SIMPSON THACHER

INSURANCE LAW ALERT

MARCH 2013

This Alert reports on recent decisions relating to the number of occurrences that arise from multiple claims of bodily injury or property damage. We also report on rulings that address an insurer's duty to defend, the consequences of a breach of that duty and an insurer's right to recoup defense costs following a determination of no coverage. Finally, we discuss decisions relating to additional insured coverage, enforcement of a cooperation clause and trigger and allocation rulings in the context of asbestos litigation, among others. Please "click through" to view articles of interest.

- ***Insurer's Reliance on Declaratory Judgment in Withdrawing Defense Precludes Breach of Contract Claim Against Insurer***

  A California federal court held that an insurer did not breach its duty to defend when it withdrew a defense in reliance on a declaratory judgment which was subsequently reversed on appeal. *National Union Fire Ins. Co. v. Seagate Tech., Inc.*, 2013 WL 308875 (N.D. Cal. Jan. 25, 2013). *Click here for full article*

- ***Washington Supreme Court Rules That Insurers May Not Recoup Defense Costs Incurred Under a Reservation of Rights Defense***

  The Washington Supreme Court held that an insurer may not, through a reservation of rights letter, unilaterally require the policyholder to reimburse defense costs in the event that a court ultimately determines that there is no coverage. *National Surety Corp. v. Immunex Corp.*, 2013 WL 865459 (Wash. Mar. 7, 2013). *Click here for full article*

- ***Michigan Court Addresses Scope of Damages Awardable for Insurer's Breach of Duty to Defend***

  A Michigan district court ruled that an insurer's breach of the duty to defend does not automatically vitiate an insurer's entitlement to the benefit of a self-insured retention. *Stryker Corp. v. XL Ins. America, Inc.*, 2013 WL 504646 (W.D. Mich. Feb. 8, 2013). *Click here for full article*

- ***Pennsylvania Court Rules That Drywall Claims Arose From a Single Occurrence***

  A Pennsylvania district court ruled that numerous drywall-related claims constituted a single occurrence for insurance coverage purposes. *Cincinnati Ins. Co. v. Devon Int'l, Inc.*, 2013 WL 592302 (E.D. Pa. Feb. 15, 2013). *Click here for full article*

- ***Employing Cause-Oriented Standard, Fourth Circuit Rules That Multiple Surgical Injuries Arose From a Single Occurrence***

  Applying North Carolina law, the Fourth Circuit ruled that numerous personal injury claims against an elevator repair company constituted a single occurrence, thus warranting only one per occurrence payment under the policy. *Mitsui Sumitomo Ins. Co. of Am. v. Duke Univ. Health Sys., Inc.*, 2013 WL 491942 (4th Cir. Feb. 11, 2013) (unpublished opinion). *Click here for full article*

- ***New York Appellate Court Rules That Insurer Owes Only One "Per Occurrence" Policy Limit for Lead Exposure During Two Policy Periods***

  A New York appellate court ruled that an insurer was responsible for only one policy limit in connection with lead exposure claims asserted by two tenants who leased the subject apartment during different policy periods. *Nesmith v. Allstate Ins. Co.*, 958 N.Y.S.2d 817 (N.Y. App. Div. 4th Dep't 2013). *Click here for full article*

- ***New York Court Rules That Service of Suit Clause Operates as Waiver of Right to Removal***

  A New York federal district court rejected a reinsurer's attempt to remove a reinsurance dispute to federal court, holding that a service of suit clause in some, but not all, of the parties' reinsurance contracts operated as a waiver of the right to removal. *Insurance Co. of the State of Pa. v. TIG Ins. Co.*, 2013 WL 950819 (S.D.N.Y. Mar. 11, 2013).
  Click here for full article

- ***Eighth Circuit Rules That Policyholder's Cooperation Clause Violation Negates Coverage***

  The Eighth Circuit held that a policyholder forfeited general liability coverage by breaching the policy's cooperation clause. *Heubel Materials Handling Co. v. Universal Underwriters Ins. Co.*, 704 F.3d 558 (8th Cir. 2013). *Click here for full article*

- ***Minnesota Supreme Court Limits Additional Insured Coverage to Vicarious Liability Claims***

  The Minnesota Supreme Court ruled that an insurer was not required to provide additional insured coverage to a contractor where the named insured sub-contractor had not committed negligence. *Engineering & Construction Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695 (Minn. 2013). *Click here for full article*

