

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TRUDY SPENCE-PARKER,

Plaintiff,

v.

DELAWARE RIVER AND BAY
AUTHORITY & JAMES JOHNSON,

Defendants.

HON. JEROME B. SIMANDLE

Civil No. 08-3740 (JBS)

OPINION

APPEARANCES:

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and James Johnson

SIMANDLE, District Judge:

I. INTRODUCTION

This matter is before the Court upon Defendant Delaware River and Bay Authority's motion to dismiss Plaintiff's Complaint [Docket Item 4]. Plaintiff's relatively straightforward claims, premised upon New Jersey statutory and common law, are complicated by the fact that the Delaware River and Bay Authority (the "DRBA" or "Authority"), is a bistate Compact Clause entity

that is “not subject to the unilateral control of any one of the States that compose the federal system.” Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 30, 42 (1994). This case calls upon the Court to consider whether the state laws under which Plaintiff’s claims are brought are applicable to the DRBA. For the reasons set forth below, the Court will grant the DRBA’s motion to dismiss Plaintiff’s statutory claims but deny its motion to dismiss Plaintiff’s common law claims.¹

II. BACKGROUND

A. Facts

1. Plaintiff’s Employment at DRBA

Plaintiff Trudy Spence-Parker is a New Jersey resident who was previously employed by the DRBA as the Authority’s Chief Human Resources Officer. (Compl. ¶¶ 1, 6.) Plaintiff was hired for the Chief Human Resources Officer position on February 24, 2003, and served in that capacity at the DRBA until she tendered her resignation on March 14, 2008. (Id. at ¶¶ 6, 42.) As Chief Human Resources Officer, Plaintiff was responsible for “the development, implementation, monitoring, and enforcement of the Authority’s human resources policies, procedures and practices and creating and sustaining a work environment that will make the

¹ Defendants appear to have filed this motion to dismiss on behalf of the DRBA alone, not Mr. Johnson. This Opinion and Order will dismiss the statutory claims against the DRBA; the Court, like Defendants, does not address whether Plaintiff’s statutory claims may be asserted against Mr. Johnson.

. . . Authority an employer of choice.” (Id. at ¶ 7.) In her capacity as Chief Human Resources Officer, Plaintiff reported directly to Defendant James T. Johnson, Jr., the Executive Director of the DRBA. (Id. at ¶¶ 3, 9.)

According to the allegations in the Complaint, while Plaintiff had a good working relationship with Mr. Johnson during the first two years of her employment, her relationship with Mr. Johnson began to deteriorate in May 2005. (Id. at ¶¶ 14, 17.) In May 2005, Plaintiff began to harbor concerns about the DRBA’s search for a new Chief Financial Officer (“CFO”) – she disapproved of the outside recruiting consultant whom the DRBA employed during the hiring process and felt that the process was being “manipulat[ed]” – and she expressed her concerns to Mr. Johnson on multiple occasions. (Id. at ¶ 18.) In response to Plaintiff’s criticism of the CFO search process, “Mr. Johnson disregarded and dismissed Mrs. Spence-Parker’s [] concerns . . . and became increasingly critical of Mrs. Spence-Parker, acting increasingly argumentative and condescending toward her.” (Id. at ¶ 19.)

In particular, Plaintiff alleges that Mr. Johnson engaged in the following conduct over the course of approximately three years: (1) Mr. Johnson falsely accused Plaintiff of “going over his head” to express concerns about the CFO search process to the DRBA commissioners, (id. at ¶ 20); (2) Mr. Johnson told Plaintiff

that there were "rumors []flying around with [her] name attached to many of them," (id. at ¶ 22); (3) Mr. Johnson excluded Plaintiff from several meetings essential to her job duties as Chief Human Resources Officer and reassigned some of Plaintiff's job duties, (id. at ¶¶ 23, 38-39); (4) Mr. Johnson required Plaintiff to submit weekly updates of human resources activities when other DRBA executives did not have to submit such updates, (id. at ¶ 24); (5) Mr. Johnson said in Plaintiff's presence, "I know I cannot fire tenured employees, but I know how to get them - death by a thousand paper cuts," (id. at ¶ 25); (6) during a meeting with Plaintiff, Mr. Johnson closed the door to his office and screamed at her for forty-five minutes, telling her that she had mishandled the CFO search process, that she did not understand workplace politics, and that she "was not worth the money she was paid," (id. at ¶ 27); (7) Mr. Johnson removed Plaintiff from a committee that she had created because he did not want her to be the "face" of the committee, (id. at ¶ 29); (8) Mr. Johnson's secretary intercepted Plaintiff's mail, opened it, and did not deliver it to Plaintiff, (id. at ¶ 30); (9) Mr. Johnson falsely accused Plaintiff of stealing from the DRBA, (id. at ¶ 31); (10) Mr. Johnson sent "threatening emails" to Plaintiff because she was unable to schedule a training session around his schedule, (id. at ¶ 32); (11) Mr. Johnson refused to permit the DRBA's Public Information Officer to release an acknowledgment

that several DRBA employees, including Plaintiff, had received a human resources certification, (id. at ¶ 33); (12) Mr. Johnson wrote a "letter of reprimand" to Plaintiff wrongly accusing her of having omitted information from a draft harassment policy, (id. at ¶ 34); (13) Mr. Johnson refused to authorize Plaintiff's participation in a volunteering opportunity, notwithstanding the DRBA's policy position encouraging volunteer work, (id. at ¶ 36); (14) Mr. Johnson did not invite Plaintiff to a Delaware Chamber of Commerce dinner, despite inviting her peers and subordinates, (id. at ¶ 40); and (15) Mr. Johnson refused to credit Plaintiff with an additional vacation day after she worked on a holiday. (Id. at ¶ 41.)

In September 2007, Plaintiff met with the Chair and Vice-Chair of the DRBA Board of Commissioners Personnel Committee in order to express her concern over Mr. Johnson's conduct. (Id. at ¶ 37.) The Committee told Plaintiff to "keep her head down and do her job," and told her that they would follow up with her upon further review of the dispute. (Id.) Mr. Johnson's allegedly hostile conduct did not cease in the wake of her complaint to the Personnel Committee. (Id.) Finally, on March 14, 2008, allegedly as a result of Mr. Johnson's sustained hostile conduct "and upon recommendation of her physician," Plaintiff tendered her resignation to Mr. Johnson and the DRBA. (Id. at ¶ 42.)

