STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
MECKLENBURG COUNTY	Case. No. 13 CVS 2271
RADIATOR SPECIALTY COMPANY, Plaintiff, v. FIREMAN'S FUND INSURANCE COMPANY, *et al.*, Defendants.	**ORDER REGARDING ALLOCATION**

Upon consideration of the Motion for Partial Summary Judgment Regarding Allocation of Defendant Sirius America Insurance Company, as successor-in-interest to Imperial Casualty and Indemnity Company ("Sirius America"), in which Defendants Fireman's Fund Insurance Company, Landmark American Insurance Company, United National Insurance Company, and Zurich American Insurance Company of Illinois join, Defendant National Union Fire Insurance Co. of Pittsburgh, Pa.'s ("National Union") Motion for Partial Summary Judgment, Defendant United National Insurance Company's ("United National") Motion for Summary Judgment Regarding Allocation, and Plaintiff Radiator Specialty Company's ("RSC") Cross Motion for Partial Summary Judgment Regarding Allocation, the oppositions and replies thereto, and the record herein, it is:

ORDERED that Sirius' Motion for Partial Summary Judgment Regarding Allocation and National Union's Motion for Partial Summary Judgment (as it relates to allocation) are **GRANTED**;

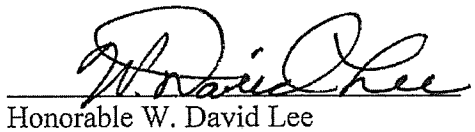
FURTHER ORDERED that United National's Motion for Summary Judgment Regarding Allocation is **GRANTED IN PART** as it relates to pro rata allocation AND **DENIED**

IN PART as it relates to United National's argument that RSC has no possible future claim against United National; and

FURTHER ORDERED that RSC's Cross Motion for Partial Summary Judgment Regarding Allocation is **DENIED**; and

FURTHER ORDERED that pro rata allocation applies to both defense and indemnity payments based on each insurer's "time on the risk" over the RSC coverage block. Implicit in this determination is that RSC is responsible for its pro rata share of defense and indemnity costs where there has been settled, insolvent or lost policies, as well as periods where RSC was uninsured, underinsured or self-insured. The pro rata allocation most reasonably interprets the policy language in the subject policies, requiring that sums paid by an insurer apply to those injuries occurring during that insurer's policy period. This allocation appropriately and judiciously addresses the factors that are generally encountered where there are multiple coverages addressing progressive disease claims. I have further concluded that it would be an anomaly in this State's jurisprudence to construe contractual language in such manner as to countenance either the broad discretion afforded the insured to manipulate the source of its recovery (and thereby often avoid insurers' bargained for deductions, retentions, etc.) or the further procedures inherent in the all sums approach.

SO ORDERED, this 28th day of January, 2016



Honorable W. David Lee
Superior Court Judge Presiding

Copies to: All counsel of record

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	Case No.: 13 CVS 2271
RADIATOR SPECIALTY COMPANY, Plaintiff, v. ARROWOOD INDEMNITY COMPANY, *ET AL.*, Defendants.	**ORDER ON TRIGGER OF COVERAGE**

This matter is before the Court on the Motions for Partial Summary Judgment of Plaintiff Radiator Specialty Company ("RSC") and Defendants Fireman's Fund Insurance Company ("FFIC"), Landmark American Insurance Company ("Landmark"), National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), Zurich American Insurance Company of Illinois ("Zurich"), and Sirius America Insurance Company as successor-in-interest to Imperial Casualty and Indemnity Company ("Sirius America"), the supporting and reply briefs, and the opposition briefs, affidavits, exhibits, and other appropriate matters of record, and having considered the matter at oral argument, this Court FINDS and CONCLUDES as follows:

Based upon an interpretation of the language in the various policies and, once again, recognizing the unique circumstances presented by progressive disease claims, the Court concludes that the exposure trigger is appropriate in the context of long tail bodily injury claims like the underlying asbestos and benzene claims. The Court makes this determination distinguishing *Gaston County Dyeing Mach. Co. v. Northfield, Ins.*, 351 N.C. 293, 524 S.E.2d 563 (2000), wherein the date of injury-in-fact could be ascertained with certainty in the property damage context. Further, the Court does not believe that this approach is inconsistent with Dr.

Gore's opinions (expressed in both his affidavit and deposition testimony) with respect to both the etiology and sequelae of benzene injuries.

The beginning of the triggered policy period is the date on which the claimant was first exposed to benzene or asbestos from any RSC product. The end of the triggered policy period is the date on which the claimant was last exposed to benzene or asbestos from any RSC product.

