

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: May 12, 2004
Decided: August 31, 2004

Richard L. Horwitz, Esq. and William R. Denny, Esq., Potter, Anderson & Corroon, Wilmington, Delaware, for Plaintiff.

Robert J. Katzenstein, Esq., Smith, Katzenstein & Furlow, Wilmington, Delaware for Defendant Allstate Insurance Company.

Timothy J. Houseal, Esq. and Anthony G. Flynn, Esq., Young, Conaway, Stargatt & Taylor, Wilmington, Delaware for Defendants International Insurance Company, Lexington Insurance Company and A. I. U. Insurance 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 and Ludgate Insurance Company Limited.

J. R. Julian, Esq., J. R. Julian, P.A., Wilmington, Delaware for Defendants European Reinsurance Company of Zurich, Everest Reinsurance Company, Gerling-Konzern Allgemeine Versicherungs-Aktiengesellschaft and Mt. McKinley Insurance Company.

Louis J. Rizzo, Esq., Reger & Rizzo, Wilmington, Delaware for Defendant Travelers Casualty and Surety Company.

Robert J. Leoni, Esq., Morgan, Shelsby & Leoni, Newark, Delaware for Defendant Employers Insurance Company of Wausau.

Neal C. Belgam, Esq., Blank, Rome, LLP, Wilmington, Delaware for Defendant First State Insurance Company.

Kevin J. Connors, Esq. and Thomas Gerard, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware for Defendant Royal Indemnity Insurance Company.

Felice Glennon Kerr, Esq., The Bayard Firm, Wilmington, Delaware for Defendant Geico Insurance Company.

John S. Spadaro, Esq., Murphy, Spadaro & Landon, P. A., Wilmington, Delaware for Defendants Underwriter's at Lloyd's of London, Certain London Market Companies and Compagnie D'assurances Maritimes Aeriennes Terrestries.

R. Karl Hill, Esq., Seitz, Van Ogtrop, & Green, P. A., Wilmington, Delaware for Defendants Equitas Limited and Equitas Reinsurance, Ltd.

Upon Consideration of Certain Defendants' Motion to Strike Paragraphs 18-20 of The Affidavit of Jean Western and All Corresponding Statements in Dupont's Motion For Summary Judgment
DENIED

Certain Defendants' Motion to Strike Paragraph 8 of The Supplemental Affidavit of William Hines and All Statements in Dupont's Briefs That Rely Upon That Paragraph of The Supplemental Hines affidavit
DENIED

Dupont's Motion to Strike Affidavits of Defendants' Claims Handlers
DENIED

Certain Defendants' Motion to Strike William Hines' Second Supplemental Affidavit
DENIED

VAUGHN, Resident Judge

ORDER

Upon consideration of motions to strike all or parts of affidavits, the

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opposition thereto, and the record of the case, it appears that:

1. Before me are four motions to strike affidavits or parts of affidavits. The first is Certain Defendants' Motion to Strike Paragraphs 18-20 of The Affidavit of Jean Western and All Corresponding Statements in Dupont's Motion For Summary Judgment. The defendants allege that paragraphs 18-20 of Ms. Western's affidavit do not comply with Superior Court Civil Rule 56(e) because they are conclusory, lack specific facts and are otherwise inadequate to support the plaintiff's Motion For Summary Judgment.

2. The second is Certain Defendants' Motion to Strike Paragraph 8 of The Supplemental Affidavit of William Hines and All Statements in Dupont's Briefs That Rely Upon That Paragraph of The Supplemental Hines affidavit. The defendants allege that paragraph 8 does not comply with Superior Court Civil Rule 56(e) because it is conclusory, lacks specific facts, and does not explain the basis for the affiant's paragraph 8 statements.

3. The next is Dupont's Motion to Strike Affidavits of Defendants' Claims Handlers. Dupont alleges that the affidavits are irrelevant and not based upon personal knowledge of the affiants.

4. The final motion is Certain Defendants' Motion to Strike William Hines' Second Supplemental Affidavit. The defendants allege that this affidavit adds no material facts relevant to the issues pending before the Court on summary judgment and is not based on personal knowledge.

5. Superior Court Civil Rule 56 requires that all supporting and opposing affidavits offered in connection with a motion for summary judgment shall meet

the following criteria: (1) the affidavit must "be made on personal knowledge," (2) it must "set forth such facts as would be admissible in evidence," and (3) it must "show affirmatively that the person is competent to testify to the matters stated therein."

6. After considering all of the submissions for and against these affidavits and the arguments of counsel, I have concluded that for the reasons given in opposition to each motion, all four motions should be denied. The motions go to the weight to be given the affidavits, not their competency. This ruling is without prejudice to objections which might be asserted in future proceedings in this case concerning the matters set forth in the affidavits.

7. Therefore, all four Motions to Strike are *denied*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

Resident Judge

oc: Prothonotary (by e File)
cc: Order Distribution (by e File)
File