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

JOSEPH HUSSEY	:	CIVIL ACTION
	:	
v.	:	
	:	
CHASE MANHATTAN BANK,	:	
ET AL.	:	NO. 02-7099

SURRICK, J. **JULY 29, 2005**

MEMORANDUM & ORDER

Presently before the Court is Defendants Chase Manhattan Bank, Chase Manhattan Mortgage Corporation, JP Morgan Chase & Co., and Director of Human Resources, Chase Manhattan Bank's (collectively "Defendants") Motion In Limine To Preclude Certain Evidence (Doc. No. 53). For the following reasons, Defendants' Motion will be denied.

I. BACKGROUND

Plaintiff Joseph Hussey joined Chase Manhattan Mortgage Corporation ("CMMC") in June, 1997, as an executive sales manager and loan officer. Upon arriving at CMMC, Plaintiff's supervisor, Greta Huegel, gave Plaintiff a "Welcome to Chase" binder, which contained information about employee benefits, including the Long Term Disability ("LTD") Plan and the LTD Excess Plan.

The LTD Plan, administered by Liberty Life Assurance Company of Boston and Liberty Mutual Group (collectively "Liberty"),[1] provided employees who became totally or permanently

[1] On December 31, 2003, we granted summary judgment in favor of Defendants Liberty Life Assurance Company of Boston and Liberty Mutual Group, concluding that they were not fiduciaries under ERISA with respect to Plaintiff's claim. (Doc. No. 42 at 7-10.)

disabled with benefits following twenty-six weeks of absence from work. In 1997, employees had the option of choosing among three levels of benefit payments from the LTD Plan: 50% of annual salary with a maximum monthly benefit of $6,250; 60% of annual salary with a maximum monthly benefit of $7,500; and 70% of annual salary with a maximum monthly benefit of $8,750. (Berliner Aff. Ex. 1 at B-46.) The benefits were capped at incomes up to $150,000. (*Id.*) For employees with an annual Benefit Eligible Compensation ("BEC") exceeding $150,000, CMMC provided the option of enrolling in the LTD Excess Plan. (*Id.*) The LTD Excess Plan essentially raised the earning cap on the LTD Plan and allowed participants to choose from the same 50%, 60%, or 70% levels of payment up to a maximum BEC of $600,000. All of this information was included in Plaintiff's "Welcome to Chase" binder.[2]

On June 2, 1997, Plaintiff elected the 70% coverage under the LTD Plan. When he joined CMMC, Plaintiff was not yet eligible for the LTD Excess Plan because his salary was commission-based and, as a new employee, he had no earning history to calculate his annual

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[2] The "Welcome to Chase" binder described the LTD Excess Plan as follows:

> **Long-Term Disability Excess Plan**
> CHASE*Choice* Excess LTD coverage applies to eligible compensation above $150,000. If your eligible compensation is more than $150,000 and you elect to participate in the Long-Term Disability Plan, you may also choose to enroll in the LTD Excess Plan. . . . The same level of coverage you elected in the LTD Plan (i.e., 50%, 60%, or 70%) will apply to eligible compensation above $150,000 up to a maximum of $600,000.
>
> **Costs**
> The contribution rates for the LTD Excess Plan will be higher than those for the LTD Plan. See the "Enrolling in CHASE*Choice*" section.

(Huegel Dep. Ex. 5 at B-48.)

income.[3] (Huegel Dep. at 24.) If Plaintiff's BEC in his first year exceeded $150,000, he would then be eligible to elect the LTD Excess Plan during the next enrollment period, which ran for several weeks every October and November. Changes made during the enrollment period would become effective at the start of the new plan year on January 1.

The enrollment period for 1999 ran from October 14, 1998, through November 4, 1998. (Doc. No. 26 at 7 (citing Huegel Decl. Ex. 6 at CMMC0001191).) After one year of service, Plaintiff had a BEC of $204,378.72, making him eligible to enroll in the LTD Excess Plan for the 1999 plan year. (Huegel Dep. Ex. 6 at CMMC000512.) Plaintiff did not enroll in the LTD Excess Plan for 1999.