2. The DRBA Personnel Manual

Plaintiff's common law claims turn in part on certain provisions of the DRBA's Personnel Manual, which are reviewed below.² The Manual provides on its first page:

This Manual provides general descriptions and guidelines concerning the Authority's personnel policies and practices The Authority may, where appropriate, deviate from the policies and practices described herein on a case by case basis and subject to the approval of the Commissioners' Personnel Committee. This Manual is not a contract, and nothing in this booklet is intended or shall be deemed to vest any right in any employee of the Authority.

(Pl.'s Br. Ex. B at 1.)

Section XVIII of the Manual, which Plaintiff invokes in support of her contract-based claims, states:

Each permanent full-time employee, who has held that status for a period of at least twelve (12) months shall be deemed to be employed upon the condition that the employee shall not be removed from the particular office, position or employment except for good and sufficient cause or reason. It is the intent of these regulations to create for the permanent full-time employee of the Authority a tenure of employment which shall be permanent, subject to good behavior, the proper performance of the employee's duties, or the possible reorganization or reduction in personnel (in whole or part) made in good faith in the interest of efficiency or economy.

² On a motion to dismiss brought pursuant to Rule 12(b)(6), Fed. R. Civ. P., the parties "may supplement the complaint by adding exhibits such as public records and other indisputably authentic documents underlying the plaintiff's claims." Sentinel Trust Co. v. Universal Bonding Ins. Co., 316 F.3d 213, 216 (3d Cir. 2003). The Personnel Manual, the authenticity of which neither party has disputed, underlies Plaintiff's contractual claims and may thus be accounted for under Rule 12(b)(6).

(Id. at 67.) Among the non-exhaustive list of examples of “good and sufficient cause” set forth in the Manual are incompetency, insubordination, violation of the Authority’s drug or anti-harassment policies, and neglect in the performance of duties. (Id. at 67-68.)

B. Procedural History

Plaintiff commenced this action in New Jersey Superior Court, and Defendants removed the matter to this Court pursuant to 28 U.S.C. § 1441(b) [Docket Item 1]. In her Complaint, Plaintiff asserts common law claims for breach of contract (Count I) and breach of the duty of good faith and fair dealing (Count II); a claim that Defendants violated the New Jersey Conscientious Employee Protection Act (“CEPA”), N.J.S.A. 34:19-1, et seq. (Count III); and a claim that Defendants violated the New Jersey Law Against Discrimination (“NJLAD”), N.J.S.A. 10:5-1, et seq. (Count IV).³ Defendants filed a motion to dismiss [Docket Item 4] in lieu of an answer, as to which the Court heard oral argument on February 26, 2009 and reserved decision.

III. DISCUSSION

A. Standard of Review

On a Rule 12(b)(6) motion to dismiss for failure to state a claim for which relief may be granted, the Court must “accept all

³ The Complaint incorrectly labels this Count as “Count VI.”

factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008) (quoting Pinker v. Roche Holdings Ltd., 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

While Rule 12(b)(6) does not permit dismissal of a well-pleaded complaint simply because "it strikes a savvy judge that actual proof of those facts is improbable," the "[f]actual allegations must be enough to raise a right to relief above the speculative level."

Phillips, 515 F.3d at 234. "To survive a motion to dismiss, a civil plaintiff must allege facts that 'raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact).'" Victaulic Co. v. Tieman, 499 F.3d 227, 234 (3d Cir. 2007) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007)).

When deciding a motion to dismiss, the Court generally looks only to the complaint, matters of public record, and "other indisputably authentic documents underlying the plaintiff's claims," such as the agreement upon which contract-based claims are based. Sentinel Trust Co. v. Universal Bonding Ins. Co., 316 F.3d 213, 216 (3d Cir. 2003).

B. Overview

The viability of Plaintiff's claims turns in large part on

the question of whether New Jersey may subject the DBRA, a bistate Compact Clause entity operating ferry boats and facilities between Cape May, New Jersey and Lewes, Delaware, to its statutory and common law.⁴ The following discussion explains the general principles governing the application of state law to such bistate entities and reviews the relevant provisions of the compact at issue in this case before addressing the merits of Plaintiff's claims.⁵

1. Application of State Law to Bistate Compact Entities

"Under the Compact Clause, Article I, Section 10, Clause 3 of the United States Constitution, states may enter into agreements regarding matters of common concern provided they obtain the consent of Congress." International Union of Operating Engineers, Local 542 v. Delaware River Joint Toll Bridge Commission ("Local 542"), 311 F.3d 273, 274 (3d Cir.

⁴ The Court notes at the outset that this is not a question of sovereign immunity, as bistate entities are not, as a general matter, immune from suit in federal court. See Hess, 513 U.S. at 41 ("Suit in federal court is not an affront to the dignity of a Compact Clause entity, for the federal court, in relation to such an enterprise, is hardly the instrument of a distant, disconnected sovereign; rather, the federal court is ordained by one of the entity's founders.").

⁵ This Court has subject matter jurisdiction over Plaintiff's Complaint because "[t]he construction of a bi-state compact that has been consented to by Congress pursuant to the Compact Clause presents a federal question." International Union of Operating Engineers, Local 542 v. Delaware River Joint Toll Bridge Commission, 311 F.3d 273, 275 (3d Cir. 2002) (citation omitted).

2002). As the Supreme Court has explained:

Bistate entities occupy a significantly different position in our federal system than do the States themselves. The States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three discrete sovereigns: two States and the Federal Government. Their mission is to address interests and problems that do not coincide nicely either with the national boundaries or with State lines - interests that may be badly served or not served at all by the ordinary channels of National or State political action.

Hess, 513 U.S. at 40 (internal quotations and citations omitted).

Bistate entities thus are not "extensions of each compacting state's authority," but are instead formed through each state's surrender of a portion of its sovereignty to the compact entity.

