SIGNED: 10/27/03

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

GARY L. RADER,	:	**No. 3:01cv1998**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
WEA MANUFACTURING, INC	:	
and SPECIALTY RECORDS,	:	
Defendants	:	
	:	

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MEMORANDUM

Before the court for disposition is the defendants' motion for summary judgment in this case asserting discrimination in employment. The plaintiff is Gary L. Rader, and the defendants are WEA Manufacturing, Inc. and Specialty Records.[1] The matter has been fully briefed and is ripe for disposition. For the reasons that follow, the motion for summary judgment will be granted.

Background

On January 18, 1993, WEA Manufacturing, Inc. ("WEA") hired plaintiff as a full-time Mechanical Designer in its Research and Development ("R&D") Department. Complaint ¶ 6. Plaintiff was fifty-three years of age at the time he was hired. Id. ¶ 5-6. WEA operates a manufacturing facility that produces various multimedia products, including Compact Discs

[1] Specialty Records is the former business name of an unincorporated operating division of WEA Manufacturing, Inc. Jeffrey Raider Aff ¶ 103. WEA discontinued use of Specialty Records as a business name and operating division in 1996. Id. ¶ 104. No motion has been made to remove Specialty Records and it remains a named party in the lawsuit.

("CDs"), information CDs ("CD-ROMs") and Digital Versatile Discs ("DVDs"). Jeffrey Raider Aff. ¶ 3.

On June 27, 1996, WEA implemented a large-scale reduction in its force, which resulted in the termination of approximately six hundred employees. Complaint ¶ 13. As a part of this reduction in force, the R&D department was eliminated. Id. ¶ 14. After an initial reassignment in the Project Support Group, plaintiff began to work for WEA's Machine and Mold Shop on May 23, 1997. Id. ¶ 16. There, plaintiff created 3-D models and drawings and replacement parts for both molds and other machines. Id. ¶ 17.

On December 13, 2000, plaintiff was informed that the Machine and Mold Shop ("the Shop") was going to be eliminated and all part fabrication would be outsourced. Id. ¶ 26. Plaintiff was also informed that, since his position was part of this department, he would be terminated. Id. ¶ 27. On April 10, 2001, at the age of sixty-one, plaintiff was terminated. Id. ¶ 43. Plaintiff claims that the functions of his position were still required and were distributed among several other employees who were not as qualified or experienced. Id. ¶ 48. Plaintiff also claims that all of the other younger Shop employees and their supervisor were not terminated. Id. ¶ 6.

On October 17, 2001, the plaintiff instituted the instant action on the grounds that he was terminated due to discrimination. Plaintiff's complaint contains two counts: Count I, Age Discrimination in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et. seq.; and Count II, Age Discrimination in violation of the Pennsylvania

Human Relations Act (PHRA), 43 PA. CONS. STAT. ANN. § 951 et seq. At the close of discovery, the defendants filed the instant motion for summary judgment.

Jurisdiction

The Court exercises jurisdiction over this dispute pursuant to its federal question jurisdiction, 28 U.S.C. § 1331, and supplemental jurisdiction, 28 U.S.C. § 1367. Pennsylvania law applies to those claims considered pursuant to supplemental jurisdiction. United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)).

Standard of Review

The granting of summary judgment is proper "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. See Knabe v. Boury, 114 F.3d 407, 410 n.4 (3d Cir. 1997) (citing FED. R. CIV. P. 56(c)). "[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

In considering a motion for summary judgment, the court must examine the facts in the light most favorable to the party opposing the motion. International Raw Materials, Ltd. v. Stauffer Chemical Co., 898 F.2d 946, 949 (3d Cir. 1990). The burden is on the moving

party to demonstrate that the evidence is such that a reasonable jury could not return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material when it might affect the outcome of the suit under the governing law. Id. Where the non-moving party will bear the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the non-movant's burden of proof at trial. Celotex v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings, and designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue for trial. Id. at 324.

