

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

<b>FOSTER RAWLEY,</b>	:	
	:	<b>C.A. No: 05C-05-033</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>J.J. WHITE, INC., a Pennsylvania</b>	:	
<b>corporation and LIBERTY</b>	:	
<b>MUTUAL INSURANCE CO.,</b>	:	
	:	
<b>Defendants.</b>	:	

Submitted: April 10, 2006  
Decided: May 18, 2006

Walt F. Schmittinger, Esq., Schmittinger & Rodriguez, P.A., Dover, DE for Plaintiff.

Eric D. Boyle, Esq., Chrissinger & Baumberger, Wilmington, DE for Defendants.

**OPINION**

*Upon Consideration of Plaintiff's  
Motion to Strike Third-Party Complaint*

***MOOT***

Young, Judge

**OPINION**

Presently before the Court is the motion of Plaintiff, Foster Rawley, (“Rawley”) to strike the third-party complaint of Defendants, J.J. White, Inc. and Liberty Mutual Insurance Company. Rawley initiated this action, alleging that Defendants had wrongfully terminated Rawley’s workers’ compensation benefits, pursuant to 19 Del.C. § 2347 and *Huffman v. C. C. Oliphant & Son, Inc.*<sup>1</sup> Rawley claims that Defendants failed to make timely payments to Bayhealth Medical Center, d/b/a Kent General Hospital, for medical expenses incurred for Rawley’s knee surgery, which was related to the work accident. Defendants maintain that the delay in paying the Bayhealth bill was caused by the failure of Bayhealth to provide Defendants with timely invoices, billing statements, and documentation of the reasonableness of the charges.

After reviewing the parties’ original submission, this Court noted that the parties addressed different legal theories in their briefs. Accordingly, the parties were directed to submit supplemental briefing to reconcile those differences. Additionally, the parties were asked to address whether a *Huffman* claim regarding payment of medical bills is procedurally appropriate at this time in light of *Correa v. Pennsylvania Mfrs. Ass’n Ins. Co.*<sup>2</sup> This Court is satisfied that a *Huffman* claim related to medical bills is untimely at this juncture. Therefore, for the following reasons, Rawley’s Complaint is **DISMISSED**.

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<sup>1</sup> 432 A.2d 1207 (Del. 1981).

<sup>2</sup> 618 F.Supp. 915 (D.Del. 1985).

### **FACTS**

Rawley was injured in a work accident on April 26, 1999. As a result of those injuries, Rawley underwent total knee replacement surgery at Kent General Hospital on December 10, 2003. Rawley filed a petition for workers' compensation benefits with the Industrial Accident Board ("IAB"), seeking benefits related to that surgery. In a letter, dated January 5, 2004, Defendants agreed to pay for Rawley's knee replacement surgery and post-surgical period of total disability. In return, Defendants asked Rawley to withdraw the pending IAB petition. Rawley's assent to the agreement was memorialized in his January 8, 2004 letter to Defendants.

On February 9, 2004, Rawley sent a generic *Huffman* demand to Defendants, requesting payment of all workers' compensation benefits. The letter did not specify which bills were outstanding. However, Rawley's Complaint indicates that the February 9<sup>th</sup> letter put Defendants on notice that the Bayhealth bill was due. There is some dispute as to when Defendants received the Bayhealth bill. Defendants claim that they did not receive the bill until April 12, 2004. Nevertheless, the parties agree that, on May 21, 2004, Defendants made a partial payment of \$21,008.60 to Bayhealth, and paid the balance, \$12,150.25, on October 27, 2004. Defendants maintain that they are not liable for *Huffman* damages, because they consistently paid all of Rawley's reasonable and necessary medical services. Defendants fault Bayhealth for any delay in satisfying the Bayhealth bill for its failure to provide complete invoices, billing statements, and/or medical records.

## DISCUSSION

In the present matter, Rawley claims that Defendants failed to make timely compensation payments, according to the parties' settlement agreement. Rawley is seeking damages, including liquidated damages pursuant to 19 Del.C. § 1103(b)(c) and *Huffman*.<sup>3</sup>

Workers' compensation payable to an employee cannot be unilaterally terminated by an employer without an order of the IAB, following a hearing on the matter.<sup>4</sup> In *Huffman*, the Court held that, when an employer violated § 2347 by wrongfully withholding benefits, an employee is entitled to seek relief under the remedies available under § 2357.<sup>5</sup> Accordingly, employees may recover any amounts due for unpaid benefits in the same manner that claims for unpaid wages are collected under § 1113(a), which also permits recovery for liquidated damages.<sup>6</sup> Complaints filed under § 2357 to collect unpaid workers' compensation awards have come to be known as "*Huffman*" claims.<sup>7</sup>

In *Huffman*, the benefit at issue was disability compensation.<sup>8</sup> Since the *Huffman* decision was announced, courts have applied those precepts in a variety of

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<sup>3</sup> 432 A.2d 1207.

<sup>4</sup> *Id.* at 1209, 1210 (*citing* 19 Del.C. § 2347).

