

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DELAWARE RIVER AND BAY)
AUTHORITY,)
)
Plaintiff,)
)
v.) Civ. No. 07-008-SLR
)
JAN D. KOPACZ,)
)
Defendant.)


MEMORANDUM ORDER

At Wilmington this 28th day of August, 2007, having conferred with counsel;
IT IS ORDERED that plaintiff's motion in limine (D.I. 20) is granted in part and denied in part. With respect to evidence regarding the August 9, 2002 incident, defendant seeks to submit such evidence to prove recalcitrance and bad faith on the part of plaintiff, thus justifying the payment of attorney fees and, possibly, punitive damages. The issues that arose from the August 9, 2002 incident were tried and the verdict is on appeal presently. The decision of the Third Circuit will determine whether such evidence is relevant in the first instance,¹ as well as determine whether a party in defendant's position is entitled to punitive damages. Therefore, the court will not entertain new evidence as to the August 9, 2002 incident, but will consider the decision

¹In other words, if the verdict is overturned, the court would not consider plaintiff's failure to pay maintenance and cure for the August 9, 2002 incident as being characterized by bad faith; if the verdict is affirmed, the court will consider such for purposes of an award of attorney fees.

of the Third Circuit in this regard.² With respect to defendant's medical conditions allegedly resulting from plaintiff's failure to pay maintenance, the court will allow such evidence to be presented and to be given such weight as it deserves in light of the controlling law.

2. The bench trial in the case at bar shall be conducted on **Monday, September 24, 2007 from 8:30 a.m. until 4:30 p.m.** in courtroom 6B, sixth floor Federal Building, 844 King Street, Wilmington, Delaware. Plaintiff shall have four hours in which to present its evidence; defendant shall have three hours in which to present his evidence.


United States District Judge

²Although the court will not wait for the Third Circuit's mandate in Kopacz v. D.R.B.A., Civ. No. 04-911-GMS (D. Del.) to issue its decision on liability in the case at bar, if plaintiff is found to be responsible for maintenance and cure in the instant litigation, the court will not issue its decision as to attorney fees and other damages until the Third Circuit has issued its opinion in the above earlier case. The parties will be given the opportunity to separately brief this issue.