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September 10, 2013

**VIA OVERNIGHT MAIL**

United States District Court Clerk  
M.L. King, Jr. Federal Building and  
U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: Bill Balram v. Pacific Rail Services, et al.**  
**Civil Action No.:**  
**Our File No.: 1384**

Dear Sir/Madam:

Justice Handler clearly sets forth the most definitive statement, albeit the fact that his opinion is a dissenting opinion, that “if the employer lays off the employee only because the employee sought worker's compensation benefits, the employer would be unlawfully firing the employee in retaliation for seeking those benefits. Firing an employee under those circumstances is clearly forbidden by the Act.” *Outland v. Monmouth-Ocean Educ. Serv. Comm'n*, 154 N.J. 531, 552 (N.J. , 1998) citing N.J.S.A. 34:15-39.1; *Lally v. Copygraphics*, 85 N.J. 668, 428 A.2d 1317 (1981).

It is worthwhile quoting Justice Handler to demonstrate how ridiculous defendants' position is. Defendants' have decided to engage in ad hominem attacks which is as immature as it is unfortunate. What is even more unfortunate is that even though defendants accuse plaintiff of not performing basic research, they nowhere quote N.J. Stat. § 34:15-39.1 (the “NJ WCA”).

The statute itself clearly sets forth the following:

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim workmen's compensation benefits from such employer, or because he has testified, or is about to testify, in any proceeding under the chapter to which this act is a supplement. For any violation of this act, the employer or agent shall be punished by a fine of not less than \$ 100.00 nor more than \$ 1,000.00 or imprisonment for not more than 60 days or both. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, if such employee shall cease to be qualified to perform the duties of his employment he shall not be entitled to such restoration and compensation.

N.J. Stat. § 34:15-39.1

Nothing can be clearer that the statute supports a cause of action for retaliation under the statute. In fact, the only New Jersey case that defendants cite states the following:

In particular we endorse the conclusion of the Appellate Division that there exists a common law cause of action for civil redress for a retaliatory firing that is specifically declared unlawful under N.J.S.A. 34:15-39.1 and 39.2. The statutory declaration of the illegality of such a discharge underscores its wrongful and tortious character for which redress should be available... A common law action for wrongful discharge in this context will effectuate statutory objectives and complement the legislative and administrative policies which undergird the workers' compensation laws. The determination of the Appellate Division that the statutory treatment of this kind of retaliatory firing is not preemptive of a civil right of redress is sound. 173 N.J. Super. at 170-172, 179.

Lally v. Copygraphics, 85 N.J. 668, 670-671 (N.J. , 1981)

Clearly, Lally stands for the proposition that pursuing a CEPA or Pierce claim does not preclude a plaintiff's right to pursue a claim under the NJ WCA.

Defendants cite to a host of Colorado cases that in no way interpret or cite the NJ WCA. This simply belies the desperation of their attempt. This is compounded that other than minimize The Honorable Joseph A. Greenaway, USDJ's opinion and The Honorable Donald Haneke, USMJ, recommendation, defendants make no other comment about the opinion or the legal reasoning opinion by these judges. Defendants merely cast aspersions and refers to the opinion as "thin gruel."

Respectfully submitted,

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*Attorneys for Plaintiff*

Enclosures

cc: Clerk, Hudson County (w/ encls.) via overnight mail  
Paul Castronovo, Esq. (w/ enclosures) via facsimile

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