

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

AARON WESLEY WYATT,	:	January Term, 2002
Plaintiff / Petitioner,	:	No. 4165
v.	:	Commerce Program
RICHARD G. PHILLIPS,	:	
Defendant / Respondent.	:	Control No. 031035

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**OPINION**  
**SUR ATTORNEYS' FEES**

**Albert W. Sheppard, Jr., J. .... March 29, 2004**

This Opinion is submitted in support of this court's Order, filed contemporaneously, that defendant-petitioner Phillips shall cause Pilot<sup>1</sup> to pay to Wyatt the sum of \$211,691.00, constituting reimbursement of attorneys' fees incurred relative to certain lawsuits.

Wyatt claims that a total of \$528,124.00 is owing. This court finds that, of the total sought by Wyatt, the amount of \$370,433.00 pertinent to the "John Edwards' Federal Litigation" is **not** an appropriate charge for reimbursement.

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<sup>1</sup> "Pilot" means Pilot Holding Company and/or Pilot Air Freight Corporation.

## Discussion

Essentially, there are nine categories of litigation for which Wyatt claims reimbursement for attorneys' fees. A chart outlining the nature of the litigation and amount of fees involved is set forth below:

<b>Mandamus Action</b>  (a component of what is labeled "Pilot Enforcement" in Petitioner's Binder IV, Tab 1)	\$ 40,382.00
<b>July 31, 2001 Shotgun Letter</b>  (a component of what is labeled "Pilot Enforcement" in Petitioner's Binder IV, Tab 1)	\$ 5,112.00
<b>First Shotgun Letter Litigation</b>  (a component of what is labeled "Pilot Enforcement" in Petitioner's Binder IV, Tab 1)	\$ 38,777.50
<b>Reath &amp; Gafni Arbitrations</b>  (includes what is labeled "Pilot Enforcement " and "Def. of Pilot Claims" in Petitioner's Binder IV, Tab 1)	\$ 83,147.40
<b>Miscellaneous</b>	\$ 659.10
<b>Litigation Before Judge DiNubile</b>	\$ 11,270.00
<b>J. Edwards v. Wyatt ("John Edwards' Federal Litigation")</b>  (labeled "JEE Defense" in Petitioner's Binder IV, Tab 1)	\$ 370,433.00
<b>John Edwards' Bankruptcy</b>  (labeled "JEE BR" in Petitioner's Binder IV, Tab 1)	\$ 2,603.00
<b>T.&amp;W. Edwards v. Wyatt (New Jersey Litigation)</b>  (labeled "T&W Buyout" in Petitioner's Binder IV, Tab 1)	\$ 29,740.00
<b>TOTAL</b>	<b>\$ 582,124.00</b>

See Court Ex. 10; Tr. VII, pp. 40-46, 62.

In support of his claim for total reimbursement, Wyatt relies on the Settlement Agreement of October 29, 1998, the Bylaws of Pilot Holding, and Delaware law. The Settlement Agreement, dated October 29, 1998, provides for the reimbursement of legal fees for specific litigation:

Pilot shall reimburse the parties for his and their reasonable legal fees incurred to date in connection with the Bankruptcy case [of John Edwards], New Jersey and Delaware County Litigation and this Settlement Agreement and for the additional time required to consummate the actions contemplated therein.

Settlement Agreement, ¶ 12(b).

The Bylaws for Pilot Holding provide that a stockholder will be indemnified by the corporation if the stockholder was or is a party to litigation because of his position as a corporate officer or director. Section 8.01 of the Bylaws states:

Third Party Actions. The corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (and whether brought by or in the right of the corporation), by reason of the fact that the person, or the person for whom he is legal representative, is or was a director or officer of the corporation, or is or was an employee or other representative of the corporation designated for indemnification by and in the discretion of the board of directors, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

The Delaware corporation statute addresses the indemnification of officers, directors, employees and agents of a corporation, Del.

Code. Ann. tit. 8, § 145, providing:

A corporation shall have power to indemnify any person who was or is a party or is threatened to be made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

Del. Code. Ann. tit. 8, § 145(a).

The Delaware Chancery Court has instructed that Section 145 should be liberally interpreted, thusly:

Section 145 must be applied in light of the broad, salutary policy goal of assuring corporate officers and directors that their corporation will absorb the risks that may result from performance of their duties and, accordingly, Delaware's indemnification statute has been interpreted expansively.

Perconti v. Thornton Oil Corp., 2002 WL 982419, \*3 (Del.Ch. 2002).

