

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 PLAINTIFFS' FIRST AMENDED COMPLAINT**

For the reasons stated more fully in its Brief in Support of Motion to Dismiss Count III of the Plaintiffs' First Amended Complaint, a copy of which is incorporated herein by reference, Defendant Pittsburgh Glass Works, LLC ("PGW"), by and through its attorneys, FREEBORN & PETERS, LLP and COHEN & GRIGSBY, P.C., hereby moves to dismiss with prejudice Count III of Plaintiffs' First Amended Collective Action 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 and they have failed to allege and conduct that interfered with either plaintiffs' employment relationship at the relevant time.

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/ David S. Becker

One of its Attorneys

Jeffrey J. Mayer
jmayer@freebornpeters.com
Jennifer L. Fitzgerald
jfitzgerald@freebornpeters.com
IL6229243
David S. Becker
IL6271932
dbecker@freebornpeters.com
Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000

Robert B. Cottingham
PA51164
rcottingham@cohenlaw.com
COHEN & GRIGSBY, P.C.
625 Liberty Avenue
Pittsburgh, PA 15222-3152
(412) 297-4677 (Telephone)
(412) 209-1906 (Direct Fax)

Counsel for Defendant Pittsburgh Glass Works, LLC

Dated: March 1, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss Count III of Plaintiffs' First Amended Complaint has been served upon counsel of record by the Court's ECF system, this 1st day of March, 2011, addressed as follows:

Bruce C. Fox, Esq.
bruce.fox@obermayer.com

Melissa L. Evans, Esq.
melissa.evans@obermayer.com

/s/ David S. Becker