The parties dispute whether Plaintiff received any information from Chase in October and November, 1998, regarding his eligibility for the LTD Excess Plan. Plaintiff asserts that he did not receive any materials during the enrollment period for the 1999 calendar year. Defendants claim that Plaintiff received the annual enrollment materials and a Personalized Fact Sheet ("PFS"), which is an "individualized document[] that show[s] each employee's Benefits Eligible Compensation ('BEC'), the employee's current level of benefits and the cost of that level of benefit for the next year." (Doc. No. 26 at 7.) Defendants also contend that Plaintiff received the 1999 Enrollment Guide, which explained how to add or remove benefits for the upcoming year:

> **II. How to Use Your Enrollment Materials**
> Your Personalized Fact Sheet and Enrollment Guide are valuable materials that can help make your coverage decision-making process and your oneCHASE enrollment phone call as streamlined as possible. Here's how to use your materials:
>
> 1. On your Personalized Fact Sheet, review your current coverages

[3] Upon joining CMMC, Plaintiff's initial BEC was set at $50,000. (Huegel Dep. Ex. 3.)

> and the cost to continue them for 1999.
>
> 2. Decide which coverages you want to keep and which ones you want to change for 1999.
>
> 3. At the end of each benefit section in this Enrollment Guide, you'll find a "Making Your Elections" box. This box outlines the available options, what you should complete on your Worksheet to make a change, and the next steps.
>
> 4. To make a change, turn to the Worksheet in the back of this Enrollment Guide (or on your Personalized Fact Sheet) and fill in the box(es) to the right of the coverage(s) you want to change . . . .
>
> 5. After you complete your Worksheet, call oneCHASE . . . and enter your elections as they appear on your Worksheet.

(*Id.* at 8.)

In October, 1999, Plaintiff became totally disabled due to a severe stroke. (Compl. ¶ 18.) For twenty-six weeks following the stroke, Plaintiff received short-term disability benefits. (*Id.*) In April, 2000, Plaintiff became eligible for benefits under the terms of his LTD Plan. Plaintiff was initially informed that he would be eligible for $9,333.00 per month, which was 70% of the maximum ($160,000) allowed at that time under the regular LTD Plan. (Glidden Dep. Ex. 2 at CMMC000420.) When Plaintiff's wife, Maureen Hussey, received Liberty's letter explaining Plaintiff's benefits, she questioned why Plaintiff was not eligible for benefits equal to 70% of his total salary for 1999, which would have been $18,305.03 per month.[4] (Maureen Hussey Aff. ¶ 7.) CMMC thereafter informed Liberty that Plaintiff was eligible for benefits under the LTD Excess Plan. Plaintiff then began receiving payments of $18,305.00 per month, which was equal to 70% of his total salary for 1999, in May, 2000. (Glidden Dep. Ex. 3.) On October 27, 2000,

[4] Plaintiff's BEC in 1999 was $313,800.47. (Huegel Dep. Ex. 6 at CMMC000512.)

however, Liberty informed Plaintiff that an audit had revealed that he was only eligible for benefits equal to 70% of the salary cap of $160,000 under the LTD Plan, and reduced his monthly disability benefit payments to $9,333.[5] (*Id.* Ex. 4; *see also* Compl. ¶ 24.)

On August 30, 2002, Plaintiff filed a Complaint, alleging that Defendants breached their fiduciary duty under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified at 29 U.S.C. § 1132(a)(3)) by failing "to convey to Plaintiff complete and accurate information regarding the benefits for which he was eligible, and complete and accurate information as to steps to be taken to enroll in those benefits." (Compl. ¶ 31.)

On July 1, 2005, Defendants filed the instant Motion In Limine, seeking to exclude the following evidence: (1) communications between Defendants, Liberty, and Plaintiff regarding Plaintiff's long-term disability benefits after his October, 1999, stroke; and (2) information regarding Defendants' employees' enrollment decisions for the LTD Excess Plan for plan year 1999. (Doc. No. 53.)

