s “Since at least on or about January 1, 2006, Defendant has engaged in a pattern or practice of unlawful employment practices at its Johnston, Illinois facility, [by] failing or refusing to hire females into mining and related (non-office) positions because of their sex.”

13. Factual information and documents that support or rebut Plaintiff’s allegation in the Complaint that Mach Mining’s “practice[] . . . were and are done with malice or with reckless indifference to the federally protected rights of Brooke Petkas and a class of female applicants”

14. Policies, procedures, practices and criteria used by Plaintiff that determine or affect the scope of the investigation conducted or complaint brought by Plaintiff on behalf of a EEOC Claimants, including but not limited to the factors taken into account when determining the group of persons who

potentially may be aggrieved by allegations or factors identified in an underlying charge(s).

15. Policies, procedures, practices and criteria used by Plaintiff for conducting statistical analysis pertaining to disparate impact described in Plaintiff's complaint.

16. Requirements, policies, practices, or procedures of Plaintiff relating to the use or consideration of referrals in employment or hiring decisions.

APPENDIX K

Defendant's First Requests for Admission

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

**EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,) Case No. 3:11-
) CV-879-JPG-
Plaintiff,) PMF
)
)
 v.)
)
Mach Mining, LLC,)
)
Defendant.)**

**DEFENDANT MACH MINING, LLC'S FIRST
REQUESTS FOR ADMISSION DIRECTED TO
PLAINTIFF**

Defendant Mach Mining, LLC, pursuant to
Rule 36 of the Federal Rules of Civil Procedure,

requires answers to the following Requests for Admission:

- Defendant's First Request for Admission directed to Plaintiff regarding Vivian Beasley, attached hereto as Attachment 1;
- Defendant's First Request for Admission directed to Plaintiff regarding Dixie Beavers, attached hereto as Attachment 2;
- Defendant's First Request for Admission directed to Plaintiff regarding Susan J. Blades, attached hereto as Attachment 3;
- Defendant's First Request for Admission directed to Plaintiff regarding Holly Brooks, attached hereto as Attachment 4;
- Defendant's First Request for Admission directed to Plaintiff regarding Andrea L. Bruington, attached hereto as Attachment 5;
- Defendant's First Request for Admission directed to Plaintiff regarding Kathryn E. Carney, attached hereto as Attachment 6;
- Defendant's First Request for Admission directed to Plaintiff regarding Heather C. Clark, attached hereto as Attachment 7;

- Defendant's First Request for Admission directed to Plaintiff regarding Carrie Ann Cox, attached hereto as Attachment 8;
- Defendant's First Request for Admission directed to Plaintiff regarding Wendy J. Dalmonte, attached hereto as Attachment 9;
- Defendant's First Request for Admission directed to Plaintiff regarding Sandra Finney, attached hereto as Attachment 10;
- Defendant's First Request for Admission directed to Plaintiff regarding Karen Gerl, attached hereto as Attachment 11;
- Defendant's First Request for Admission directed to Plaintiff regarding Pamela Grimsley-Bynum, attached hereto as Attachment 12;
- Defendant's First Request for Admission directed to Plaintiff regarding Kimberly Hall-Seagraves, attached hereto as Attachment 13;
- Defendant's First Request for Admission directed to Plaintiff regarding Jacquelynn D. Harris, attached hereto as Attachment 14;

- Defendant's First Request for Admission directed to Plaintiff regarding Tonya M. Herron, attached hereto as Attachment 15;
- Defendant's First Request for Admission directed to Plaintiff regarding Kitty Hitt, attached hereto as Attachment 16;
- Defendant's First Request for Admission directed to Plaintiff regarding Carrie Johnson, attached hereto as Attachment 17;
- Defendant's First Request for Admission directed to Plaintiff regarding Benita C. Jordan, attached hereto as Attachment 18;
- Defendant's First Request for Admission directed to Plaintiff regarding Jenna N. Massa, attached hereto as Attachment 19;
- Defendant's First Request for Admission directed to Plaintiff regarding Arleen M. Meracle, attached hereto as Attachment 20;
- Defendant's First Request for Admission directed to Plaintiff regarding Sandra Pagliaa, attached hereto as Attachment 21;
- Defendant's First Request for Admission directed to Plaintiff regarding Brooke Petkas, attached hereto as Attachment 22;

