IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Annette Stephens,	:	
	:	
Plaintiff,	:	C.A. No. 03-04-0078
	:	
v.	:	
	:	
Lifecare at Lofland Park	:	
And PMA Management Corp.	:	
	:	
Defendants.	:	

Upon Plaintiff's Motion for Summary Judgment

Date of Hearing: April 7, 2004

Date of Decision: April 8, 2004

Motion for Summary Judgment granted.

Walter F. Schmittinger, Esquire, Schmittinger & Rodriguez, 414 South State Street, Post Office Box 497, Dover, Delaware 19903, attorney for plaintiff.

Dennis J. Menton, Esquire, Tybout, Redfearn & Pell, 300 Delaware Avenue, P.O. Box 2092, Wilmington, Delaware 19899, attorney for defendants.

Trader, J.

In this case the plaintiff seeks liquidated damages, interest, and attorney's fees because of the wrongful suspension of worker's compensation benefits. The plaintiff, Annette Stephens, has filed a motion for summary judgment. The defendants first contend that the medical bill for surgery was not subject to the settlement agreement. I conclude that Dennis Menton's letter of July 19, 2002 is unambiguous and the defendants agreed to pay the reasonable, necessary and related medical expenses, which included the cervical spine surgery that was performed on 6/06/02. The defendants next contend that the plaintiff's demand letters were insufficient. I conclude that Mr. Schmittinger's letters of August 29, 2002 and September 26, 2002 gave sufficient notice that the surgery bill was due.

The relevant facts are as follows: Annette Stephens suffered an industrial accident while an employee of Lifecare at Lofland Park on December 30, 2001. On June 6, 2002, Dr. Jacek Malik of Peninsula General Neurological Associates performed cervical spine surgery on the plaintiff. The defendant's attorney in his letter of July 19, 2002 offered to settle the outstanding issues related to the industrial accident. The letter provides in pertinent part as follows: "The employer/carrier will agree to acknowledge reasonable, necessary and related expenses which would include the surgical spine surgery conducted on 6/06/02."

By letters dated August 29, 2002 and September 26, 2002, the plaintiff's attorney submitted demands for payment of all worker's compensation benefits due the plaintiff. Suzanne Sam's affidavit of February 10, 2004 indicates that Dr. Malik's bill for this surgery was forwarded to the defendant, PMA Management Corporation, on June 12, 2002 and it was again sent to PMA Management Corporation on October 8, 2002. William Patterson's affidavit asserts that it did not receive the bill prior to October 14,

2002. The defendants paid Dr. Malik's bill in the amount of $17,279.00 on December 19, 2002. Thereafter, the plaintiff filed this civil action for liquidated damages in the amount equal to the late paid claim, plus interest and reasonable attorney's fees. The plaintiff has filed a motion for summary judgment on the grounds that there is no material issue of fact.

The court must grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to summary judgment as a matter of law. *Pullman v. Phoenix Steel Corp.,* Del. Super. Ct., 304 A.2d 334 (1973). The moving party has the burden of demonstrating that no material issue of fact exists. *Borish v. Graham*, Del. Super. Ct., 655 A.2d 831 (1994). The court must view all the facts and inferences in a light most favorable to the non-moving party. *Shultz v. Delaware Trust Co.,* Del. Super. Ct. 360 A.2d 576 (1976). The non-moving party must not rest on denials in its pleadings, but must set forth specific facts demonstrating the existence of a material issue for trial. *Moore v. Sizemore*, Del. Supr., 405 A.2d 679 (1979). If the non-moving party fails to respond in this manner, the court must grant summary judgment. *Nix v. Sawyer,* Del. Super Ct., 466 A.2d 407 (1983).

Under the Wage Payment and Collection Act, when an employer or insurer fails to pay an award for worker's compensation for thirty days, the employee may file a *Huffman* demand. *Huffmanv. Oliphant,* 432 A.2d 1207(Del. 1981).

19 Del.C. Sec. 1103(b) states:

> If an employer, without any reasonable grounds for dispute, fails to pay an employee wages, as required under this chapter, the employer shall, in addition, be liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller.

In addition, 19 Del.C. Sec. 1113(c), allows the employee, if he chooses to take legal action, to recover "an award for the costs of the action, the necessary costs of prosecution, and reasonable attorneys' fees, all to be paid by the defendant." *Huffman, Supra* at 1211.

Huffman demands not only apply to orders of the Industrial Accident Board and judgments in the courts, but also to private settlement agreements. 19 Del.C. Sec. 2344; *see also American Consumer Indus. v. Fehl,* 391 A.2d 224 (Del. Super. Ct. 1978). This is true whether the agreement is approved by the Board or not. In *Seserko v. Milford School District,* Judge Steele (now Justice Steele) held that "[f]or purposes of applying the principles in *Huffman*, the Court finds no meaningful distinction between an agreement approved by the Board pursuant to [19 Del.C.] Sec. 2344 and a valid, private agreement for which the employer sought no Board approval." 1992 WL 19941 at *2 (Del. Super. Ct.).

The defendants first contend that there is a factual dispute concerning the terms of the settlement agreement. The defendants' contention is without merit.