In analyzing summary judgment motions in cases involving employment discrimination, a burden-shifting analysis is utilized which was set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). First, the plaintiff must establish unlawful discrimination. The burden then shifts to the employer to proffer a legitimate, nondiscriminatory reason for terminating her. Once the employer has offered a legitimate reason, the burden shifts back to the plaintiff to demonstrate that the proffered reason was merely pretextual. Id. (citing McDonnell Douglas, supra and Texas Dep't of Comm. Affairs v. Burdine, 450 U.S. 248, 252-56 (1981)).

Discussion

The ADEA prohibits employers from discriminating against employees over the age

of forty years old in hiring, discharge, compensation, terms, conditions, or privileges of employment. ADEA of 1967, § 4(a)(1), 29 U.S.C.A. § 623(a)(1). Because the prohibition against discrimination contained in the ADEA is similar in text, tone, and purpose to the prohibition against discrimination contained in Title VII, courts routinely look to law developed under Title VII to guide inquiry under the ADEA. ADEA of 1967, § 4(a)(1), 29 U.S.C.A. § 623(a)(1); Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq. Barber v. CSX Disrib. Servs. 68 F.3d 694, 698 (3d Cir. 1995).

The Pennsylvania Human Relations Act includes a similar provision prohibiting discrimination on the basis of age. 43 P.S. § 951 et seq. Claims brought under the PHRA are generally analyzed under the same standards as their federal statutory counterparts. Kroptavich v. Pa. Power and Light Co., 795 A.2d 1048, 1055 (Pa. Super. Ct. 2002). Consequently, it is proper to treat the plaintiff's PHRA claim as coextensive with his ADEA claim. Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996).

Prima Facie case

According to the McDonnell Douglas framework, the plaintiff must first establish a *prima facie* case of discrimination. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000). To establish a *prima facie* case of disparate treatment on the basis of age, plaintiff must establish that: (1) he is a member of the protected class [i.e., was 40 years of age or older]; (2) he was qualified for the position; (3) he was dismissed despite being qualified; and (4) he was ultimately replaced by a person sufficiently outside the protected class to create an

inference of discrimination. Walton v. Mental Health Ass'n of Southeastern Pa., 168 F.3d 661, 671 (3d Cir. 1999).

Here, plaintiff contends that he can establish a *prima facie* case of age discrimination based on the following: (1) he belonged to the protected class since he was 61 years of age at the time of his termination, (2) was qualified for the position, (3) was dismissed despite being qualified, and (4) he suffered dismissal despite WEA's need "for someone to perform the same work after he left." Plaintiff's Resp. Br. p. 8.

WEA does not dispute that the plaintiff can establish the first three elements of a *prima facie* case. The parties, however, disagree on the proper legal standard to apply to the fourth element and whether or not the plaintiff has satisfied that element. Plaintiff contends that the fourth prong of his *prima facie* is satisfied simply by showing that "the employer had a continued need for someone to perform the work after the complainant left." Pivirotto v. Innovative Sys., Inc. 191 F.3d 344, 354 (1999). Defendant, on the other hand, argues that plaintiff must show that "the employer retained someone similarly situated to him who was sufficiently younger." Anderson v. Consolidated Rail Corp., 297 F.3d 242, 250 (3d Cir. 2002).

In evaluating both standards, the facts of Anderson are more consistent with the facts in the present case. As in the present case, Anderson involved an ADEA claim that resulted from an employer's reduction in force. Id. at 245. The Court there held that "to present a prima facie case raising an inference of age discrimination in a reduction in force situation,

the plaintiff must show, as part of the fourth element, that the employer retained someone similarly situated to him who was sufficiently younger." Id. at 250. Pivirotto, on the other hand, was a Title VII gender discrimination case. Moreover, Anderson (2002) is a more recent case than Pivirotto (1999) and, therefore, to the extent that they are inconsistent, Anderson would control.

