



## Default Hearings Can't Save Bad Complaints, 5th Circ. Says

Share us on: By **Vin Gurrieri**

Law360, New York (January 5, 2015, 12:42 PM ET) -- The Fifth Circuit on Friday ruled that evidence cited at a hearing to prove up damages for a default judgment cannot be used to correct a defective complaint, vacating a Texas federal judge's award of default judgment to a McDonald Transit Associates Inc. worker in an age bias case.

A three-judge panel vacated a default judgment entered in June 2013 by U.S. District Judge Sam R. Cummings against McDonald Transit in a suit brought by plaintiff Eddie Wooten alleging the company violated the Age Discrimination in Employment Act and retaliated against Wooten when it fired him after he made the age bias claim.

In upholding McDonald Transit's appeal, the panel found that Wooten's complaint contained very few factual allegations and could not be cured by his testimony at a so called prove-up hearing, which provided evidence on the elements of his ADEA claim that were absent from his complaint.

"We hold that a defective complaint cannot be redeemed by evidence presented at a prove-up hearing and therefore cannot support a default judgment absent amendment of the pleadings," Circuit Judge Edward C. Prado said writing on behalf of the panel.

Initially filed in June 2012, Wooten's complaint said he worked at the company as a Class B mechanic for about 12 years beginning in 1999. He claimed McDonald Transit ultimately fired him in May 2011 in retaliation for an age discrimination claim he had made months earlier to the U.S. [Equal Employment Opportunity Commission](#).

After twice failing to respond to summonses, Judge Cummings entered a default judgment against McDonald Transit in June 2013. The judgment awarded Wooten \$44,400 in back wages, about \$5,000 for incurred healthcare expenses that would have been covered under the health insurance provided by his employer, \$6,500 for the lost value of the company's

contribution to Wooten's retirement plan and \$7,500 in attorneys' fees.

The judgment was entered after the judge held a hearing in which Wooten provided live testimony that elaborated on the allegations contained in his complaint. The testimony included details about Wooten's history at the company and his age as well as a more detailed description of his retaliation claim than what was presented in the initial complaint.

On the heels of the ruling, McDonald Transit petitioned Judge Cummings to set aside the judgment because it was not properly served, did not intentionally fail to respond to the complaint and that Wooten was not actually employed by the company.

But in August 2013, Judge Cummings denied the company's bid to vacate the judgment after concluding that McDonald Transit's president and vice-president were aware of Wooten's lawsuit months before the default judgment was entered.

“This demonstration of intentional and willful neglect is inexcusable,” Judge Cummings' order said. “The defendant's argument is without merit.”

But in Friday's ruling, the Fifth Circuit found that Wooten's complaint was “impermissibly bare” to support an ADEA claim.

The panel noted that if the complaint were viewed in combination with Wooten's live testimony at the prove-up hearing, it provided a sufficient basis to support the default judgment against McDonald Transit.

However, the panel determined in a matter of first impression that fatally defective pleadings, such as Wooten's complaint, cannot be corrected by proof taken at a default judgment hearing, and that Judge Cummings erred in entering default judgment in the case.

Although the panel pointed out that it does not condone McDonald Transit's conduct in federal court, it said the company should have been served with an amended complaint containing Wooten's “plausible” factual allegations, and should have received a corresponding opportunity to answer or properly default before judgment.

The panel noted that even though other circuits have not addressed the exact issue presented in this case, the courts' precedents agree on a basic proposition that a default

judgment must be founded on adequate pleadings.

“Recognizing an exception to this established rule in cases where necessary facts omitted from the complaint emerge for the first time at a damages hearing would inject uncertainty into this body of law and unfairly disadvantage defaulting defendants,” the panel said.

The panel also pointed out that allowing evidence cited at hearings to cure deficient complaints would grant trial judges “impermissible latitude” to assist one party or another that they may be sympathetic to by choosing to either conduct or not conduct such a hearing before entering a default judgment.

Additionally, allowing a prove-up hearing to effectively amend a complaint would also not afford a defendant enough of an opportunity to respond and would “undermine the court's policy of enabling defendants intelligently to weigh the costs of default against the costs of defending an action.”

The panel sent the case back to district court with instructions that Wooten's complaint be dismissed with leave to amend.

Steve Tatum of [Cantey Hanger LLP](#), which represented McDonald Transit, said Monday that “the issue raised in this appeal was uncertain and needed to be addressed by the Fifth Circuit.”

“We are pleased that the court issued a decision on this issue that was favorable to McDonald Transit,” Tatum said.

An attorney for Wooten were not immediately available for comment Monday.

Wooten was represented by Joseph Craig Johnston of Johnston & Miller Attorneys At Law.

McDonald Transit was represented by Stephen Tatum, David B. Dowell, Jennifer Bley Sweeny and T. Derek Carson of Cantey Hanger LLP.

The case is Eddie Wooten v. McDonald Transit Associates Inc., case number [13-11035](#), in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Ben Guilfoy.