

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

(302) 255-0664

**NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801**

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Re: **David Harrigan v. City of Wilmington, Mayor James
Baker, and the Council of the City of Wilmington
C.A. No. 05C-05-143 RRC**

Submitted: November 9, 2005

Decided: January 5, 2006

On Defendants' Motion to Dismiss.

GRANTED.

Dear Counsel:

Currently before this Court is a Motion to Dismiss filed pursuant to Rule 12(b)(6) by Defendants City of Wilmington, Mayor James Baker, and the Council of the City of Wilmington (collectively "City of Wilmington"). In his complaint, Plaintiff David Harrigan ("Plaintiff") alleges that the City of Wilmington violated the Wage Payment and Collection Act ("WPCA")

by failing to pay past due workers' compensation benefits.¹ Plaintiff further contends that as a result of the City's failure to pay those past due benefits, the City of Wilmington, as Plaintiff's employer, must pay the statutory penalties enumerated in the WPCA.

In this Motion to Dismiss, the City of Wilmington asserts that, as a political subdivision of the State of Delaware, it is specifically excluded from the ambit of the WPCA because the General Assembly unambiguously provided in 19 *Del. C.* § 1101(a)(3) and (a)(4) that the WPCA does not apply to the employees of a political subdivision of the State of Delaware.²

Plaintiff, however, counters that the "political subdivision" exemption of the WPCA does not apply, arguing that such defenses within the WPCA are inapplicable in an action based on wrongfully withheld worker's compensation benefits that also seeks the statutory penalties, widely styled as a *Huffman* action.³ Because *Huffman* liability is couched in 19 *Del. C.* § 2357 (providing an employee, after proper demand, with the remedy available for the collection of wages), Plaintiff maintains that the defenses in the WPCA do not apply and that the "political subdivision" exemption defense relied upon by the City of Wilmington in § 1101(a)(3) and (a)(4) is not applicable.⁴

This Court finds that § 1101(a)(3) and (a)(4) unambiguously precludes an injured employee of a political subdivision of the State of Delaware, such as the City of Wilmington, from filing an action for certain liquidated damages as set forth in 19 *Del. C.* § 1103(b). For that reason, Defendants' Motion to Dismiss is granted.

I. FACTS

The facts are not in dispute. On May 25, 2004, the Plaintiff, an employee of the City of Wilmington, was awarded worker's compensation benefits by the Industrial Accident Board, which included medical bills for

¹ 19 *Del. C.* §§ 1101-1115 (1995).

² Defs. Mot. ¶ 7. See 19 *Del. C.* § 1101(a)(3), (4).

³ *Huffman v. C.C. Oliphant & Son, Inc.*, 432 A.2d 1207 (Del. 1981) (holding that the remedies available under the WPCA may also be used in an action for the recovery of wrongfully withheld worker's compensation benefits, which enlarges the possible remedy for an employee seeking such benefits).

⁴ Pl.'s Resp. ¶ 10, 12, 13.

ankle surgery, medical expert witness fees as well as attorney's fees. Plaintiff alleged that the City of Wilmington failed to pay those benefits to Plaintiff, even after a proper demand was made by Plaintiff. Thereafter, Plaintiff filed the instant Complaint, which alleged a WPCA violation and sought the wrongfully withheld worker's compensation benefits, plus the additional damages allowed under *Huffman*.

II. DISCUSSION

A. Standard of Review

When deciding a motion to dismiss "all allegations in the complaint must be accepted as true,"⁵ and the Court must determine "whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."⁶

B. The City of Wilmington is a political subdivision of the State of Delaware and, thus, the § 1101(a)(3), (4) exemption applies.

The issue is whether the exemption of political subdivisions of the State of Delaware from the WPCA in 19 *Del. C.* § 1101(a)(3) and (a)(4) precludes an action by an injured City employee under the WPCA, pursuant to 19 *Del. C.* § 2357, for certain liquidated damages as set forth in 19 *Del. C.* § 1103(b).

Generally, where the Industrial Accident Board ("IAB") grants benefits in favor of the plaintiff, but which are then withheld by the employer, "[t]he only relief that the IAB may grant to an employee is an order that the employer or insurer pay all *past due* compensation that has been wrongfully withheld."⁷ However, the Delaware Workers' Compensation Act provides:

⁵ *Plant v. Catalytic Constr. Co.*, 287 A.2d 682, 686 (Del. Super. Ct. 1972), *aff'd* 297 A.2d 37 (Del. 1972).