II. LEGAL STANDARD

Federal Rule of Evidence 401 provides that evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Federal Rule of Evidence 402 provides that "all relevant evidence is admissible." Fed. R. Evid. 402. The Third Circuit has stated that "'Rule 401 does not raise a high standard,'" *Hurley v. Atl. City*

[5] Liberty also initially requested repayment of the overpayment totaling $46,355.00, but later withdrew that demand. (Glidden Dep. Ex. 4; Compl. ¶ 23.)

Police Dep't, 174 F.3d 95, 109-10 (3d Cir. 1999) (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 782-83 (3d Cir. 1994)), observing that:

> As noted in the Advisory Committee's Note to Rule 401, "relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case." Because the rule makes evidence relevant "if it has any tendency to prove a consequential fact, it follows that evidence is irrelevant only when it has no tendency to prove the fact."

Blancha v. Raymark Indus., 972 F.2d 507, 514 (3d Cir. 1992) (quoting Charles A. Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5166, at 74 n.47 (1978)).

Under Federal Rule of Evidence 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. The Third Circuit has defined prejudice under Rule 403 as follows:

> [T]he . . . prejudice against which the law guards [is] . . . unfair prejudice . . . prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts, which inhibits neutral application of principles of law to the facts as found. Prejudice does not simply mean damage to the opponent's cause. If it did, most relevant evidence would be deemed "prejudicial." However, the fact that probative evidence helps one side prove its case obviously is not ground for excluding it under Rule 403. Excluded evidence must be unfairly prejudicial, not just prejudicial.

Goodman v. Pa. Tpk. Comm'n, 293 F.3d 665, 670 (3d Cir. 2002) (citations omitted).

III. DISCUSSION

A. Plaintiff's Claims

ERISA establishes certain obligations for fiduciaries of a qualified employee welfare or pension plan.[6] *Varity Corp. v. Howe*, 516 U.S. 489, 496 (1996); *Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found.*, 334 F.3d 365, 384 (3d Cir. 2003). Under Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), a plan participant may have a cause of action for a breach of fiduciary duty. *Burstein*, 334 F.3d at 384; *see also Howe*, 516 U.S. at 509-15. "'Section 502(a)(3) authorizes the award of appropriate equitable relief directly to a participant or beneficiary to redress any act or practice which violates any provision of this title[,]' including a breach of the statutorily created fiduciary duty of a[] [plan] administrator." *Bixler v. Cent. Pa. Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1298 (3d Cir. 1993) (quoting *Mass. Mutual Life Ins. Co. v. Russell*, 473 U.S. 124, 153 (1985) (Brennan, J., concurring) (internal quotations omitted)).

In his Complaint, Plaintiff alleges that Defendants breached their fiduciary duty under ERISA by "fail[ing] to convey complete and accurate information regarding the benefits for

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[6] Under ERISA, a fiduciary

> shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
>
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
>
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

29 U.S.C. § 1104(a) (2000).

which he was eligible" and the "steps to be taken to enroll in those benefits."[7] (Doc. No. 1 ¶ 31.) Plaintiff thus appears to be asserting both a misrepresentation and a material omission claim against Defendants.

To establish a breach of fiduciary duty for a misrepresentation, a plaintiff must establish each of the following elements: "(1) the defendant's status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of the defendant; (3) the materiality of that misrepresentation; and (4) detrimental reliance by the plaintiff on the misrepresentation." *Daniels v. Thomas & Betts Corp.*, 263 F.3d 66, 73 (3d Cir. 2001). Similarly, to establish a breach of fiduciary duty for failure to disclose information, a plaintiff must establish that: (1) the defendant was an ERISA fiduciary to plaintiff; (2) the existence of "material facts, known to the fiduciary but unknown to the beneficiary, which the beneficiary must know for its own protection," *Horvath v. Keystone Health Plan E., Inc.*, 333 F.3d 450, 461 (3d Cir. 2003); and (3) detrimental reliance—"a substantial likelihood that [the material omission] would mislead a reasonable employee in making an adequately informed . . . decision.'" *Id.* (quoting *Jordan v. Fed. Express Corp.*, 115 F.3d 1005, 1015-16 (3d Cir. 1997)).

