

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>MARGARET ASHEY,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL NO. 01-57-B-S</b>
	)	
<b>LILY TRANSPORTATION CORP.,</b>	)	
	)	
<b>Defendant</b>	)	

**ORDER**

The defendant has filed a motion pursuant to Rule 12(f) of the Federal Rules of Civil Procedure to strike two allegations contained in the plaintiff’s complaint. The complaint sets forth two counts based on alleged sex discrimination: one premised on Title VII and another premised on the Maine Human Rights Act. The subject allegations are the following:

- 24. On February 1, 2000, a gust of wind slammed a heavy door at the Chinet mill against Plaintiff’s left shoulder. Plaintiff reported the injury to Lily and sought medical treatment, which continued for the next several months. However, the Plaintiff did not lose time from work.
  
- 25. Plaintiff’s symptoms from this injury were aggravated by the setup of her workstation, which was evaluated by an ergonomics consultant in late April, 2000.

**DISCUSSION**

Rule 12(f) provides:

**(f) Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court’s own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Wright and Miller inform us that immaterial matter “is that which has no essential or important relationship to the claim for relief or the defenses being pleaded,” whereas impertinent matter “consists of statements that do not pertain, and are not necessary, to the issues in question.” 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1382, at 706-07, 711 (1990). Rule 12(f) motions have not been commonplace either in this Circuit or in this District. According to the First Circuit, that may be explained by the fact that such “motions are narrow in scope, disfavored in practice, and not calculated readily to invoke the court’s discretion.” Boreri v. Fiat, S.P.A., 763 F.2d 17, 23 (1st Cir. 1985). See also 2 James Wm. Moore et al., *Moore’s Federal Practice* § 12.37[1] (3d ed. 2000) (“Courts disfavor the motion to strike, because it ‘proposes a drastic remedy.’”); Kounitz v. Slaatten, 901 F. Supp. 650, 658 (S.D.N.Y. 1995) (“[M]otions to strike are generally disfavored and will not be granted unless the matter asserted clearly has no bearing on the issue in dispute.”) Thus, for instance, where the stated ground for the motion is impertinence or immateriality, the Second Circuit holds that “the motion will be denied, unless it can be shown that no evidence in support of the allegation would be admissible.” Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2d Cir. 1976). The rationale provided by the Second Circuit is, in my view, quite sound:

The Federal Rules of Civil Procedure have long departed from the era when lawyers were bedeviled by intricate pleading rules and when lawsuits were won or lost on the pleadings alone. Thus the courts should not tamper with the pleadings unless there is a strong reason for so doing.

Evidentiary questions, such as the one present in this case, should especially be avoided at such a preliminary stage of the proceedings. Usually the questions of relevancy and admissibility in general require the context of an ongoing and unfolding trial in which to be properly decided. And ordinarily neither a district court nor an appellate court should decide to strike a portion of the complaint—on the grounds that the material could not possibly be relevant—on the sterile field of the pleadings alone.

Id. (citations omitted).

The parties' submissions have not moved me to conclude that the subject allegations are either irrelevant or relevant to the claims for relief or the defendant's affirmative defenses. In short, I am not particularly moved by the motion to believe that there is any great cause for concern that would require such a drastic remedy. The defendant complains that the plaintiff has included the subject allegations in her complaint because she "is on a fishing expedition to obtain discovery in support of a wholly unrelated worker's compensation claim." If a discovery dispute should arise on this score, then I may be persuaded at that juncture to permit the defendant to withhold documents and/or testimony related to these allegations. See D. Me. Local R. 26(b).

***SO ORDERED.***

Dated: June 18, 2001

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Margaret J. Kravchuk  
U.S. Magistrate Judge

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 01-CV-57

ASHEY v. LILY TRANSPORTATION

Filed: 03/26/01

Assigned to: Judge GEORGE Z. SINGAL

Jury demand: Plaintiff

Demand: \$0,000

Nature of Suit: 710

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:2000 Job Discrimination (Sex)

MARGARET ASHEY

MAURICE A. LIBNER

plaintiff

[COR LD NTC]

PO BOX G, 93 PLEASANT STREET

BRUNSWICK, ME 04011, 729-0700

v.

LILY TRANSPORTATION CORP

MELINDA J. CATERINE, ESQ.

defendant

[COR LD NTC]

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