

RECEIVED
CLERK'S OFFICE

FEB 14 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

GINA PATTERMANN

Complainant,

v.

BOUGHTON TRUCKING AND MATERIALS,
INC.

Respondent.

PCB 99-187

(Citizen Enforcement,
Noise & Air)

NOTICE OF FILING

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on the 11th day of February, 2005, the undersigned caused to be filed with the Office of the Clerk of the Pollution Control Board the COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION FOR LEAVE TO FILE INSTANTER, a copy of which is herewith served upon you.

THE JEFF DIVER GROUP, L.L.C.



By: _____

Michael S. Blazer
THE JEFF DIVER GROUP, L.L.C.
1749 S. Naperville Road, Suite #102
Wheaton, IL 60187
(630) 681-2530

FEB 14 2005

STATE OF ILLINOIS
Pollution Control Board

(Citizen Enforcement,
Noise & Air)

THIS FILING SUBMITTED ON RECYCLED PAPER

A. More important, the subject e-mail pointed out cases confirming the costs to which Boughton is not entitled.

3. Despite the foregoing, Boughton persists in its pursuit of its excessive costs. Its effort is wholly inappropriate and finds no support in the Board's rules. Under the circumstances, Boughton's Motion for Leave to File Instanter should be denied.

Respectfully submitted,

Gina Pattermann



By: _____
One of her attorneys

Michael S. Blazer
The Jeff Diver Group, L.L.C.
1749 S. Naperville Road
Suite 102
Wheaton, IL 60187
630-681-2530

EXHIBIT A**Michael S. Blazer**

From: Michael S. Blazer [mblazer@enviroatty.com]
Sent: Sunday, January 23, 2005 1:48 PM
To: Sharkey, Patricia F.
Subject: RE: Pattermann v. Boughton; Respondent's Costs

Pat:

I have had a chance to review your list of "costs". In the context of a Voluntary Dismissal, I am unable to find any support for the award of the items you seek in either Section 2-1009 or Supreme Court Rules 208 and 219. First, the case law is clear that attorneys' fees and expenses, including travel expenses and the like, are not recoverable. See *Gilbert-Hodgman, Inc. v. Chicago Thoroughbred Enterprises, Inc.*, 17 Ill.App.3d 460 (1st Dist. 1974). Likewise, in this context, expert witness and deposition fees and expenses are not recoverable. See *Vicencio v. Lincoln-Way Builders, Inc.*, 204 Ill.2d 295 (2003); *Galowich v. Beech Aircraft Corporation*, 92 Ill.2d 157 (1982). Any reliance you may be placing on Supreme Court Rule 219(e) in this regard is misplaced, as that provision applies only to circumstances evidencing sanctionable conduct. See *Morrison v. Wagner*, 191 Ill.2d 162 (2000); *Scattered Corp. v. Midwest Clearing Corp.*, 299 Ill.App.3d 653 (1st Dist. 1998).

I note that the costs that are allowed in this context, filing fees and the like, are absent from your correspondence. In any event, as set forth in our Motion, we remain ready to pay appropriate costs upon presentation of the same. I do not, however, wish to foreclose you from substantiating your position, and I would welcome citations to any authorities that are contrary to or have overruled that set forth above.

Mike

Michael S. Blazer

Principal

The Jeff Diver Group, L.L.C.

1749 S. Naperville Road

Suite 102

Wheaton, IL 60187

(630) 681-2530

Fax: (630) 690-2812

Mobil: (708) 404-9091

mblazer@enviroatty.com

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged, including any attachments, contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information. This message is intended to be conveyed only to the designated recipient(s). If you are not the intended recipient of this message, please immediately notify the sender that you have received this message in error and delete this message. Unauthorized use, disclosure, dissemination, distribution or reproduction of this message or the information contained in this message or the taking of any action in reliance on it is strictly prohibited and may be unlawful. Thank you for your cooperation.

-----Original Message-----

From: Sharkey, Patricia F. [mailto:PSarkey@mayerbrownrowe.com]
Sent: Friday, January 21, 2005 5:30 PM
To: Michael S. Blazer
Cc: Desharnais, Kevin; Gale, Michelle A.; Ter Molen, Mark R.
Subject: Pattermann v. Boughton; Respondent's Costs

1/25/2005

Mike - As discussed on the phone this afternoon, I am attaching a letter with a preliminary statement of Boughton's "costs" within the meaning of Section 5/2-1009 and invoices. We have limited this to costs which are expressly authorized under the Code and Supreme Court Rule 208 and 219. I don't have the Kip Smith invoice in hand right now, but can obtain it Monday. Have a good weekend. -Pat

<<Boughton.PDF>> <<Letter.PDF>>

Patricia F. Sharkey
Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, Illinois 60603
312-701-7952
psharkey@mayerbrownrowe.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the above and foregoing Notice of Filing and MEMORANDUM IN RESPONSE TO RESPONDENT'S MOTION FOR LEAVE TO FILE INSTANTER, all on behalf of the Complainant, to be served via facsimile transmission upon the following:

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601
Fax No. (312) 814-3669

Patricia F. Sharkey
Kevin G. Deshamais
Mayer, Brown, Rowe & Maw
190 S. LaSalle Street
Chicago, IL 60603
Fax No. (312) 706-9113

on this 11th day of February, 2005.

THE JEFF DIVER GROUP, L.L.C.



By: _____

Michael S. Blazer