

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WASTE MANAGEMENT OF PENNSYLVANIA, : CIVIL ACTION
INC., ET AL. :
 :
 :
 v. :
 :
 :
 POLLUTION CONTROL FINANCING : NO. 96-1683
AUTHORITY OF CAMDEN COUNTY :

ORDER-MEMORANDUM

AND NOW, this 28th day of August, 1997, the motion of plaintiffs Waste Management of Pennsylvania, Inc. and Geological Reclamation Operations and Waste Systems, Inc. for partial summary judgment as to liability is denied. Fed. R. Civ. P. 56.¹

Genuine issues of material fact remain as to whether the decision in Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders, 893 F. Supp. 301 (D.N.J. 1995), constituted a force majeure event permitting defendant Pollution Control Financing Authority of Camden County to suspend performance under the contract.

The contract definition of force majeure includes certain specified events or conditions "having a direct material adverse effect on the rights or the obligations of the parties" under the agreement. See 1987 Landfill License Agreement, Art. I, XI. Movants have a strong argument that the decision invalidating New

1. Summary Judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The movant has the burden of showing that there is no triable issue. The opposing party must point to specific, affirmative evidence in the record - and not simply rely on allegations or denials in the pleadings - in order to defeat a properly supported motion. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed.2d 265 (1986); Charlton v. Paramus Board of Education, 25 F.3d 194, 197 (3d Cir. 1994).

Jersey's waste control regulations does not have the required "direct effect" to implicate the force majeure provision of the contract.² However, defendant contends that as a direct result of the decision it has had to "renegotiate all contracts and obligations in an effort to develop a specific nondiscriminatory alternative." Aff. Giordano ¶¶ 16-17. It cannot be said at this time with certainty that the decision has not had a direct effect on the rights and obligations of the parties under the terms of the contract. Accordingly, plaintiffs' motion for partial summary judgment must be denied.

Edmund V. Ludwig, S.J.

2. Plaintiffs correctly note that the effect of the Atlantic Coast decision has been stayed for two years from the completion of all appeals. Additionally, the decision does not specifically address the disposal of ash residue waste.