

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

MARIE BERRODIN	:	CIVIL ACTION
Plaintiff	:	
	:	No. 03-5572
v.	:	
	:	
MEDICAL COMPONENTS, INC.,	:	
d/b/a MEDCOMP	:	
Defendant	:	

MEMORANDUM OPINION AND ORDER

RUFE, J.

October 7, 2004

Plaintiff Marie Berrodin claims that Defendant Medical Components, Inc. (“Medcomp”) violated her rights under the New Jersey Conscientious Employee Protection Act (“CEPA”)¹ when it terminated her employment on June 9, 2003. She contends that Medcomp fired her in retaliation for her good faith complaints about a sheath included in Medcomp’s dialysis kits, which she reasonably believed was defective and potentially dangerous to the health and/or safety of its users.

Before the Court is Medcomp’s Motion for Summary Judgment. In its Motion, Medcomp argues for summary judgment on four grounds. First, Medcomp asserts that the Court must dismiss Plaintiff’s cause of action because Pennsylvania law, not New Jersey law, applies to this matter. The other three grounds relate to Plaintiff’s ability to produce sufficient evidence to support the elements of a CEPA claim under New Jersey law. For the reasons below, Medcomp’s Motion for Summary Judgment is Denied.

¹ N.J. Stat. Ann. 34:19-1 et seq.

Background²

Medcomp is a privately owned Pennsylvania corporation in the business of selling catheters and catheter components used in dialysis. Medcomp has its only office and a warehouse facility in Pennsylvania, but it distributes dialysis products throughout the United States and internationally.

Plaintiff began working for Medcomp in 1982 as a sales representative responsible for selling dialysis equipment to hospitals in Pennsylvania, Delaware and occasionally in other states. In 1988, Plaintiff moved to New Jersey for reasons unrelated to her job, and she continues to reside there. She added several New Jersey accounts to her territory but continued to sell Medcomp products in other states as well, including Pennsylvania. Beginning in 1993, Medcomp changed its sales model and stopped selling dialysis products directly to hospitals. Instead, it began selling its products to eleven independent distributors, with Medcomp's sales managers overseeing the distributors' sales forces. In 1993, Plaintiff became a Regional Sales Manager, responsible for the sales force of one distributor, which has business accounts in New Jersey. Between 1993 and 2003, Plaintiff added two additional distributors to her territory, but neither of these distributors sold Medcomp products in New Jersey. At all relevant times, the National Sales Manager, Leonard Mancini, supervised Plaintiff. Plaintiff describes Mancini as her "roving" supervisor, but his office was located at the Medcomp facility in Pennsylvania.

Medcomp expected Plaintiff to be "in the field" 60-80% of the time and to do

² In deciding a motion for summary judgment, the Court construes all facts and inferences in favor of the non-moving party. EEOC v. Westinghouse Elec. Corp., 725 F.2d 211, 216 (3d Cir. 1983).

administrative work for the balance of her time. Plaintiff did her administrative work at her home in New Jersey. Medcomp never designated a work site for Plaintiff to perform her administrative duties, nor did Medcomp provide its regional sales managers with offices at Medcomp's headquarters. Plaintiff rarely visited the Medcomp office in Pennsylvania, but she did call the office a few times each month. She communicated with her supervisor primarily by telephone and submitted her account and expense reports to the Medcomp office in Pennsylvania. Although Medcomp did not require Plaintiff to conduct her administrative duties in New Jersey, it did require her to be "in the field" with her New Jersey accounts to carry out her responsibilities as Regional Sales Manager.

One component of the dialysis kits Medcomp sells is a sheath. Starting in 2002, Medcomp substituted a sheath manufactured by one of its affiliates (Martech) for a sheath produced by an outside supplier (TFX). Medcomp did not inform the sales force of the change. In February or March 2003, Plaintiff reported to her supervisor that she had been receiving reports of problems with the sheaths. At this point, Plaintiff learned that Medcomp had changed the manufacturer of the sheaths.

Plaintiff reported safety problems and malfunctions of the product to Mancini in a memorandum dated April 24, 2003.³ She had compiled these complaints during a meeting she held for that express purpose on April 23, 2003 at a medical center in Illinois. Three doctors and a physician's assistant attended this meeting. According to Plaintiff, the doctors were very concerned with the excessive bleeding caused by the sheaths when the catheters were inserted or changed. Although she does not mention this concern about bleeding in the letter to Mancini, she did write:

³ Memorandum captioned Rush Presbyterian, dated April 24, 2003.