- Defendant's First Request for Admission directed to Plaintiff regarding Amy Pritchett, attached hereto as Attachment 23;
- Defendant's First Request for Admission directed to Plaintiff regarding Debbie Rasor, attached hereto as Attachment 24;
- Defendant's First Request for Admission directed to Plaintiff regarding Leslie R. Rolla, attached hereto as Attachment 25;
- Defendant's First Request for Admission directed to Plaintiff regarding Dawn Sanders, attached hereto as Attachment 26;
- Defendant's First Request for Admission directed to Plaintiff regarding Donnita K. Shaw, attached hereto as Attachment 27;
- Defendant's First Request for Admission directed to Plaintiff regarding Bobbi Jo Smith, attached hereto as Attachment 28;
- Defendant's First Request for Admission directed to Plaintiff regarding Christi L. Tarr, attached hereto as Attachment 29;
- Defendant's First Request for Admission directed to Plaintiff regarding Julie A. Threet, attached hereto as Attachment 30;

- Defendant's First Request for Admission directed to Plaintiff regarding Janice L. Vancil, attached hereto as Attachment 31;
- Defendant's First Request for Admission directed to Plaintiff regarding Dana A. Webb attached hereto as Attachment 32;
- Defendant's First Request for Admission directed to Plaintiff regarding Kathi Wolf-Starnes, attached hereto as Attachment 33;
- Defendant's First Request for Admission directed to Plaintiff regarding Delana J. Yates, attached hereto as Attachment 34;
- Defendant's First Request for Admission directed to Plaintiff regarding Carla Bozarth, attached hereto as Attachment 35;
- Defendant's First Request for Admission directed to Plaintiff regarding Julie Carter, attached hereto as Attachment 36;
- Defendant's First Request for Admission directed to Plaintiff regarding Amanda Davis, attached hereto as Attachment 37;
- Defendant's First Request for Admission directed to Plaintiff regarding Debbie Edwards, attached hereto as Attachment 38;

- Defendant's First Request for Admission directed to Plaintiff regarding Elizabeth Kilman, attached hereto as Attachment 39;
- Defendant's First Request for Admission directed to Plaintiff regarding Christina Laskowski, attached hereto as Attachment 40;
- Defendant's First Request for Admission directed to Plaintiff regarding Paula Pyle, attached hereto as Attachment 41;
- Defendant's First Request for Admission directed to Plaintiff regarding Judy Rains, attached hereto as Attachment 42;
- Defendant's First Request for Admission directed to Plaintiff regarding Sherry Robinson, attached hereto as Attachment 43;
- Defendant's First Request for Admission directed to Plaintiff regarding Amanda Smith, attached hereto as Attachment 44.

Dated: June 27, 2012

Respectfully Submitted,
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART

/s/ Sarah N. Swatosh

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Attorneys for Defendant

APPENDIX L

**Defendant Mach Mining, LLC's First Request
for Admission Directed to
Plaintiff Vivian J. Beasley**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,	) Case No. 3:11-
	) CV-879-JPG-
Plaintiff,	) PMF
)
v.)
)
Mach Mining, LLC,)
)
Defendant.)
_____)

**DEFENDANT MACH MINING, LLC'S FIRST
REQUEST FOR ADMISSION DIRECTED TO
PLAINTIFF VIVIAN J. BEASLEY**

Defendant Mach Mining, LLC, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requires answers to the following Requests for Admission. If your answer to any of the following requests is anything other than an unqualified admission, please answer the accompanying interrogatory and request for production of documents.

DEFINITIONS AND INSTRUCTIONS

The following definitions and/or instructions are an integral part of these requests:

1. Each of the matters stated as Requests for Admissions herein will be deemed admitted unless answers are served within thirty (30) days after service of these Requests. If an objection is made to any Request, the reasons therefore should be stated with particularity. All answers shall specifically admit or deny the matter or set forth in details the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the Request; and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, it shall specify so much of it as is true and qualify or deny the remainder. An answering party may not assert lack of information or knowledge as a reason for failure to admit or deny a Request, unless it states that it has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable it to admit or deny same. Such representations must, of course, be true.

