

PRICE WATERHOUSE v. HOPKINS (1989)
SEX DISCRIMINATION

The case of *Price Waterhouse v. Hopkins* concerned which party had the burden of proof in a sex discrimination case when the company employing the woman claimed that, while there may have been sex discrimination against the woman, she lost the employment opportunity because of some other, legitimate ground.

On May 1, 1989, the Supreme Court issued its opinion in *Waterhouse*. By a 6-3 vote, the Court concluded that the employer had the burden of proof in such a case. Justices Brennan, Marshall, Blackmun, and Stevens supported Hopkins entirely. Justices White and O'Conner wrote separate concurring opinions in which Justice White stated that the employer had the burden of proving that the legitimate ground was the dominant one but only by a preponderance of the evidence (51%) not "clear and convincing" evidence (a higher standard) as the trial court had held. Justice O'Conner argued that the burden shifting to the employer should only be allowed in those cases, such as this, where the employer had muddied the waters by giving "substantial weight" to the employee's gender in making its employment decision. Justice Kennedy filed a dissenting opinion in which Chief Justice Rehnquist and Justice Scalia joined.

The opinion in *Waterhouse* marks a major, if not complete, victory for victims of sex discrimination. The employer who can conjure up some legitimate grounds for firing a woman employee but who has also shown signs of discriminating on the basis of sex will not be off the hook in the future. The employer will have to prove, by a preponderance of the evidence, that the legitimate basis for firing was the dominant basis for firing. That burden will not be easily met.

MOTIVES

Price Waterhouse's Argument: Price Waterhouse's basic argument is taken from the statute involved here, Title VII of the Civil Rights Act of 1964. This is the law that provides a remedy for those who claim to have been discriminated against in employment because of their race, sex, religion, or nationality. That law says that the employee may not be given relief for any reason other than unlawful discrimination. If that is so, Price Waterhouse argues, then the employee should show, in a mixed motive case, that the dominant reason for the decision not to promote her was sex discrimination. Under Title VII, they argue, the employee must establish that they would have been promoted but for sex discrimination.

Hopkins' Argument: Hopkins' basic argument also concerns Title VII. She argues that when Congress enacted Title VII it did so in order to provide relief for persons who had been discriminated against. It established a national policy against discrimination based on such factors as sex and race. She contends that if the burden was placed on the employee in a mixed motives case, that Congressional policy would be destroyed. Her case, she argues, presents a classic example of why this is so.

In her case the employer argues that it had legitimate reasons for not promoting her. It claims that she did not deal well with other people; that she was abrasive. But are these legitimate reasons or just another form of sex discrimination? Conduct that is regarded as abrasive in women may be seen as aggressive in men. Legitimate grounds, such as a lack of interpersonal skills, are very subjective and very easy to invent when faced with a sex discrimination charge. If that is so, then to require the employee to bear the burden of proof in mixed motive cases would be to allow many employers to get away with sex discrimination by inventing some legitimate but hard to prove reason for their actions and then requiring the employee to show that was not the dominant reason for the decision. If employers can do that, then Title VII is no remedy at all, Hopkins argues.

Title VII of the Civil Rights Act of 1964 states, in part: "It shall be an unlawful employment practice for an employer...to discriminate against any individual... because of such individual's race, color, religion, sex, or national origin."

GLOSSARY OF TERMS

(The following terms were defined in pervious issued of **spotlight**: appeal, evidence, warrant and writ of certiorari.)

Amicus Curiae: Friend of the court. A person or organization who submits a brief to the court even though it is not a party to the case. The amicus must show a special interest in the outcome of the case.

Brief: A written statement of the case, including an argument in support of one side.

Burden of Proof: The responsibility of one of the parties to convince the court that they are right. Only one party can have the burden of proof on an issue.

Dissent: To disagree. Frequently a justice or justices will disagree with the majority and will file a dissenting opinion.

Prosecution: The act of presenting evidence against an individual or company in a criminal case. The case is presented by the prosecutor.