

## Eastern District of PA Federal Judge Rules Transportation Company May Be Sued Over Harassment by Non-Employee

By Joseph G. Harraka, Jr., Esq. and Christopher M. Leddy, Esq.

**Philadelphia, P.A.** - Addressing an issue that remains unresolved by the Third Circuit Court of Appeal, U.S. District Court Judge Jan DuBois of the Eastern District of Pennsylvania recently ruled that a transportation company can be held liable for failing to stop an employee from being sexually harassed by a non-employee in *Carl Hewitt v. BS Transportation of Illinois, LLC*, et al. Plaintiff, Carl Hewitt (“Hewitt”) worked as a freight driver for Defendant, BS Transportation of Illinois, LLC (“BS Transportation”) and his job responsibilities included loading oil at the refinery located at Marcus Hook, Pennsylvania owned by Defendant Sunoco, Inc. (“Sunoco”). Beginning in early 2014, Sunoco employee Defendant, Anthony Perillo (“Perillo”) began to make sexual advances toward Hewitt when he travelled to the Sunoco plant to fill his truck up with fuel. Despite his complaints to both Perillo’s supervisor at Sunoco and his complaints to his supervisor and the owner at BS Transportation, the sexual harassment he experienced from Perillo did not cease and continued over an extended period of time. Hewitt claimed he eventually was “constructively terminated” when he continued to complain about the situation and suffered various pecuniary harm and severe emotional and physical distress as a result of such termination of employment.

In issuing her opinion, Judge DuBois granted in part and denied in part a motion to dismiss Hewitt’s Complaint filed by BS Transportation. She determined that Hewitt could proceed on his Title VII of the Civil Rights Act of 1964, “hostile work environment” claim based on his allegations that his employer failed to address reports that a non-employee with whom he had regular contact during the scope of his work responsibilities was sexually harassing him on a continual basis. Judge DuBois noted in her decision that although the Third Circuit Court of Appeal had not settled the issue, other Circuit Courts and certain District Courts within the Third Circuit had determined that employers such as BS Transportation can be liable if they know, or should have known, about harassment by a non-employee but fail to take “immediate and appropriate corrective action.”

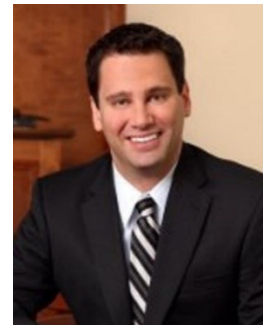
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BS Transportation also challenged Hewitt's ability to bring a Title VII claim given that the company did not meet the definition of "employer" under that statute because it employs fewer than 15 people, but Judge DuBois determined that such an issue could be best handled at the summary judgment stage of the case and therefore, Hewitt's action could proceed to discovery on this and other issues.

In light of this recent ruling, companies need to be sensitive and vigilant about any employee complaints of harassment whether such harassment is being conducted by a fellow employee within the company or an individual with whom the company's employees interact on a regular basis during the scope of their work responsibilities and conduct immediate investigations into any and all such complaints to eliminate or limit any potential exposure. Our Firm would be more than happy to assist with such investigations should the need present itself in the future. In the meantime, the attorneys within our Firm's Transportation Group would be happy to answer any questions you may have about this case or any other employment related issues.

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