2. *EEOC*. The term “EEOC” means the Equal Employment Opportunity Commission and all representatives, agents, and all persons acting on its behalf.

3. *Mach*. The term “Mach” means Mach Mining LLC, its affiliates, predecessors, present and former agents, employees, attorneys and representatives, and all other persons acting for or on behalf of Mach Mining.

4. *Letter of Determination*. The phrase “Letter of Determination” means the probable cause Determination made by EEOC, bates labeled at E000042-000043.

REQUESTS FOR ADMISSION

1. Admit that at no time after June 1, 2007, Vivian J. Beasley applied for a job with Mach.

2. Admit that as of September 17, 2010, EEOC had not determined that the “class of female applicants” (as referenced in the Letter of Determination) specifically included Vivian J. Beasley.

3. Admit that as of September 17, 2010, EEOC had not verbally communicated with Vivian J. Beasley.

4. Admit that as of September 17, 2010, EEOC had not exchanged written correspondence, including emails, faxes and/or any letters, with Vivian J. Beasley.

5. Admit that as of September 17, 2010, EEOC had not requested any documents from a third party identified by Vivian J. Beasley.

6. Admit that as of September 17, 2010, EEOC had not subpoenaed any documents from a third party identified by Vivian J. Beasley.

7. Admit that as of September 17, 2010, EEOC had not interviewed any witnesses identified by Vivian J. Beasley.

8. Admit that as of September 17, 2010, EEOC had not investigated whether Mach had specifically discriminated against Vivian J. Beasley based on her gender.

9. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of back wages for Vivian J. Beasley.

10. Admit that as of September 27, 2011, EEOC had not disclosed Vivian J. Beasley's estimated back wages to Mach.

11. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of front wages for Vivian J. Beasley.

12. Admit that as of September 27, 2011, EEOC had not disclosed Vivian J. Beasley's estimated front wages to Mach.

13. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of lost benefits for Vivian J. Beasley.

14. Admit that as of September 27, 2011, EEOC had not disclosed Vivian J. Beasley's estimated lost benefits to Mach.

15. Admit that as of September 27, 2011, EEOC had not performed any damages calculation on behalf of Vivian J. Beasley.

16. Admit that as of September 27, 2011, EEOC had not disclosed Vivian J. Beasley's damages calculation to Mach.

Dated: June 27, 2012

Respectfully Submitted,
MACH MINING, LLC

/s/ Sarah N. Swatosh
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Sarah N. Swatosh, # 6300994
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Attorneys for Defendant Mach
Mining, LLC

APPENDIX M

EEOC's Responses Requests for Admission

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

**EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,) Case No. 3:11-
) CV-879-JPG-
Plaintiff,) PMF
)
)
 v.)
)
Mach Mining, LLC,)
)
Defendant.)**

**EEOC'S RESPONSES TO DEFENDANT MACH
MINING, LLC'S REQUESTS FOR ADMISSION
DIRECTED TO PLAINTIFF REGARDING
EACH CLAIMANT**

On May 16, 2012, Defendant mailed to EEOC forty-four sets of requests to admit facts. Forty-three of these were identical to each other except for the name of the claimant that was inserted into each set

of requests; each contained sixteen requests. A set was also served regarding the Charging Party; the eight requests in this set are identical to requests nine through sixteen of the other sets. In total, Defendant served 696 requests to admit facts on EEOC.

Many of the requests appear to deal with matters outside the knowledge of the Defendant. It therefore appears that Defendant is not using these requests to confirm matters that are already known, in an effort to streamline discovery and trial, but rather as a method for circumventing the limit placed on the number of interrogatories a party may propound. EEOC generally objects to these requests on that basis.

Other Requests ask EEOC to confirm information which has already been shown to be false through the production of documents. EEOC concludes from this that Defendant propounded these requests not in an attempt to clarify issues, but for some other purpose. EEOC objects to these requests as harassing.

1. Admit that at no time after June 1, 2007, [Claimant Name] applied for a job with Mach.

Response: During the administrative investigation, Defendant produced dated applications, cover letters, resumes, or lists of resumes that show that many of the claimants applied to Mach after June 1, 2007. EEOC therefore objects to this request as harassing.

