

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

PHILADELPHIA INDEMNITY	§	
INSURANCE COMPANY	§	
	§	
V.	§	CIVIL ACTION NO. G-10-243
	§	
ANDY HOUSE, ET AL.	§	

**OPINION AND ORDER**

Before the Court, with the consent of the Parties under 28 U.S.C. § 636(c)(1), are two competing motions: the “Motion for Partial Summary Judgment on Coverage” of Defendant, Lloyd Gillespie and the “Partial Motion for Summary Judgment” of Plaintiff, Philadelphia Indemnity Insurance Company. Having now exhaustively considered the Motions, all relevant submissions and the arguments of counsel made during a lengthy Hearing on November 10, 2011, the Court issues this admittedly abstentious Opinion and Order.

Despite the mandatory language of Rule 56(a), this Court has discretion not to enter summary judgment when special circumstances are present and there is reason to believe that the better course would be to proceed with a full trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) Even where a movant otherwise carries its burden of proof, if the trial judge has doubts as to the wisdom of terminating a case before a full trial, he has the discretion to deny a motion for summary judgment. Veillon v. Exploration Services, Inc., 876 F.2d 1197, 1200 (5<sup>th</sup> Cir. 1989) (applying abuse of discretion standard to district court’s decision to deny motion for summary judgment.)

In the humble opinion of this Court, this case involves quizzical factual circumstances that compel credibility determinations which this Court may not make at the summary judgment stage, Dibidale of Louisiana, Inc. v. American Bank & Trust Co., 916 F.2d 300, 307-08 (5<sup>th</sup> Cir. 1990) (“Credibility assessments are not fit grist for the summary judgment mill.”); that function is for the Jury that both Gillespie and Philadelphia have demanded.

It is, therefore, the **ORDER** of this Court that both “Defendant Lloyd Gillespie’s Motion for Partial Summary Judgment on Coverage” (Instrument no. 34) and “Plaintiff Philadelphia Indemnity Insurance Company’s Partial Motion for Summary Judgment” (Instrument no. 42) are **DENIED**.

It is further **ORDERED** that the “Motion to Strike Certain of Philadelphia Indemnity Insurance Company’s Summary Judgment Evidence” and “Motion to Strike Philadelphia Indemnity Insurance Company’s Sur-Reply to Defendant Lloyd Gillespie’s Motion for Summary Judgment” (Instrument nos. 54 and 59) of Defendant, Lloyd Gillespie, and the “Motion to Strike Defendant Lloyd Gillespie’s Motion to Strike Certain of Plaintiff’s Summary Judgment Evidence” (Instrument no. 61) of Plaintiff, Philadelphia Indemnity Insurance Company, are **DENIED as moot**.

**DONE** at Galveston, Texas, this 22nd day of November, 2011.

  
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John R. Froeschner  
United States Magistrate Judge