

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
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September 6, 2012

(VIA E-FILED)

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

**Upon Plaintiffs' Motion to Strike the Expert Report and Deposition
Testimony of Gregory V. Serio and to Preclude from Testifying - *GRANTED.***

**Upon Plaintiffs' other Motions to Strike and/or Preclude Testimony -
*DENIED.***

Upon Defendants' Motions *in Limine* to Preclude Testimony - *DENIED.*

Dear Counsel:

This addresses both sides' motions to limit or exclude opposing experts: Gregory V. Serio, Douglas Talley, F. Ford Loker, John Santapaola, Edward Gabrielson, Roger A. Quigley, James L. Britt, George L. Priest, Dennis Connolly, and Bernd G. Heinze. As explained in the Kensicki order, the trial will resolve all

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potential factual disputes.¹ Accordingly, the court will not now decide whether the policies are unambiguous, and the trial will proceed on the presumption that the policies must be construed with the jury's help. The trial will also proceed under the presumption that the underlying policies have not been exhausted.

As to both side's experts, regardless of whether their expertise is academic or practical, each is generally qualified to assist the jury. If, while testifying, an expert opines on an ultimate fact, so be it. Opposition to an expert's competence and testimony is better left to cross-examination.

Additionally, several "experts" purportedly will testify against Chancellor Strine's previous holdings, the law of the case. No "expert" will confuse or mislead the jury by testifying contrary to the law of the case established by Chancellor Strine's rulings. To the limited extent that the jury must be instructed on the law, given the trial's preoccupation with the facts, the Court will charge.

As to Gregory V. Serio, Chancellor Strine held that "an all sums approach is the one embraced by the Houdaille policies."² Serio cannot question that. Otherwise, Defendants offer him for his "regulator's perspective about how multi-tiered insurance programs operate," and to educate the jury on the insurance markets' financial health and integrity. This proffer is vague and fails to satisfy the court about its relevance to the narrow, factual issues that will be put before the jury. Additionally, Defendants fail to show how Serio's testimony will be a productive use of our limited time. For these reasons, Plaintiffs' Motion to Strike and Preclude Serio's testimony is **GRANTED**.

In closing, it remains to be seen whether every listed expert will need to testify. In most instances, each side touts an expert to rebut another. For example, Excess Insurers state, "[I]f Mr. Connolly may testify, then so may Mr. Heinze."

¹ See Transaction ID 46065519.

² *Viking Pump, Inc. v. Century Indem. Co.*, 2 A.3d 76, 119 (Del. Ch. 2009).

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Additionally, Plaintiffs argue: “Travelers in particular has proffered James Robertson as an expert to testify with regard to the meaning of the very same Aetna policies as Mr. Britt”; “Defendants [moved] to exclude Mr. Loker, . . . yet Plaintiffs have not moved to disqualify Mr. Hugo, Defendants’ own expert on the same topic”; and “Mr. Talley’s . . . testimony was offered to rebut Mr. Heinze.” After Plaintiffs’ experts’ direct and cross-examination, there may be nothing for Defendants’ experts to add, but that is not for the court to say here. Each party will decide how to use its allotted time.

For the foregoing reasons, Plaintiffs’ motions to strike as to: Bernd G. Heinze, George L. Priest, Roger A. Quigley, and John Santapaola are **DENIED**. Plaintiffs’ Motion to Strike and Preclude Gregory V. Serio is **GRANTED**. Defendants’ motions *in limine* as to: James L. Britt, Dennis Connolly, Edward Gabrielson, F. Ford Loker, and Douglas Talley are **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)