Without waiving this objection, see EEOC's responses contained in Attachment A.

With respect to Andrea Bruington, Debbie Edwards, and Benita Jordan, EEOC lacks sufficient information to admit or deny that they did not apply to Mach after June 1, 2007. Mach has not produced applications for Jordan and Bruington, and the application from Edwards does contain any date stamp reflecting when it was received. In addition, based on the information EEOC has obtained from Bruington, Edwards, and Jordan as to when they applied at Mach, EEOC cannot determine with certainty whether they applied after June 1, 2007 and therefore can neither admit nor deny this request to admit.

2. Admit that as of September 17, 2010, EEOC had not determined that the "class of female applicants" (as referenced in the Letter of Determination) specifically included [Claimant Name].

Response: EEOC objects to Request to Admit 2 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984);

EEOC v. Chicago Miniature Lamp Works, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC further objects that Request to Admit 2 seeks information protected from disclosure by the government deliberative process privilege.

EEOC objects to this Request as an attempt to circumvent the limits placed on the number of interrogatories a party may propound.

3. Admit that as of September 17, 2010, EEOC had not verbally communicated with [Claimant Name].

Response: EEOC objects to Request to Admit 3 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC has previously produced documents showing that it verbally communicated with many of the claimants during its investigation. EEOC therefore objects to this request as harassing.

Without waiving these objections, see EEOC's responses contained in Attachment A.

4. Admit that as of September 17, 2010, EEOC had not exchanged written correspondence, including

emails, faxes and/or any letters with [Claimant Name].

Response: EEOC objects to Request to Admit 4 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC has previously produced documents showing that it communicated in writing with many of the claimants during its investigation. EEOC therefore objects to this request as harassing.

Without waiving these objections, see EEOC's responses contained in Attachment A.

5. Admit that as of September 17, 2010, EEOC had not requested any documents from a third party identified by [Claimant Name].

Response: EEOC objects to Request to Admit 5 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th

Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC further objects that Request to Admit 5 is vague because “identified” is undefined, such that it is unclear whether “identified” includes an instance, for example, where a claimant referred to unnamed individuals with whom she conversed, or whether it is limited to instances where a claimant identified a third party by name. For purposes of this Request to Admit, EEOC will apply Definition 3 “Identify (with respect to persons)”, contained in Defendant Mach Mining, LLC’s First Interrogatories Directed to Plaintiff.

EEOC objects to Request to Admit 5 because it assumes without foundation that a claimant identified third parties from whom EEOC could request documents and is therefore misleading. EEOC also objects that Request to Admit 5 is vague and ambiguous because it is unclear whether EEOC is being asked to admit or deny both that a claimant identified third parties and that EEOC had not requested any documents from third parties.

Without waiving these objections, see EEOC’s responses contained in Attachment A.

6. Admit that as of September 17, 2010, EEOC had not subpoenaed any documents from a third party identified by [Claimant Name].

Response: EEOC objects to Request to Admit 6 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC’s administrative

investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC further objects that Request to Admit 6 is vague because “identified” is undefined, such that it is unclear whether “identified” includes an instance, for example, where a claimant referred to unnamed individuals with whom she conversed, or whether it is limited to instances where a claimant identified a third party by name. For purposes of this Request to Admit, EEOC will apply Definition 3, “Identify (with respect to persons),” contained in Defendant Mach Mining, LLC’s First Interrogatories Directed to Plaintiff.

EEOC objects to Request to Admit 6 because it assumes without foundation that a Claimant identified third parties from whom EEOC could subpoena documents and is therefore misleading. EEOC also objects that Request to Admit 6 is vague and ambiguous because it is unclear whether EEOC is being asked to admit or deny both that a claimant identified third parties and that EEOC had not subpoenaed any documents from third parties.

Without waiving these objections, see EEOC’s responses contained in Attachment A.

