

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DELAWARE 19947
TELEPHONE (302) 856-5264

Clayton E. Bunting, Esquire
P.O. Box 690
Georgetown, DE 19947

James D. Griffin, Esquire
Griffin & Hackett, P.A.
P.O. Box 612
Georgetown, DE 19947

Re: *Hantman v. P/E Ltd.*
C.A. No. S10C-08-008 RFS

Upon Plaintiff's Motion for Reargument. Granted.
Upon Plaintiff's Motion to Compel. Denied.

Submitted: October 28, 2011
Decided: January 19, 2012

Dear Counsel:

Plaintiff moves to reargue the legal question of his entitlement to liquidated damages on all late-paid or unpaid IAB awards under the Workers' Compensation Act and the Wage Payment and Collection Act. The motion for reargument is granted. Plaintiff's motion to compel is denied.

Plaintiff relies on *Holden v. Gaico, Inc.*,¹ which is based on *Huffman*.² *Huffman* presented a jurisdictional issue pertaining to recovery of IAB awards. *Huffman* stated that in this context the term "wages" includes unpaid workmen's compensation benefits.

¹736 A.2d 202 (Del. 1999).

²*Huffman v. C. C. Oliphant & Son, Inc.*, 432 A.2d 1207 (Del. 1981).

In *Holden*, the Supreme Court found that the plaintiff was entitled to seek recovery of an IAB award of expert witness fees and expenses under the Wage Payment Act. Damages were not addressed.

In *McDougall v. National Union Fire Co. of Pittsburgh ("McDougall I")*,³ the Supreme Court acknowledged that this Court had granted damages on all late-paid or unpaid IAB awards. The damages awarded were 100 percent of the amounts due, indicating that lump sum awards such as medical expenses, attorneys' fees, and permanency awards are subject to full damages.

On subsequent IAB awards to McDougall, the Supreme Court listed the amounts that this Court had granted, including damages on all amounts due, and affirmed.⁴

In *McDougall I* and *McDougall II*, the plaintiff recovered damages equal to the amount due on all IAB awards. This Court will follow the *McDougall* model as determined by the trial court, and affirmed by the Supreme Court. A copy of the written Order of Judgment, the itemization of the judgment award and relevant portions of the bench ruling are attached to and incorporated into this Letter Order.

³*Nat'l Union Fire Ins. Co. of Pittsburgh v. McDougall ("McDougall I")*, 773 A.2d 388 (Del. 2001).

⁴*Nat'l Union Fire Ins. Co. of Pittsburgh v. McDougall ("McDougall II")*, 877 A.2d 969 (Del. 2005).

Here, the Complaint sought damages on all amounts due under the IAB decision.

Plaintiff's *Huffman* letter⁵ demanded recovery of all IAB awards:

1. Permanancy: \$38,134.80
2. Attorneys' fees: 9,077.30
3. Expert fees
Dr. Sopa 850.00
Wm.Colvin 520.00
4. Medical expenses 7,000.00
5. Total disability from 10/08/09 to the present and continuing at the rate of \$346.68 per week.

This Court issued an Interim Order for total disability benefits from October 8, 2009 through April 15, 2011.

Defendant then conceded:

1. Liquidated damages for the period covered by the Interim Order;
2. Temporary total disability benefits and liquidated damages from July 27, 2011 and going forward;
3. Attorneys' fees awarded by the IAB (but not damages);
4. Future temporary total disability benefits and liquidated damages going forward;
5. Costs of the action, the necessary costs of prosecution and reasonable attorneys' fees (pursuant to § 1113 damages).

This Court granted Plaintiff's motion for summary judgment to the extent conceded by Defendant and denied it as to damages for permanancy, medical witness fees and IAB attorneys' fees because *Huffman* was not presented with this issue.

Under *McDougall I* and *II*, Plaintiff is entitled to recover 100 percent liquidated damages on disability benefits and all other unpaid or late-paid IAB-ordered amounts as

⁵Plaintiff's first *Huffman* demand letter is dated September 25, 2008. His second demand letter is dated March 24, 2010.

listed in the demand letter. Defendant's failure to respond to ¶ 12 of the Request for Admissions, as to the permanency award, constitutes an admission on this amount.

Plaintiff's motion for reargument is **GRANTED**.

Furthermore, Plaintiff shall prepare an affidavit and accompanying order as to two outstanding matters. First, the affidavit shall set forth whether Defendant timely paid the \$7000 medical expenses award. If not, the accompanying order shall include an award of 100 per cent damages award on the medical expenses. Second, the affidavit shall set forth the interest due on the judgment and a thorough explanation of how the figures were calculated. *See McDougall II* at 971. That is, the order shall address the medical expenses only if the payment was untimely. The order shall set forth interest due, and shall be approved by Defendant as to form only. The affidavit and form of order shall be filed on or before Thursday, February 2, 2012.


Plaintiff shall submit an affidavit setting forth a detailed explanation of reasonable attorneys' fees for this action on or before Thursday, February 9, 2012.