Local 542, 311 F.3d at 276.⁶ "Such a surrender of state

⁶ As one commentator recently observed, "[c]ompact agencies and entities are said to exist in a no-man's land. They lie somewhere in the space between independent and dependent, sovereign and subject, state and federal." Matthew S. Tripolitsiotis, Bridge over Troubled Waters: The Application of State Law to Compact Clause Entities, 23 Yale L. & Pol'y Rev. 163, 167 (2005) (internal quotations and citations omitted). Numerous unusual legal outcomes have been noted to have resulted from these entities' unique legal status:

[W]orkers have the right to unionize and force collective bargaining in both Pennsylvania and New Jersey, while workers on many bridges between Pennsylvania and New Jersey do not enjoy such a right. New York and New Jersey both have anti-discrimination laws, but those laws do not apply to people working on bridges between the two states. Maryland, Virginia, and the District of Columbia have all adopted freedom of information laws, but the agency that operates rail bridges between them is not subject to any of those policies. These paradoxes stem from the fact that the entities in control of many trans-state resources - entities such as the Port Authority of New York and New Jersey - often exist in a

sovereignty should be treated with great care, and the Supreme Court has stated that courts should not find a surrender unless it has been 'expressed in terms too plain to be mistaken.'" Id. (quoting Jefferson Branch Bank v. Skelly, 66 U.S. 436, 446 (1861)). The terms of a state's surrender of portion of its sovereignty to a compact entity are found in the compact agreement itself, which is a "contract[] subject to the principles of contract law." Doe v. Pennsylvania Bd. of Probation and Parole, 513 F.3d 95, 105 (3d Cir. 2008).

The construction of a bistate compact is "a question of federal law." Local 542, 311 F.3d at 279 n.4; see also Cuyler v. Adams, 449 U.S. 433, 442 (1981).⁷ The question of whether and to what extent the laws of the compacting states apply to a bistate entity they create has been approached differently by different courts, but has been clarified considerably in this Circuit by the Court of Appeals' decision in Local 542. As a general matter, Local 542 emphasizes that the extent to which each compacting state's laws apply to a compact entity turns

state of legal limbo.

Id. at 163-64 (footnotes omitted).

⁷ See also Pievsky v. Ridge, 98 F.3d 730, 733 (3d Cir. 1996) ("Since the Compact is an interstate agreement which requires the consent of Congress, such Congressional consent transforms the Compact into an agreement pursuant to federal law. Our interpretation of the terms and conditions of the Compact is, therefore, governed by federal law") (citations omitted).

exclusively on the language of the compact and the intent of the contracting states. Id. at 280 (“Our first and last order of business is interpreting the compact; we may not read into it language or intent that is simply not there.”) (internal quotations and citations omitted).

More specifically, Local 542 addressed the issue of whether a compacting state, after having entered into a bistate compact, can modify the terms of the compact by passing legislation that applies to the bistate entity. The Court of Appeals held that in the absence of an express provision in the compact authorizing the compacting states to modify the obligations placed upon the entity through the passage of legislation “concurrent in” by both states, one compacting state could not unilaterally impose such obligations by applying new laws to the entity. Id. Joint amendment of the compact itself was the only means available to these states to adjust the legal obligations imposed upon the compact entity.

While Local 542 thus addressed a compact that was silent as to the capacity of the compacting states to modify the compact, the case was decided against the backdrop of compact entity jurisprudence addressing the more common question of whether compacting states may apply new legislation to a bistate entity whose compact permits modification through legislation “concurrent in” by both states. As the court explained:

The most notable difference of opinion regarding the interpretation of "concurrent in" language is between the courts of New York and those of New Jersey. New York courts have interpreted the "concurrent in" language in a compact to permit application of states' laws to the compact [only] if the states' legislation contains an express statement that they intend to amend the compact. New Jersey courts have held that this language will be effective to apply the states' laws that are "complementary or parallel" even where there is no stated intent to amend the compact.

Local 542, 311 F.3d at 276. Although the decision in Local 542 turned largely on the absence of "concurrent in" language in the compact at issue in that case, the court expressed in no uncertain terms its disapproval of the "complementary or parallel" test - the court noted that it was "persuaded . . . by the logic of the reasoning underpinning the New York express intent standard," and explained that "the New Jersey complementary or parallel standard appears to be based on a misinterpretation of compact law." Id. at 280. As the court went on to explain, "[p]rinciples of federalism . . . caution against inferring an intent to amend . . . [because a] bi-state entity, created by compact, is 'not subject to the unilateral control of any one of the States that compose the federal system.'" Id. (quoting Hess, 513 U.S. at 42).

2. The Delaware River and Bay Authority Compact

In 1962, the states of New Jersey and Delaware entered into the Delaware River and Bay Authority Compact (the "DRBA Compact" or "Compact") "with the intention of advancing the economic

growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas." N.J.S.A. 32:11E-1. Congress approved the Compact in 1962. Pub. L. No. 87-678 (1962).

The Compact establishes "a body politic, to be known as 'The Delaware River and Bay Authority' . . . which shall constitute an agency of government of the State of Delaware and the State of New Jersey." N.J.S.A. 32:11E-1 at Art. IV. Among the many powers granted the Authority in the Compact is the power to "appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention." Id. at Art. VII. The Compact further authorizes the DRBA to "enter into contracts and agreements with either state or with the United States, or with any public body, department, or other agency of either state or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers." Id.

In addition to these (and numerous other) expressly delineated powers, the Compact authorizes the DRBA “[t]o exercise all other powers not inconsistent with the Constitutions of the two states or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes,” id., a provision which, courts have long held, authorizes the DRBA to sue and be sued. Delaware River and Bay Authority v. International Organization of Masters, Mates, & Pilots, 45 N.J. 138, 147 (1965). As to the imposition of additional obligations on the Authority by the compacting states, the Compact provides that “no additional duties or obligations shall be undertaken by the authority under the law of either state or of Congress without authorization by the law of both states.” N.J.S.A. 32:11E-1, Art. VIII (emphasis added). Finally, under the heading “Review and Enforcement of Rules,” the Compact provides:

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Each state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the authority, and, by law or rule of court, for the manner of enforcing the same.

Id. at Art. XV.

