

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

VIKING PUMP, INC. and)
WARREN PUMPS, LLC)
Plaintiffs,)
)
v.)
)
CENTURY INDEMNITY)
COMPANY, et al.)
Defendants.)

C.A. No.: 10C-06-141 FSS
CCLD
(E-FILED)

Submitted: August 17, 2012
Decided: August 17, 2012

CORRECTED ORDER¹

**Upon Plaintiff Warren Pumps, LLC's Motion to Strike Normand Vermette's
Supplemental Report - *GRANTED*.**

Upon Plaintiff Warren Pumps, LLC's Motion for Sanctions - *GRANTED*.

1. On August 1, 2012, the day after the *Daubert* deadline, and more than five months after the February 10, 2012 expert report deadline, Excess Insurers submitted a "supplemental report" from one of its experts, Normand Vermette. The new report opines, "Liberty has not exhausted all of its available limits of products

¹ Page 2, Paragraph 4 is corrected to show that Warren's motion to strike is opposed.

liability coverage issued to Warren.”

2. Vermette’s supplemental report ostensibly stems from two Liberty Mutual employees’ depositions. At the May 24, 2012 status conference, Excess Insurers sought a subpoena to depose the two. One employee had been deposed under Rule 30(b)(6) in 2009, the other had not.

3. Warren objected to the subpoenas merely as “inconvenient.” No one told the court, however, as Excess Insurers now put it, “a supplemental report and [further] deposition were yet to come.” So, the court allowed the depositions and Excess Insurers got precisely what they asked for.

4. When Excess Insurers asked for leave to take the depositions, they did not alert the court that they expected to use the depositions to supplement an expert report less than two months before trial and, in the process, precipitate a last-minute round of discovery. Moreover, they never asked for leave to file a supplemental expert report, much less did they ask to file after the *Daubert* deadline. The court will not be cornered. Warren’s motion to strike Excess Insurers’ supplemental report is **GRANTED**.

5. As to sanctions, the disruptiveness of Excess Insurers’ tactic is brought into sharper focus by pointing out that on July 31, 2012, the parties submitted ten motions *in limine*, five motions for each side. This motion, therefore, is

the eleventh filed within two months of the scheduled trial. Excess Insurers' tired argument that there is no prejudice here because Warren can file a supplemental report ignores how close we are to trial and how exhaustively this case has been litigated here and in the Court of Chancery over the last seven years. Now, Warren is entitled to focus on trial preparation, instead of having to respond to supplemental reports and take more discovery.

6. Excess Insurers have not justified waiting until after the deadline to pursue this "critical" evidence, except to blame the delay on Warren. That does not do. If Warren dawdled about something so important to them, Excess Insurers should have become animated long ago. If Excess Insurers are unprepared for trial, as their midnight filings suggest, they cannot blame Warren or the court.

7. In any event, the parties have ignored Chancellor Strine's blunt disapproval of their excessive and abusive discovery tactics and this court's warnings about "the way this litigation has dragged on." As this court warned, it will not tolerate last-minute, *ad hoc*, motion practice and other scrimmaging in the final run-up to trial.

8. Accordingly, Warren's motion for sanctions is **GRANTED**,

payable forthwith, upon submission by Warren after approval as to form. If the court has to enter another order like this, it will use a multiplier. We are not going to spend the next two months dealing with distractions or other disruptive tactics.

IT IS SO ORDERED.

/s Fred S. Silverman

Judge

oc: Prothonotary (Civil)

pc: All Counsel of Record via Lexis/Nexis