⁶ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁷ *National Union Fire Ins. Co. v. McDougall*, 877 A.2d 969, 974 (Del. 2005) (holding that 19 *Del. C.* § 2305 requires an analysis of Delaware's Workers' Compensation Act to determine which statute of limitations applies to a *Huffman* action and precluding the application of the one-year statute of limitations used for wage collection actions). *See also Huffman*, 432 A.2d at 1210.

If default is made by the employer for 30 days after demand in the payment of any amount due under this chapter, the amount may be recovered in the same manner as claims for wages are collectible.⁸

Thus, § 2357 gives an employee, after proper demand, an additional remedy: instead of limiting recovery to past due compensation, the employee may also elect to bring an action, in a “court of competent jurisdiction,”⁹ under the WPCA.¹⁰ In such an action, known as a “*Huffman* action,” a court is authorized to order the employer to pay all past due compensation that is owed and, in addition, the employee shall be entitled to “liquidated damages in the amount of 10 percent of the unpaid wages for each day” or an amount equal to the amount already owed, whichever is smaller.¹¹ Moreover, the judgment “shall include an award for the costs of the action, the necessary costs of prosecution and reasonable attorney’s fees, all to be paid by the defendant.”¹² Thus, in this purported *Huffman* action under the WPCA, Plaintiff seeks the past due compensation, the liquidated damages allowable under the statute, and attorney’s fees.

However, as correctly argued by the City of Wilmington, as a political subdivision of the State of Delaware, it is exempt from a cause of action, and the attendant penalties, brought by a city employee under the WPCA. In 1995, the General Assembly amended § 1101(a)(3) and (a)(4) of the WPCA by adding the following unambiguous language: “[Chapter 11 (Wage and Payment Collection Act)] does not apply to employees of the United States government, the State of Delaware or any political subdivision thereof.”¹³ Because a proper *Huffman* claim allows a plaintiff to pursue an action against an employer under the WPCA, that employer is afforded the opportunity to use the defenses available under the WPCA as well.

⁸ 19 *Del. C.* § 2357.

⁹ 19 *Del. C.* § 1113(a) (“A civil action to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction.”).

¹⁰ 19 *Del. C.* 1103. *Huffman* refined this analysis by holding that “in order to give effect to the provisions of section 2357, the reference in section 1113(a) to ‘wages’ must be construed to include claims based on unpaid workmen’s compensation benefits due after proper demand therefore has been made.” 432 A.2d at 1210. *See also McDougall*, 877 A.2d, at 974.

¹¹ 19 *Del. C.* § 1103(b).

¹² 19 *Del. C.* § 1113(c).

¹³ 19 *Del. C.* § 1101(a)(3), (4).

Thus, given the unambiguous language of the “political subdivision” exemption in § 1101(a)(3) and (a)(4), Plaintiff is unable to invoke the remedy available in the WPCA, via a *Huffman* claim, against the City of Wilmington and recovery is limited to the compensation owed to him under the IAB award.

Plaintiff’s present heavy reliance on *McDougall* (a case, however, decided one month after the filing of this lawsuit) is misplaced, as that case is both factually and legally distinguishable. *McDougall* was essentially a *Huffman* action in which plaintiff sought unpaid worker’s compensation benefits, which were wrongfully withheld by his private employer, plus the statutory penalties; all were ultimately granted by the Superior Court.¹⁴ The private employer then appealed to the Delaware Supreme Court claiming that the plaintiff’s *Huffman* action was barred by the one year statute of limitations that governs actions to collect wages, instead of the five year period of the Workers’ Compensation Act, which had been applied by the Superior Court.¹⁵ The employer in *McDougall* argued that an employee who elects to file a *Huffman* action to collect past due wages should also be subject to the one-year statute of limitations used in actions to recover wages, which is found in 10 *Del. C.* § 8111. However, the Supreme Court affirmed the Superior Court’s ruling for the employee and found applicable the statute of limitations in the Workers’ Compensation Act.

Plaintiff leans on *McDougall* for the proposition that, because 19 *Del. C.* § 2305 precludes application of the one-year statute of limitations for wage collection in *Huffman* actions, it should also, by analogy, preclude the “political subdivision” exemption as a defense. However, the *McDougall* case is not analogous to the case at bar for two reasons. First, the employer in *McDougall* was a private employer, as opposed to a government entity, and thus, the “political subdivision” exemption invoked here was not at issue. Second, *McDougall* involved two conflicting statutes of limitations; the Supreme Court chose one to apply based on the Court’s interpretation of the statutory scheme of the Delaware Worker’s Compensation Act.¹⁶ However, as stated below, the language of § 1101(a)(3) and (a)(4) is unambiguous and not subject to judicial interpretation. For all of the above reasons, Plaintiff’s argument is without merit.