C. Plaintiff's Claims

The DRBA has moved to dismiss all four of Plaintiff's claims, arguing that the it is not subject to any of the New Jersey laws under which Plaintiff's claims are brought, and alternatively, that Plaintiff's allegations are insufficient to state a claim. For the reasons explained below, the Court will grant Defendants' motion to dismiss Plaintiff's CEPA and NJLAD claims against the DRBA, but deny the motion to dismiss her common law claims.

1. CEPA Claim

New Jersey's CEPA was enacted in 1986 "to provide broad protections against employer retaliation for workers whose whistle-blowing actions benefit the health, safety and welfare of the public." Feldman v. Hunterdon Radiological Associates, 187 N.J. 228, 239 (2006) (internal quotations and citations omitted). The statute affords a private right of action to "[a]ny aggrieved employee . . . [to] enforce the provisions of this act by means of a civil action." N.J.S.A. 34:19-13. In her Complaint, Plaintiff asserts that Defendants retaliated against her after she complained to Mr. Johnson that the CFO search process was being "manipulat[ed]," (Compl. ¶ 18), and alleges that such retaliation violated the CEPA. Defendants argue that under Local 542, the CEPA does not apply to DRBA.

The Court holds that the CEPA does not apply to the DRBA and

will thus grant the DRBA's motion to dismiss this claim. As the Court of Appeals has made clear, in determining whether New Jersey and Delaware intended for the DRBA to be subject to suit under the CEPA, the Court's "first and last order of business is interpreting the compact." Local 542, 311 F.3d at 280 (internal quotations and citations omitted). In interpreting the Compact to assess whether the states' surrender of sovereignty encompassed exposing the DRBA to suit under New Jersey's CEPA, the Court must likewise bear in mind that "a surrender of state sovereignty should be treated with great care, and . . . that courts should not find a surrender unless it has been 'expressed in terms too plain to be mistaken.'" Id. at 276 (quoting Skelly, 66 U.S. at 446).

The Compact at issue in this case does not express in such plain terms that the CEPA applies to the DRBA, and there simply is no indication that Delaware, in ceding a limited portion of its sovereignty to the Authority, agreed to permit the DRBA to be subjected to New Jersey's CEPA. Indeed, whereas the CEPA "establishes a statutory exception to the general [common law] rule that an employer may terminate an at-will employee with or without cause," Feldman, 187 N.J. at 238 (citation omitted), the language of the Compact is consistent with the general rule, not CEPA's exception; the Compact expressly invests in the Authority the power to employ staff "as it may require for the performance

of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention." N.J.S.A. 32:11E-1 at Art. VII (emphasis added). Nothing in this language, or elsewhere in the Compact, indicates that the Authority's power to "fix and determine [employees'] . . . terms of office and . . . conditions and terms of employment and retention," id., is subject to the CEPA's exception to the general common law rule of at-will employment.⁸ That is, the plain language of the Compact does not even remotely suggest that it was the compacting states' intent to subject the Authority to the CEPA's requirements for the treatment of whistle-blowing employees.⁹

⁸ Nor is it dispositive of the question before the Court that the definition of "employer" in the CEPA includes "any authority, commission, or board or any other agency" of the State. N.J.S.A. 34:19-2a. As the Appellate Division emphasized in holding that the CEPA does not apply to the Delaware River Port Authority, "[w]hile DRPA may arguably fall within this definition, all that this connotes is that DRPA could be subject to CEPA if the concurrence of Pennsylvania or the consent of DRPA had been established." Ballinger v. Delaware River Port Authority, 311 N.J. Super. 317, 329 (App. Div. 1998). As the preceding discussion makes clear, nothing on the face of the Compact suggests that either Delaware or the Authority has consented to the application of the CEPA to the DRBA.

⁹ The Court is unconvinced by Plaintiff's argument that the express language of the Compact authorizes the application of the CEPA to the DRBA. In support of this argument, Plaintiff draws the Court's attention to Article XV of the Compact, entitled "Review and Enforcement of Rules," which states in relevant part:

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought

Unlike the compact at issue in Local 542, the Compact in this case provides a means for New Jersey and Delaware to impose additional obligations upon the DRBA through the passage of legislation. See N.J.S.A. 32:11E-1, Art. VIII ("no additional duties or obligations shall be undertaken by the authority under

in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

N.J.S.A. 32:11E-1, Art. XV. Plaintiff appears to argue that this provision authorizes the general "application of state law to the Authority." (Pl.'s Opp'n Br. at 11.)

This argument is not persuasive. As Defendant argues, the language of the provision cited by Plaintiff indicates unmistakably that it merely authorizes judicial review of final agency actions. See, e.g., In re Carter, 191 N.J. 474, 482 (2007) ("The scope of appellate review of a final agency decision is limited, and we do not ordinarily overturn such a decision in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence") (internal quotations and citations omitted). As the court held in Chafin v. Delaware River and Bay Auth., Article XV does not "entitle[] [a plaintiff] to bring state law claims" against the Authority, but instead merely permits the Court to review final decisions of the Authority under "an 'arbitrary and capricious' standard, the general standard employed for court reviews of agency decisions." Chafin v. Delaware River and Bay Auth., No. 06-836, slip op. at 4 (D.N.J. June 24, 2008). Given the Supreme Court's prescription that surrenders of state sovereignty must be "expressed in terms too plain to be mistaken," Skelly, 66 U.S. at 446, Plaintiff's suggestion that in providing for judicial review of final agency actions, the compacting states authorized the general "application of state law to the Authority," (Pl.'s Opp'n Br. at 11), is untenable. This is particularly true in light of the fact that the fact that the Compact expressly states that "authorization by the law of both states" is required in order for the Authority to undertake "additional duties or obligations." N.J.S.A. 32:11E-1, Art. VIII. In short, Article XV provides for judicial review of final actions of the Authority; it does not open the door to the application of the entirety of both states' laws to the Authority.

the law of either state or of Congress without authorization by the law of both states"). In apparent reliance upon this provision, Plaintiff argues that the CEPA should apply to DRBA because both New Jersey and Delaware have passed whistle-blower protection laws that, according to Plaintiff, are complementary and parallel. See N.J.S.A. 34:19-1, et seq.; 19 Del. C. § 1702, et seq.