Nevertheless, we also recognize that the McDonnell Douglas framework "was never intended to be rigid, mechanized, or ritualistic. Rather, it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." Pivirotto, 191 F.3d at 352. Accordingly, we find that both standards are helpful in determining whether the plaintiff has established a *prima facie* case. We will, therefore, evaluate the plaintiff's claim under both standards.

Under both standards, we find that the plaintiff has failed to present a *prima facie* case of age discrimination. First, we find that plaintiff has not demonstrated that WEA continued to need an employee to perform plaintiff's work after he was terminated. Pivirotto 191 F.3d at 354 (1999). Plaintiff claims that his "identified position may have been eliminated, but not the requirements of his job." Plaintiff's Resp. Brief. P. 14. Plaintiff further contends that "the work - the projects and the need for my services is still there." Plaintiff's Dep. pp. 152-53.

The speculative nature of plaintiff's opinion, however, is demonstrated by the following exchange during his deposition:

> Q. Anything else that leads you to believe that your job continued in some fashion after your termination?
> A. Not that I can be absolutely sure, because, again, I'm not there. So I can't be 100 percent sure of who is doing it and to what extent. It's got to be being done by somebody.
> Q. Let me ask you this. Is it possible that the work is being done by an outside company?
> A. It's possible.
> Q. And you don't have any information that can show that it's not being done by an outside company?
> A. I don't have any information, right.

Id. at 153.

Furthermore, there is substantial evidence in the record that nobody has continued to perform plaintiff's work since his termination. Jeffrey Raider, WEA's Vice President of Human Resources, states that plaintiff "has not been replaced and WEA does not employ a Mechanical Designer." Jeffrey Raider Aff. ¶ 50. He further states that "none of the design work previously performed by Plaintiff has been assumed by other employees." Id. ¶ 84. Raider explains that

> Since the closure of the Machine and Mold Shop, all of the machine work (such as fabrication or manufacture of replacement machine parts) that had been performed in the Machine Shop has been outsourced to outside companies, such as Richter Precision (located in New York State), Square Tool & Die Co. (located in Throop, Pa.) and Equipment Technologies, Inc. (ETI) (located in Peckville, Pa.)

Id. ¶ 82.

Raider further explains that plaintiff's "former Workstation (Sun UNIX) is not used, and has not been used, since Plaintiff's termination, to perform the same type of work that Plaintiff used it for during his employment." Id. ¶ 86. Moreover, the "Pro-Engineering

software that Plaintiff used during his employment is no longer used, and has not been used since Plaintiff's separation from employment." Id. ¶ 84.

Furthermore, the plaintiff's own deposition testimony evidences that, prior to his termination, he participated in meetings to help prepare for the outsourcing of the work of the Machine and Mold Shop. Plaintiff's Dep. p. 78-79. Plaintiff visited one of the outside companies with a group from WEA to determine if it could meet WEA's outsourcing needs. Id. at 182-85. He provided copies of his drawings to one of the companies in preparation for the outsourcing of the work. Id. at 192. Plaintiff admits that it is possible that these outside companies are doing his designing work. Id. at 79. In sum, plaintiff has not presented any evidence that WEA continued to need an employee to perform plaintiff's work after he was terminated.

Next, we consider whether the plaintiff has presented any evidence that WEA "retained someone similarly situated to him who was sufficiently younger." Anderson, 297 F.3d at 250. Plaintiff has presented evidence that he was the oldest of the twenty-three employees in the department and was the only one terminated. Id. ¶ 58-59. He also presented evidence that all of the younger employees of the Machine and Mold Shop were offered jobs. Plaintiff's Aff. ¶ 63.

