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

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) C.A. No. 08C-09-218-JRJ
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<u>ORDER</u>

AND NOW TO WIT, this <u>15th</u> day of <u>December</u>, 2009, the Court

having duly heard and considered Plaintiffs' Motion to Strike Improper Materials

from Defendants' Motion for Reargument and Application for Certification of an

Interlocutory Appeal, and Defendants' response thereto, AND IT APPEARING

THAT:

 Four days before oral argument on Plaintiffs' Motion for Summary Judgment on the Issue of Defendants' Duty to Defend, defendants filed a Motion for Leave to Supplement the Record ("Motion to Supplement"). Through that Motion to Supplement, the defendants sought to introduce documents they claim are relevant to the contracting parties' intent with respect to the scope of insurance coverage. The documents include communications between DynCorp and Willis, plaintiffs' agent. These communications occurred during and before certain of the policies at issue were effective.¹

- 2. When defendants sought to offer the documents at oral argument, the Court disallowed it.²
- 3. The Court denied the defendants' Motion to Supplement.³
- 4. The defendants did not seek reconsideration of this Order within five days pursuant to Delaware Superior Court Civil Rule 59.
- 5. Defendants filed a Motion for Reargument and Reconsideration of the Court's November 9, 2009 Order Granting Partial Summary Judgment on the Duty to Defend ("Motion for Reargument"). Attached to the Motion for Reargument are the same documents the Court has previously ruled inadmissible.

¹ Defendant Underwriters' Response to Plaintiffs' Motion to Strike p. 1-2, D.I. 129.

² See Plaintiffs' Motion to Strike Improper Materials from Defendants' Motion for Reargument and Application for Certification of an Interlocutory Appeal p. 3, D.I. 125.

³See October 12, 2009 Order denying Defendants' Motion for Leave to Supplement the Record on Plaintiffs' Motion for Summary Judgment on the Duty to Defend, D.I. 101.

- 6. Defendants cited these same documents in their Application for Certification of Interlocutory Appeal.⁴
- 7. As plaintiffs noted during oral argument on their Motion to Strike, this is
 "déjà vu all over again."⁵
- 8. The Court did now allow defendants to supplement the record with these documents because these documents were and are not relevant or material to the Summary Judgment Motion on the Issue of Defendants' Duty to Defend.

WHEREFORE, IT IS HEREBY ORDERED THAT: Within 10 days,

defendants shall file an amended Motion for Reargument and Appendix in which all references to the documents, and all arguments or statements derived or based on the documents, shall be deleted and defendants shall not file any documents or assert any arguments based on the evidence which the Court has ruled inadmissible.

> /s/Jan R. Jurden Jan R. Jurden, Judge

cc: Prothonotary - Original

⁴ See p. 3 of Plaintiffs' Motion, D.I. 125. On November 19, 2009, Defendant Underwriters filed a Motion for Extension of Time for Submission of Certification of Interlocutory Appeal. (D.I. 115.) As a precautionary measure, Defendant Underwriters also filed an Application for Certification of Interlocutory Appeal of the Court's November 9, 2009 Order. On November 24, 2009, the Court granted Defendant Underwriters' Motion for Extension of Time for Submission of Certification of Interlocutory Appeal. (D.I. 122.) Defendant Underwriters subsequently withdrew the Application for Certification of Interlocutory Appeal. (D.I. 123.)

⁵ December 14, 2009 oral argument on Plaintiffs' Motion to Strike.

David Baldwin, Esquire Jennifer C. Wasson, Esquire Finley T. Harckham, Esquire Alex D. Hardiman, Esquire Thaddeus J. Weaver, Esquire Ann C. Taylor, Esquire Mark A. Deptula, Esquire