¹⁴ *McDougall*, 877 A.2d at 970.

¹⁵ *Id.* at 972.

¹⁶ *Id.* at 974-75.

C. The Language of § 1103(a)(3) and (a)(4) is Unambiguous, Needing No Statutory Interpretation.

The above conclusion would seem to end the analysis but for a wrinkle that appeared during the 1995 amendment process, which this Court raised *sua sponte* at oral argument. Interestingly, the synopsis to the 1995 amendment of § 1101(a)(3) and (a)(4) states in part that the amendment (providing for exemption of liability under the WPCA to political subdivisions) “incorporates the government exemption in order to eliminate confusion relating to the state’s new lag-time payroll procedures.”¹⁷ The issue now becomes what weight, if any, should the Court afford to this language in the synopsis of the 1995 amendment to § 1101(a)(3) and (a)(4).

This language of the synopsis suggests that the “political subdivision” exemption was legislatively created “to eliminate confusion relating to the State’s new [in 1995] lag-time payroll procedure.” However, “lag-time payroll procedures” are not at issue in this case and the synopsis says nothing about any policy reasons for “government exemptions” to a *Huffman* claim.

Ultimately, the unambiguous language of the statute providing an exemption to a “political subdivision” is fatal to Plaintiff’s case. In Delaware, while a synopsis may be used to determine the scope or limitations of that particular statute, “it may only be used for such purposes if the Court determines that the statute is ambiguous and requires interpretation.”¹⁸ “[A] statutory synopsis cannot change the meaning of an unambiguous statute.”¹⁹ These tenets of Delaware law fully and properly

¹⁷ 70 *Del. Laws* c. 103, 366 (June 26, 1995).

¹⁸ *Transamerica Corp., et al. v. Reliance Ins. Co.*, 1995 WL 1312656, * 4 (Del. Super.) (holding that Delaware’s choice of law statute was unambiguous and that the synopsis carried no weight in the analysis of the statute). *See also Carper v. New Castle County Bd. of Educ.*, 432 A.2d 1202, 1205 (Del. 1981) (finding that the language of a statute was ambiguous, thus necessitating the use of the statute’s legislative history, including the synopsis that accompanied the amendments to the bill at issue).

¹⁹ *Id.* (citing *Chrysler Corp. v. State*, 457 A.2d 345, 351 (Del. 1983) (holding that an unambiguous statute did not have retroactive application even though a bill was passed during the litigation of the case that amended the statute at issue, which the Secretary of State interpreted as having retroactive effect) (citing *Bank of America Nat’l Trust and Saving Ass’n v. GAC Properties Credit, Inc.*, 389 A.2d 1304, 1309 (Del. Ch. 1978) (declaring that there is “no room for judicial interpretation” of a clear and unambiguous statute)).

comport with a doctrine offered by a leading treatise: “a statute, clear and unambiguous on its face, need not and cannot be interpreted by a court and ... only statutes which are of doubtful meaning are subject to statutory interpretation.”²⁰ A statute is ambiguous, and thus, subject to interpretation, if it is reasonably susceptible to different conclusions.²¹

This Court finds that the plain language of the Wage and Collection Payment Act providing for the exemption of the State of Delaware and for its political subdivisions is clear and unambiguous. The statutory language is not reasonably susceptible to a different conclusion. Therefore the 1995 synopsis carries no weight in this Court’s present analysis of whether the governmental exemption applies to the City of Wilmington in a WPCA action. Because the language of the statute is clear and unambiguous, the governmental exemption is enforceable and the WPCA does not apply to the City of Wilmington as a political subdivision of the State of Delaware.²²

III. CONCLUSION

For the foregoing reasons, the City of Wilmington’s Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

oc: Prothonotary

²⁰ Norman J. Singer, *Sutherland on Statutory Construction*, § 45.02 (6th ed. 2000) (citing *Wilgus v. Estate of Law*, 1996 WL 769335 (Del. Super.) (relying on the 5th edition of *Sutherland*); *Matter of Mayors Estate*, 385 A.2d 734 (Del. Ch. 1978) (relying on the 4th edition of *Sutherland*)).

²¹ *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985). See *State v. Snowden*, 677 A.2d 33, 37 (Del. 1996); *Sutherland*, § 45.02.

²² Any removal of the exemption for “political subdivisions” of the State (the only category at issue in this case) is a policy decision for the General Assembly and should only occur through action by the General Assembly.