

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOANNE DIDONNA,)
)
 Plaintiff,)
)
 v.) Civil No. 02-132-B-W
)
 WAL-MART STORES,)
)
 Defendant.)

**ORDER ON DEFENDANT’S
MOTION IN LIMINE**

Defendant Wal-Mart has filed a Motion In Limine to exclude the affidavit of Paul Pierce, Maine Human Rights Investigator, and the decisions and proceedings of the Maine Human Rights Commission for purposes of the pending motion for summary judgment and for trial purposes. The court has not considered the Pierce affidavit in its ruling on the motion for summary judgment and, therefore, it is not necessary to rule on this portion of the Defendant’s motion.

Regarding the question of the admissibility of the decisions and proceedings of the Maine Human Rights Commission at the time of trial, there is insufficient information concerning the material the Plaintiff might seek to introduce, the context of the evidence, and the purpose of its admission for this court to rule at this time. The court will note for the benefit of the parties that it does not view the *Patten v. Wal-Mart Stores, Inc.*, 300 F.3d 21 (1st Cir. 2002) case as mandating the wholesale exclusion of all Maine Human Rights Commission material. The *Patten* Court upheld Judge Hornby’s refusal to admit into evidence a right-to-sue letter from the Maine Human Rights Commission as within

his discretion under a Rule 403 balancing analysis. *Patten*, 300 F.3d at 27 (“...the district court’s exclusion reflects a tacit balancing under Rule 403”). In *Patten*, the First Circuit refused to adopt a rule of per se admissibility of the investigative file and instead allowed the district court to function as an independent fact-finder on a case-by-case basis. *Id.* at 26-27 quoting *Smith v. Massachusetts Institute of Technology*, 877 F.2d 1106, 1113 (1st Cir. 1989). The *Patten* court’s refusal to adopt a rule of per se admissibility does not imply its adoption of a rule of per se exclusion.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 21st day of January, 2004.

Plaintiff

JOANNE DIDONNA

represented by

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