IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CONTINENTAL CASUALTY COMPANY, *et al.*,	)	
	)	
Plaintiffs,	)	
v.	)	04 CH 01708
	)	
BORGWARNER INC., *et al.*,	)	
	)	
Defendants.	)	

ORDER

This matter comes before the Court on the issue of whether the four umbrella policies that CNA issued to Borg-Warner Corporation ("BWC") are exhausted. CNA filed its Motion for Summary Determination that the Limits for Asbestos Claims in Its Umbrella Policies Issued to BorgWarner Corporation Are Exhausted ("Umbrella Exhaustion Motion"). Flowserve Corporation ("Flowserve"); Certain Excess Insurers ("CEI"); Munich Reinsurance America, Inc. ("Munich"); Transportation Insurance Company ("TIG"); and York International ("York") filed responses in opposition. York also filed a Cross-Motion for Summary Determination on the Limit of Certain Multi-Year CNA Policies, to which TIG filed a Response. Following a hearing on the Umbrella Exhaustion Motions on April 9, 2015, TIG filed its Supplemental Brief in Response to CNA's Umbrella Exhaustion Motion, to which CNA filed a Supplemental Reply.

Additionally before the Court are CEI's Motion to Strike the Affidavit of James A. Markos Submitted in Support of CNA's Motion for Summary Determination and TIG's Motion to Strike the Affidavit of Michael McNeela Submitted in Support of CNA's Supplemental Reply.

Background

This Court previously held that CNA exhausted the single-occurrence limits of its two primary policies issued to BWC.[1] The Court based its ruling on documentation showing that CNA paid $12.8M in indemnity for asbestos bodily injury claims, the last of those payments occurring on April 2, 2003. (*See* 11/7/13 Order.) After CNA exhausted its primary policies, it made defense and indemnity payments under its umbrella policies for claims by BWC's successors, BorgWarner/Morse TEC, York, and Flowserve (the "Policyholders").

I. Cost-Sharing Agreements

In 2004, CNA and certain other umbrella insurers of BWC – Arrowood, Imperial, and Seaton – entered into a series of negotiated defense and indemnity cost-sharing agreements through which they shared the cost of defending and indemnifying asbestos claims with each

[1] TIG filed a Motion to Reconsider this ruling, which the Court denied at the April 9, 2015 hearing. (*See* Tr. at 7-8.)

other, and with BorgWarner/Morse TEC and York. Similar to what had been done under the primary insurers' cost-sharing agreements, these agreements used a continuous trigger and shared the defense and indemnity costs for all claims. The cost sharing was done in the aggregate, according to each umbrella insurer's share (based on number of years of coverage), rather than claim by claim. Although Flowserve, another policyholder, did not participate in the umbrella cost-sharing agreements, CNA and certain other insurers made payments on a *pro rata* basis to cover Flowserve's claims.

In December 2007, in order to facilitate settlement negotiations in mediation, CNA, Arrowood, Imperial, Seaton, London, Allstate, BorgWarner/Morse TEC, and York entered into an Interim Funding Agreement, in effect from January 1, 2008, through July 31, 2008, which provided a different cost-sharing formula than the earlier agreements. In contrast with earlier agreements, which only related to payments under the various umbrella policies, the Interim Funding Agreement also related to payments under two excess policies issued by CNA – RDX 9125775 and RDX 8084708. CNA contends that these excess policies were included, in part, due to intervening exhaustion of umbrella policies in place for those years.[2]

After termination of the Interim Funding Agreement on July 31, 2008, CNA continued to pay a *pro rata* share of indemnity for the Policyholders under the four umbrella policies and two excess-level policies. Again, Flowserve did not participate in this agreement, but CNA asserts it continued to make payments to cover Flowserve's asbestos claims on a *pro rata* basis.

II. CNA's Payments after Primary Policy Exhaustion

After primary exhaustion, CNA continued to make payments under four umbrella policies and two excess policies that it issued to BWC, which CNA asserts are as follows:

Umbrella Policies		Excess Policies	
LX 6332888 (10/1/69 – 9/1/73):	$57,555,796	RDX 9125775 (10/1/69 – 11/1/70):	$2,035,919
RDU 3653746 (1/1/79 – 1/1/82):	$7,985,236	RDX 8084708 (11/1/70 – 9/1/71):	$1,686,914
UMB 6891202 (1/1/82 – 1/1/83):	$5,000,000		
UMB 6891300 (1/1/83 – 1/1/86):	$23,733,932		
TOTAL:	**$94,274,964**	**TOTAL:**	**$3,722,833**

CNA's payment records show a total of 1,487 indemnity payments and 4,738 defense payments and reimbursements under the six policies. For each payment, the records indicate the type of payment (defense or indemnity), whether the payment was for asbestos liability, the date of payment, amount, and payee (which was usually the law firm defending the claims). As with the records for primary insurance payments, CNA's payment records for its umbrella and two excess policies do not contain the names of individual claimants.

