

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

E. I. du PONT de NEMOURS)
& COMPANY,) C.A. No. 99C-12-253 JTV
)
Plaintiff,)
)
v.)
)
ALLSTATE INSURANCE)
COMPANY, et al.)
)
Defendants.)

Submitted: November 21, 2007

Decided: February 20, 2008

John E. James, Esq, and Richard L. Horwitz, Esq., Potter, Anderson & Corroon,
Wilmington, Delaware for E.I. du Pont de Nemours & Company.

Brian L. Kasprzak, Esq. and Dawn Courtney Doherty, Esq., Marks, O'Neill,
O'Brien & Courtney, P. C., Wilmington, Delaware for Defendants Stonewall
Insurance Company.

*Upon Consideration of Defendant Stonewall's
Motion for Admission Pro Hac Vice of
Keith Moskowitz, Esq. and Robert Johnson, Esq.*

GRANTED

VAUGHN, President Judge

E.I. du Pont de Nemours and Company v. Allstate Insurance Company, et al.
C.A. No. 99C-12-253 JTV
February 20, 2008

ORDER

Upon consideration of a defense motion for admission of an attorney *pro hac vice*, the plaintiff's opposition, and the record of the case, it appears that:

1. Defendant Stonewall Insurance Company, through local counsel, has moved the admission *pro hac vice* of Keith Moskowitz, Esquire, and Robert Johnson, Esquire. Both are of the lawfirm of Sonnenschein Nath & Rosenthal L.L.P.

2. The plaintiff opposes the admission *pro hac vice* of Messrs. Moskowitz and Johnson for two reasons. It contends that their admission should be denied because it would inevitably result in Stonewall gaining confidential information relating to a confidential settlement between the plaintiff and Travelers Insurance Company. It also contends that their admission would place them in an impermissible conflict of interest between Stonewall and Travelers.

3. This is an insurance coverage case. DuPont's first contention arises from Messrs. Moskowitz' and Johnson's previous representation of Travelers in this same litigation. While defending Travelers against claims which DuPont brought against it, Messrs. Moskowitz and Johnson entered into confidential communications with DuPont's same current counsel which led to a confidential settlement agreement between DuPont and Travelers. Messrs. Moskowitz and Johnson have now been retained by Stonewall to represent it. Permitting them to represent Stonewall, DuPont contends, will place Stonewall in de facto receipt of confidential information relating to the DuPont-Travelers settlement negotiations. DuPont relies upon cases which have expressed the strong public policy to encourage settlements and protect the confidentiality of settlement discussions and agreements. Messrs. Moskowitz and Johnson state in an affidavit that they have not and will not disclose to Stonewall the

E.I. du Pont de Nemours and Company v. Allstate Insurance Company, et al.

C.A. No. 99C-12-253 JTV

February 20, 2008

terms of the settlement agreement between Travelers and DuPont. There is substantial disagreement, however, between DuPont's counsel and Messrs. Moskowitz and Johnson as to the amount and nature of the confidential information which they acquired during the settlement negotiations between DuPont and Travelers.

4. The only question before the Court is whether Messrs. Moskowitz and Johnson should be admitted *pro hac vice* to represent Stonewall in this case. Denial of the motion would not, in and of itself, prevent Sonnenschein from being retained by Stonewall to advise it concerning settlement of DuPont's claims. It would simply prevent it from appearing in the action. The confidentiality issue raised by DuPont does not seem to implicate any previous order of the Court or any rule of evidence or any rule of the Court, apart from the rule on admission *pro hac vice* itself. While the Court is mindful that Sonnenschein's experience in representing Travelers may give Stonewall, through Sonnenschein, an insight into DuPont settlement strategies or the like which Stonewall would not otherwise enjoy, the Court is not persuaded that these circumstances outweigh Stonewall's interest in being represented by counsel of its choice.

5. DuPont's second contention arises from the fact that Stonewall has a cross-claim pending against Travelers in this same litigation. This fact, DuPont contends, places Sonnenschein in a conflict of interest between Stonewall and Travelers. In Stonewall's papers in support of the motion, Delaware counsel states that Sonnenschein represents Stonewall only in connection with DuPont's claims against it and not in connection with the cross-claim, and that Travelers has consented to Sonnenschein's representation of Stonewall so long as Sonnenschein does not

E.I. du Pont de Nemours and Company v. Allstate Insurance Company, et al.
C.A. No. 99C-12-253 JTV
February 20, 2008

represent Stonewall on the cross-claim. The Court is satisfied that Sonnenschein's representation of Stonewall in defending it against DuPont's claims only and the mutual consent of Stonewall and Travelers to the arrangement resolve the ethical issues.

6. The requirements for admission *pro hac vice* are set forth in Superior Court Civil Rule 90.1. Where the requirements of the rule are satisfied, as they are here, denial of a motion for admission *pro hac vice* should occur only where denial is clearly warranted.¹ Denial is not clearly warranted in this case. Therefore, the motion for admission *pro hac vice* of Messrs. Moskowitz and Johnson is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File

¹ *Certain Underwriters at Lloyd's London v. E. I. DuPont De Nemours and Company*, 2007 Del. Super. LEXIS 197.