The settlement agreement provided that the defendant agreed to acknowledge the reasonable, necessary and related medical expenses including the cervical spine surgery performed on 6/06/02. Reasonableness refers to the amount of the medical expense, necessary refers to the need for medical treatment, and related refers to the cause of the need for treatment. The injury in this case is work related and the defendants were aware that the surgery had taken place when the offer of settlement was made on July 19, 2002. Although the carrier disputes the receipt of the surgery bill in July, 2002, it is undisputed that the bill was sent to the carrier on October 8, 2002. The bill was paid on December

19, 2002 and the defendants never raised an issue as to the reasonableness of the bill. The issue was first raised when this civil action was filed.

According to 19 Del.C. Sec. 2323(2), when surgery is required for a compensable injury, "the employer shall be held liable for the reasonable cost of the services of any physician, [or] surgeon." "[T]he reasonableness of medical expenses is a question of fact [not law]." *General Motors v. English*, 1991 WL 89812 at *2 (Del. Super. Ct.), *aff'd*, 608 A.2d 727 (Del. 1992), *quoting Thomas Roofing Co. v. Whaley,* Del. Super., C.A. No. 82A-JA-1, Bush, J. (January 21, 1983); *see also Ames v. Medical Center of Delaware,* 1999 WL 458794 (Del. Super. Ct.). The burden is first on the employee to present evidence of the medical services rendered along with the costs associated with those services. Thereafter, if the employer challenges the reasonableness of the cost of surgery, the burden shifts to the employer to prove the surgery was unreasonable. *Id.*

In the case before me, the defendants' attorney drafted a settlement letter. In that letter, the defendants admitted that the 6/06/02 cervical spine surgery was necessary and agreed to pay the reasonable costs. The bill for the surgery was submitted to the defendants and the burden was then on the defendants to prove that the cost was unreasonable. Since the defendants offered no evidence that the bill is unreasonable within the statutory time frame, the bill was compensable and should have been paid.

The good faith belief of the defendant that he is not obligated to compensate the employee is irrelevant under the 19 Del.C. Sec. 2357. *Huffman, Supra.* "The employer may not unilaterally terminate the benefits, even if the employer acts in good faith." *Blue Hen Lines v. Turbitt,* 787 A.2d 74, 79 (Del. 2001). The Delaware Supreme Court held that "[f]ailure to pay an amount due can be 'wrongful' in a sense that does not necessary imply bad faith." *National Union Fire Ins. Co. of Pittsburgh v. McDougall,* 773 A.2d

388, 393 (Del. 2001). In that case, the Court explained that the order of the Board was of "an amount due" under the WPCA "regardless of [the defendant's] good faith objections." *Id.*

Despite the defendant's objections, I conclude that the surgical bill was a part of the settlement and the defendant was obligated to pay it within the statutory time frame. There is no support in the record that there is a material issue of fact as to the settlement agreement or the reasonableness of Dr. Malik's bill.

The defendants next contend that plaintiff's demands for the payment of the surgical bill were insufficient. The defendants' contention is incorrect. I hold that the demand letter need not mention a particular settlement obligation to be effective.

The Superior Court has taken several opportunities to comment on what constitutes an adequate demand under 19 Del.C. Sec. 2357. The Court has noted that the purpose of the demand requirement is not to provide the employer with additional notice of the specific benefits due. President Judge Ridgely noted in *Kelley v. ILC Dover, Inc*. 787 A.2d 751, 754 (Del. Super. Ct. 2001) that:

> The purpose behind the demand requirements of Section 2357 is to put defendants on notice of their default and permit them to cure their deficiency within thirty days in order to avoid incurring liquidated damages under the [Wage Payment and Collection Act]. The defendants' obligation to pay benefits did not arise as a result of the demand letter… The demand letter merely provided notice of the default to the defendants. Therefore, the plaintiff's demand letter need not specifically reiterate the relief sought because both parties knew what payments were due the plaintiff…

President Judge Ridgely addressed the same issue in an earlier case. In *MacDonald v Smalls Ins.,* the Court held that since the settlement agreement placed both parties on notice that payments were due on a monthly basis, the plaintiff's letters demanding "payment of all worker's compensation benefits

due… because the agreed upon settlement had not been paid" were sufficiently specific. 2000 WL 1611093 at *5 (Del. Super. Ct.).

Plaintiff's attorney's letters of August 29, 2002 and September 26, 2002 are identical and provide in pertinent part as follows:

> "Please take this letter as our demand for payment of all workers' compensation benefits due the above-referenced claimant pursuant to *Huffman v. C.C. Oliphant and Son, Inc.*, Del. Supr., 432 A.2d 1207 (1981).
>
> We are making this demand at this time because total disability benefits have been illegally suspended."

The first paragraph of the letters makes a demand for payment of all worker's compensation benefits due and that demand would include the surgery bill. The second paragraph does not limit or modify the general request for payment of all worker's compensation benefits contained in the first paragraph of the letters. The defendants knew about the medical bill, but failed to pay it in a timely manner. Since the medical bill remained unpaid until December 19, 2002, the plaintiff is entitled to liquidated damages, at the rate of 10% per day up to double the amount of the late paid benefit.

Accordingly, judgment is entered in behalf of the plaintiff, Annette Stephens, and against the defendants Lifecare at Lofland, a business entity, and PMA Management Corporation, a foreign corporation, for the sum of $17, 279.00 plus prejudgment interest, from October 14, 2002, attorney's fees and costs of these proceedings.

IT IS SO ORDERED.

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Merrill C. Trader
Judge