Plaintiff also seeks asset discovery. In his argument on his motion to compel, counsel stated that Defendant's asset-related reason for not paying the IAB awards was irrelevant. He then requested much broader discovery on the "irrelevant" information. Discovery of this nature is appropriately sought in the post-judgment aid and execution

process under Civil Rule 69. The motion to compel is **DENIED**.⁶

IT IS SO ORDERED.

Very truly yours,



Richard F. Stokes

Enclosure
cc: Prothonotary

⁶Civil penalties as pled are denied under 19 *Del. C.* § 1112(a) and *Rodas v. Service General Corp.*, 2010WL 2355314 (Del. Super.) Punitive damages as pled are denied as unavailable under the Wage Payment and Collection Act and under *Jardel Co., Inc. v. Hughes.*, 523 A.2d 518 (Del. 1987).

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

WILLIAM S. McDOUGALL, SR.,
by and through his Guardian
ad Litem, Paulette McDougall,

Plaintiff,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PENNSYLVANIA,
a foreign corporation,

Defendant.

C.A. No. 94C-03-040 (HDR)

National Union #1

JUDGMENT ORDER

AND NOW this 20 day of April, 2000, the Court hereby enters the following Judgment Order in this matter as a result of decisions rendered on the parties' respective Motions for Summary Judgment regarding the four counts of the Amended Complaint. This Judgment Order reflects the decisions rendered by this Court after argument by the parties which occurred on Friday, April 7, 2000;

1. It is the Order of this Court that Defendant's Motion for Summary Judgment on Count I of the Plaintiff's Amended Complaint is granted. Therefore, judgment is entered in favor of the Defendant and against the Plaintiff on the Amended Complaint's Count I;

2. It is the Order of this Court that Defendant's Motion for Summary Judgment on Count II of the Plaintiff's Amended Complaint is granted. Therefore, judgment is entered in favor of the Defendant and against the Plaintiff on the Amended Complaint's Count II;

3. It is the Order of this Court that Defendant's Motion for Summary Judgment on Count III of the Plaintiff's Amended Complaint is granted. Therefore, judgment is entered in favor of the Defendant and against the Plaintiff on the Amended Complaint's Count III;

4. It is the Order of this Court that Defendant's Motion for Summary Judgment on Count IV of the Plaintiff's Amended Complaint is denied. It is the further Order of this Court that Plaintiff's Motion for Summary Judgment on Count IV of the Amended Complaint is granted. Therefore, judgment is hereby entered in favor of the Plaintiff and against the Defendant in the amount of \$924,529.02 as explained in the attached Exhibit "A".

IT IS SO ORDERED.



Superior Court President Judge

OC: Prothonotary
XC: W. Fitch, Esq.
C. Sipe, Esq.
File

ITEMIZATION OF JUDGMENT AMOUNT

<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>HUFFMAN AWARD</u>	<u>TOTAL</u>
Medical Expenses Per 1995 Award	\$367,697.66	\$367,697.66	\$735,395.32
Disability Benefits 8/5/94-4/7/00	\$ 87,974.16	\$ 87,974.16	\$175,948.32
Attorneys Fees and Costs Related to 1995 Award	Paid But Untimely	\$ 4,500.00 +5,185.38 \$ 9,685.38	\$ 9,685.38
Attorneys Fees For Huffman Suit	\$ 3,500.00	_____	\$ 3,500.00
TOTAL			\$924,529.02

EXHIBIT "A"

COPY

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

WILLIAM S. McDOUGALL, SR.,) C.A. No. 94C-03-040
)
 Plaintiff,)
)
 vs.)
)
NATIONAL UNION FIRE INSURANCE))
COMPANY OF PITTSBURGH,)
PENNSYLVANIA, a foreign)
corporation,)
)
 Defendant.) April 7, 2000

* * * * *

BEFORE: HON. HENRY duPONT RIDGELY, PRESIDENT JUDGE

* * * * *

APPEARANCES:

SCHMITTINGER & RODRIGUEZ, P.A.
BY: WILLIAM D. FLETCHER, JR., ESQUIRE
BY: CRAIG T. ELIASSEN, ESQUIRE
Attorneys for Plaintiff.

BAILEY & WETZEL, P.A.
BY: CHRISTOPHER J. SIPE, ESQUIRE
Attorney for Defendant.

TRANSCRIPT OF HEARING ON MOTION
Friday, April 7, 2000

SHEILA A. DOUGHERTY
Official Court Reporter

1 of the claims. If so, the plaintiff is limited to
2 contract remedies for the breach.

3 The appropriate standard to establish an
4 actionable bad faith claim is where the insurer's
5 denial of benefits was, quote, clearly without any
6 reasonable justification, unquote. In applying this
7 standard of reasonableness, the determinative factor
8 is, quote, whether at the time the insurer denied
9 liability, there existed a set of facts or
10 circumstances known to the insurer which created a
11 bona fide dispute and therefore a meritorious
12 defense to the insurer's liability, unquote.