SO ORDERED, this the 28th day of January, 2016.

Honorable W. David Lee
Superior Court Judge Presiding

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	Case No.: 13 CVS 227
RADIATOR SPECIALTY COMPANY, Plaintiff, v. FIREMAN'S FUND INSURANCE COMPANY, et al. Defendants.	**ORDER**

THIS MATTER COMING ON TO BE HEARD before the Honorable W. David Lee upon Defendant Fireman's Fund Insurance Company's Motion for Partial Summary Judgment Regarding Defense Costs, and after having reviewed the materials submitted in support of and in opposition to the motion, having heard the arguments of counsel for Plaintiff Radiator Specialty Company and Defendant Fireman's Fund Insurance Company on January 21, 2016, and having considered the motion, pleadings, affidavits and exhibits filed in this matter, and other appropriate matters of record, the Court has determined that there are no genuine issues of material fact, and accordingly Defendant Fireman's Fund Insurance Company is entitled to judgment in its favor on Plaintiff's claims concerning the duty to defend and to pay or reimburse defense costs against Defendant Fireman's Fund Insurance Company as a matter of law;

The Court FINDS and CONCLUDES as follows:

1. Defendant Fireman's Fund Insurance Company issued three excess liability insurance policies to Plaintiff Radiator Specialty Company. These policies contain express language disavowing a duty to defend the insured. Plaintiff concedes that Fireman's Fund Insurance Company has no duty to defend it under these excess policies.

2. Each of these excess policies contains a condition that provides in relevant part:

"Loss expenses and legal expenses, including court costs and interest, if any, which may be incurred by the Insured with the consent of the Company in the adjustment or defense of claims, suits or proceedings shall be borne by the Company and the Insured in the proportion that each party's share of loss bears to the total amount of said loss."

3. Pursuant to the foregoing policy language, the Court concludes that Fireman's Fund Insurance Company is entitled to a declaration that it has no past, present or future obligation to pay or reimburse defense costs under its excess policies without its consent.

4. There is no genuine issue of material fact that Fireman's Fund Insurance Company has not consented to Plaintiff incurring defense costs with respect to the underlying benzene and asbestos claims at issue here, and that it has not consented to be obligated to pay defense costs therefor. Nothing in this Order shall prohibit Fireman's Fund Insurance Company from exercising its unconditional right to consent to pay or reimburse defense costs in the future.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Fireman's Fund Insurance Company's Motion for Partial Summary Judgment Regarding Defense Costs shall be, and hereby is, GRANTED; and that Plaintiff's claims against Defendant Fireman's Fund Insurance Company for defense or payment or reimbursement of defense costs are DISMISSED WITH PREJUDICE.

SO ORDERED, this 28th day of January, 2016.

Honorable W. David Lee
Superior Court Judge Presiding

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF MECKLENBURG	Case No.: 13 CVS 2271
RADIATOR SPECIALTY COMPANY, Plaintiff, v. ARROWOOD INDEMNITY COMPANY, *ET AL.*, Defendants.	**ORDER ON STATUTE OF LIMITATIONS**

This matter is before the Court on the Motions for Partial Summary Judgment of Defendants Landmark American Insurance Company ("Landmark"), National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), Zurich American Insurance Company of Illinois ("Zurich") and the joinder of Sirius America Insurance Company as successor-in-interest to Imperial Casualty and Indemnity Company ("Sirius America"), the supporting and reply briefs, and the opposition brief from Radiator Specialty Company ("RSC"), and having considered the matter at oral argument, this Court FINDS and CONCLUDES as follows:

The Court concludes that North Carolina General Statutes § 1-52(1) provides a three-year statute of limitations that applies to RSC's First through Fourth Causes of Action in its First Amended Complaint.

RSC's liability had been determined by the completed settlement or other resolution of all asbestos and benzene claims prior to February 6, 2010, and the Court concludes believe that as a matter of law this is the latest three-year statute of limitations accrual date. RSC clearly then had the right to institute and maintain a suit upon these completed settlements. An insurer's notice that it is reserving its rights does not diminish that right. North Carolina law does not

require the insurer to deny coverage at some point after settlement or other resolution by the insured (or judgment, for that matter) before the insured is at liberty to pursue its claims. Thus, recovery of costs with respect to all asbestos and benzene claims closed prior to February 6, 2010 is barred as to the remaining insurer-defendants.

SO ORDERED, this the 28th day of January, 2016.

Honorable W. David Lee
Superior Court Judge Presiding