“the sheaths are not staying locked when they put them in over the guidewire. Very dangerous.”⁴ She also mentioned other complaints about the quality and ease of use of the Martech sheath. Plaintiff continued to complain to Medcomp about the sheath for several months until Medcomp terminated her.

Medcomp terminated Plaintiff on June 9, 2003, after twenty-one years of employment. Mancini met with Plaintiff personally to inform her that Medcomp was firing her. This meeting took place in Cape May, New Jersey, where Plaintiff was attending a previously arranged sales meeting with one of Medcomp’s distributors. The non-retaliatory reasons proffered by Medcomp for her firing are: 1) insufficient time spent in the field; and 2) disclosure of confidential sales data belonging to a distributor.

Standard of Review

The Court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”⁵ The nonmoving party must come forth with admissible factual evidence establishing a genuine issue of material fact to defeat the motion.⁶

⁴ Id.

⁵ Fed. R. Civ. Proc. 56 (c).

⁶ See Celotex Corp. v. Catrett, 447 U.S. 317 (1986).

Discussion

I. Conflict of Laws Analysis

Medcomp asserts that Pennsylvania law should apply, because Pennsylvania has the greater interest in the employment relationship at issue here. This Court must apply Pennsylvania's conflict of laws rules in a diversity action to decide which state's laws apply.⁷ Under Pennsylvania conflict of laws rules, the Court first examines whether the laws of the interested states conflict.⁸ If the laws conflict, the Court must determine which state has the most significant contacts as they relate to the states' public policies underlying the issue in question.⁹

A. Is There a Conflict Between New Jersey and Pennsylvania Law?

First, the Court must determine whether the laws of the states actually conflict.¹⁰ Plaintiff brings this case under New Jersey's Conscientious Employee Protection Act (CEPA).¹¹ This statute outlines several public policy exceptions to an employer's right to fire employees "at will." The relevant provision to this case provides that "an employer shall not take any retaliatory action against an employee because the employee . . . objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes . . . is incompatible with a clear

⁷ Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 47 (1941); Shuder v. McDonald's Corp., 859 F.2d 266, 269 (3d Cir. 1988).

⁸ On Air Entm't Corp. v. Nat'l Indem. Co., 210 F.3d 146, 149 (3d Cir. 2000).

⁹ Gen. Star Nat'l Ins. Co. v. Liberty Mut. Ins. Co., 960 F.2d 377, 379 (3d Cir. 1992).

¹⁰ On Air Entm't Corp., 210 F.3d at 149.

¹¹ N.J. Stat. Ann. § 34:19-1 et seq.

mandate of public policy concerning the public health, safety or welfare”¹²

While New Jersey has statutory exceptions to “at will” employment, Pennsylvania’s exceptions are found in common law. Generally, under Pennsylvania law, an employer may discharge an employee “at will,” with or without cause.¹³ Pennsylvania allows a cause of action for firing an “at will” employee when the termination threatens “clear mandates of public policy,”¹⁴ but the courts construe this exception very narrowly.

The facts in Geary v. United States Steel Corp.¹⁵ are very similar to those alleged by Plaintiff in this case. In Geary, the plaintiff sales person was dismissed after voicing his concerns over the inadequacy of product testing and the potential for serious danger to users of the product. The plaintiff argued that his dismissal for opposing a product he believed to be dangerous violated public policy. Nevertheless, the Supreme Court of Pennsylvania found that Geary did not possess expert qualifications, nor did he have a duty to make judgments in matters of public safety.

In Pennsylvania, the public policy exception does not even apply to an employee who is fired because he refuses to perform an act he “reasonably believes” to be illegal; the act must actually be illegal for the employee to have a cause of action for wrongful termination.¹⁶ In other words, the public policy exception requires the employee to have more than a “reasonable belief” that a product is dangerous or an action is illegal. This is a substantially different standard than that set forth under

¹² N.J. Stat. Ann. § 34:19-3.

¹³ Shick v. Shirey, 716 A.2d 1231, 1233 (Pa. 1998).