This argument fails for two reasons. First, in light of the determination by the Court of Appeals that "the New Jersey complementary or parallel standard appears to be based on a misinterpretation of compact law" and its endorsement of the "logic of the reasoning underpinning the New York express intent standard," Local 542, 311 F.3d at 280, the New Jersey standard no longer appears to be good law in this Circuit.

Second, even if the Court were to find that Local 542 is limited to the facts of that case and conclude that the rejection of the New Jersey standard by the Court of Appeals was mere dicta,¹⁰ the language of the Compact before the Court does not

¹⁰ Such a conclusion would not appear to be warranted in light of the reasoning in Local 542. First, the statement of the Court of Appeals that "[w]e are persuaded, first, by the fact that the Compact does not contain any provision enabling either state to modify it through legislation 'concurrent in' by the other, and second, by the logic of the reasoning underpinning the New York express intent standard," Local 542, 311 F.3d at 280 (emphasis added), suggests that its endorsement of the New York standard was not mere dicta. See Ponnappula v. Ashcroft, 373 F.3d 480, 488 (3d Cir. 2004) (a discussion in an opinion "is dicta [if] it is not necessary to that opinion's holding"). Even if

suggest that it is susceptible to interpretation under the complementary or parallel standard. That is, courts have applied the complementary or parallel standard to compacts that contain language "enabling the states to modify [the compact] by passing legislation that is 'concurrred in' by the other state." Id. at 274 (emphasis added). Such an approach is at least supportable in the case of compacts containing the "concurrred in" phrasing, because the verb "concur" could suggest either a coincidental or express agreement. See Webster's II New Riverside University Dictionary 295 (2d ed. 1988) (defining "concur" as "to have or express the same opinion" or "to act together"). By contrast, the Compact in this case permits modification only via "authorization by the law of both states," N.J.S.A. 32:11E-1, Art. VIII, language that is not susceptible to the coincidental or passive interpretation that is plausible in the case of the "concurrred in" phrasing. In other words, the language of this Compact requires joint "authorization," id., not mere concurrence, and such authorization does not take place merely upon the coincidental passage of similar legislation by New Jersey and Delaware.

In short, the mere passage by New Jersey and Delaware of

the court's discussion of the New Jersey and New York standards could be characterized as dicta, however, its language is forceful, and not the sort of offhanded remark that this subordinate Court could lightly disregard.

similar whistle-blower protection laws is not sufficient, under Local 542 and the language of the Compact at issue in this lawsuit, to apply such laws to the DRBA. Instead, such laws will apply to the Authority only "if the states' legislation contains an express statement that they intend to amend the compact." Local 542, 311 F.3d at 276. No such express statement exists in the states' legislation, which indicates that the CEPA does not apply to the DRBA. The Court will accordingly grant the DRBA's motion to dismiss Plaintiff's CEPA claim.¹¹

2. NJLAD Claim

For substantially the same reasons, Plaintiff's NJLAD claim against the DRBA will likewise be dismissed. Once again, while Plaintiff attempts to identify the similarities between the NJLAD

¹¹ Defendant argues that N.J.S.A. 34:19-8, known as CEPA's "waiver provision," requires that Plaintiff's remaining claims be dismissed. This argument is without merit. The waiver provision provides that "the institution of an action in accordance with this act shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law." N.J.S.A. 34:19-8. The New Jersey Supreme Court rejected the very argument raised by Defendant regarding the waiver provision in Ballinger v. Delaware River Port Authority:

The determination of whether a viable CEPA claim could be brought against [the Delaware River Port Authority] could be made only by a court of law. This Court now having decided that the claim cannot be brought, plaintiff Ballinger should not now be denied any possible rights that may still exist under our state common law.

Ballinger v. Delaware River Port Authority, 172 N.J. 586, 602 (2002). Under Ballinger, Plaintiff may pursue her state common law claims following the Court's dismissal of her CEPA claim.

and Delaware's Discrimination in Employment Act (the "DDEA"), 19 Del. C. § 1702, et seq., under the logic of Local 542, the question in determining whether a state law applies to a bistate entity is no longer whether the compacting states have passed parallel legislation, but is instead whether the states have expressly and jointly stated that a particular law amends the compact and thereby applies to the bistate entity. See Local 542, 311 F.3d at 280; Evans, 2003 WL 25749089, at *20. Nothing in the language of the Compact suggests that New Jersey and Delaware intended for the NJLAD or the DDEA to apply to the DBRA, and neither of the states' antidiscrimination laws appears to mention the DRBA. Under the express intent standard endorsed by the Court of Appeals in Local 542, the absence of an express statement that the states intended for one or both of these antidiscrimination statutes to apply to the DRBA renders Plaintiff's NJLAD claim unsustainable. See Baron v. Port Auth. of New York and New Jersey, 968 F. Supp. 924, 929 (S.D.N.Y. 1997) (applying the express intent standard to state antidiscrimination law).

In Local 542, the Court of Appeals cited with approval cases in which courts applied the express intent standard and held that the "absence from the text and legislative history of . . . [the] LAD of any mention of [the bistate entity], in addition to the absence of an express statement by either state legislature that

it was amending or supplementing the provisions of the Compact and that the law would take effect upon the enactment of identical legislation in the opposite state, seems to indicate that neither [state] legislature[] intended the laws to apply to the internal operations of [the bistate entity].” Settecase v. Port Auth. of New York and New Jersey, 13 F. Supp. 2d 530, 535 (S.D.N.Y. 1998) (quoting Baron, 968 F. Supp. at 929); see also Dezaio v. Port Auth. of New York & New Jersey, 205 F.3d 62, 65 (2d Cir. 2000); Rose v. Port Auth. of New York & New Jersey, 13 F. Supp. 2d 516, 523 (S.D.N.Y. 1998). This reasoning applies with equal force in this case, in which New Jersey and Delaware have not expressly indicated that the NJLAD applies to the DRBA. The Court accordingly finds, in the absence of an express statement from the states regarding the application of the NJLAD to the Authority, that the DRBA is not subject to suit under such a claim, and will grant the DRBA’s motion to dismiss Plaintiff’s NJLAD claim.

