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*1997 U.S. Dist. LEXIS 10118 , \*; 134 Lab. Cas. (CCH) P33,560*

MARIA STORCH v. IPCO SAFETY PRODUCTS COMPANY OF PENNSYLVANIA, INC. and AIRGAS SAFETY, INC.

CIVIL ACTION NO. 96-7592

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1997 U.S. Dist. LEXIS 10118; 134 Lab. Cas. (CCH) P33,560

July 15, 1997, Decided

July 16, 1997, Filed

**DISPOSITION:**

**[\*1]** Sales Data from 1990-1994 related to the Plaintiff's Accounts GRANTED; Sales Data from 1990-1994 related to other employees' accounts DENIED; and Sales Data from 1990-1996 related to the Plaintiff's Accounts on computer disk GRANTED.

**COUNSEL:** For MARIA STORCH, PLAINTIFF: ANDREW S. ABRAMSON, BLUE BELL, PA USA.

For IPCO SAFETY PRODUCTS COMPANY OF PENNSYLVANIA, INC., AIRGAS SAFETY, INC., DEFENDANTS: JANEEN OLSEN DOUGHERTY, MC CAUSLAND, KEEN AND BUCKMAN, RADNOR, PA USA.

**JUDGES:** HERBERT J. HUTTON, J.

**OPINION BY:** HERBERT J. HUTTON

**OPINION**

**MEMORANDUM AND ORDER**

HUTTON, J.

July 15, 1997

Presently before this Court is the Plaintiff's Motion to Compel Defendant Airgas Safety, Inc. to Provide Full and Complete Answers to Interrogatories and Document Requests Concerning Sales Data, and the Defendant Airgas Safety, Inc.'s Response thereto.

**I. BACKGROUND**

This action arises under the Family Medical Leave Act, 29 U.S.C. § 2601. The plaintiff alleges that after her election of Family Medical Leave, and upon her return, she was told by the defendant that she could not return to her original position as a sales account manager, a position she held from February, 1990 through[\*2] February, 1996. Now she requests certain discovery to determine the extent of her damages. Specifically, the plaintiff states

that in order to ascertain the income which she would have derived from her former accounts, information must be derived by developing a computer analysis of data based upon Storch's past sales to her former clients, as well as historical and future sales of other individuals employed by Airgas in a similar position. As such, the plaintiff states that on February 19, 1997, she served interrogatories and request for production of documents upon counsel for defendant Airgas, requesting such information.

The plaintiff contends that defendant Airgas has refused to produce sales information for the period 1990-1994. Instead, the plaintiff states that Airgas has only produced sales data for the period 1995 and 1996 relating only to salespeople who assumed responsibility for Storch's accounts, by producing hundreds of pages of paper, ignoring the discovery which requests the production of information on a computer disk. The defendant Airgas argues that it has produced all information relevant to the determination of damages under the Family Medical Leave Act. Additionally, [\*3] defendant Airgas states that it is still investigating its ability to provide the computer information for those non-objectionable portions of the requests in a computerized form.

## **II. DISCUSSION**

### **A. Scope of Discovery**

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . ." Fed. R. Civ. P. 26(b)(1). "Relevancy, and to a lesser extent burdensomeness, constitute the principal inquiry in ruling upon objections to interrogatories. McClain v. Mack Trucks, Inc., 85 F.R.D. 53, 57 (E.D. Pa. 1979). The scope of discovery, however, is not without its limits, and is "committed to the sound discretion of the trial court." *Id.* "The party seeking discovery has the burden of showing clearly that the information sought is relevant to the subject matter of the action and would lead to admissible evidence. *Id.*

### **B. Data from 1990-1994 Related to Plaintiff's Accounts**

The plaintiff contends that evidence of sales data of plaintiff's accounts are needed from 1990-1994 in order to predict[\*4] the sales which she could have generated after she returned from her Family Medical Leave. The defendant states that such data is not needed for the determination of plaintiff's damages.

Because discovery should be granted liberally, this Court finds that such data is relevant for purposes of determining the damages of the plaintiff. The plaintiff's own history of sales and success with different accounts may shed light on the amount of sales she may have been able to generate in subsequent years. Therefore, this Court grants the plaintiff's Motion to Compel discovery for sales information related to the plaintiff's accounts from 1990-1994.

### **C. Data from 1990-1994 Related to Other Employees Accounts**

The plaintiff next argues that the defendant should also produce sales data related to other employees accounts. The plaintiff contends that because these individuals were employed in the same position as the plaintiff, the data is relevant. The defendant contends that the sales, income or profit derived by other Airgas employees who did not service the plaintiff's accounts bears no possible correlation to the relevant issues in this action. This Court agrees with the[\*5] defendant. The sales data of other employees constitutes information outside the scope of discovery in this matter. The plaintiff fails to show how such information is relevant to an analysis of the potential sales of the plaintiff. The plaintiff cites to McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973) for support. This Court, however, finds that the McDonnell case involved a Title VII matter

alleging discrimination. The Court noted that "especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the "stall-in" were nevertheless retained or rehired." *Id.* The plaintiff's comparison of this matter with *McDonnell* is faulty. *McDonnell* is distinguishable from this matter because in a Title VII matter, comparison between different kinds of individuals based on sex, race, etc., is the essential factual issue involved. Such is not the case in this matter. Accordingly, the plaintiff's motion to compel discovery of sales data of other employees is denied.

**D. Feasibility of Producing Information on Computer Disk**

The plaintiff contends that the information she has[\*6] requested should be provided in computer disk format. She states that data in disk format is needed in order to run an analysis of the information. Otherwise, the plaintiff may incur between \$ 10,000 to \$ 20,000 in data encoding fees to properly format the information. The defendant has stated that it is "still investigating its ability to provide the computer information for those non-objectional portions in a computerized form."

This Court finds that in this age of high-technology where much of our information is transmitted by computer and computer disks, it is not unreasonable for the defendant to produce the information on computer disk for the plaintiff. See *National Union Electric v. Matsushita Electric*, 494 F. Supp. 1257, 1262 (E.D. Pa. 1980)(stating that to "secure the just, speedy, and inexpensive determination in every action", court may grant a party's motion to receive data on computer disk). The defendant has not given sufficient reasons why it can not provide the information on disk. As such, this Court grants the plaintiff's motion to compel the production of the relevant information on computer disks.

An appropriate Order follows.

**ORDER**

[\*7] AND NOW, this 15th day of July, 1997, upon consideration of the Plaintiff's Motion to Compel Defendant Airgas Safety, Inc. to Provide Full and Complete Answers to Interrogatories and Document Requests Concerning Sales Data, and Defendant Airgas Safety, Inc.'s Response thereto, IT IS HEREBY ORDERED that the Plaintiff's Motion is **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that the Plaintiff's Motion for production of:

- (1) Sales Data from 1990-1994 related to the Plaintiff's Accounts is **GRANTED**;
- (2) Sales Data from 1990-1994 related to other employees' accounts is **DENIED**; and
- (3) Sales Data from 1990-1996 related to the Plaintiff's Accounts on computer disk is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.

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