7. Admit that as of September 17, 2010, EEOC had not interviewed any witnesses identified by [Claimant Name].

Response: EEOC objects to Request to Admit 7 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC further objects that Request to Admit 7 is vague because "identified" is undefined, such that it is unclear whether "identified" includes an instance, for example, where a claimant referred to unnamed individuals with whom she conversed, or whether it is limited to instances where a claimant identified a third party by name. For purposes of this Request to Admit, EEOC will apply Definition 3, "Identify (with respect to persons)," contained in Defendant Mach Mining, LLC's First Interrogatories Directed to Plaintiff.

EEOC objects to Request to Admit 7 because it assumes without foundation that a claimant identified third parties from whom EEOC could interview therefore misleading. EEOC also objects that Request to Admit 7 is vague and ambiguous because it is unclear whether

EEOC is being asked to admit or deny both that a claimant identified third parties and that EEOC had not interviewed those third parties.

Without waiving these objections, see EEOC's responses contained in Attachment A.

8. Admit that as of September 17, 2010, EEOC had not investigated whether Mach had specifically discriminated against [Claimant Name] based on gender.

Response: EEOC objects to Request to Admit 8 because it seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. EEOC's administrative investigation is irrelevant and not reviewable, as Defendants are entitled to a trial de novo on all discrimination claims in this case. *See, e.g., EEOC v. Caterpillar, Inc.*, 409 F.3d 831, 833 (7th Cir. 2005); *EEOC v. Keco Indus., Inc.*, 748 F.2d 1097, 1100 (6th Cir. 1984); *EEOC v. Chicago Miniature Lamp Works*, 526 F. Supp. 974, 976 (N. D. Ill. 1981).

EEOC has previously produced documents which demonstrate an investigation specifically in regard to many of the claimants during its investigation. EEOC therefore objects to this request as harassing.

Without waiving these objections, see EEOC's responses contained in Attachment A.

9. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of back wages for [Claimant Name].

Response: EEOC objects that Request to Admit 9 because whether and when EEOC investigators, supervisors, or attorneys estimated back wages for any claimant is information protected from disclosure by the government deliberative process privilege, the attorney-client privilege, and/or the attorney work product privilege.

EEOC further objects to Request to Admit 9 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 9 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 9 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not

reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to this Request as an attempt to circumvent the limits placed on the number of interrogatories a party may propound.

10. Admit that as of September 27, 2011, EEOC had not disclosed [Claimant Name]'s estimated back wages to Mach.

Response: EEOC objects to Request to Admit 10 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 10 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 10 seeks to confirm facts about EEOC's assessment of potential damages

for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to Request to Admit 10 because it assumes without foundation that EEOC estimated back wages for the claimant and is therefore misleading.

Without waiving these objections, see EEOC's responses contained in Attachment A.

11. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of front wages for [Claimant Name].

Response: EEOC objects that Request to Admit 11 because whether and when EEOC investigators, supervisors, or attorneys estimated back wages for any claimant is information protected from disclosure by the government deliberative process privilege, the attorney-client privilege, and/or the attorney work product privilege.

EEOC further objects to Request to Admit 11 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 11 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The

district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 11 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to this Request as an attempt to circumvent the limits placed on the number of interrogatories a party may propound.

12. Admit that as of September 27, 2011, EEOC had not disclosed [Claimant Name]'s estimated front wages to Mach.

Response: EEOC objects to Request to Admit 12 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 12 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus.*,

Inc., 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 12 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to Request to Admit 12 because it assumes without foundation that EEOC estimated front wages for the claimant and is therefore misleading.

Without waiving these objections, see EEOC's responses contained in Attachment A.

13. Admit that as of September 27, 2011, EEOC had not estimated damages in the form of lost benefits for [Claimant Name].

Response: EEOC objects that Request to Admit 13 because whether and when EEOC investigators, supervisors, or attorneys estimated back wages for any claimant is information protected from disclosure by the government deliberative process privilege, the attorney-client privilege, and/or the attorney work product privilege.

EEOC further objects to Request to Admit 13 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 13 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 13 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to this Request as an attempt to circumvent the limits placed on the number of interrogatories a party may propound.

14. Admit that as of September 27, 2011, EEOC had not disclosed [Claimant Name]'s estimated lost benefits to Mach.

Response: EEOC objects to Request to Admit 14 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 14 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 14 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to Request to Admit 14 because it assumes without foundation that EEOC estimated

lost benefits for the claimant and is therefore misleading.

