

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

NANCY KOVACS, JOSEPH GRAHAM,	:	
GEORGE AMANDOLA AND	:	
PATRICK HORTON,	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 04-1667
v.	:	
	:	
CONMED CORPORATION,	:	
	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER, S. J.

May 11, 2006

Presently before the Court is Conmed Corporation’s Omnibus Motion in Limine to Exclude the Equal Employment Opportunity Commission (“EEOC”) Determination Letters Regarding David Madonna,<sup>1</sup> Patrick Horton, Nancy Kovacs, Joseph Graham and George Amandola (Docket No. 40), Plaintiff Amandola’s Reply (Docket No. 42), and Conmed’s Reply (Docket No. 43) For the reasons set forth below, Defendant’s Motion is granted.

**I. EEOC DETERMINATION LETTER OF PLAINTIFF AMANDOLA**

The Court grants Defendant’s Motion to exclude the EEOC Determination Letter (“Letter”) regarding Plaintiff Amandola. Assuming that the Letter is trustworthy under Federal Rule of Evidence 803(8)(C),<sup>2</sup> the Court finds that the Letter is inadmissible under Federal Rule of

---

1. Plaintiff Madonna’s suit was filed separately under civil action number 03-4289. The Court granted Defendant’s Motion for Summary Judgment against Plaintiff Madonna on March 1, 2005. (Madonna Docket No. 19.)

2. Federal Rule of Evidence 803(8)(C) provides:

(continued...)

Evidence 403.<sup>3</sup> Under Rule 403, relevant evidence may be excluded if its “probative value is substantially outweighed by the danger 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.”<sup>4</sup> Fed. R. Evid. 403. Rule 403 “recognizes that a cost/benefit analysis must be employed to determine whether or not to admit the evidence.” Coleman v. Home Depot, Inc., 306 F.3d 1333, 1343 (3d Cir. 2002). “In balancing, ‘the proper equation places on one side the maximum reasonable probative force for the offered evidence,’ while ‘the other side of the equation should include the likely prejudicial impact of the evidence.’” Id. at 1344 (citation omitted).

Utilizing the cost/benefit analysis as outlined in Coleman, the Court finds that the benefit, or maximum reasonable probative force, of the Letter is minimal. Although the Court does not know the full extent of the evidence the EEOC relied upon to reach its determination in the Letter, the parties will likely be required to produce the same evidence at trial. For example, Plaintiff states that the Letter is highly probative because it “accurately establishes that a major

---

2. (...continued)

The following are not excluded by the hearsay rule, even though the declarant is not available as a witness . . . (8) Records, reports, statements or data compilation, in any form, of public offices or agencies, setting forth . . . (C) in civil actions and proceedings . . . factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of information or other circumstances indicate lack of trustworthiness.

3. In determining whether the Letter is trustworthy under Rule 803(8)(c), the Court may consider: “(1) the timeliness of the investigation; (2) the special skill or expertise of the official; (3) whether a hearing was held and the level at which it was conducted; (4) possible motivation problems . . . Others no doubt could be added.” Fed. R. Evid. 803(8)(c) advisory committee’s note (internal citations omitted). Case law has also added to the list of factors the Court can consider. See Coleman v. Home Depot, Inc. 306 F.3d 1333, 1342 (citing Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd., 505 F. Supp. 1125, 1147 (E.D. Pa. 1980)). Because the Court finds that the Letter is inadmissible under Rule 403, the Court declines to determine the Letter’s trustworthiness under Rule 803(8)(C).

4. The Court’s decision to exclude the Letter is discretionary. See Coleman, 306 F.3d at 1345 (citations omitted).

change took place at ConMed (the Imagyn acquisition) contemporaneous to the discriminatory actions alleged by Plaintiff.” (Pl.’s Reply 5-6.) In the event that Plaintiff Amandola establishes a prima facie case of age discrimination at trial, the burden will then shift to the Defendant to offer a legitimate, non-discriminatory reason for Plaintiff’s termination. Defendant will likely introduce evidence about the Imagyn acquisition and its effect on the company at that time.

The Court also finds that the Letter is of minimal probative value because it contains various inaccuracies. See Rizzo v. PPL Serv. Corp., No. 03-5779, 2005 U.S. Dist. LEXIS 6757, at \*35 (E.D.Pa. Apr. 20, 2005) (excluding an EEOC Determination Letter because the “determinations are filled with findings inconsistent with the actual record”). In the Letter, Plaintiff Amandola is grouped with the other Plaintiffs who were all Field Marketing Managers in Defendant’s Endoscopy Division. Yet, unlike the other Plaintiffs, Plaintiff Amandola was a Territory Manager in Defendant’s Electrosurgery Division. The Electrosurgery Division also did not experience an influx of sales representatives after the Imagyn acquisition, as did the Endoscopy Division.

Balanced against the minimal benefit, or probative value, are the many likely costs associated with the admission of the Letter. First, the Court finds that the Letter will result in the needless presentation of cumulative evidence. As noted above, the parties will likely be required to produce the same evidence at trial as relied on by the EEOC in the Letter.