¹⁴ Id. at 1234.

¹⁵ Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974).

¹⁶ See Clark v. Modern Group, LTD, 9 F.3d 321 (3d Cir. 1993).

the New Jersey statute, which provides protection for employees who “reasonably believe” that an action is illegal or incompatible with a clear mandate of public policy.¹⁷

Having determined that the Pennsylvania and New Jersey laws are inconsistent, the Court must examine whether both states have a genuine interest in the issue at stake, and whether applying the law of the one state would undermine the other state’s interest.¹⁸ There are many factual situations where two jurisdictions have nominal contacts with the transaction, but only one jurisdiction is truly concerned with the result. That is not the situation here. New Jersey demonstrated its interest in preventing its citizens from being discharged in retaliation for acting in the public interest by passing CEPA.¹⁹ Similarly, Pennsylvania has a significant interest in regulating employers located and doing business in the state according to Pennsylvania’s own traditions and principles of law.²⁰

Applying Pennsylvania rather than New Jersey law affects the analysis of the claims here. Accordingly, a conflict exists. Having answered this question, the Court must now determine whether Pennsylvania or New Jersey law applies in this case.

B. Does New Jersey or Pennsylvania Law Govern in This Case?

Since the relevant laws of Pennsylvania and New Jersey conflict, the Court must use

¹⁷ N.J. Stat. Ann. §34:19-3.

¹⁸ LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996).

¹⁹ Abbamont v. Piscataway Township Bd. of Ed., 650 A.2d. 958, 971 (N.J. 1994).

²⁰ Shamley v. ITT Corp., 869 F.2d 167, 172 (2d Cir. 1989).

Pennsylvania's conflict of laws rules to determine which state's law applies here.²¹ Pennsylvania's rule requires examination of the significant contacts with each state as they relate to the states' public policies underlying the issue in question.²²

1. **Factors Favoring Pennsylvania Law**

a. **State Interest**

As a rule, Pennsylvania does not allow a cause of action against an employer for termination of an at-will employment relationship.²³ Courts have recognized exceptions to this rule only when discharges of at-will employees would threaten clear mandates of public policy.²⁴ Pennsylvania's whistleblower statute applies only to public employees.

Policy considerations underlie Pennsylvania's approach to employment relationships.

This court has held:

“An employer, unless constrained by some law, has a right to keep his house in any order he desires. Part of the discretion that entails is the right to make informed or uninformed, wise or unwise, business decisions which include, *inter alia*, employment decisions. If plaintiff was not fulfilling his duties and was acting contrary to the interests of his employer by undermining confidence in the defendant's product, it cannot be a violation of public policy to discharge plaintiff, particularly when those reasons appear on the complaint itself.”²⁵

²¹ Shuder, 859 F.2d at 269.

²² Gen. Star Nat'l Ins. Co., 960 F.2d at 379.

²³ See Geary, 319 A.2d at 176.

²⁴ E.g., Reuther v. Fowler & Williams, Inc., 386 A.2d 119 (Pa. Super. Ct. 1978) (employee cannot be discharged for serving on a jury); Shick, 716 A.2d at 1237 (terminating at-will employee for filing a workers compensation claim violates public policy); cf. McLaughlin v. Gastrointestinal Specialists, Inc., 750 A.2d 283, 289 (Pa. 2000) (holding that employer's violation of federal safety law is not indicative of violation of Pennsylvania public policy).

²⁵ Wagner v. Gen. Elec. Corp., 760 F. Supp. 1146, 1155 (E.D. Pa. 1991).

b. **Contacts with Pennsylvania**

Defendant Medcomp is incorporated in Pennsylvania and has its only office in Pennsylvania. It also operates a warehouse in Pennsylvania. Plaintiff's supervisors work in the Pennsylvania office, including her direct supervisor, Mancini, and the president of the company. The staff in the Pennsylvania office hired Plaintiff. The Pennsylvania office issued her paycheck, and she submitted account and expense reports to the office monthly. Supervisors based in the Pennsylvania office decided to terminate Plaintiff's employment.