The plaintiff does not, however, present any evidence that at least one of the former Shop employees was "similarly situated" to the plaintiff.[2] Plaintiff's own deposition

[2] Moreover, plaintiff does not present any evidence that any of the other Shop employees were "sufficiently younger." Plaintiff alleges in his complaint that the Shop manager, Joseph Sklareski, was forty-two when he became

testimony indicates that he was the only mechanical designer at WEA during his term of employment. Plaintiff's Dep. p. 212. It is undisputed that, apart from Joseph Sklareski, the Shop manager, all other Shop employees were either machinists or mold technicians. This court easily concludes the machinists and mold technicians had jobs that were substantially different to plaintiff's job.[3]

The court is unable to locate any evidence on the record that Mr. Sklareski's role as Shop manager was "similarly situated" to plaintiff's role as mechanical designer. On the contrary, there is undisputed evidence that Mr. Sklareski also served as Facility Maintenance manager simultaneous with his position as Shop manager. Joseph Sklareski Aff. ¶ 8-9. As Facility Maintenance manager, Mr. Sklareski supervised a number of employees; was responsible for several Audio CD Plants; and was responsible for supervising all of the major changes with WEA's physical plant. Id. ¶ 4-6. Following the closure of the Shop, Mr. Sklareski was retained as the Facility Maintenance manager, which is a position he held before and during the time he managed the Shop. Id. ¶ 20. Mr. Sklareski was also assigned

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Shop manager in 1999. Complaint ¶ 18. Defendant specifically denies this allegation. Answer ¶ 18. The court is unable to locate any further discussion of Mr. Sklareski's age.

[3] The machinists worked with tools and machines to manufacture the machine parts used in WEA's manufacturing process. Jeffrey Raider Aff. ¶ 26. The mold technicians installed, repaired and maintained the molds and mold parts used in WEA's manufacturing process. Id. ¶ 27. Plaintiff, on the other hand, used a sophisticated computer software program to design 3-D models and drawings and replacement parts for molds and other machines. Complaint ¶ 17. Additionally, the machinists and mold technicians were hourly wage employees, whereas the plaintiff was a salary employee. Jeffrey Raider Aff. ¶ 24, 25, 42. Since the mold maintenance work is necessary, continuous and needs to be done on-site, the mold technicians were transferred to various plants and maintained the same job titles and performed the same work they had performed in the Shop. Id. ¶ 55-58. Because the machinists were hourly employees and had experience and familiarity working with machines, they were offered other available hourly jobs as technician operators in WEA's DVD plant. Id. ¶ 62-65.

to manage two of the mold technicians who were transferred into other plants, which is the same work he had performed as the Shop manager. Id. ¶ 21. Accordingly, we find that plaintiff was not similarly situated to Mr. Sklareski.

Therefore, this court concludes that plaintiff has failed to state a *prima facie* case of age discrimination. As the discussion below indicates, even if the plaintiff had been able to make out a *prima facie* case, his claim would still fail to survive defendant's summary judgment motion.

Pretext

If the plaintiff had been able to establish a *prima facie* case, then the burden would shift to the defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action. See McDonnell Douglas, 411 U.S. at 802-04. WEA asserts that it terminated plaintiff's employment because his position was eliminated when the Machine and Mold shop closed. Jeffrey Raider Aff. ¶ 73. WEA decided that it no longer needed a full-time mechanical designer since the Shop work was being outsourced. Id.

Since the defendant has articulated a legitimate, non-discriminatory reason for plaintiff's termination, the plaintiff must then prove by a preponderance of the evidence that the proffered reason was a pretext and that the unlawful discrimination was the real reason for the employment action. Pivirotto, 191 F.3d at 352 n. 4 (3d Cir. 1999). When discussing step three:

> the plaintiff can survive summary judgment only if he submits evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate

reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.

Connors v. Chrysler Fin. Corp., 160 F.3d 971, 974 n. 2 (3d Cir. 1998).