Without waiving these objections, see EEOC's responses contained in Attachment A.

15. Admit that as of September 27, 2011, EEOC had not performed any damages calculation on behalf of [Claimant Name].

Response: EEOC objects that Request to Admit 15 because whether and when EEOC investigators, supervisors, or attorneys estimated back wages for any claimant is information protected from disclosure by the government deliberative process privilege, the attorney-client privilege, and/or the attorney work product privilege.

EEOC further objects to Request to Admit 15 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 15 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d

527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 15 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to this Request as an attempt to circumvent the limits placed on the number of interrogatories a party may propound.

16. Admit that as of September 27, 2011, EEOC had not disclosed [Claimant Name]'s damages calculation to Mach.

Response: EEOC objects to Request to Admit 16 because what was said or done during conciliation is irrelevant as Mach has not waived Title VII's confidentiality provision with respect to conciliation and therefore cannot rely on the conciliation proceedings as a basis for its defense. *See* 42 U.S.C. § 2000e-5(b); Plaintiff EEOC's Motion to Deem Confidentiality of Conciliation Process to Have Been Waived by Defendant. EEOC further objects to Request to Admit 16 as EEOC's conciliation efforts are beyond judicial review. *See EEOC v. Keco Indus., Inc.*, 748 F. 2d 1097, 1102 (6th Cir. 1984) ("The district court should only determine whether the EEOC made an attempt at conciliation. The form and substance of those conciliations is within the discretion of the EEOC as the agency ... and is

beyond judicial review."); *EEOC v. Zia Co.*, 582 F.2d 527, 533 (10th Cir. 1978) ("[A] court should not examine the details of the offers and counteroffers between the parties, nor impose its notions of what the government should provide ... "). Therefore, to the extent that Request to Admit 16 seeks to confirm facts about EEOC's assessment of potential damages for conciliation purposes, it is irrelevant and not reasonably calculated to lead to the discovery or establishment of admissible facts.

EEOC objects to Request to Admit 16 because it assumes without foundation that EEOC estimated damages for the claimant and is therefore misleading.

Without waiving these objections, see EEOC's responses contained in Attachment A.

Dated: June 18, 2012

Respectfully Submitted,

/s/ Ann M. Henry

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 Attachment A--EEOC's Responses to Defendant Mach Mining, LLC's Requests for Admission Directed to EEOC Regarding Each Claimant

Claimant	RTA 1	RTA 2	RTA 3	RTA 4	RTA 5	RTA 6	RTA 7	RTA 8
Beasley, Vivian	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Beavers, Dixie	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Blades, Susan	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Bozarth, Carla	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Brooks, Holly	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Bruington, Andrea	Insufficient information to admit or deny after making a reasonable inquiry	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Carney, Kathryn	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Carter, Julie	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Clark, Heather	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Cox, Carrie	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
DalMonte, Wendy	Deny	See objections	Deny	Admit	Admit	Admit	Admit	Deny
Davis, Amanda	Deny	See objections	Deny	Admit	Admit	Admit	Admit	Deny
Edwards, Debbie	Insufficient information to admit or deny after making a reasonable inquiry	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Finney, Sandra	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Gerl, Karen	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Admit
Grimsley-Bynum, Pamala	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Hall-Seagraves, Kimberly	Admit	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Harris, Jacquelynn	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Herron, Tonya	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Hitt, Kitty	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Johnson, Carrie	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny

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 Attachment A--EEOC's Responses to Defendant Mach Mining, LLC's Requests for Admission Directed to EEOC Regarding Each Claimant