13 The Court is satisfied based upon the
14 undisputed facts before it and the record in this
15 case that there was a bona fide dispute as to the
16 applicability of a credit, and therefore summary
17 judgment is granted in favor of the defendant and
18 against the plaintiff on Count III of the
19 complaint.

20 The result is different as to Count IV.

21 Count IV of McDougall's amended complaint
22 sets forth a cause of action pursuant to the
23 Delaware Wage Payment and Collection Act and

1 requests imposition of statutory penalties on
2 National for its failure to pay the benefits awarded
3 by the Industrial Accident Board in 1995. That
4 award has become final as of March of 1996.

5 National has moved for summary judgment on this
6 count, claiming that it is not liable under the Wage
7 Payment and Collection Act for failure to pay the
8 IAB award, because McDougall's counsel orally agreed
9 that National was entitled to a Worker's
10 Compensation credit with respect to McDougall's
11 third-party medical malpractice recovery. McDougall
12 has filed a cross-motion for summary judgment on
13 Count IV, arguing that National is not entitled to a
14 credit and is liable as a matter of law for failure
15 to pay the Industrial Accident Board award.

16 Under 19 Delaware Code, Section 2347, an
17 employee has a cause of action against an employer
18 or insurance carrier who wrongfully suspends or
19 terminates Worker's Compensation benefits. 19
20 Delaware Code, Section 2357 provides that if the
21 employee demands payment of Worker's Compensation
22 benefits, and the employer fails to make payment
23 within thirty days after the demand, the unpaid

1 benefits may be recovered in the same manner as
2 wages are collectible. Title 19, Chapter 11 of the
3 Delaware Code governs wage claims. In Huffman versus
4 C.C. Oliphant and Son, the Delaware Supreme Court
5 declared that, in order to give effect to the
6 provisions of 19 Delaware Code, Section 2357, the
7 term "wages" in Title 19, Chapter 11 must be
8 construed to include Worker's Compensation
9 benefits. Huffman held that, pursuant to 2357,
10 after having made a proper demand, an employee with
11 a claim based on the employer's alleged failure to
12 pay Worker's Compensation benefits may elect to
13 pursue an action under Chapter 11. 19 Delaware
14 Code, Section 1103 states that an employer who
15 wrongfully fails to pay an employee wages is liable
16 to the employee for liquidated damages in the amount
17 of ten percent of the unpaid wages for each day,
18 except Sunday and legal holidays, upon which such
19 failure continues after the day upon which payment
20 is required or in an amount equal to the unpaid
21 wages, whichever is smaller. Additionally, under
22 19 Delaware Code, Section 1113(c), in an action for
23 wages, the employee is entitled to an award for the

1 costs of the action, the necessary costs of
2 prosecution, and reasonable attorneys' fees, all to
3 be paid by the defendant. Huffman thus construed
4 19 Delaware Code, Sections 1103 and 1113(c) and 2357
5 as enabling an employee to recover unpaid benefits,
6 liquidated damages, attorneys' fees, and costs in an
7 action for wrongful termination of Worker's
8 Compensation benefits.

9 A decision of the Industrial Accident
10 Board becomes final and conclusive unless a timely
11 appeal is taken. An employer becomes immediately
12 liable for any benefits awarded to the employee once
13 the Board's decision becomes final.

14 The Industrial Accident Board granted
15 Mr. McDougall's award in September of 1995.
16 National filed a motion for reargument regarding
17 that decision; however, the Board issued an order on
18 March 21, 1996. National had 30 days to file an
19 appeal from that order, but failed to do so. Both
20 the Superior Court and the Supreme Court of Delaware
21 have ruled that the Board's 1995 award became final
22 and binding when National failed to make a timely
23 appeal from the Board's March 1996 order.

1 National has failed to pay Mr. McDougall
2 his weekly disability benefits from 1994 until the
3 present time and has not paid Mr. McDougall the
4 award of \$397,697.66 for past medical expenses.
5 McDougall made a demand on National for payment of
6 those benefits, but the demand was not granted.

7 National's defense of a Worker's
8 Compensation credit lacks merit. There is no credit
9 recognized by the Board in its award, which has
10 become final. And it is undisputed that the Board's
11 award is final in this case, and that National has
12 failed to pay it. McDougall is, therefore, entitled
13 to judgment as a matter of law under 19 Delaware
14 Code 1103(d) and 1113(c) and Huffman. Consequently,
15 the grant of summary judgment in favor of McDougall
16 on Count IV is made by this Court. The defendant's
17 cross-motion for summary judgment is denied.

18 Counsel, I think what remains for me to
19 decide now is Counts I, II and III, is that
20 correct? Cross-motions?

21 MR. SIPE: Your Honor, if I could raise one
22 issue in the context of Your Honor's ruling, I
23 believe that there is an issue of fact as to the