**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF WYOMING**

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| EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,<br><br>Plaintiff,<br><br>vs.<br><br>M & N EQUIPMENT, INC., LLC, a Wyomign limited liability company,<br><br>Defendant. | ) | Case No.03-CV-201-B |

**ORDER DENYING EEOC'S MOTION TO CONSOLIDATE**

The above-entitled matter having come before the Court on the EEOC's Motion to Consolidate filed herein, and the Court having reviewed the motion and the response thereto and being fully advised in the premises FINDS:

1. This action comes before the Court on the EEOC's claims of discrimination by defendant M & N Equipment against Clifford DeLambert. The plaintiff alleges that the defendant engaged in unlawful employment practices at its Pinedale, Wyoming facility violating Title VII of the Civil Rights Act. The defendant generally denies the same.

2. The EEOC filed this instant motion urging the Court to consolidate the above captioned case with *Nicodemus, et al v. M & N Equipment*, Civil Action No. 03-CV-68. The EEOC

argues that both cases are based upon "similar sets of operative facts, evidence, and occurred in overlapping time frames." *Motion*, at 3. In addition, the EEOC asserts that both cases will involve a determination of similar legal issues and will involve many of the same witnesses. Specifically, both lawsuits claim the defendant violated Title VII of the Civil Rights Act when the plaintiffs in both lawsuits were subject to retaliation due to their complaints about harassment and retaliation. The EEOC asserts that "[w]here the subject matter of the claims made in separate actions arise out of the same transaction and involve common issues of law and fact" consolidation is warranted. *Motion*, 2-3 (quoting *Harris v. Illinois-California Express, Inc.*, 687 F.2d 1361, 1368 (10th Cir. 1982); FED. R. CIV. P. 42). The EEOC states that it intends to depose many of the same individuals that will or have been deposed in *Nicodemus*. Further, the EEOC argues that no party will be prejudiced as a result of the consolidation. The EEOC contends that it will agree not to unnecessarily duplicate depositions. Consequently, the EEOC moves the Court to grant the instant motion.

3. In its response, the defendant argues that after the initial charge was filed and nearly six months after suit was filed in the *Nicodemus* case, the EEOC filed an action on behalf of Mr. DeLambert and now seeks to consolidate its case with the *Nicodemus* case. The "[d]efendant objects to consolidation solely to avoid unnecessary delay and expenses." *Response*, at 3. The defendant argues that further delay will only increase costs. However, the defendant states that it would be willing to consolidate if the EEOC agreed to the deadlines already established in *Nicodemus*. The

defendant moves the Court to deny the instant motion, or in the alternative that EEOC be required to live with deadlines already set in *Nicodemus*.

4. The Court notes that when actions involving common questions of law or fact are pending before the court, the court may order a joint trial of any or all of the matters in issue in the actions; it may order all actions consolidated; and it may make such orders to avoid unnecessary costs or delay. FED. R. CIV. P. 42(a). Whether to grant a motion to consolidate is within the court's discretion. *Servant s of the Paraclete, Inc. v. Great American Ins. Co.,* 866 F.Supp. 1560, 1572 (D.N.M. 1994). In deciding whether to grant the motion for consolidation, the Court should initially determine that the cases involve common questions of law or fact. If the cases involve common questions of law or fact, the Court should then weigh the interests of judicial convenience in consolidating the cases against the delay, confusion and prejudice that consolidation might cause. *Id.*

This Court finds that the actions involve common questions of law and fact, as the claims in both cases are based on similar facts and issues. However, consolidation of the two cases will not result in the efficient adjudication of the cases unless the DeLambert case can follow the same briefing schedule set in *Nicodemus*. The EEOC argues that it would agree to not unnecessarily duplicate the deposition testimony already obtained, but is unwilling to agree that it will not need to depose anyone already deposed. The Court finds that the DeLambert case may need more in depth discovery than the constraints of the *Nicodemus* briefing schedule will allow. The Court further

finds that the two cases could have and should have been consolidated long before now. Therefore, consolidation at this time will result in a substantial delay in the *Nicodemus* proceedings and would be contrary to the spirit of judicial efficiency. Delay constitutes sufficient grounds for denial of a motion for consolidation. *Zapata v. IBP, Inc.,* No. 93-2366-EEO, 1994 WL 401572, at 2 (D. Kan. July 25, 1994).

Finally, the two actions are in completely different stages of proceedings. In the first action, *Nicodeumus*, 03-CV-068-B, the Order on Initial Pretrial Conference has been issued. Discovery has been ongoing, deadlines have been set, and trial is scheduled to begin in January of 2004. In the DeLambert case, 03-CV-201-B, a pretrial schedule has not even been established. Consolidation may properly be denied in instances where cases are at different stages of preparedness for trial, even if the cases involve common questions of law or fact. *Zapata v. IBP, Inc.,* No. 93-2366-EEO, 1994 WL 401572, at 2 (D. Kan. July 25, 1994); *Servants of the Paraclete, Inc. v. Great American Ins. Co.,* 866 F.Supp. 1560, 1573 (D.N.M. 1994). Accordingly, consolidation is improper.

NOW, THEREFORE, IT IS ORDERED that defendant's motion to consolidate the causes of action be, and the same is hereby DENIED.

Dated this 21st day of October, 2003.

William C. Beaman, U.S. Magistrate Judge