

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

RUDOLPH A. KARLO, MARK K.,)	
MCLURE, WILLIAM S. CUNNINGHAM,)	
JEFFREY MARIETTI, DAVID)	
MEIXELSBERGER, BENJAMIN D.)	
THOMPSON and RICHARD CSUKAS,)	Civil Action No. 2:10-cv-01283
on behalf of themselves and all others)	
similarly situated,)	Honorable Nora Barry Fischer
)	
Plaintiffs,)	
)	ELECTRONIC FILING
v.)	
)	
PITTSBURGH GLASS WORKS, LLC,)	
)	
Defendant.)	

**DEFENDANT PITTSBURGH GLASS WORKS’
MOTION TO DISMISS COUNT III OF THE COMPLAINT**

For the reasons stated more fully in its Memorandum in Support of its concurrently filed Motion to Dismiss Count III of the Complaint, a copy of which is incorporated herein by reference, Defendant Pittsburgh Glass Works, LLC (“PGW”), by and through its attorneys COHEN & GRIGSBY, P.C., hereby moves to dismiss with prejudice Count III of Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. As articulated in the Memorandum, Count III fails to state a claim for retaliation under the Age Discrimination in Employment Act because Plaintiffs Karlo and McLure were not employees of PGW at the time of the alleged retaliation. Count III also fails to state a claim because Karlo and McLure did not allege retaliatory conduct.

WHEREFORE, PGW respectfully requests that the Court grant this Motion to Dismiss and grant PGW such other and further relief as the Court deems just and proper.

Respectfully submitted,

PITTSBURGH GLASS WORKS, LLC

By: /s/ Robert B. Cottington
One of its Attorneys

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Counsel for Defendant Pittsburgh Glass Works, LLC

Dated: November 29, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss Count III of the Complaint has been served upon counsel of record by the Court's ECF system, this 29th day of November, 2010, addressed as follows:

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/s/ David S. Becker