- ***In Excess Coverage Dispute, Illinois Appellate Court Applies "All Sums" Allocation, Horizontal Exhaustion, and "Triple Trigger" Doctrine***

  In a decision relating to the availability of excess coverage for long-term asbestos claims, an Illinois appellate court issued rulings on allocation, exhaustion, and trigger. *John Crane, Inc. v. Admiral Ins. Co.*, 2013 WL 865841 (Ill. App. Ct. Mar. 5, 2013). *Click here for full article*

Duty to Defend Alerts:

Insurer's Reliance on Declaratory Judgment in Withdrawing Defense Precludes Breach of Contract Claim Against Insurer

Ruling on a matter of first impression, a California federal court held that an insurer did not breach its duty to defend when it withdrew a defense in reliance on a declaratory judgment which was subsequently reversed on appeal. *National Union Fire Ins. Co. v. Seagate Tech., Inc.*, 2013 WL 308875 (N.D. Cal. Jan. 25, 2013).

In 2004, National Union and other insurers brought a declaratory judgment action seeking a ruling that they had no duty to defend an underlying action brought against policyholder Seagate. During the litigation that followed, National Union contributed to Seagate's defense. In 2010, a California district court ruled that the insurers' duty to defend terminated in 2007. In light of this ruling, National Union ceased funding Seagate's defense. In 2012, an appellate court reversed the district court decision. Seagate then sought reimbursement from National Union of legal costs incurred in connection with the underlying claims between 2007 and 2012. Seagate argued that National Union's 2010 withdrawal of a defense breached the insurance contract. The court held that there was no breach. The court reasoned that National Union did not act wrongfully in withdrawing a defense and "was entitled to the benefit of the (erroneous) ruling that there was no longer a duty to defend." Thus, the court concluded, the initial decision in National Union's favor "*does* provide insulation against a further claim of breach of contract."

Although the ruling did not eliminate National Union's obligation to reimburse the defense costs deemed retroactively due by the appellate court, the dismissal of the breach of contract claim has potentially significant financial implications under California

law. Under California law, an insurer that wrongfully denies a defense may be liable for defense costs incurred by the policyholder. However, Civil Code Section 2860 allows an insurer to reduce its payment of fees and prejudgment interest to "the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of similar actions in the community." The court held that because National Union's defense denial was not wrongful, it was entitled to the benefit of Section 2860. Significantly, Section 2860 not only permits appropriate fee reductions, but also requires fee disputes (here, a $20 million discrepancy between fees demanded and amounts paid by National Union) to be resolved by arbitration.

Seagate represents a victory to insurers, but its precedential reach may be limited. First, the court contrasted an insurer's fair reliance on a court ruling (as was the case here) with an insurer's unilateral decision to stop defending in the absence of a court judgment. Second, the court distinguished cases in which an

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insurer attempts to "advance a subsequent declaratory judgment backwards in time to its decision to stop defending." Finally, the court deemed it significant that Seagate had not sought a stay pending its appeal of the lower court duty-to-defend decision, indicating that had a stay been imposed, National Union's withdrawal might have given rise to a breach of contract claim.

Washington Supreme Court Rules That Insurers May Not Recoup Defense Costs Incurred Under a Reservation of Rights Defense

The Washington Supreme Court held that an insurer may not unilaterally condition its defense of a policyholder on the reimbursement of defense costs in the event that a court ultimately determines that there is no coverage. *National Surety Corp. v. Immunex Corp.*, 2013 WL 865459 (Wash. Mar. 7, 2013). In so ruling, the court relied on the broad scope of an insurer's defense obligation, stating that "allowing recoupment to be claimed in a reservation of rights letter would allow the insurer to impose a condition on its defense that was not bargained for." As discussed in our January 2011 and September 2010 Alerts, courts nationwide are split as to whether an insurer is entitled to reimbursement of defense costs following a judicial determination that the insurer has no obligation to defend and/or indemnify. Courts that have allowed reimbursement have relied on unjust enrichment and implied contract theories.

The *National Surety* court also ruled in favor of the policyholder on the issue of when an insurer's duty to defend arises. The court held that defense obligations arise "not at the moment of tender, but upon the filing of a complaint alleging facts that could potentially require coverage." As such, the court concluded that once tender is made, a policyholder may be entitled to recover pretender defense costs. However, defense costs are not recoverable where notice was provided in an untimely fashion, resulting in "actual and substantial" prejudice to the insurer.