3. Common Law Claims

For the reasons now explained, the Court will deny the DRBA’s motion to dismiss Plaintiff’s contractual claims. As is discussed in detail below, the Court concludes that the DRBA may be subjected to suit based on contracts into which it has entered and allegedly breached. In this matter, the determination of whether Plaintiff’s common law claims are viable turns on a

threshold choice-of-law question which the Court cannot answer due to the absence of necessary information in the record, requiring that the DRBA's motion to dismiss Plaintiff's common law claims be denied at this time. The Court's denial of the DRBA's motion to dismiss Plaintiff's common law claims is without prejudice to its right to move for summary judgment upon a record with sufficient evidence for the Court to address the choice-of-law issues explained below.

a. The DRBA May Be Subjected to Suit Based on Contractual Claims

The Court first addresses the question of whether the DRBA may be subjected to suit for breach of contract. Looking to the language of the Compact and the intent of the compacting states, see Local 542, 311 F.3d at 280, it is apparent that the concerns reviewed supra concerning the applicability of the CEPA and the NJLAD to the DRBA do not require the dismissal of Plaintiff's contract-based claims. Whereas the Compact is completely silent as to the applicability of the states' whistle-blower-protection and antidiscrimination statutes to the DRBA, it expressly authorizes the Authority to "enter into contracts and agreements with . . . any individual . . . deemed necessary or advisable for the exercise of its purposes and powers,"¹² N.J.S.A. 32:11E-1,

¹² One such power expressly delineated in the Compact is the "power[] . . . [t]o . . . employ[] such . . . employees as it may require for the performance of its duties . . ." N.J.S.A. 32:11E-1, Art. VII.

Art. VII, and contains a provision that has long been recognized as a sue-and-be-sued clause. See International Organization of Masters, Mates, & Pilots, 45 N.J. at 147 (citing N.J.S.A. 32:11E-1, Art. VII). Indeed, the Authority has continuously availed itself of these powers by, e.g., entering into contracts and filing lawsuits, pursuant to the laws of both New Jersey and Delaware, against its contractual partners when those contracts have been breached. See, e.g., Delaware River and Bay Auth. v. York Hunter Const., Inc., 344 N.J. Super. 361, 364 (Chan. Div. 2001) (explaining that the Authority "filed a verified complaint seeking an accounting and damages against [Defendant] on theories of conversion and breach of contract"); Delaware River and Bay Auth. v. Gauntt Const. Co., No. 9952, 1989 WL 3220 (Del. Ch. Jan. 19, 1989) (same).

In light of the fact that the Compact expressly authorizes the DRBA to enter into contracts and to sue parties who breach their contractual agreements with the Authority, it simply does not subject either of the compacting states "to the unilateral control of any one of the States," Hess, 513 U.S. at 42, to hold that the Authority's power to contract and sue over contractual breaches carries with it the attendant possibility that the Authority itself may be sued for breach of contract.¹³ See

¹³ The Court's conclusion herein is to be distinguished from Moore v. Delaware River Port Authority, 80 F. Supp. 2d 264, 271 (D.N.J. 1999), which was decided before Local 542's rejection

Chafin v. Delaware River and Bay Auth., No. 06-836, 2006 WL 3780765, at *7 (D.N.J. Dec. 20, 2006) (noting that it “would be a perverse rule of law if the authority was empowered to enter into contracts without being held accountable under the law of contracts”). That is, in the Compact, Delaware and New Jersey expressly consented to the surrender of that portion of their sovereignty necessary for the Authority to “enter into contracts and agreements with . . . any individual . . . deemed necessary or advisable for the exercise of its purposes and powers,” N.J.S.A. 32:11E-1, Art. VII (including the power to enter into employment contracts, N.J.S.A. 32:11E-1, Art. VII), and to sue and be sued over legal obligations arising out of such contracts. See International Organization of Masters, Mates, & Pilots, 45 N.J. at 147; York Hunter, 344 N.J. Super. at 364; cf. Baron v. Port Auth. of New York and New Jersey, 105 F. Supp. 2d 271, 275 (S.D.N.Y. 2000), aff’d 271 F.3d 81 (2d Cir. 2001) (applying state-law implied employment contract claims to Compact Clause entity).

The Court accordingly holds that the DRBA may be subject to suit for breach of contract claims under the terms of its Compact.¹⁴ See id.

of the complementary or parallel standard.

¹⁴ Plaintiff’s claims, to be sure, are based upon the DRBA’s alleged breach of an agreement expressed in its Personnel Manual. Under New Jersey’s Woolley doctrine, as the Court

b. Choice of Law

Plaintiff asserts claims of breach of contract and breach of the implied covenant of good faith and fair dealing under New Jersey law, claims which are premised upon Plaintiff's assertion that her resignation was the product of a constructive discharge brought about by Mr. Johnson's allegedly hostile conduct. While Plaintiff appears to recognize the general common law principle that "a contract for employment, unless otherwise expressly stated, is at-will in nature," Lindsey v. M.A. Zeccola & Sons, Inc., 26 F.3d 1236, 1241 (3d Cir. 1994) (citation omitted), she argues that the DRBA's Personnel Manual contained an implied promise that she would only be terminated for cause, and asserts that she was constructively discharged in violation of this promise.