The defendant argues that the plaintiff has not submitted any evidence that would permit a factfinder to either disbelieve WEA's articulated reasons for his dismissal or conclude that his firing was, more likely than not, motivated or determined by an invidious discriminatory reason. After a careful review, we agree. There is simply no evidence of record to support plaintiff's age-discrimination claim.

Plaintiff has not established a genuine issue of material fact that could discredit WEA's proffered reason for plaintiff's dismissal. To make such a showing, plaintiff cannot simply assert that WEA's decision was wrong or mistaken. Instead, the decisive issue is whether discriminatory animus was the motivating factor behind the plaintiff's termination, and not whether WEA's decision was wise, shrewd or competent. Fuentes v. Perskie, 32 F.3d 759 (3d Cir. 1994).

Therefore, plaintiff is required to demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence." Fuentes, 32 F.3d at 765. Further, "federal courts are not arbitral boards ruling on the strength of 'cause' for discharge. The question is not whether the employer made the best, or even a sound, business decision; it is whether the real reason is discrimination." Keller v. Ortix Credit Alliance, Inc., 130 F.3d 1101, 1109 (3d Cir. 1997).

Plaintiff presents evidence of a conversation between Mr. Sklareski and himself in August or September of 2000, where Mr. Sklareski asked plaintiff his thoughts about retirement. Plaintiff's Aff. ¶ 39. Plaintiff was sixty-one at the time of the conversation and made it clear that he did not intend to retire, and would continue with his job, until he was seventy. Id. ¶ 39-40. "This conversation came about after a machinist was kidding me because of my age, because I was the oldest guy in the department. He was joking that my beard was getting grayer every day." Id. 41.

However, no inference of discrimination can be derived from this conversation because plaintiff's own testimony indicates that Mr. Sklareski was both relieved and happy that plaintiff did not have plans to retire soon. Plaintiff's Dep. p. 138-39. "He was relieved, because he said, that's great, because . . . I don't want to have to go through training somebody else to come in here and pick up your job if you decide to leave." Id. Plaintiff testified that he had no reason to believe that Mr. Sklareski was insincere, and that he did not take offense to the joking. Id. p. 139-40. "I got along really well with all the people in that shop, both mold techs and machinists." Id. He also testified that neither Mr. Sklareski, nor anybody in management, ever brought up again in any conversation, or made any comment, about his age or retirement. Id. Accordingly, this court finds that this innocuous conversation fails to establish any inference of discriminatory animus.

Plaintiff also argues that he was "singled out" for a meeting with Mr. Sklareski and Mr. Lee Albeck, senior Vice President of Manufacturing, where he was informed that the

Machine and Mold Shop was going to be eliminated and that his position was going to be terminated. Plaintiff's Aff. ¶ 44. The other employees were informed of the closure in group meetings attended by a human resources representative. Id. Although the court acknowledges that plaintiff may have been treated differently in this regard, the court fails to see how this private meeting amounts to any evidence of discrimination. On the contrary, the plaintiff was almost certainly extended a courtesy by being informed prior to the hour employees. See Lee Albeck Aff. ¶ 20-21; Joseph Sklareski Aff. ¶ 12 ("Albeck and I met with Rader in a private meeting, before the hourly employees were informed, out of courtesy to Rader and because Rader was a salary/exempt employee.")

Plaintiff has presented evidence of a December 13, 2000 company memo that was directed to "All employees" and posted by Lee Albeck. Plaintiff's Aff. ¶ 52; Plaintiff's Exhib. B. The memo states that "the growth in DVD will allow us to absorb the employees in the mold and machine jobs without a job loss." Id. It also states that the "exact nature of that absorption will be determined with each affected employee." Id. Plaintiff apparently believes that this memo casts some doubt on the defendant's proferred reason for his termination. This court disagrees. It is undisputed that the memo served as a general announcement to WEA's workforce as a whole and not specifically to the Shop employees. Lee Albeck Aff. ¶ 26. Moreover, as discussed above, the plaintiff had already been notified, prior to the posting of the memo, that his job would be terminated due to the elimination of his position. This court fails to see how this general memo provides any evidence that

discriminatory animus was the motivating factor behind the plaintiff's termination.[4]