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[7] Plaintiff also seeks relief against Defendants under an equitable estoppel theory. Plaintiff alleges that in April, 2000, Defendants "verified that Plaintiff was eligible for and enrolled in the [LTD] [E]xcess [P]lan" and therefore should be estopped from asserting Plaintiff did not enroll in the LTD Excess Plan for plan year 1999. (Compl. ¶ 34.) To establish a cause of action for equitable estoppel, "an 'ERISA plaintiff must establish (1) a material representation, (2) reasonable and detrimental reliance upon the representation, and (3) extraordinary circumstances.'" *Burstein*, 334 F.3d at 393 (quoting *Curcio v. John Hancock Mut. Life Ins. Co.*, 33 F.3d 226, 235 (3d Cir. 1994)). "'[E]xtraordinary circumstances' generally involve acts of bad faith on the part of the employer, attempts to actively conceal a significant change in the plan, or commission of fraud." *Jordan*, 116 F.3d at 1011.

B. Federal Rule of Evidence 401

Defendants assert that communications between Defendants, Liberty Life, and Plaintiff after Plaintiff's stroke in October, 1999, and evidence of its other employees' benefit election decisions should be excluded as irrelevant pursuant to Federal Rule of Evidence 401. (Doc. No. 53 at 5-9.) They argue that under ERISA's statutory disclosure requirements, their fiduciary duty "is limited to the distribution of a summary plan description, nothing more." (Doc. No. 53 at 5.) According to Defendants, Plaintiff received a summary plan description ("SPD") of the LTD Excess Plan in the "Welcome to Chase" binder in 1997. (*Id.*) Thus, Defendants contend that we "need inquire no further to decide Plaintiff's claim for breach of fiduciary duty," and that any evidence of Defendants' alleged "administrative dysfunction" is irrelevant. (*Id*.)

We disagree. Section 104(b)(1) of ERISA requires that a SPD must be provided to each plan participant within ninety days of becoming a participant. 29 U.S.C. § 1024(b)(1) (2000). Satisfaction of this requirement, however, does not discharge all of Defendants' fiduciary duty obligations under ERISA. "Congress intended ERISA's fiduciary responsibility provisions to codify the common law of trusts." *Griggs v. E.I. DuPont De Nemours & Co.*, 237 F.3d 371, 380 (4th Cir. 2001) (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989)). As the Third Circuit has explained, "[a]lthough the [ERISA] statute articulates a number of fiduciary duties, . . . Congress relied upon the common law of trusts to 'define the general scope of [a fiduciary's] authority and responsibility.'" *Bixler*, 12 F.3d at 1299 (quoting *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985)). A fiduciary's duties under ERISA are thus based both on ERISA's statutory requirements and on the common law of trusts. *Ream v. Frey*, 107 F.3d 147, 153 (3d Cir. 1997); *see also In re Unisys Sav. Plan Litig.*, 74

F.3d 420, 434 (3d Cir. 1996) ("We also bear in mind that Congress has instructed that section 1104 'in essence, codifies and makes applicable to . . . fiduciaries certain principles developed in the evolution of the law of trusts.'" (quoting S. Rep. No. 93-127 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4863)).