Before the Court can assess the merits of Plaintiff's contract claims, it must determine which state's substantive laws

explains below, "[a]n employment manual may alter an employee's at-will status by creating an implied contract between an employer and employee." Wade v. Kessler Institute, 172 N.J. 327, 339 (2002). The DRBA has identified no reason why it may not be subjected to suits based on breaches of implied contracts, and, indeed, courts have held that bistate entities may be sued under such a theory. See Baron, 105 F. Supp. 2d at 275. A Woolley contract, after all, is still a contract. See Noye v. Hoffmann-La Roche Inc., 238 N.J. Super. 430, 432 (App. Div. 1990) ("The Woolley contract is no more than the ordinary result of an acceptance by plaintiff, by continuing to work, of the terms of employment offered by defendant's handbook").

apply to her claims.¹⁵ See Baron, 105 F. Supp. 2d at 275 (applying the “choice of law rules of the forum state” to determine whether New York or New Jersey common law applied to an implied contract claim asserted by a former employee against a bistate Compact Clause entity). This determination is critical in this case, since, as will become clear below, Plaintiff’s claims may be viable under New Jersey law, but are not under Delaware law. As the Court now explains, the record herein is insufficient for the Court’s choice-of-law determination, which means that the motion of the DRBA, which bears the burden of proof as to dismissal, will be denied as to Plaintiff’s common law claims.

i. New Jersey Choice of Law Principles

The Court applies New Jersey’s choice-of-law rules to determine whether New Jersey or Delaware substantive law applies to Plaintiff’s contract-based claims. See Berg Chilling Systems, Inc. v. Hull Corp., 435 F.3d 455, 462 (3d Cir. 2006); Baron, 105 F. Supp. 2d at 275. New Jersey’s choice-of-law rules for contract claims call for a two-step analysis. The Court first

¹⁵ Plaintiff is a New Jersey resident, (Compl. ¶ 1), and the DRBA is “an agency of government of the State of Delaware and the State of New Jersey.” N.J.S.A. 32:11E-1 at Art. IV. The record is silent as to where Plaintiff’s employment agreement was negotiated and where she performed her employment duties, although it appears that the DRBA’s principal office is located in Delaware, see DRBA, <http://www.drba.net/customer/customer.html> (last visited Mar. 24, 2009), a fact of which the Court takes judicial notice.

assesses whether there is an "actual conflict" between the laws of the potentially interested states on the issue in question; if there is no divergence between the potentially applicable laws, the Court is "presented with a false conflict," Curtis T. Bedwell and Sons, Inc. v. Geppert Bros., Inc., 280 N.J. Super. 391, 395 (App. Div. 1995), and the choice-of-law "inquiry is over." Lebegern v. Forman, 471 F.3d 424, 428 (3d Cir. 2006).

If there is an actual conflict between the two states' laws, the Court determines "which state has the most meaningful connections with and interests in the transaction and the parties." NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 319 (3d Cir. 1995). Although a host of factors may figure into this governmental interests analysis, id., "[i]f the place of negotiating the contract and the place of performance are in the same state, the local law of this state" will apply. Restatement (Second) of Conflicts § 188(3).

ii. Actual Conflict

Plaintiff's common law claims are sustainable under New Jersey law, but not under Delaware law, meaning that there is an actual conflict between the states' laws. Curtis T. Bedwell and Sons, 280 N.J. Super. at 395. The chief argument advanced by Defendants in moving to dismiss Plaintiff's contractual claims is that Plaintiff was an at-will employee subject to termination for any reason, and so the DRBA breached no contractual obligation

related to her alleged constructive discharge.¹⁶ In opposing Defendants' argument, Plaintiff asserts that the DRBA's Personnel Manual contained an implied promise that she would only be terminated for cause. As the Court now explains, New Jersey law would recognize and enforce such an implied promise from the Personnel Manual at issue in this case, but Delaware law would not.

Under New Jersey law, while "an employer may fire an employee for good reason, bad reason, or no reason at all under the employment-at-will doctrine," Wade v. Kessler Institute, 172

¹⁶ The DRBA also argues that Plaintiff's term of employment ended due to her resignation, not as the result of a breach of any contract (implied or otherwise) by the DRBA, which, it asserts, forecloses her assertion of contractual claims. In light of Plaintiff's allegations supporting her claim that she was constructively discharged, the Court is not, at this stage, persuaded by Defendant's argument that Plaintiff's resignation precludes her from maintaining a breach of contract claim. "Standing alone, constructive discharge is neither a tort nor a breach of contract, but a doctrine that transforms what is ostensibly a resignation into a firing." Alliance Metals, Inc., of Atlanta v. Hinely Industries, Inc., 222 F.3d 895, 901 (11th Cir. 2000) (quoting Turner v. Anheuser-Busch, Inc., 876 P.2d 1022, 1030 (Cal. 1994)); see also Turner, 876 P.2d at 1030 ("a constructive discharge may, in particular circumstances, amount to breach of an employer's express or implied agreement not to terminate except in accordance with specified procedures or without good cause"). "A constructive discharge occurs when the employer has imposed upon an employee working conditions 'so intolerable that a reasonable person subject to them would resign.'" Daniels v. Mutual Life Ins. Co., 340 N.J. Super. 11, 17 (App. Div. 2001) (quoting Muench v. Township of Haddon, 255 N.J. Super. 288, 302 (App. Div. 1992)). The allegations in the Complaint that Plaintiff was subjected to such hostile working conditions are sufficient, at the motion-to-dismiss stage, to permit her common law claims to survive.

N.J. 327, 338 (2002) (citation omitted), "New Jersey law does recognize a cause of action for breach of contract against employers who fail to honor the express or implied promises made in an employee manual or handbook." Ratti v. Service Management Systems, Inc., No. 06-6034, at *4 (D.N.J. Aug. 25, 2008) (citing Woolley v. Hoffmann-La Roche, Inc., 99 N.J. 284 (1985)).

In Woolley, [the New Jersey Supreme Court] held that absent a clear and prominent disclaimer, an implied promise contained in an employment manual that an employee will be fired only for cause may be enforceable against an employer even when the employment is for an indefinite term and would otherwise be terminable at will. The Court reasoned that when an employer of a substantial number of employees circulates a manual that, when fairly read, provides that certain benefits are an incident of the employment (including, especially, job security provisions), the judiciary, instead of grudgingly conceding the enforceability of those provisions, should construe them in accordance with the reasonable expectations of the employees.

Wade, 172 N.J. at 339 (internal quotations and citations omitted, emphasis added).

The New Jersey Supreme Court clarified Woolley's requirements for what constitutes a clear and prominent disclaimer in Nicosia v. Wakefern Food Corporation:

Although Woolley does not require the use of specific language for an effective disclaimer, it does require that a disclaimer make clear that the employer continues to have the absolute power to fire anyone with or without cause [A]n effective disclaimer must expressly advise its employees that they could be discharged at will. In so doing, the language in the disclaimer must indicate, in straightforward terms, that the employee is subject to discharge at will The burden is not on the employee to draw inferences from the handbook language. . . .