Michigan Court Addresses Scope of Damages Awardable for Insurer's Breach of Duty to Defend

Our July/August 2012 Alert reported on a Sixth Circuit decision holding that when an insurer breaches its duty to defend, it is not automatically subject to damages in excess of policy limits. *Stryker Corp. v. XL Ins. America*, 681 F.3d 806 (6th Cir. 2012). The ruling, which abrogated prior Sixth Circuit precedent, held that damages exceeding policy limits are appropriate only if they arise naturally from the breach or were

contemplated by the parties at the time of contracting. The Sixth Circuit remanded the consequential damages issue to a Michigan district court to consider what portion, if any, of judgments beyond policy limits constituted consequential damages under Michigan law.

Last month, the Michigan district court issued two noteworthy rulings on remand. *Stryker Corp. v. XL Ins. America, Inc.*, 2013 WL 504646 (W.D. Mich. Feb. 8, 2013). First, the court interpreted the Sixth Circuit's decision to imply that a breach of the duty to defend does not vitiate an insurer's entitlement to the benefit of a self-insured retention. Although the Sixth Circuit did not address this issue, the Michigan district court concluded that the "letter and spirit" of its mandate was that an insurer does not automatically forfeit the benefit of an SIR if it breaches a duty to defend. Rather, an insurer would be responsible for an SIR only if such relief constitutes a consequential damage of the insurer's breach. Second, the court ruled that XL Insurance was not entitled to a credit for the amount it paid above its policy limits. The court reasoned that XL Insurance's payment was based on a tactical decision, not a mistake of fact. The court stated, "XL relied on a Court ruling on policy limits that it believed to be erroneous, and that it was ultimately able to get reversed. Until that policy limits ruling was reversed, XL was incurring steep interest penalties. XL made a strategic decision to settle . . . ."

Number of Occurrences Alerts:

Litigation over the "number of occurrences" that arise from bodily injury or property damage claims is not uncommon. Number of occurrences determinations can have significant financial implications because the number of occurrences often affects the number of per occurrence limits available and the number of deductibles due under a policy. Three recent decisions have considered this issue in different contexts.

Pennsylvania Court Rules That Drywall Claims Arose From a Single Occurrence

A Pennsylvania district court ruled that numerous drywall-related claims constituted a single occurrence for insurance coverage purposes. *Cincinnati Ins. Co. v. Devon Int'l, Inc.*, 2013 WL 592302 (E.D. Pa. Feb. 15, 2013).

Devon International, a sourcing agent for Chinese products, received a customer order for drywall. Devon filled the order by purchasing drywall from Shandong, a Chinese drywall manufacturer. All of the ordered drywall was sent in a single shipment to a Florida customer. The customer accepted some, but not all of the drywall, and the remaining drywall was sold to other entities. When problems with the drywall became apparent, Devon was sued in several jurisdictions. Devon turned to Cincinnati Insurance, its general liability and umbrella insurer, for coverage. In the ensuing coverage litigation, the central issue was whether the claims constituted a single occurrence or multiple occurrences under the policies, which defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

Applying Pennsylvania law, the court held that the number of occurrences must be determined by a cause-oriented approach. More specifically, the court ruled that "if all the injuries suffered by the underlying

plaintiffs in this case stem from a single cause over which Devon had some control, then there would be a single occurrence under the parties' insurance policy." Applying this standard, the court concluded that all of the claims against Devon originated from a common source – the single purchase and shipment of drywall from Shandong. In addition, the court found that Devon had "some control" over the cause of the injuries because it chose to purchase and distribute the Shandong drywall. Therefore, the court found that there was only one occurrence for insurance coverage purposes.

Few courts have considered the number of occurrences issue in the defective drywall context. A Virginia court, also employing a cause-based test, reached a different conclusion in *Dragas Mgmt. Corp. v. Hanover Ins. Co.*, 798 F. Supp. 2d 758 (E.D. Va. 2011). There, the court held that each installation of drywall in a home constituted a separate occurrence. The different outcomes in *Cincinnati Insurance* and *Dragas* may be partly attributable to the policyholder's role in connection with the drywall: in *Cincinnati Insurance*, the policyholder distributed the defective drywall whereas in *Dragas*, the policyholder installed it.