Second, the Court finds that there is a substantial danger of unfair prejudice due to the Letter’s nature and unsupported legal conclusions. The evidence at issue is an EEOC Letter of Determination. (Def.’s Mot. Limine Ex. A at 1.) Unlike EEOC Letters of Probable Cause, “which conclude that there is a probable cause to believe that an [Age Discrimination in

Employment Act (“ADEA”)] violation has occurred,” Letters of Determination “offer a legal conclusion that a violation has occurred.” Cambra v. The Restaurant School, No. 04-2688, 2005 U.S. Dist. LEXIS 26231, at \*13-14 (E.D.Pa. Nov. 2, 2005). The Letter states that the EEOC “determined that the evidence establishes a violation of the [ADEA].” (Def.’s Mot. Limine Ex. A at 2.) The Letter also states that it is a “determination on the merits” and that the “evidence gathered during the investigation substantiates [Amandola’s] allegation that he and similarly-situated employees were harmed because of their age.” Id. at 1, 2.

Third, the Court finds that the Letter has the potential to mislead the jury. Unlike a bench trial, “a strong argument can be made that the jury would attach undue weight to this type of agency determination viewing it as a finding of discrimination.” Cambra, 2005 U.S. Dist. LEXIS 26231, at \*10 (citing Williams v. Nashville Network, 132 F.3d 1123, 1129 (6th Cir. 1997)). The Letter also has the potential to mislead a jury because as stated above, the Letter specifically states that based on the merits, the EEOC determined that the Defendant violated the ADEA.

Finally, and most importantly in light of Coleman, the Court finds that the admission of the Letter will create the potential risk of undue delay and waste of time. Coleman, 306 F.3d at 1347 (stating that “the District Court opined that the EEOC Letter of Determination would be unfairly prejudicial or confusion, but we find that the argument would have created the potential risk of undue delay and waste of time to be stronger”). The Letter not only refers to Plaintiff Amandola but, “other similarly situated employees.” (Def. Mot. Limine Ex. A at 1, 2.) The Letter also states that “the investigation determined that all the original Field Marketing Managers were either terminated or resigned under duress.” Id. At trial, the Defendant would

likely spend a great deal of time rebutting the various EEOC findings that the company engaged in a pattern of age discrimination by presenting information about numerous former employees.

Based upon the foregoing analysis, the Court finds that the probative value of the Letter is substantially outweighed by the “costs” associated with it. Therefore, the Letter is inadmissible under Federal Rule of Evidence 403.<sup>5</sup>

## **II. EEOC DETERMINATIONS OF PLAINTIFFS MADONNA, HORTON, KOVACS AND GRAHAM**

With respect to Defendant’s Motion to exclude the EEOC Determination Letters of Plaintiffs Madonna, Horton, Kovacs and Graham, Defendant’s Motion is granted. In Plaintiff Amandola’s Reply, he states that he only intends to introduce his own EEOC Determination Letter at his trial on June 19, 2006, not the Determination Letters of the other Plaintiffs. (Pl.’s Reply 1.) Therefore, Defendant’s Motion is moot to the extent that it seeks to exclude the EEOC Determination Letters of Plaintiffs other than Plaintiff Amandola.

## **III. CONCLUSION**

For the foregoing reasons, Defendant’s Motion to exclude the admission of the EEOC Determination Letter of Plaintiff Amandola is granted because the Court finds that the Letter is inadmissible under Federal Rule of Evidence 403. Defendant’s Motion to exclude the admission of the EEOC Determination Letters of Plaintiffs Madonna, Horton, Kovacs and Graham is granted as moot in light of Plaintiff Amandola’s intent to only introduce his own Letter at the upcoming trial. An appropriate Order follows.

---

5. Given the short length of the letter, the Court does not agree with Plaintiff’s request for redaction. (Pl.’s Reply 6.) Further, given the extent of the problems associated by admitting the Letter, the Court does not believe that a limiting instruction would be useful.

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

NANCY KOVACS, JOSEPH GRAHAM,	:	
GEORGE AMANDOLA AND	:	
PATRICK HORTON,	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 04-1667
v.	:	
	:	
CONMED CORPORATION,	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 11<sup>th</sup> of May, 2006, upon consideration of Conmed Corporation's Omnibus Motion in Limine to Exclude the Equal Employment Opportunity Commission Determination Letters Regarding David Madonna,<sup>6</sup> Patrick Horton, Nancy Kovacs, Joseph Graham and George Amandola (Docket No. 40), Plaintiff Amandola's Reply (Docket No. 42), and Conmed's Reply (Docket No. 43), it is hereby **ORDERED** that Defendant's Motion is **GRANTED**.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.  
RONALD L. BUCKWALTER, S.J.

---

6. Plaintiff Madonna's suit was filed separately under civil action number 03-4289. The Court granted Defendant's Motion for Summary Judgment against Plaintiff Madonna on March 1, 2005. (Madonna Docket No. 19.)