Claimant	RTA 1	RTA 2	RTA 3	RTA 4	RTA 5	RTA 6	RTA 7	RTA 8
Jordan, Benita	Insufficient information to admit or deny after making a reasonable inquiry	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Kilman, Elizabeth	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Laskowski, Christina	Admit	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Massa, Jenna	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Meracle, Arleen	Admit	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Pagliai, Sandra	Admit	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Petkas, Brooke	See objections to RTA 9	Admit	See objections to RTA 11	Admit	See objections to RTA 13	Admit	See objections to RTA 15	Deny
Pritchett, Amy	Deny	See objections	Deny	Admit	Admit	Admit	Admit	Deny
Pyle, Paula	Admit	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Rains, Judy	Admit	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Rasor, Debbie	Admit	See objections	Deny	Admit	Admit	Admit	Admit	Deny
Robinson, Sherry	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Rolla, Lesli	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Sanders, Dawn	Deny	See objections	Admit	Admit	Admit	Admit	Admit	Admit
Shaw, Donnita	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Smith, Amanda	Deny	See objections	Deny	Admit	Admit	Admit	Admit	Deny
Smith, Bobbi Jo	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Tarr, Christi	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Threet, Julie	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Vancil, Janice	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny
Webb, Dana	Deny	See objections	Admit	Deny	Admit	Admit	Admit	Deny
Wolfe-Starnes, Kathi	Admit	See objections	Admit	Admit	Admit	Admit	Admit	Deny
Yates, Delana	Deny	See objections	Deny	Deny	Admit	Admit	Admit	Deny

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 Attachment A--EEOC's Responses to Defendant Mach Mining, LLC's Requests for Admission Directed to EEOC Regarding Each Claimant

Claimant	RTA 9	RTA 10	RTA 11	RTA 12	RTA 13	RTA 14	RTA 15	RTA 16
Beasley, Vivian	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Beavers, Dixie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Blades, Susan	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Bozarth, Carla	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Brooks, Holly	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Bruington, Andrea	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Carney, Kathryn	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Carter, Julie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Clark, Heather	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Cox, Carrie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
DalMonte, Wendy	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Davis, Amanda	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Edwards, Debbie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Finney, Sandra	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Gerl, Karen	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Grimsley-Bynum, Pamala	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Hall-Seagraves, Kimberly	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Harris, Jacquelynn	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Herron, Tonya	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Hitt, Kitty	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Johnson, Carrie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit

Case 3:11-cv-00879-JPG-PMF Document 28 Filed 06/29/12 Page 20 of 21 Page ID #249
 Attachment A--EEOC's Responses to Defendant Mach Mining, LLC's Requests for Admission Directed to EEOC Regarding Each Claimant

Claimant	RTA 9	RTA 10	RTA 11	RTA 12	RTA 13	RTA 14	RTA 15	RTA 16
Jordan, Benita	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Kilman, Elizabeth	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Laskowski, Christina	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Massa, Jenna	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Meracle, Arleen	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Pagliari, Sandra	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Petkas, Brooke	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Pritchett, Amy	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Pyle, Paula	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Rains, Judy	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Rasor, Debbie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Robinson, Sherry	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Rolla, Lesli	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Sanders, Dawn	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Shaw, Donnita	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Smith, Amanda	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Smith, Bobbi Jo	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Tarr, Christi	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Threet, Julie	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Vancil, Janice	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Webb, Dana	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Wolfe-Starnes, Kathi	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit
Yates, Delana	See objections	Admit	See objections	Admit	See objections	Admit	See objections	Admit

APPENDIX N

**Notice of Withdrawal of EEOC's
First Requests to Admit Facts**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,	) Case No. 3:11-
	) CV-879-JPG-
Plaintiff,	) PMF
)
v.)
)
Mach Mining, LLC,)
)
Defendant.)

**NOTICE OF WITHDRAWAL OF EEOC'S FIRST
REQUESTS TO ADMIT FACTS AND
MODIFICATION OF ITS INTERROGATORIES
AND DOCUMENT REQUESTS**

EEOC withdraws its First Set of Requests for Admissions to Defendant Mach Mining, LLC, of which all of the requests related to EEOC's

investigation or conciliation of the charge of discrimination underlying this suit.

In addition, to the extent that EEOC's First Set of Interrogatories to Defendant (served on August 16, 2012) or First or Second Requests for Production of Documents call for the production of information or documents related to pre-suit conciliation efforts, EEOC agrees to limit those requests to seek only information or documents unrelated to conciliation and withdraws all portions of the requests seeking the production of information or documents related to conciliation.