Employing Cause-Oriented Standard, Fourth Circuit Rules That Multiple Surgical Injuries Arose From a Single Occurrence

Applying North Carolina law, the Fourth Circuit ruled that numerous personal injury claims against an elevator repair company constituted a single occurrence, thus warranting only one per occurrence payment under the policy. *Mitsui Sumitomo Ins. Co. of Am. v. Duke Univ. Health Sys., Inc.*, 2013 WL 491942 (4th Cir. Feb. 11, 2013) (unpublished opinion).

The coverage dispute arose out of an incident in which hospital employees mistakenly believed that barrels containing hydraulic fluid used in connection

with elevator repair were surgical detergent. Duke Hospital had provided empty barrels, still labeled as containing surgical detergent, to the elevator repair company for disposal of hydraulic fluid. The elevator repair company filled the barrels with hydraulic fluid and left them at the hospital following repair work. The mislabeled barrels were subsequently returned to the surgical detergent supplier's warehouse and re-sold to several other hospitals. Before the error was realized, more than three thousand patients had potentially been affected by tainted surgical instruments. Approximately 150 patients sued Duke, the repair company, and the detergent company. The repair company ultimately settled all claims. Its insurer, Mitsui Sumitomo, contributed $1 million, the per occurrence limit under the policy. When the repair company was sued in a separate action by Duke, Mitsui Sumitomo filed a declaratory judgment action seeking a ruling that it had no further obligations because it had already paid the $1 million per occurrence limit. The district court granted the insurer's summary judgment motion, finding that the elevator repair company's negligence constituted one occurrence.

On appeal, Duke argued that the number of occurrences should be determined by the number of tainted surgeries or each use of hydraulic fluid to wash the instruments. The Fourth Circuit disagreed, finding that under North Carolina law, the court must look to

the negligent act or continuum of acts that gave rise to the insured's liability. Under this standard, the court concluded that the relevant negligent act was the use of the barrels at the hospital – a single occurrence. A majority of jurisdictions have endorsed a cause-based test in determining the number of occurrences.

New York Appellate Court Rules That Insurer Owes Only One "Per Occurrence" Policy Limit for Lead Exposure During Two Policy Periods

Reversing a trial court decision, a New York appellate court ruled that Allstate Insurance Company was responsible for only one policy limit in connection with lead exposure claims asserted by two tenants who leased the subject apartment during different policy periods. *Nesmith v. Allstate Ins. Co.*, 958 N.Y.S.2d 817 (N.Y. App. Div. 4th Dep't 2013).

Allstate insured the property owner under three consecutive one-year policies, each of which had a $500,000 per occurrence limit. During the second policy period, two children were exposed to lead paint in the owner's apartment. The family moved out and brought suit against the owner. During the third policy period, two children of a different tenant were exposed to lead in the same apartment. They too filed suit. The first action settled for $350,000, which Allstate paid under the policy. In the second action, Allstate offered $150,000 toward a settlement, arguing that its liability for all lead exposures in the apartment was limited to a single policy limit of $500,000. The plaintiffs in the second action, subrogated to the rights of the property owner via settlement, filed a declaratory judgment action against Allstate seeking to recover a separate $500,000 policy limit for their injuries. The trial court awarded summary judgment to the plaintiffs, finding that they were entitled to a full second policy limit. The appellate court reversed.

The appellate court based its decision on applicable policy language and New York precedent. Allstate's policy stated that "[a]ll bodily injury and property damage resulting from one accidental loss or from continuous or repeated exposure to the same general conditions is considered the result of one accidental loss." A non-cumulation clause further provided that regardless of the number of "injured persons, claims, claimants or policies involved, our total liability … for damages resulting from one accidental loss will not exceed the limit shown on the declarations page." The

appellate court ruled that this language unambiguously operated to limit Allstate's liability for both actions to one policy limit. The court noted that although two sets of children were exposed to lead during different policy periods, the lead paint that injured the second set of children was the same lead paint that was present in the apartment during the first tenants' residence. Therefore, the court reasoned, "the claims arise from exposure to the same condition" and are "spatially identical and temporally close enough" that they "must be viewed as a single occurrence within the meaning of the policy." In addition, the court relied on New York case law in the asbestos context, finding that the grouping of asbestos claims at common locations and times to constitute a single occurrence was applicable to lead exposure claims as well.