Despite all these contacts, it cannot be said that Plaintiff's employer-employee relationship focuses on or is primarily centered in Pennsylvania.²⁶ Plaintiff managed sales accounts for Medcomp in New Jersey, Pennsylvania, New York, Delaware, Ohio, Indiana, Michigan and Illinois. Thus, she was hired to work in several states, including New Jersey. Furthermore, while Medcomp does not maintain corporate offices outside of Pennsylvania, it does require its sales employees to work outside of Pennsylvania on a regular basis. Medcomp argues that Plaintiff had a greater number of accounts in Pennsylvania than in New Jersey, and spent more time "in the field" in Pennsylvania. These facts are not relevant to the analysis at hand, as the Court must look at the contacts qualitatively, not quantitatively.²⁷

Although Medcorp is incorporated in and has its principal place of business in Pennsylvania, Pennsylvania law does not "travel with [it] wherever it runs."²⁸ In Shields, the Third

²⁶ Kramer v. Novak, 908 F. Supp. 1281, 1285 (E.D. Pa. 1995) (applying New Jersey law where the contractual relationship between the parties was "centered primarily" in New Jersey, and New York and Pennsylvania had relevant but weaker contacts).

²⁷ LeJeune, 85 F.3d at 1071.

²⁸ Shields v. Consol. Rail Corp., 810 F.2d 397, 401 (3d Cir. 1987).

Circuit held that when a Pennsylvania corporation elects to transact business in another state, it exposes itself to the laws and policies of that state, and its rights can be governed by the laws and policies of that state.²⁹ If Medcomp wishes to have its employment relationships governed by Pennsylvania law regardless of where its employees live and work, it can create a “choice of law” provision by contract with its employees.³⁰ It has not elected to do so. While Pennsylvania does have a strong policy interest in applying its own law to employment relationships involving work in that state,³¹ the employment relationship at issue here involved work in many states, including New Jersey. Therefore, Pennsylvania’s interest in allowing at-will employment may, in this instance, be outweighed by the policy interests of New Jersey.

3. **Factors Favoring New Jersey:**

a. **State Interest:**

By enacting this remedial legislation (CEPA), New Jersey has made it clear that New Jersey has a public policy interest in encouraging employees to report illegal or unethical workplace activities, to protect them when they do so, and to discourage public and private sector employers

²⁹ Id.

³⁰ In a case analyzed under New Jersey’s conflict of laws rule, which is similar to the Pennsylvania rule, the court found that New Jersey law, rather than Missouri law, applied in a contract case involving a salesman who lived and had some sales accounts in New Jersey. The plaintiff also sold the defendant’s products in New York and parts of New England. The defendant employer was incorporated in Delaware and based in Missouri. The court acknowledged that applying New Jersey law rather than Missouri law raised concerns about certainty, predictability and uniformity of result, given that company employees working in different states could sue and achieve different results under the same contract provisions. However, the court reasoned that the employer could have adopted a choice-of-law provision. Since it did not, the employer must have expected to be subject to the laws of multiple jurisdictions. Finding that the many of the plaintiff’s employment duties and responsibilities were performed in New Jersey, the court applied New Jersey law. Pepe v. Rival Corp., 85 F.Supp.2d 349 (D.N.J. 1999), aff’d 254 F.3d 1078 (3d Cir. 2001).

³¹ Shamley, 869 F.2d at 172.

from engaging in such conduct.³²

b. **Contacts with New Jersey**

Medcomp, a Pennsylvania corporation, contracts with distributors which sell Medcomp's dialysis products to medical facilities worldwide. Medcomp employs a staff of sales managers to oversee the distributors' sales staff. Because the distributors sell the product throughout the nation and internationally, Medcomp routinely requires its sales managers to work outside of Pennsylvania. Plaintiff is a New Jersey resident who worked for Medcomp as a Regional Sales Manager. Her region included the state of New Jersey. She was responsible for overseeing the sales staff of three medical equipment distributors, one of which has sales territory in New Jersey and two of which are located in New Jersey. As such, Plaintiff's responsibilities as Regional Sales Manager required her to work "in the field" in New Jersey.³³ She also worked in the field in Pennsylvania and in other states.

Plaintiff also maintained an office in her New Jersey home. She performed her administrative duties out of her home office approximately one to two days per week, communicating with distributors and her Medcomp supervisor and office support staff by telephone. She maintained her files at home and sent and received correspondence from home. Medcomp did not provide Plaintiff, or any of its Regional Managers, with an office, so Plaintiff had no choice but to perform her administrative work at home in New Jersey. Plaintiff alleges that she rarely went to Medcomp's Pennsylvania office.

