

## COMPANY BANKRUPT, SUPERVISOR AND HR MANAGER NEXT IN LINE FOR LAWSUIT



A former employee alleged racial discrimination and retaliation, but the company where he worked, Equistar Chemicals, LP – as well as its affiliate, Lyondell Chemical Company – was not legally responsible for a very simple reason: it was bankrupt. So the defendants named in the suit were his former supervisor and the HR manager. This is a legal maneuver allowable under 42 U.S.C. § 1981. The man began working as a process technician at Equistar's facility in Illinois. He claimed that his supervisor, who is white (the plaintiff is African American), made racially derogatory comments, including statements that black people are lazy, that steps be taken to limit the black population and suggesting that slavery be "revived." The man further alleged that he complained of the harassment to the HR manager on several occasions, but she neither discussed the allegations with higher-ups nor disciplined the supervisor. The plaintiff testified that he had problems with other employees as well, and there were at least two anonymous calls made to the employee hotline, complaining of the plaintiff's subpar work. After reputedly discovering garbage and feces in his locker, the man saw a psychologist and physician and informed his supervisor that he would be taking medical leave for work-related stress. The healthcare provider, however, had trouble verifying his medical records and denied the man's application for leave and the subsequent appeal. It was then determined that the employee had been absent from work without leave, and the HR manager, who did not have the authority to terminate workers, prepared a termination report for the plant manager. The man initially filed a lawsuit citing racial discrimination and retaliation – for his complaints of the harassment – against Lyondell, Equistar and the two individuals. But after the companies filed for bankruptcy, he amended his complaint to name only the supervisor and HR manager. The district court denied the supervisor's motion for summary judgment, and he reached a settlement with the former employee. The HR manager's motion for summary judgment, however, was granted for



all counts. The court had rejected the retaliation claim for two reasons: it found no evidence that the HR manager even had a hand in the plaintiff's firing, and even if she had participated in his termination, there was no proof that she had done so because of the man's complaints. Appellate judges disagreed with the district court on the former point but concurred with the latter. The man had argued that the HR manager supplying "damaging information" is ultimately what swayed the decision-makers to terminate his employment. The appeals court accepted this notion, citing the "cat's paw" theory – an employee having input in any adverse action from an employer, such as a firing. Unfortunately, this did not show that the HR manager's reason for potentially influencing the decision to fire him was on account of his complaints. The man's strongest point in support of retaliation was a threat to retaliate – made by the supervisor, who named the HR manager. As this was deemed hearsay, the plaintiff had nothing to corroborate his argument, and the summary judgment in favor of the HR manager was affirmed.