Reinsurance Alert:

New York Court Rules That Service of Suit Clause Operates as Waiver of Right to Removal

A New York federal district court rejected a reinsurer's attempt to remove a reinsurance dispute to federal court, holding that a service of suit clause in some, but not all, of the parties' reinsurance contracts operated as a waiver of the right to removal. *Insurance Co. of the State of Pa. v. TIG Ins. Co.*, 2013 WL 950819 (S.D.N.Y. Mar. 11, 2013).

Insurance Company of the State of Pennsylvania ("ICSOP") brought suit against TIG Insurance in New York State Supreme Court, seeking payment and other relief pursuant to six reinsurance contracts issued by TIG. TIG removed the action to New York federal court on the basis of diversity jurisdiction. In response, ICSOP filed a motion to remand the case back to state court. The federal court granted ICSOP's motion.

The court ruled that "a valid service of suit clause operates as a waiver of the defendant's right to remove a state court action to federal court." The court further held that the right to removal was waived as to disputes under all certificates despite the absence of a service of suit clause in three of the certificates. In so ruling, the court relied on *Russell Corp. v. American Home Assurance Co.*, 264 F.3d 1040 (11th Cir. 2001), in which the Eleventh Circuit ruled that a service of suit clause in one policy precluded removal of a lawsuit involving 23 insurers and 79 policies.

ICSOP is represented by Simpson Thacher partner Andrew Amer.

Cooperation Clause Alert:

Eighth Circuit Rules That Policyholder's Cooperation Clause Violation Negates Coverage

Affirming a Missouri district court decision, the Eighth Circuit held that a policyholder forfeited general liability coverage by breaching the policy's cooperation clause. *Heubel Materials Handling Co. v. Universal Underwriters Ins. Co.*, 704 F.3d 558 (8th Cir. 2013).

Heubel Materials Handling Company was named as a defendant in a personal injury suit involving a forklift accident. Heubel did not immediately notify Universal, its general liability insurer, of the suit and instead sought and obtained a defense from Raymond Corporation, the forklift manufacturer, pursuant to an indemnity contract. After a six-month delay, Heubel provided notice to Universal. Universal initially agreed to provide a defense under a reservation of rights. In response, Heubel filed a declaratory judgment action arguing that Universal's reservation of rights entitled Heubel to control its own defense. Universal then withdrew its reservation and offered to defend Huebel and reimburse prior defense costs, with the requirement that Heubel cooperate in pursuing indemnification against Raymond. Heubel rejected Universal's offer, arguing that Universal's requirement that Heubel cooperate in pursuing indemnification against Raymond created a conflict of interest which entitled Heubel to control its own defense. Universal counter-claimed that Heubel's refusal to cooperate negated coverage under the policy. The district court granted summary judgment in favor of Universal, finding that Heubel breached the policy's cooperation clause, resulting in substantial prejudice to Universal. The Eighth Circuit affirmed.

Under Missouri law, a policyholder may reject an insurer's offer to defend under a reservation of rights without running afoul of a cooperation clause. Here, however, Heubel refused Universal's defense even after Universal withdrew its reservation. The Eighth Circuit

held that this constituted a violation of the policy's cooperation clause. In so ruling, the court rejected Heubel's argument that its duty to cooperate with Raymond created a conflict of interest with Universal. The court also concluded that Universal suffered prejudice as a result of the breach. In this context, the court predicted that the Missouri Supreme Court would not require a showing of "actual prejudice" in order to deny coverage on the basis of a cooperation clause violation, citing to a Missouri appellate decision which held that "prejudice automatically follows from the denial to the insurer of any opportunity to defend against the claim."

Additional Insured Alert:

Minnesota Supreme Court Limits Additional Insured Coverage to Vicarious Liability Claims

A split in authority exists as to whether additional insured coverage is limited to circumstances in which the additional insured is held vicariously liable for the named insured's negligence, or whether it extends to acts of the additional insured's own negligence, so long as the injury has some connection to the operations of

the named insured. Decisions in this context are driven largely by applicable policy language.

In a recent decision, the Minnesota Supreme Court limited additional insured coverage to instances of vicarious liability and ruled that an insurer was not required to provide additional insured coverage to a contractor where the named insured sub-contractor had not committed negligence. *Engineering & Construction Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695 (Minn. 2013).

