

## GEICO Can't Be Dragged Into Bias Suit Against NJ Biz

By **Bill Wichert**

Law360 (March 25, 2020, 2:41 PM EDT) -- A New Jersey federal judge on Wednesday shot down a bid to pull GEICO into a discrimination suit against another insurance business purportedly serving as a franchisee, saying that company's former employee failed to allege the insurance giant exerted the requisite amount of control over the business.

U.S. Magistrate Judge Michael A. Hammer denied without prejudice plaintiff Nasser Saleh's motion to file an amended complaint adding GEICO as a defendant in his case against Egglinger Insurance Agency based on the companies' alleged franchisor-franchisee relationship.

The judge concluded that such control was necessary to impose liability on GEICO for the conduct of EIA staff.

"In the instant case, plaintiff's proposed amended complaint is devoid of any specific allegations that GEICO asserts control over EIA's operations," Judge Hammer said in the opinion. "Aside from stating that EIA was a franchised third-party vendor of GEICO, plaintiff provides no allegations to illustrate that GEICO had control over EIA's day-to-day operations."

Judge Hammer acknowledged that discovery might be needed to develop the allegations against GEICO and said Saleh could seek to amend his suit if he uncovers evidence during discovery that supports those claims.

But even at the current stage of the case, "the court cannot simply overlook the complete absence of any meaningful allegations that GEICO exercises a requisite degree of control over EIA," the judge said.

Saleh, who is Muslim and of Middle Eastern descent, filed his complaint in June against EIA, Berkshire Hathaway Inc. and related defendants, alleging he faced discrimination at the insurance agency based on his religion, race, ethnicity and national origin.

Saleh was hired by EIA in March 2018 for a hybrid position of customer service representative and sales agent, according to the judge's opinion. During the application and interview phase, the agency supported his idea of using his knowledge of Arabic as part of the job, the opinion said.

After he had started working for the agency, however, Saleh said he was told by his superiors that "he could no longer speak in Arabic to customers, as no other EIA employees

could understand or monitor him," the opinion said.

Soon after, Saleh allegedly found out that his co-workers were talking about him in Spanish, which he didn't understand, the opinion said. On April 13, 2018, Saleh allegedly learned a co-worker had complained about him in Spanish to Saleh's manager, the opinion said. Four days later, he allegedly met with the manager and other bosses to discuss that incident, the opinion said.

"Plaintiff expressed his displeasure with how he had been treated in his time with EIA, including the rule against speaking Arabic to customers," the opinion said in recapping Saleh's claims, adding that he alleged one of the bosses "informed plaintiff that he needed to 'let go of the issue,' and if he could not, he could not work at EIA." Saleh said he resigned from EIA that day, the opinion said.

After Berkshire Hathaway asserted the claims against it were frivolous and vowed to seek sanctions if the company was not removed from the action, Saleh voluntarily dismissed the business from the case and sought to add GEICO as a defendant in its place, according to the opinion.

The "core fact" linking EIA to GEICO in the proposed amended complaint is that Saleh "describes EIA as a franchised third-party vendor of GEICO," the opinion said.

In rejecting Saleh's motion to file the amended complaint, Judge Hammer on Wednesday noted that "case law reinforces this proposition that a franchisor must go beyond mere branding and general operation guidelines to open itself up to liability for the conduct of the franchisee," citing a Pennsylvania federal court's 2010 opinion in Myers v. Garfield & Johnson Enterprises.

The judge also pointed to a New Jersey federal court opinion last year in Michalak v. ServPro Industries, in which the court denied a defense motion to dismiss on the grounds that "the complaint adequately plead that ServPro exercised control over the franchisee's affairs."

"Unlike Michalak and Myers, there are no facts alleged in the proposed amended complaint that provide any evidence of control measures such as training procedures, policy manuals, or operations mandates from GEICO to EIA," Judge Hammer said.

Saleh attorney Louis J. Johnson Jr. told Law360 on Wednesday, "We are dissatisfied with Judge Hammer's decision to deny adding GEICO to the case. We plan on making a second motion to add GEICO at the close of discovery on the basis of contradictory answers provided by Egglinger Insurance Agency in responding to the complaint."

"The fact that GEICO is denying liability during this worldwide pandemic is troubling given the thinly capitalized nature of the entities used by global corporations to shield themselves from responsibility for unlawful discrimination against employees and customers," Johnson added.

Counsel for GEICO declined to comment Wednesday.

Saleh is represented by Louis J. Johnson Jr. and Omer Khwaja of the Law Office of Louis J. Johnson Jr. LLC.

GEICO is represented by Christian A. Cavallo and Patrick J. Mulqueen of Goldberg Segalla LLP.

The case is Nasser Saleh v. Egglinger Insurance Agency LLC et al., case number 2:19-cv-13944, in the U.S. District Court for the District of New Jersey.

--Editing by Marygrace Murphy.

*Update: This article has been updated to reflect that GEICO's attorneys declined to comment.*

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