Plaintiff further claims that the functions of his position were still needed by WEA and that they were distributed among several other employees who were not as experienced or qualified as plaintiff. Plaintiff's Brief in Response p. 12. In support, plaintiff asserts that Mr. Sklarski asked plaintiff to write up a procedure for assessing plaintiff's files from the UNIX Workstation. Id. Plaintiff, however, does not dispute defendant's response that this information was necessary for the future outsourcing of the Shop's work. Answer ¶ 41. Therefore, this evidence fails to cast doubt on defendant's articulated reason for plaintiff's termination.

Plaintiff also claims that two other younger WEA employees went to AutoCAD training classes and each were given a new computer with AutoCAD software. Plaintiff's Brief in Response p. 12. Plaintiff, however, admits that he was not the only employee who used AutoCAD at WEA. Plaintiff's Dep. pp. 100-102. Plaintiff furthermore admits that various other WEA employees have used AutoCAD for any number of reasons. Id. Therefore, this evidence also fails to create an inference of pretext.

In conclusion, we find that the plaintiff has failed to present any evidence that would enable a reasonable factfinder to could conclude that the WEA's articulated reason for

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[4] In addition, the defendant has provided evidence that the statement "growth in DVD will allow us to absorb the employees in the mold and machine shops without a job loss" applied only to the affected hourly employees (i.e. machinists and mold technicians) and not to plaintiff or Mr. Sklareski, who were salary employees. Lee Albeck Aff. ¶ 27; Jeffrey Raider Aff. ¶ 42. Significantly, Mr. Slareski was not absorbed into DVD, but rather continued as the Facility Maintenance manager and was assigned to supervise two mold technicians. Defendant's Reply Brief p. 12.

plaintiff's termination was pretextual.[5] Accordingly, the plaintiff's ADEA and PHRA claims will be dismissed.

Conclusion

For the foregoing reasons, we will grant the defendants' motion for summary judgment. An appropriate order follows.

[5] Additional undisputed evidence supports the defendant's assertion that plaintiff was terminated for non-discriminatory reasons. For example, the plaintiff was hired by plaintiff in January 1993 at age fifty-three, which is well within the class protected by the ADEA. Complaint ¶ 5-6. See, e.g., Hennessey v. Good Earth Tools, Inc., 126 F.3d 1107, 1109 (8th Cir. 1997) ("[Employer's] hiring of [plaintiff] at age fifty-five, when he was well within the age group protected by the ADEA, suggests that [the employer] was not influenced by ageism in firing him four years later.") Moreover, plaintiff was retained in 1996 when plaintiff was an employee in WEA's R&D department and that department was closed. Plaintiff's Aff. ¶ 24-28. Plaintiff was one of only four employees who were retained out of twelve or thirteen R&D employees. Id. ¶ 26. The R&D employees who were laid off at the time of the closure were considerably younger than plaintiff. Plaintiff's Dep. p. 118 ("I think probably all of them were a lot younger than I."). The R&D closure was part of a large-scale reduction in force implemented by WEA in 1996 that resulted in layoffs of more than 600 employees. Plaintiff's Aff. ¶ 24-25.

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

GARY L. RADER,	:	**No. 3:01cv1998**
Plaintiff	:	
	:	**(Judge Munley)**
v.	:	
	:	
WEA MANUFACTURING, INC	:	
and SPECIALTY RECORDS,	:	
Defendants	:	
	:	

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ORDER

_____**AND NOW**, to wit, this _____ day of October 2003, the defendants' motion for summary judgment (Doc. 17) is hereby **GRANTED**. The Clerk of Court is directed to close this case.

BY THE COURT:

_____
JUDGE JAMES M. MUNLEY
United States District Court

FILED: 10/28/03