³² Abbamont, 650 A.2d. at 971.

³³ Although the parties dispute the *amount of time* Plaintiff spent working in the field in New Jersey, it is undisputed that Plaintiff was required by her employer to spend time in the field in New Jersey.

Plaintiff complained to her employer that it was producing a product that she believed to be dangerous to consumers' health and safety. She alleges that Medcomp terminated her employment in retaliation for her complaints.³⁴ Plaintiff's complaints are the type of communication that New Jersey intended the CEPA statute to encourage and protect. Although Medcomp is based in Pennsylvania, its contact with New Jersey is not fortuitous. Medcomp engages in purposeful economic activity within its borders and reaps benefits from doing so. Medcomp does not operate an office in New Jersey, but it does contract with New Jersey-based distributors, and sells its products in New Jersey. Medcomp employed Plaintiff, a New Jersey resident, to oversee the sale of its product in New Jersey. And Medcomp terminated Plaintiff when she complained about the safety of that product. New Jersey has an interest in protecting its citizens, such as Plaintiff, from retaliatory termination by employers doing business in the state.³⁵ There are significant contacts with New Jersey in this case, and these contacts closely relate to New Jersey's public policy, as set forth in the CEPA statute.

That the New Jersey law offers Plaintiff greater protection is not a consideration in the conflict of laws analysis.³⁶ Nevertheless, looking at the state contacts as they relate to the states' public policies underlying the issue, this Court finds that New Jersey has the most significant contacts. Pennsylvania has only a general interest in allowing employers to terminate employees

³⁴ Plaintiff argues that New Jersey has a compelling interest in this case because her supervisor notified Plaintiff of her termination in New Jersey. The Court does not consider this a significant factor. The "act" which is the subject of Plaintiff's complaint is the termination of her employment relationship with Medcomp, not the *notice* of termination. Therefore, the state in which Medcomp notified Plaintiff of her termination does not determine the choice of law.

³⁵ Abbamont, 650 A.2d at 971.

³⁶ Shuder, 859 F.2d at 272; Cipolla v. Shaposka, 267 A.2d 854, 856-857 (Pa. 1970) ("Inhabitants of a state should not be put in jeopardy of liability exceeding that created by their state's law just because a visitor from a state offering higher protection decides to visit there.")

“at will.” New Jersey has expressed a specific interest in protecting employees who report illegal or unethical workplace activities from retaliatory termination. Medcomp is alleged to have fired a New Jersey resident who works in New Jersey in retaliation for her objections to an allegedly dangerous product. The New Jersey legislation was written to provide a cause of action for just such claims. Therefore, the Court finds that New Jersey law applies to Plaintiff’s claims.

II. Whether Plaintiff Reasonably Believed That the Sheath in Question Presented an Unreasonable and Substantial Risk of Injury or Illness.

To sustain a CEPA claim, Plaintiff must prove that she reasonably believed the sheath posed an unreasonable risk of injury or illness.³⁷ Plaintiff does not need to prove that the sheath actually posed an unreasonable risk of injury or illness.³⁸ Medcomp argues that Plaintiff cannot produce sufficient evidence on this point to meet her burden of proof. Medcomp states that Plaintiff received few complaints about the product relative to the number of accounts she served, and that those complaints related to convenience and quality, not health and safety. Contrary to Medcomp’s assertion, Plaintiff has presented evidence that she received complaints about the safety of the product. While she did receive complaints about the quality and convenience of the product, Plaintiff has alleged that she also heard complaints about excessive bleeding because of the sheath.³⁹ Plaintiff also reported a complaint that the sheath was not staying locked, which the complaining doctor noted was very dangerous.⁴⁰ The Court finds that there are genuine issues of material fact as

³⁷ Dzwonar v. McDevitt, 828 A.2d 893, 900 (N.J. 2003).

³⁸ Id. at 901.

³⁹ Berrodin Deposition at 250-254.

⁴⁰ Id.; See also Memorandum captioned Rush Presbyterian dated April 24, 2003.

to whether Plaintiff reasonably believed that the sheath in question presented a substantial risk of injury or illness, and therefore this issue cannot be resolved on summary judgment.

