

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

September 25, 2013

David J. Baldwin, Esq.
Potter, Anderson & Corroon, LLP
1313 North Market Street
P.O. Box 951
Wilmington, DE 19899-0951

Thaddeus J. Weaver, Esq.
Dilworth Paxson, LLP
704 N. King Street, Suite 500
P.O. Box 1031
Wilmington, DE 19899-1031

**RE: Dyncorp; Dyncorp International, LLC; Dyncorp Technical Services, LLC
n/k/a CSC Applied Technologies, LLC; and Dyncorp Aerospace Operations, LLC
v.
Certain Underwriters at Lloyd's London; Certain London Market Insurers; and
DOES 3-20
C.A. No. N08C-09-218 JRJ**

Dear Counsel:

The parties have raised three issues requiring disposition by the Court. First, Certain London Market Insurers and Certain Underwriters at Lloyds London (collectively “Underwriters”) seeks leave to file a motion for summary judgment on the “pollution exclusion” in certain of the policies at issue in this insurance coverage case. Second, DynCorp Aerospace Operations LLC, DynCorp International LLC, DynCorp LLC, DynCorp Technical Services LLC (collectively “DynCorp”) initially filed objections to the Special Master’s Opinions and Orders on Discovery Matter No. 10,¹ and then requested that the Court place a “hold” on the adjudication of these objections. Third, DynCorp has filed an objection to the Special Master’s Final Opinion and Order on Discovery Matter No. 9.²

¹ See Trans. ID 53062806 and Trans. ID 53260388.

² Trans. ID 53247256.

Underwriters' request to file a motion for summary judgment on the pollution exclusion language is **GRANTED**. This filing is permitted, notwithstanding that Underwriters had previously represented to the Court that it did not intend to file a motion for summary judgment. Having this issue briefed before trial may assist the Court. The Court will not schedule argument on this motion at this time. As the parties are well aware, in connection with the application for leave to file this motion for summary judgment, there was much discussion about whether Underwriters' claims for reformation of policy language could be tried to the Court absent a ruling on the issue of whether coverage is excluded by the pollution exclusion. After directing the parties to confer with the Special Master on the issue of trial sequencing, I understand that the parties are now in agreement that trial on the reformation and rescission claims *can* proceed without a ruling on the meaning of the pollution exclusion language. Accordingly, the trial sequencing jointly proposed by the parties and approved by the Special Master shall remain in place. The parties shall meet with the Special Master promptly and establish a schedule for completing discovery and pretrial proceedings so that the Court can set a trial for the rescission and reformation actions.

After *de novo* review, I concur with the Special Master's finding that Underwriters should not be compelled to pay the costs of DynCorp's review or processing of its own documents, simply because the documents are on the government's computer systems. I find the Special Master's analysis and orders on the issue to be sound, and therefore DynCorp's objections to the Special Master's decisions on DM No. 10³ are **OVERRULED**, and the Special Master's orders are **AFFIRMED** as orders of this Court.

DynCorp's request that the Court put a "hold" on this discovery dispute is **DENIED**. I share the Special Master's concern that this discovery has dragged on too long. Since the parties

briefed and argued the issue to the Court, placing a hold on the issue, without either a disposition or agreed upon resolution, invites further delay. It also risks the Court having to revisit the issue. This would not be judicially efficient.

To the extent there are new issues relating to the burden (or lack thereof) of conducting the discovery, or issues relating to spoliation, these issues should be presented in the first instance to the Special Master, consistent with the Order of Reference.

DynCorp's objections to Discovery Matter No. 9 will be resolved by a separate order.

The Special Master is hereby directed to hold a scheduling conference at his earliest convenience and to propose a pretrial and trial schedule for the rescission and reformation actions.

IT IS SO ORDERED.

Very truly yours,

/s/Jan R. Jurden

Jan R. Jurden
Judge

JRJ:mls

cc: Prothonotary
SDM Neal C. Belgam, Esq.

³ See Trans. ID 53062806 and Trans. ID 53260388.