

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. )  
)  
STONEWALL INSURANCE )  
COMPANY, et al. )  
)  
Defendants. )

*Submitted: January 12, 2009*  
*Decided: January 12, 2009*  
*Opinion Issued: June 30, 2009*

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., Marks, O'Neill, O'Brien & Courtney, P.C., Wilmington,  
Delaware for Defendant Stonewall Insurance Company.

*Upon Consideration of Defendant Stonewall's*  
*Motion For Summary Judgment*  
*Regarding Bad Faith Claim*  
**GRANTED**

**VAUGHN, President Judge**

**ORDER**

Upon consideration of the defendant's Motion For Summary Judgment on the plaintiff's bad faith claim, the plaintiff's opposition thereto, and the record of the case, it appears that:

1. The facts and other legal rulings in the case are set forth in written decisions issued on August 31, 2004, July 31, 2006, August 14, 2008, and August 19, 2008, and other written decisions issued today, all of which are incorporated herein by reference.

2. One of the plaintiff's claims is that defendant Stonewall Insurance Company has acted in bad faith by engaging in a 24 year, dilatory pattern of refusing to pay DuPont's claim without reasonable justification despite repeated demands by DuPont and by forcing DuPont to litigate numerous baseless issues and defenses raised by Stonewall during the course of this litigation. As mentioned, Stonewall has moved for summary judgment.

3. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> The moving party bears the burden of establishing the nonexistence of material issues of fact.<sup>2</sup> If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>3</sup> In considering the motion, the facts

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<sup>1</sup> Super. Ct. Civ. R. 56(c).

<sup>2</sup> *Gray v. Allstate Ins. Co.*, 2007 Del. Super. Ct. LEXIS 124, at \*3.

<sup>3</sup> *Id.*

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must be viewed in the light most favorable to the non-moving party.<sup>4</sup> Summary judgment is inappropriate “when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”<sup>5</sup>

4. In order to establish bad faith failure to settle a claim, the plaintiff must prove that the “insurer’s refusal to honor its contractual obligation was clearly without any reasonable justification.”<sup>6</sup> The “ultimate question” for evaluation is whether, at the time of denial, there were “facts or circumstances known to the insurer which created a bona fide dispute and therefore a meritorious defense to the insurer’s liability.”<sup>7</sup> In the insurance claim processing context, there are at least two levels of decision-making: 1) determining whether the claim is within the policy’s coverage; and 2) where damages are not liquidated, determining the amount of compensation.<sup>8</sup> Mere delay supported by reasonable justification is not evidence of bad faith.<sup>9</sup>

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<sup>4</sup> *Pierce v. Int’l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

<sup>5</sup> *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 Del. Super. Ct. LEXIS 22, at \*4.

<sup>6</sup> *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 369 (Del. Super. 1982) (citing *Noble v. Nat’l Am. Life Ins. Co.*, 624 P.2d 874 (Ariz. Ct. App. 1979); 3 Appleman, *Insurance Law and Practice* § 1612 (rev. ed. 1967)); *Tackett v. State Farm Fire & Cas. Ins. Co.*, 653 A.2d 254, 264 (Del. 1995).

<sup>7</sup> *Casson*, 455 A.2d at 369.

<sup>8</sup> *Tackett*, 653 A.2d at 265-66.

<sup>9</sup> *Tackett*, 653 A.2d at 266.

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5. In the late 1980's the plaintiff began notifying Stonewall and other insurers of its Delrin, plumbing system liabilities. This case was commenced in 1999. When the case was filed, Stonewall was one of many insurance companies named as defendants. In 2004 the Court issued a decision which ruled upon a number of phase one issues. The issues as presented at that time focused on coverage for the policy year 1983. After the Court's 2004 decision was issued, the focus shifted to the 1985 year and, for the first time, to Stonewall. Through 2006 DuPont and Stonewall litigated issues relating to the allocation of liabilities which were not associated with any specific claims. After the Court decided those issues in that year, the parties litigated the effect of a non-cumulation clause. The Court ruled on the non-cumulation clause in August 2008.

6. In September 2008 the case proceeded to trial to determine a question of fact – whether DuPont's Delrin liabilities were one occurrence or more than one occurrence. In 2004 the Court had denied a motion for summary judgment on that issue, reasoning that it presented questions of fact which must be submitted to a jury.

7. The issues which Stonewall litigated to judicial decision in 2006 and 2008 were legitimate issues involving bona fide disputes. That Stonewall was the unsuccessful party in those issues, or that it raised and abandoned other issues during the course of the litigation, does not diminish their legitimacy. Stonewall was entitled to the judicial rulings which it sought.

8. The September 2008 trial ended prematurely due to the illness of a witness. The Court has since then decided that the number-of-occurrences issue can be (and now has been) decided by summary judgment. However, Stonewall cannot

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be faulted for proceeding to trial on that issue since until then the Court had ruled that the issue was one of fact for a jury.

9. For these reasons, and after considering all of the attendant facts and circumstances of this 24-year-old dispute, I conclude as a matter of law that the plaintiff cannot establish that Stonewall's failure to settle was "clearly without any reasonable justification."

10. Therefore, Stonewall's Motion For Summary Judgment on DuPont's bad faith claim is *granted*.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary  
cc: Order Distribution  
File