

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

August 23, 2012

**(VIA E-FILED)**

John E. James, Esquire  
Potter Anderson & Corroon LLP  
Hercules Plaza - Sixth Floor  
1313 North Market Street  
Wilmington, DE 19801

John D. Balaguer, Esquire  
White and Williams LLP  
824 North Market Street, Suite 902  
P.O. Box 709  
Wilmington, DE 19899-0709

RE: *Viking Pump, Inc., et al. v. Century Indemnity Company, et al.*  
*C.A. No. 10C-06-141 FSS CCLD*

**Plaintiffs' Motion to Strike the Expert Report of Dr. Peter R. Kensicki  
and to Preclude Dr. Kensicki from Testifying at Trial – DENIED.**

Dear Counsel:

In denying this narrow motion, the court will first address the upcoming trial broadly. For the reasons set-out in the November 15, 2011 order denying all motions for summary judgment, the trial will resolve all potential, factual disputes. Accordingly, the court will not now decide whether the policies are unambiguous, as a matter of law. Therefore, the trial will precede on the assumption that the policies must be construed with the jury's help.

As to Dr. Kensicki, specifically, regardless of whether his expertise is mainly academic, he is qualified to help the jury understand deductible and self-retention clauses. It may also help if Dr. Kensicki, as an insurance law specialist, tells the jury it can simply use common sense to construe those clauses. If, in the process, Dr. Kensicki offers his opinion on the ultimate fact, even if it is based on his

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common sense, so be it.<sup>1</sup> Basically, Plaintiffs' opposition to Dr. Kensicki's competence and common sense are better left to cross-examination.

In closing, it remains to be seen whether Dr. Kensicki will need to testify. First, Plaintiffs call the policy language "plain," and Dr. Kensicki sees it similarly. Thus, the parties seem to tacitly agree that the court should resolve this issue, as a matter of law, after trial. Second, Plaintiffs tout their expert. After Plaintiffs' expert's direct and cross-examination there may be nothing for Dr. Kensicki to add, but that is not for the court to say here.

If it comes to it, it is difficult to see how Dr. Kensicki's testimony - direct, cross examination and redirect - should take more than a half hour. This order does not impose a time-limit on Dr. Kensicki, but the parties are again reminded about the trial's time constraints. In the end, one party's witness's testimony may come at the expense of another. The parties must budget their time accordingly.

For the foregoing reasons, Plaintiffs' motion to exclude Dr. Kensicki's testimony is **DENIED**.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS:mes  
oc: Prothonotary (Civil)

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<sup>1</sup> D.R.E. 704 ("Testimony in a form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact.").