Engineering and Construction Innovations, Inc. ("ECI") entered into a sub-contract with L.H. Bolduc Company for excavation and shoring services in connection with a pipeline project. During the project, Bolduc's operations caused damage to the pipeline. However, a jury determined that Bolduc was not negligent. ECI repaired the damage and sought additional insured coverage from Travelers under a policy issued to Bolduc. The additional insured endorsement in the Travelers policy provided coverage to ECI for liability "caused by the acts or omissions" of Bolduc. Travelers denied coverage, arguing that without negligence on Bolduc's part, there was no coverage under the endorsement. A Minnesota trial court agreed with Travelers, finding that the absence of negligence by Bolduc was fatal to ECI's additional insured coverage claim. An appellate court reversed. The appellate court reasoned that the policy provided coverage to ECI for any "acts and omissions" of Bolduc, and was not limited to negligent acts.

The Minnesota Supreme Court reversed the appellate ruling. It ruled that the phrase "caused by the acts or omissions [of Bolduc]" in the additional insured endorsement was unambiguous and provided coverage to ECI "only in instances of ECI's vicarious liability for Bolduc's negligent acts or omissions." The court reasoned that coverage under the additional insured provision "cannot be divorced from the concept of fault" and that without a finding of negligence on the part of Bolduc, there was no additional insured coverage. Interpreting similar policy language, other courts have likewise limited additional insured coverage to acts of vicarious liability. *See Garcia v. Federal Ins. Co.*, 969 So. 2d 288 (Fla. 2007). Construing different additional insured provisions, some courts have deemed them ambiguous and ruled that coverage is not dependent upon the named insured's negligence. *See Evanston Ins. Co. v. Atofina Petrochemicals, Inc.*, 256 S.W.3d 660 (Tex. 2008); *Mikula v. Miller Brewing Co.*, 281 Wis. 2d 712 (Wis. Ct. App. 2005).

Asbestos Coverage Alert:

In Excess Coverage Dispute, Illinois Appellate Court Applies "All Sums" Allocation, Horizontal Exhaustion, and "Triple Trigger" Doctrine

Coverage litigation between Crane, a manufacturer of asbestos-containing projects, and its primary and excess carriers has given rise to disputes relating to allocation, exhaustion, and trigger. In a recent decision, an appellate court issued several rulings relating to the

availability of excess coverage for long-term asbestos claims. *John Crane, Inc. v. Admiral Ins. Co.*, 2013 WL 865841 (Ill. App. Ct. Mar. 5, 2013).

Allocation: The court held that excess insurers' indemnity obligations should be based on an "all sums" allocation. Under this approach, each insurer on the risk may be held "jointly and severally liable" for claims up to its policy limits. Illinois has previously endorsed "all sums" in the primary insurer context, *see Zurich Ins. Co. v. Raymark Indus., Inc.*, 118 Ill. 2d 23 (1987), but the trial court here had applied a pro rata method, reasoning that the excess policies covered injury "during the policy period" and did not contain "all sums" language. In reversing the trial court decision, the appellate court reasoned that even if some of the excess policies lacked "all sums" language, they provided for payment "in excess of the loss payable by the underlying policies based on the language in the underlying primary policies which do contain the 'all sums' language."

Exhaustion: The court ruled that a horizontal exhaustion method should be utilized to determine whether excess coverage is implicated. Under horizontal exhaustion, excess coverage is not accessible until the limits of all applicable primary policies have been paid. In this context, the court held that an agreement between Crane and one of its primary insurers (which allowed both indemnity and defense payments to count toward certain primary policy limits) could not be used to determine that primary policies had been exhausted. Rather, the court held, the original primary policy limits (which were based solely on indemnity payments) must govern the exhaustion inquiry.

Trigger: The court ruled that Illinois's "triple trigger" doctrine (under which policies are triggered by asbestos exposure, sickness and disease) does not require a policyholder to prove all three triggers in order to determine the exhaustion of policy limits. The court held that each term is a "separate and distinct trigger of coverage" and thus that any one of these events was sufficient. In addition, the court rejected application of an "equitable continuous trigger over all dates between exposure and diagnosis or death," reasoning that medical evidence did not support the notion that a claimant suffers continuous injury from initial asbestos exposure to sickness or disease.

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