Respectfully Submitted,

/s/ Ann M. Henry

Ann M. Henry

Ethan Cohen

Trial Attorneys

Equal Employment Opportunity

Commission

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APPENDIX O

EEOC Letter Sep. 13, 2012



**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

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Ethan M. M. Cohen
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September 13, 2012

R. Lance Witcher
Sarah Swatosh
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
7700 Bonhomme Ave
Suite 650
St. Louis, MO 63105

Re: *EEOC v. Mach Mining*, 11-879-JPG/PMFF

Lance:

Based on your representations in court on Monday, as well as conversations you had with EEOC counsel during breaks and after court, EEOC is concerned that you may intend to submit conciliation materials with your brief in response to our motion for partial summary judgment.

Title VII provides that nothing said or done in conciliation shall be “used as evidence in a subsequent proceeding without the written consent of the persons concerned.” In this case none of the “persons concerned” have given their written consent, not Mach, the EEOC nor Brooke Petkas. You yourself have pointed out that in another case (*EEOC v. Lifecare*, 2009 WL 772834 (W.D.Pa.)) a judge recused himself because he had been exposed to conciliation materials. While it may not be clear that Title VII’s criminal sanctions apply to “any person” including non-EEOC employees (though they may), EEOC’s view is that it would certainly be sanctionable for you to inject prohibited documents into the proceedings. This is especially true as EEOC’s motion rests on a purely legal matter – whether courts have the authority to scrutinize the content or methods of EEOC’s conciliation efforts.

Based on discussions with you, it appeared to EEOC that you believe Title VII’s prohibition on the use of conciliation materials is imposed solely on the EEOC. This interpretation is both strained and contrary to case law. Two appellate circuits, two district courts within the Seventh Circuit and other district courts outside the circuit have all held that the bar applies to *any* party. *See, e.g., Joseph v. Publix Supermarkets*, 2005 WL 2249887 at **8 (C.A.11 (Fla.)); *Olitsky v. Spencer Gifts, Inc.*, 842 F.2d 123, 126 (5th Cir.1988); *EEOC v. Scrub, Inc.*, No. 09 C 4228, 2010 WL 2136807, at *6 (N.D. Ill. May 25, 2010); *EEOC v. Olsten Staffing*, 627 F. Supp. 2d 972, 975-976 (W.D. Wis. 2009); *EEOC v.*

Hotspur Resorts Nevada, Ltd., No. 2:10-cv-02265, 2012 WL 2415541, at *5 (D. Nev. June 26, 2012); *EEOC v. Con-Way Freight*, 2008 WL 4066424 at *5 (E.D.Mo.).

You also conveyed your belief to EEOC that *EEOC v. Associated Dry Goods*, 449 U.S. 590 (1981) supported your view that Mach is free to use the conciliation materials in this case. *Associated Dry Goods* merely held that disclosure of certain information to the Charging Party was not a disclosure to the public in violation of §706 of Title VII. Charges and information obtained during an investigation are different than conciliation. Charges and facts learned during an investigation may be made public once the EEOC has commenced an action in court, while conciliation materials explicitly may not be used in any subsequent proceeding. In fact, at note 13 the Court stated that, “The statute also forbids public disclosure of any matters arising in informal conciliation ‘without the written consent of the persons concerned...’” and goes on to note that this provision supports the notion that the *parties* are not the public. *Id.* at 598. The Defendant is not the only party to this action, and the Supreme Court has held that conciliation may not be made public without the consent of the persons concerned. Again, none of the persons concerned in this case have given their consent.

Please write by the close of business on Friday, September 21, 2012 to confirm that you do not intend to submit evidence of anything that was said or done

during conciliation with your response to EEOC's motion for partial summary judgment. If you do not so confirm, EEOC will likely be forced to file a motion for a protective order on this matter, thus incurring unnecessary expense and possibly further delaying this litigation. In that event, EEOC would have to consider seeking sanctions against you personally pursuant to 28 U.S.C.A. § 1927.

To be clear: if you file any conciliation material with your responsive brief without the written consent of EEOC and Brooke Petkas, or prior approval of the court, EEOC will likely seek sanctions against you and your client.

Please contact us if you wish to discuss this matter further. I look forward to hearing from you.

Sincerely,

s/ Ethan M. M. Cohen

Ethan M. M. Cohen

Trial Attorney