Under Third Circuit precedent, a fiduciary may have a legal duty to disclose material information about employee benefit plans that exceeds ERISA's statutory disclosure requirements. "[S]atisfaction by an employer as plan administrator of its statutory disclosure obligations under ERISA does not foreclose the possibility that the plan administrator may nonetheless breach its fiduciary duty owed [to] plan participants . . . ." *In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig.*, 57 F.3d 1255, 1264 (3d Cir. 1995). For example, in *Glaziers & Glassworkers Union Local No. 232 v. Newbridge Securities, Inc.*, relying on the Restatement (Second) of Trusts, the Third Circuit held that "a fiduciary has a legal duty to disclose to the beneficiary . . . material facts, known to the fiduciary but unknown to the beneficiary, which the beneficiary must know for its own protection." 93 F.3d 1171, 1182 (3d Cir. 1996) (citing Restatement (Second) of Trusts § 173 (1959)); *see also Bixler*, 12 F.3d at 1300 (stating that the fiduciary duty to inform "entails not only a negative duty not to misinform, but also an affirmative duty to inform when the trustee knows that silence might be harmful"). Similarly, in *Jordan v. Federal Express Corp.*, the Third Circuit held that an omission by a fiduciary "may rise to a material level" "if there is a substantial likelihood that [the omission] would mislead a reasonable employee in making an adequately informed retirement decision." 116 F.3d at 1015-16 (internal citations and quotations omitted); *see also Horvath*, 333 F.3d at 461-62 (discussing *Glaziers* and *Jordan*). Accordingly, we conclude that Defendants are incorrect in stating that their fiduciary duties may be fulfilled simply by demonstrating that they have complied with ERISA's statutory disclosure requirements.

In this case, Plaintiff offers evidence of communications between Defendants' employees, Liberty, and Plaintiff occurring after October, 1999, as probative evidence of Defendants' "administrative dysfunction." Plaintiff asserts that this "administrative dysfunction" is the reason he "did not receive proper information on eligibility for the excess LTD benefit 'in the normal course of business.'" (Doc. No. 56 at 9.)

As an example of this "administrative dysfunction," Plaintiff offers evidence regarding Defendants' employees' misstatements and miscommunications from April through November, 2000, regarding his eligibility to participate in the LTD Excess Plan in 1999. On April 25, 2000, Liberty initially notified Plaintiff that, based on his monthly earnings, he had been eligible to receive long-term disability benefits of 70% of his most recent salary ($18,305.05 per month), but because he had not elected the LTD Excess Plan in open enrollment, he would only receive 70% of his total monthly earnings up to an annual salary of $160,000 ($9,333.00 per month). (Doc. No. 32 Ex. 12.) Mrs. Hussey then contacted Defendants and Liberty, contending that Plaintiff had elected as much long-term disability coverage as he was eligible to receive. (*Id.* Exs. 8, 13 at 19-21.) After this inquiry, Sandra Prejean, who was in charge of the day-to-day administration of Defendants' long-term disability plan, incorrectly informed Liberty on May 3, 2000, that Plaintiff had in fact enrolled in the LTD Excess Plan and that he should receive a long-term disability benefit of 70% of his total annual salary. (*Id.* Ex. 16.) The following day, Liberty sent a letter to Plaintiff informing him that he was eligible to receive a benefit of 70% of his total annual salary ($18,305.03 per month).

On October 27, 2000, Liberty informed Plaintiff that, after an investigation, it had determined that he had not actually enrolled in the LTD Excess Plan for plan year 1999. Shortly thereafter, Jack Adams, Greta Huegel's superior, asked an employee of Defendants' human resources department whether Plaintiff had been eligible to participate in the LTD Excess Plan for 1999 and, if so, whether Plaintiff was offered the opportunity to register for the benefit. (*Id.* Ex. 19 at CMMC000525-26.) The human resources employee incorrectly replied that, according to Defendants' records, Plaintiff was not eligible for the LTD Excess Plan for 1999. (*Id.* at CMMC000525.)

Plaintiff also offers evidence regarding other employees' participation in the LTD Excess Plan for plan year 1999 as evidence of Defendants' "administrative dysfunction." According to Plaintiff, nearly 300 of Defendants' employees became newly eligible to participate in the LTD Excess Plan for plan year 1999, an increase of nearly 30% in the number of eligible beneficiaries. (Doc. No. 56 at 11.) Despite this increase in eligibility, however, Plaintiff asserts that the total number of Defendants' employees actually electing the LTD Excess Plan actually decreased slightly. (*Id.*) Plaintiff asserts that this information is circumstantial evidence that some newly-eligible employees were not properly notified that they were eligible to participate in the LTD Excess Plan. (*Id.*)