<sup>5</sup> *National Union Fire Ins. Co. v. McDougall*, 877 A.2d 969, 970-71 (Del. 2005)(*citing Huffman*, 432 A.2d 1207)).

<sup>6</sup> *Huffman*, 432 A.2d at 1210.

<sup>7</sup> *McDougall*, 877 A.2d at 971.

<sup>8</sup> *Huffman*, 432 A.2d at 1209.

contexts. In *Correa*, the Court considered whether unpaid medical bills are the proper subject of a *Huffman* claim.<sup>9</sup> The Court held that a claim for unpaid medical bills does not constitute a termination of compensation under §2347, and is not the proper subject of a *Huffman* claim.<sup>10</sup>

An employer's responsibility to pay compensation to an employee becomes binding either when the parties voluntarily enter into an agreement regarding benefits, or when the IAB enters an order establishing the compensation due.<sup>11</sup> For purposes of a *Huffman* claim, a voluntary agreement between the parties is not contingent on IAB approval.<sup>12</sup> The parties will be bound by the agreement or IAB order unless modified, pursuant to §2347.<sup>13</sup> Section 2347 contemplates modification of an employee's compensation when there is a change in circumstances to the "status quo established in the initial stage of a disability proceeding."<sup>14</sup> An appropriate status quo change, for example, might include an improvement or exacerbation of an employee's medical condition.

The Court in *Correa* acknowledged an employee's right to proceed under §2357, when a proper demand for compensation is unsatisfied for thirty days, in

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<sup>9</sup> *Correa*, 618 F.Supp. 915.

<sup>10</sup> *Id.* at 921.

<sup>11</sup> *Id.* at 920, 921.

<sup>12</sup> *Seserko v. Milford School Dist.*, 1992 WL 19941, at \*2 (Del. Super.).

<sup>13</sup> *Correa*, 618 F.Supp. at 921.

<sup>14</sup> *Id.*

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violation of §2347.<sup>15</sup> However, the Court analyzed the purpose of §2347, and interpreted the term “compensation” to encompass fixed benefits, rather than specific medical bills.<sup>16</sup> Accordingly, the Court held that “when there is a dispute over specific bills, it is not the kind of change of circumstance issue addressed in Section 2347.”<sup>17</sup> When the parties dispute a specific bill, the appropriate remedy is provided by §2346, which requires the parties to request an IAB hearing to resolve the matter. “If and when the Board determines that the specific medical expense is compensable, the injured employee may then demand payment from the employer or its insurer, and if this demand is not satisfied within 30 days, invoke the remedies available under 19 Del.C. § 2357.”<sup>18</sup>

The policy reasons underlying this approach are sound. The employee’s “ultimate right to judicial enforcement” by filing a *Huffman* claim is not sacrificed.<sup>19</sup> Instead, the remedy available under § 2346 provides a forum for the parties to resolve their disputes over specific bills without consuming the judicial resources of this Court. This process also preserves the IAB’s “jurisdiction to resolve disputes

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<sup>15</sup> *Id.* at 920.

<sup>16</sup> *Id.* at 921. (“While the term “compensation” is at times used in the worker’s compensation statute to refer to both fixed payments and medical benefits, it is used even more frequently in the statute to refer only to fixed benefits.”)

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

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between employer and employees regarding their respective responsibilities and rights under the worker's compensation statute."<sup>20</sup>

Rawley's attempts to distinguish the facts in *Correa* from the instant case are unpersuasive. Rawley argues that the correspondence between the parties in this case constituted an agreement, which obligated Defendants to pay for Rawley's total knee replacement surgery, a specific medical expense. Rawley argues that the parties in *Correa* did not have an agreement about the specific medical bills at issue, nor did the IAB make a determination that specific medical bills were reasonable, necessary and related to the work injury.

Contrary to Rawley's argument, the facts in *Correa* are analogous to the case at issue. In *Correa*, the parties voluntarily agreed that the employees' injuries were compensable. However, when the carrier failed to pay one of the plaintiffs' medical bills, which that carrier claimed was being "held pending receipt of medical substantiation," the employees brought *Huffman* claims against the carrier for wrongfully withhold payment for compensable medical expenses.<sup>21</sup> In this case, the parties did not agree that a specific bill would be paid by Defendants. The agreement was more broad. The parties agreed that Rawley's knee replacement surgery was compensable. The parties did not agree that Defendants were obligated to pay for a private room during Rawley's four-day admission at Kent General Hospital. Therefore, Defendants' alleged failure to make timely payments to Bayhealth was not a denial of Rawley's workers' compensation benefits, and a *Huffman* claim is not

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 917, 918.

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appropriate at this juncture. The appropriate remedy for Rawley's claims lies in §2346. As such, Rawley should have requested an IAB hearing to resolve this dispute. At this point, however, because the Bayhealth bill was paid in full on October 27, 2004, Rawley's claim is moot.

### **CONCLUSION**

After reviewing the record, Rawley's Complaint is **DISMISSED** as untimely. According, Rawley's Motion to Strike Defendants' Third-Party Complaint is **MOOT**.

/s/ Robert B. Young  
J.

oc: Prothonotary  
cc: Opinion Distribution