Wyatt has brought his claims against Phillips rather than the corporate entities. Phillips contends that there is "no legal foundation for holding one shareholder ... liable for indemnification of another shareholder." Phillips' Proposed Conclusions of Law, ¶ 102. Nonetheless, since Phillips has control of the corporate entities, the court deems it appropriate to go forward with a

decision.

Two items are not seriously contested, namely, items 8 and 9, which total (\$2603. plus \$29,740) \$32,343. The other seven items cannot be resolved by the litigants and are vigorously contested.

The court submits that the remaining seven disputed categories are difficult to resolve. However, after careful review of the record as presented, and application of the Delaware court's admonition to "interpret expansively" the indemnification statute, the court finds for Wyatt and orders indemnification for the remaining categories, **except** for the "John Edwards' Federal Litigation."

With respect to the "John Edwards' Federal Litigation" (\$370,433.00), Wyatt argues that his entitlement to reimbursement is based on the Bylaws of Pilot Holding, as well as Section 145 of the Delaware Code, Title 8. Tr. VII, p. 21; Petitioner's Proposed Conclusions of Law, ¶ 11. Wyatt stresses that in that lawsuit, John Edwards alleged that Wyatt failed to take certain actions as an officer and director of Pilot and that Wyatt had promised to do so. Tr. VII, pp. 55-56.

In response, Phillips argues that the "John Edwards' Federal Litigation" was not identified in the Settlement Agreement as litigation to which Wyatt would be entitled to reimbursement for attorneys' fees. Phillips' Proposed Findings of Fact, ¶ 157; Phillips' Proposed Conclusions of Law, ¶¶ 99-101. Further, Phillips contends that the Stockholders' Agreement does not require indemnification of Wyatt because the "John Edwards' Federal Litigation" predated the incorporation of Pilot Holding, and Wyatt was not a shareholder of Pilot at the time. Phillips'

Proposed Findings of Fact, ¶¶ 106, 161; Phillips' Proposed Conclusions of Law, ¶ 96; Tr. VII, 59. Moreover, Phillips urges that because Wyatt was not acting in his capacity as a director or officer of Pilot Holding at the time of the "John Edwards' Federal Litigation", Delaware law does not require statutory indemnification. Phillips' Proposed Findings of Fact, ¶¶ 106. Finally, Phillips argues that Wyatt did not submit to Pilot any of the bills from the law firm of Fisher & Zucker, LLC, relating to the "John Edwards' Federal Litigation", and that the court should infer from this conduct that Wyatt did not believe that he was entitled to reimbursement for those fees. Tr. VII, pp. 53-54.

This court finds the arguments advanced by Phillips to be persuasive. Further, the court reviewed carefully the Federal courts' decisions pertinent to the "John Edwards' Federal Litigation" submitted by counsel for Phillips<sup>2</sup> and incorporates those decisions here by reference. This court does not believe that Wyatt was acting in his capacity as an officer or director of Pilot in that litigation. Consequently, this court submits that that litigation is not the kind contemplated for reimbursement of fees by the Pilot By-Laws and the Delaware Corporation Code.

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<sup>2</sup> These decisions are: (a) Edwards v. Wyatt, 335 F2d 261 (3<sup>rd</sup> Cir. 2003), (b) Edwards v. Wyatt, 2002 WL 1832814 (E.D. Pa.), (c) Edwards v. Wyatt, 2001 WL 1382563 (E.D. Pa.), and (d) Edwards v. Wyatt, 266 B.R. 64 (E.D. Pa. 2001)

**Conclusion**

In summary, then, this court will order that Phillips shall cause Pilot to pay to Wyatt the sum of \$211,691.00 in reimbursement for attorneys' fees. The court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**

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AARON WESLEY WYATT,	:	January Term, 2002
Plaintiff / Petitioner,	:	No. 4165
v.	:	Commerce Program
RICHARD G. PHILLIPS,	:	
Defendant / Respondent.	:	Control No. 031035

**ORDER**

AND NOW, this 29<sup>th</sup> day of March 2004, upon consideration of plaintiff-petitioner, Wyatt's Amended Petition to Enforce Settlement Decree on the issue of reimbursement of attorneys' fees, and the defendant-respondent, Phillips' opposition, the respective memoranda, the post-hearing submissions, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is **ORDERED** that:

1. Wyatt is entitled to payment from Pilot Holding Company and/or Pilot Air Freight Corporation (together "Pilot") in the amount of \$211,691.00 pursuant to Section 12(b) of the Settlement Agreement dated October 28, 1998 and the bylaws of Pilot Holding Company; and
2. Phillips shall execute any document required to authorize payment of this sum to Wyatt by Pilot and shall insure that this payment is seasonably made.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**