Evidence that Plaintiff did not receive material information, or received material misinformation, regarding his eligibility to participate in an employee benefit plan is relevant. *See, e.g.*, *In re Unisys Corp. Retiree Med. Benefits Litig.*, MDL No. 969, 2002 U.S. Dist. LEXIS 25737, at *10 (E.D. Pa. Jan. 30, 2002) (citing human resources representatives' communications as relevant evidence of material misrepresentation); *Daniels v. Nat'l Employee Benefit Servs.*, 858 F. Supp. 684, 695 (D. Ohio 1994) (considering evidence supporting plaintiff's assertion that he did not receive material benefit information in denying defendant's summary judgment motion). Here, Plaintiff asserts that Defendants' "administrative dysfunction" is the reason why material information regarding his LTD Excess Plan eligibility was not disclosed to him. (Doc. No. 56 at 6-11.) Therefore, evidence tending to show that Defendants' human resources department was in fact disorganized or dysfunctional, through evidence such as miscommunications that evince its confusion regarding Plaintiff's eligibility for and enrollment in the LTD Excess Plan for plan year 1999, would be relevant.[8] Similarly, evidence that participation in an employee benefit plan declined at the same time that a large number of employees became newly eligible for that benefit may be circumstantial evidence that some of the new employees were not informed of their eligibility. Accordingly, we conclude that the proffered evidence is relevant to Plaintiff's claims.

C. Federal Rule of Evidence 403

Defendants also contend that the evidence at issue in this Motion In Limine should be excluded pursuant to Federal Rule of Evidence 403 because its probative value is substantially outweighed by the danger of unfair prejudice and confusion of the issues. (Doc. No. 53 at 9-10.) Defendants' concern is misplaced. This ERISA action is a bench trial.[9] "[I]n the context of a

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[8] We note that this evidence would also be relevant to Plaintiff's material misrepresentation claim. Evidence of confusion by Defendants' human resources personnel in November, 2000, regarding whether Plaintiff was eligible for the LTD Excess Plan in plan year 1999 tends to make it more likely that he may have been misinformed regarding his eligibility at the time of his enrollment decision.

[9] There is no right to a jury trial for actions under Section 502(a)(3) of ERISA. *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 392-93 (3d Cir. 1988)

bench trial, evidence should not be excluded under [Rule] 403 on the ground that it is unfairly prejudicial."[10] *Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994). This is because the "problems which a trial court invariably has to wrestle with in order to guard against unfair prejudice [by the jury] . . . simply do not exist in the context of a bench trial." *LiButti v. United States*, 107 F.3d 110, 124 (2d Cir. 1997). As the Fifth Circuit has explained:

> Rule 403 has no logical application to bench trials. Excluding relevant evidence in a bench trial because it is cumulative or a waste of time is clearly a proper exercise of the judge's power, but excluding relevant evidence on the basis of "unfair prejudice" is a useless procedure. Rule 403 assumes a trial judge is able to discern and weigh the improper inferences that a jury might draw from certain evidence, and then balance those improprieties against probative value and necessity. Certainly, in a bench trial, the same judge can also exclude those improper inferences from his mind in reaching a decision.

Gulf States Utils. Co. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir. Unit A Jan. 1981); *see also* 22 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5213 (1978 & Supp. 2004) ("Since the judge must hear the evidence in ruling on the motion to exclude the evidence under Rule 403, exclusion of the evidence on grounds of prejudice in a bench trial is . . . a 'useless procedure.'"). Accordingly, Defendants' proffered evidence will not be excluded as unfairly prejudicial pursuant to Rule 403.

An appropriate Order follows.

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[10] For similar reasons, concerns about confusion of the issues are inapplicable in a bench trial. *Schultz,* 24 F.3d at 632.

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

JOSEPH HUSSEY	:	CIVIL ACTION
	:	
v.	:	
	:	
CHASE MANHATTAN BANK,	:	
ET AL.	:	NO. 02-7099

ORDER

AND NOW, this 29th day of July, 2005, upon consideration of Defendants' Motion In Limine To Preclude Certain Evidence (Doc. No. 53), and all documents filed in support thereof and in opposition thereto, it is ORDERED that Defendants' Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge