

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: April 6, 2009

Decided: June 30, 2009

John E. James, Esq., and Richard L. Horwitz, Esq., Potter, Anderson & Corroon
LLP, Wilmington, Delaware for Plaintiff.

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

*Upon Consideration of Plaintiff's
Motion For Entry of a Money Judgment
Plus Interest*
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of the plaintiff's Motion For Entry of a Money Judgment Plus Interest, the defendant's opposition, 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, without further repetition.

2. The Motion For Entry of a Money Judgment Plus Interest calls into question two issues. The first is the proper application of Addendum No. 10 in the first layer Stonewall policy.

Addendum No. 10 reads as follows:

It is hereby understood and agreed that an aggregate cap of \$50,000,000 is applicable to Items (A), (B), (C) and (D) of the Schedule of Underlying Insurances and this aggregate will be reached as follows:

1) Only when a loss is in excess of \$5,000,000 will it be applied to the exhaustion of the aggregate and the total of the Assured's retained amount will be applied to the exhaustion of the aggregate.

2) If and when the aggregate is exhausted, any further losses would be subject to a \$5,000,000 per occurrence (No Aggregate) retention before Underwriters would respond.

3. DuPont contends that it reaches Stonewall's coverage when it satisfies its \$50 million self-insured retention. It contends that the \$5 million per occurrence

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retention described in paragraph two of the addendum does not apply where the insured's entire loss arises from one occurrence. The \$5 million retention, DuPont contends, does not apply unless claims filed against the policy arise from at least two occurrences.

4. Stonewall contends that the \$5 million retention is an additional retention, in excess of the \$50 million retention. Thus DuPont must satisfy a \$55 million retention, Stonewall contends, before it can reach any coverage.

5. In this case, the Court has ruled that all of DuPont's liabilities in issue arise from one occurrence. After considering the arguments of counsel, I have concluded that the \$5 million retention described in the addendum does not apply where the insured's entire loss arises from one occurrence. The policy specifies that the self-insured retention is \$50 million for "any one occurrence." The use of the word "losses," plural, in paragraph two of the addendum, and "per occurrence" after "\$5,000,000," suggest plural occurrences. Therefore, since it is undisputed that the amount of 1985 installation claims exceeds \$20 million, Stonewall is liable for its full limits of \$5 million.

6. DuPont seeks prejudgment interest from the date it filed its original complaint in this case, December 30, 1999. Stonewall opposes DuPont's claim for prejudgment interest from December 30, 1999, contending that the original complaint did not specify any definite amount of damages. It contends that it was not until August 4, 2006 that DuPont demanded a specific sum of money.

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7. I am persuaded that under *Hercules, Inc. v. AIU Insurance Co.*¹ DuPont should be awarded prejudgment interest from the date it filed its original complaint. Therefore, Stonewall is liable for prejudgment interest in the amount of \$4,541,667 from December 30, 1999 to January 30, 2009.

8. Therefore, DuPont's Motion for the Entry of a Money Judgment Plus Interest is hereby ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

¹ 784 A.2d 481 (Del. 2001).