

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

September 27, 2012

(VIA E-FILED)

John E. James, Esquire
Potter Anderson & Corroon LLP
Hercules Plaza - Sixth Floor
1313 North Market Street
Wilmington, DE 19801

John D. Balaguer, Esquire
White and Williams LLP
824 North Market Street, Suite 902
P.O. Box 709
Wilmington, DE 19899-0709

Lisa A. Schmidt, Esquire
Richards Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

RE: *Viking Pump, Inc., et al. v. Century Indemnity Company, et al.*
C.A. No. 10C-06-141 FSS CCLD

***Upon “Certain” Defendants’ Motion for Reconsideration
of September 19, 2012 Ruling and Certification – DENIED.***

Dear Counsel:

Perhaps I was not clear enough about why the court held Plaintiffs did not have to present 94 of the “disputed” facts to the jury. That decision was not punitive. It was based on Certain Defendants’ failure to show that, as to each of the 94 “disputed” facts, there was an actual dispute justifying presentation.

John E. James, Esquire
John D. Balaguer, Esquire
Lisa A. Schmidt, Esquire
Viking Pump, Inc., et al. v. Century Indemnity Company, et al.
C.A. No.: 10C-06-141 FSS CCLD
Letter/Order
September 27, 2012
Page 2

As the September 19, 2012, written order explained, the court insisted that Defendants show the actual basis for their contention that each of the 94 “disputed” facts was, indeed, disputed. The court was concerned that, consistent with Certain Defendants’ past sanctionable practices, Certain Defendants were attempting to put Plaintiffs to their proof concerning facts that were not truly disputed. Even without the 94 “disputed” facts, the parties are asking to add to the trial.

As the September 19, 2012 order also explains, instead of pointing to evidence from which the jury could find against Plaintiffs, Certain Defendants only made vague, unsubstantiated, unhelpful and conclusory statements. And so, the heart of the order’s evidentiary ruling is not Certain Defendants’ bad faith. That was addressed through the monetary sanction.

The evidentiary ruling was based on Certain Defendants inability or unwillingness to articulate the bases on which the 94 facts were disputed, even after years of discovery. Even in the motion for reconsideration, “Certain” Defendants do not offer one example of how a “disputed” fact is disputed. With the record in that condition, therefore, there is no reason why Plaintiffs must use their limited time to present evidence on those things. This holding is both substantive and procedural.

The court appreciates Plaintiffs’ September 25, 2012 response. The court agrees, as Plaintiffs argue, that “Certain” Defendants have demonstrated a pattern of efforts to impose undue burdens on Plaintiffs in the interest of delay. And, the court agrees with Plaintiffs’ *Drejka v. Hitchens Tire Serv. Inc.* analysis,¹ especially the way Plaintiffs analyze *Drejka* criterion (6).² But, the court emphasizes here the order’s substantive nature.

As for certification of an interlocutory appeal, this case is no where

¹ 15 A.3d 1221 (Del. 2010).

² Pls.’ Ans. Br. at p. 22.

John E. James, Esquire
John D. Balaguer, Esquire
Lisa A. Schmidt, Esquire
Viking Pump, Inc., et al. v. Century Indemnity Company, et al.
C.A. No.: 10C-06-141 FSS CCLD
Letter/Order
September 27, 2012
Page 3

close to being in condition for the Supreme Court's review. An interlocutory appeal would further delay this case's orderly resolution.

For the foregoing reasons, "Certain" Defendants' Motion for Reconsideration and Application for Interlocutory Appeal is **DENIED**. This order takes First State Insurance Company's and Twin City Fire Insurance Company's reply into account.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes

cc: Prothonotary (Civil)
Travis Hunter, Esquire
Jennifer C. Wasson, Esquire
Michael B. Rush, Esquire
James W. Semple, Esquire
Richard M. Beck, Esquire
Sean M. Brennecke, Esquire
Neal J. Levitsky, Esquire
Seth A. Niederman, Esquire
Paul Cottrell, Esquire
Melissa L. Rhoads, Esquire
Robert M. Greenberg, Esquire
Kevin F. Brady, Esquire
Thaddeus J. Weaver, Esquire