III. Whether There Is Sufficient Evidence of a Causal Relationship Between Plaintiff's Objection to Distribution of the Sheath and Plaintiff's Termination from Employment.

To succeed on her CEPA claim, Plaintiff must also prove a causal connection between her objections to the distribution of the Martech sheath and her termination from employment.⁴¹ There are genuine issues of material fact regarding causation which need to be resolved at trial. Medcomp alleges that Plaintiff did not complain about the sheath between April and her termination in June, and therefore the temporal link between the events is weak. Plaintiff testified that she was working to get TFX sheaths, rather than Martech sheaths, to her salespeople through the month of May, and that she discussed this with Mancini weekly.⁴² Therefore, Plaintiff has raised a genuine issue as to the temporal link between her conduct and her termination, which must be resolved at trial. In addition to the temporal link, Plaintiff has also produced evidence that there are internal inconsistencies in Medcomp's explanation and documentation of its proffered reasons for terminating her employment. Mancini only gave Plaintiff one reason for firing her: she was not spending enough time "in the field" with her clients.⁴³ Mancini later testified that this was not the reason.⁴⁴

If Plaintiff makes a prima facie case of retaliation at trial, Medcomp will have the burden of

⁴¹ Dzwonar, 828 A.2d at 900.

⁴² Berrodin Deposition at 270-271.

⁴³ Berrodin Deposition at 102-104.

⁴⁴ Mancini Deposition at 80-81.

articulating some legitimate, non-discriminatory reason for firing Plaintiff.⁴⁵ Then, Plaintiff must prove that these reasons are pretextual, and that the discharge was actually in retaliation for her objections to the product.⁴⁶ Medcomp has articulated two reasons for terminating Plaintiff: her lack of time spent in the field and her inappropriate disclosure of confidential sales information. Plaintiff has provided evidence of weaknesses, contradictions and inconsistencies in Medcomp's proffered reasons.⁴⁷ As noted above, Plaintiff offered evidence that she would not have been fired based on time in the field alone.⁴⁸ She also raises a genuine issue of fact as to whether the disclosure of allegedly confidential sales information was a reason for her termination, by noting that documentation of this disclosure was added to her personnel file six weeks after she was terminated.⁴⁹ Therefore, this issue cannot be resolved on summary judgment. Plaintiff has raised genuine issues of material fact concerning the causal relationship between Plaintiff's complaints and her termination.

Conclusion

Although Medcomp is a Pennsylvania corporation, the company does business throughout the world. Medcomp sends its employees into other states, including New Jersey, to supervise sales of its products by contracted distributors. Overall, New Jersey has a greater interest

⁴⁵ Blackburn v. United Parcel Serv., Inc., 179 F.3d 81, 92 (3d Cir. 1999).

⁴⁶ Id.

⁴⁷ Id. at 94.

⁴⁸ Plaintiff may rely upon the same evidence to prove pretext as she does to make her prima facie case. Bowles v. City of Camden, 993 F. Supp. 255, 264 (D.N.J. 1998).

⁴⁹ Note to personnel file July 16, 2003: "Per Len, Marie Berrodin gave these records to Nancy Hammer and should not have done so."

than Pennsylvania in resolving the particular issue raised in this litigation, and therefore New Jersey law applies to this case.

Having found that New Jersey law applies, the Court then examined whether Medcomp is entitled to summary judgment based on Plaintiff's failure to raise genuine issues of material fact as to the elements required to support her claim. The Court has found triable issues of fact as to the issues Medcomp raised in support of its Motion for Summary Judgment. Accordingly, Medcomp is not entitled to summary judgment.

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

MARIE BERRODIN,	:	CIVIL ACTION
Plaintiff	:	
	:	No. 03-5572
v.	:	
	:	
MEDICAL COMPONENTS, INC.,	:	
d/b/a MEDCOMP,	:	
Defendant.	:	

ORDER

AND NOW, this 7th Day of October, 2004, having considered Defendant's Motion for Summary Judgment [Doc. # 12], Plaintiff's Response thereto [Doc. # 13], Defendant's Reply [Doc. # 14], and Plaintiff's Sur-reply [Doc. #16], it is hereby **ORDERED** that Defendant's Motion for Summary Judgment is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.