Woolley also held that the disclaimer must be in a very prominent position. Disclaimers in employee manuals fail for lack of prominence when the text is not set off in such a way as to bring the disclaimer to the attention of the reader. [See McDonald v. Mobil Coal Producing, Inc., 820 P.2d 986, 988 (Wyo. 1991)] (finding disclaimer that appeared on first page of employee manual as part of lengthy text not conspicuous because it was "not set off in any way, was placed under a general subheading, was not capitalized, and contained the same type size as another provision on the same page").

136 N.J. 401, 413-15 (1994) (some internal quotations and citations omitted).¹⁷ In short, under New Jersey law, in the absence of a "prominent" disclaimer written in "straightforward terms" that an employee is subject to discharge at will, id., "an implied promise contained in an employment manual that an employee will be fired only for cause" is enforceable against an employer. Wade, 172 N.J. at 339 (internal quotations and citations omitted).

Under Delaware law, although "[s]tatements in an employee handbook may alter the at-will status," Mann v. Cargill Poultry, Inc., No. 88C-AU37, 1990 WL 91102, at *5 (Del. Super. Ct. June

¹⁷ In explaining the contents of a Woolley disclaimer, the New Jersey Supreme Court explained that an employee

should not be expected to understand that [the employer's] characterization of its manual as "not contractual" or "subject to change and interpretation at the sole discretion of the Company" meant that the employer, despite the . . . termination provisions of its manual, reserved the absolute power to fire anyone with or without cause without actually changing those provisions.

Nicosia, 136 N.J. at 414 (some quotations and citations omitted).

13, 1990), the doctrine is limited in at least two important ways that the New Jersey doctrine is not. See Lindsey, 26 F.3d at 1241 ("Delaware Courts will not hold an employment relationship to be anything but at-will absent clear and explicit terms providing otherwise") (citation omitted). First, under Delaware law, an "employer's written or oral statements to a prospective employee concerning the conditions of his employment are not enforceable against the employer without some basic contract consideration," and, unlike New Jersey law, "something more than continued employment [is required] to constitute consideration." Mann, 1990 WL 91102, at *5, *7; compare Noye v. Hoffmann-La Roche Inc., 238 N.J. Super. 430, 432 (App. Div. 1990) ("The Woolley contract is no more than the ordinary result of an acceptance by plaintiff, by continuing to work, of the terms of employment offered by defendant's handbook"), with Heideck v. Kent General Hosp., Inc., 446 A.2d 1095, 1096 (Del. 1982) (where the handbook is "merely a unilateral statement of company policies," no contract is created).

Second, in contrast with Nicosia, Delaware courts have held that an employer may foreclose a contract claim based on an employee handbook simply by including a disclaimer stating that the handbook "do[es] not create . . . an employment agreement." Bunting v. Citizens Financial Group, Inc., No. 03-013, 2006 WL 1067321, at *4 (Del. Super. Ct. Apr. 13, 2006); see also Brooks

v. Fiore, No. 00-803, 2001 WL 1218448, at *4 (D. Del. Oct. 11, 2001) (language providing that the “handbook . . . [does not] create or constitute an employment contract” is sufficient to foreclose implied contract claim). That is, while New Jersey courts consider terms such as “not contractual” to be “confusing legalese” insufficient to defeat a Woolley claim, Nicosia, 136 N.J. at 414, Delaware courts find precisely the same language to constitute an effective disclaimer. See Bunting, 2006 WL 1067321, at *4; Brooks, 2001 WL 1218448, at *4.

The upshot of this exposition for the case at hand is that the choice between New Jersey and Delaware law is dispositive. Under Delaware law, Plaintiff’s contract claim appears to be unsustainable, because (1) the DRBA’s manual is “merely a unilateral statement of company policies,” Heideck, 446 A.2d at 1096, unsupported by consideration consisting of something “more than continued employment,” Mann, 1990 WL 91102, at *7; and (2) the disclaimer in the Personnel Manual that it is “not a contract, and nothing in this booklet is intended or shall be deemed to vest any right in any employee of the Authority,” (Pl.’s Br. Ex. B at 1), is sufficient as a matter of law in Delaware to defeat Plaintiffs’ claim. See Bunting, 2006 WL 1067321, at *4; Brooks, 2001 WL 1218448, at *4. By contrast, under New Jersey law, consideration beyond “continuing to work” is not required to support a Woolley contract claim, Noye, 238

N.J. Super. at 432, and an employee "should not be expected to understand that [an employer's] characterization of its manual as 'not contractual' or subject to change and interpretation at the sole discretion of the [employer]," disclaims Woolley liability. Nicosia, 136 N.J. at 414 (further characterizing such terms as "confusing legalese"). In short, the Court finds that there is an "actual conflict" between the potentially applicable state laws for choice-of-law purposes. Curtis T. Bedwell and Sons, 280 N.J. Super. at 395.

iii. Choice of Law

The Court's determination as to whether New Jersey or Delaware law requires an evaluation of a host of governmental interest considerations, see NL Industries, 65 F.3d at 319, including, most importantly, whether "the place of negotiating the contract and the place of performance are in the same state." Restatement (Second) of Conflicts § 188(3). This determination is not possible on the present record, which gives no indication of whether Plaintiff's employment agreement was negotiated and performed in New Jersey or Delaware. Given that the DRBA bears the burden of proof on its motion to dismiss, and that it has not proven that Plaintiff's claims, premised upon New Jersey law, must be dismissed, the Court will deny Defendants' motion as to Plaintiff's common law claims. Defendants may move for summary judgment as to this choice-of-law question with evidence

sufficient for the Court's determination as to whether New Jersey or Delaware law governs Plaintiff's remaining claims. See NL Industries, 65 F.3d at 319; Restatement (Second) of Conflicts § 188(3).

IV. CONCLUSION

For the reasons explained above, the Court will grant the DRBA's motion to dismiss Plaintiff's CEPA and NJLAD claims, and deny the remainder of the relief sought. The accompanying Order will be entered.

March 30, 2009
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
United States District Judge