

## Untimeliness, Hearsay, And Failure To Link Alleged Negative References And Third-Party Job Rescissions To Protected Activity Doom Employee's Retaliation Claim

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### Gavel

The U.S. District Court for the Southern District of Indiana has dismissed the retaliation claims raised against Eli Lilly and Company (Lilly) by former employee Cassandra Welch (Welch), reaffirming that discrete acts of alleged retaliation must independently meet timeliness requirements under 42 U.S.C. § 1981 (imposing a four year statute of limitations), and finding a void of evidence to link eighteen job rescissions to any retaliatory animus on behalf of Lilly.

Specifically, in *Welch v. Eli Lilly Co.*, [found here](#), Plaintiff Welch had been terminated by Lilly in June 2004 for misconduct associated with alleged falsification of documents in the course of an internal investigation. Subsequent to her discharge, Welch filed various complaints against Lilly, alleging race discrimination, which claims ultimately were resolved in Lilly's favor at trial. Thereafter, Welch filed her retaliation suit, contending that Lilly retaliated against her post-termination by providing negative references (which she believed prompted prospective employers to rescind or refuse to offer her jobs), and by providing negative information about her husband to his employer.

A significant chunk of Plaintiff's retaliation allegations stemmed from conduct alleged to have occurred in the 2004-2006 timeframe- more than four years prior to her June 30, 2011 lawsuit. During this timeframe, for example, Welch alleged representatives of Lilly to have provided false information regarding her husband to his employer regarding misconduct he had allegedly engaged in at Lilly, while knowing that that the Lilly employee engaging in such misconduct was a different person altogether (who happened to have the same name as him). Welch further believed -- based on information conveyed to her by a prospective employer and her own observations during a call she witnessed -- that Lilly had provided negative employment verification information when prospective employers called. At the time, Lilly's policy was to provide only the dates of employment and last title/position held, and to employ a centralized process to have employment inquiries channeled through Human Resources. Welch asserted that negative references within Lilly had prompted prospective employers to decline to hire her.

In summarily disposing of these allegations, the Court rejected any argument that the events at issue were a continuing violation of covert conduct or that

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Welch had no basis to know of same until a later date. To the contrary, the Court found that Welch had witnessed the alleged references as early as late 2004, had included allegations regarding her husband's treatment in her EEOC Charge of Discrimination in April 2005, and had been asked to provide information about those comments by her then-counsel in December 2006. The Court further explicitly determined that any alleged retaliatory act dating back more than four years prior to Welch's complaint filing was time-barred, even if Welch claimed that it was tied to a later act, such as withdrawal of a contingent job offer.

Welch's remaining retaliation allegations -- namely, that a number of prospective employers had withdrawn contingent offers after contacting Lilly -- fared no better. To the contrary, in less than a two-page analysis, the Court rejected such claims outright, finding that the information conveyed to Welch by interviewers or prospective employers regarding what some nameless (or, in at least one instance, a specific employee) at Lilly may have stated was inadmissible hearsay. The Court went on to find that, even if it were true that the prospective employers had contacted Lilly and that contingent offers of employment were thereafter withdrawn, there was no evidence to demonstrate that the statements made by Lilly's employees were motivated by any past protected activity by Welch. To the contrary, many of the alleged "negative" statements were attributed to an unknown person -- not those individuals Welch identified as having knowledge of her complaints and any comments were too attenuated from any prior statements made by any alleged discriminator or person knowledgeable of her past complaints.

Though the outcome in this case was favorable to the employer, this case serves to remind employers to be cognizant of their reference/employment verification procedures and to monitor compliance with same, in order to ensure no disputes could later arise over what may or may not have been said and any resulting consequences.