

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

HERCULES INCORPORATED, a :
Delaware Corporation, :
Plaintiff, :
 :
v. : C.A. No. 02C-11-237 SCD
 :
ONEBEACON AMERICA INSURANCE :
COMPANY, et al., :
Defendants. :

Submitted: May 12, 2004
Decided: September 7, 2004

ORDER

*Upon Consideration of OneBeacon America Insurance Company's
Motion to Sever Fifth Cause of Action –
GRANTED in part; DENIED in part.*

This 7th day of September, 2004, Defendant OneBeacon America Insurance Company's (OneBeacon) motion to sever fifth cause of action, Hercules' Answer, and OneBeacon's Reply having been considered, it appears that:

(1) OneBeacon has filed a motion to sever Hercules' Bad Faith claim—for both discovery and trial-- set forth as the fifth cause of action in the complaint. OneBeacon argues that though there are 37 defendant-insurers in the action, there is a single count for bad faith directed solely at OneBeacon. The conduct giving rise to the bad faith claim allegedly arose after the coverage claim was asserted by Hercules.

(2) Hercules responds that it "would be nearly impossible to bifurcate" the discovery on the coverage issues and the discovery on bad faith. Hercules further argues that to do so would result in duplicative depositions and discovery requests, with associated additional and unnecessary expenses.

(3) Superior Court Civil Rule 42 provides that "[t]he Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim" The principal claims arise regarding Hercules' right to coverage of asbestos claims from multiple insurers. The bad faith claim is directed to only one insurer, OneBeacon.

(4) Discovery has progressed, and the case is scheduled for trial in approximately five weeks.

(5) I will not stay discovery on the bad faith claim. I will sever the trial on the bad faith claim. There is a substantial likelihood of confusion if trial proceeds against multiple defendants with a bad faith claim against only one. There is a potential for prejudice against OneBeacon and against any other carrier in the case at the time of trial if the coverage and bad faith claims are tried together. The bad faith claim is severed for trial purposes.

(6) Trial on the bad faith issue will follow the trial on coverage, before the same jury. Additional evidence may be presented by Hercules, or by OneBeacon.

IT IS SO ORDERED.

/s/ Susan C. Del Pesco
Judge Susan C. Del Pesco

Original to Prothonotary
xc: Counsel of Record