[2] The parties' agreement among themselves that certain CNA umbrella policies were exhausted for purposes of the Interim Funding Agreement is not relevant to this Court's determination of the umbrella exhaustion issues before us. This information is included to explain why the excess policies were included at all.

York, Flowserve, TIG, and CEI all dispute whether CNA's payments apply toward exhaustion of the occurrence and aggregate limits of CNA's policies. TIG and CEI (the "Excess Insurers") contend that CNA must prove that coverage was triggered on a claim-by-claim basis. Further, the parties dispute whether $4.3M in payments made under UMB 6891300, for a claim in connection with the 1983 LaSalle Plant Explosion, eroded the policy's aggregate limit.

III. CNA's Multi-Year Policy Limits

In addition, CNA issued several policies to BWC for multiple years. Specifically, three of the four umbrella policies that CNA issued and two excess policies were issued for multiple years.[3] CNA contends that the occurrence limits of the multi-year policies apply to the entire policy periods. York, Flowserve, TIG, and CEI contend that the limits of these policies apply on an annual basis. The following table summarizes the dispute over occurrence limits:

Umbrella Policies	Policy Period	CNA Claimed Limit	York/ Flowserve/ TIG/ CEI Claimed Limit	Limit in Dispute
LX 6332888	10/1/69 – 10/1/74 (cancelled 9/1/73)	$55M	$110 M	$55 M
RDU 3653746	1/1/79 – 1/1/82	$5M	$5 M[4]	$0
UMB 6891202	1/1/82 – 1/1/83	$5M	$5 M	$0
UMB 6891300	1/1/83 – 1/1/86	$25M	$40 M	$15 M
Total Umbrella Limits:		**$90M**	**$160M**	**$70M**
Excess Policies				
RDX 8073798	7/1/68 – 7/1/71	$5M	$15M	$10 M
RDX 8084708	11/1/70 –11/1/73[5]	$5M	$15M	$10 M

CNA, who contends that the total occurrence limit of the four umbrella policies it issued to BWC is $90M, seeks a determination that the umbrella limits are exhausted. York, Flowserve, TIG, and CEI contend that the total occurrence limit of the four umbrella policies is $160K, and accordingly assert that the limits are not yet exhausted.

Discussion

I. CEI's Motion to Strike the Affidavit of James A. Markos

In support of its Umbrella Exhaustion Motion, CNA submitted the Affidavit of James A. Markos, an Account Manager for Resolute Management, Inc. Markos began working as a claims manager on the BWC account for CNA in late 2005 or early 2006, and became the sole account manager in 2012. Markos took a leave of absence from September 2007 through part of 2008. In his Affidavit, Markos describes the electronic data systems that CNA used to keep

[3] Only one of these multi-year excess policies is a policy that CNA contends it made payments under pursuant to the Interim Funding Agreement.
[4] While on page 2 of its Response/Cross-Motion, York lists its contention for this limit as $15,000,000, it actually appears to concede that the limit is $5,000,000.
[5] CNA contends that this policy was cancelled effective 9/1/1971.

track of its payments under the various BWC policies. The data recorded in these systems were then used to create Exhibits A, D, E, F, and G to the Markos' Affidavit (collectively, the "Umbrella Payment and Allocation Records").

CEI moves to strike the Umbrella Payment and Allocation Records, which consist of: a list of CNA's home-office payments to alleged successors for asbestos bodily injury claims (Ex. A); a list of claim numbers confirming that payments in Exhibit A were for asbestos bodily injury claims (Ex. D); a summary of Exhibit A (Ex. E); database screenshots confirming accuracy of payments in Exhibit A (Ex. F); a table showing how payments in Exhibit A were allocated to CNA policies (Ex. G).

CEI also moves to strike Exhibit H to Markos' Affidavit, which contains records from claims associated with a 1983 tank explosion at the LaSalle Plant. The parties dispute whether CNA's payments for these claims eroded the aggregate limit of UMB 6891300, which is discussed below in connection with CNA's Umbrella Exhaustion Motion. (*See infra*, Part III.C.)

CEI argues that the Markos' Affidavit and attached exhibits constitute inadmissible hearsay because (A) Markos does not have personal knowledge to testify and (B) the affidavit does not fall within the business records hearsay exception because CNA's outside coverage counsel drafted Markos' Affidavit and "provided virtually all of the factual content."

A. Personal Knowledge

Illinois Supreme Court Rule 191(a) requires that affidavits are made on the personal knowledge of the affiants. CEI asserts that Markos fails to satisfy the personal knowledge requirement of Rule 191(a) because he did not have "direct involvement" in the negotiations surrounding the cost-sharing agreements, or in determining whether CNA's umbrella policies have been exhausted. However, "direct involvement" is not a requirement of Rule 191. *See US Bank v. Avdic*, 2014 IL App (1st) 121759, ¶ 29 ("There is no requirement that [the affiant] be familiar with the record before litigation arose or have personally made the entries into the computer system.").

Further, while the settlement negotiations may explain why the parties agreed to pay and allocate claims the way they did, what is relevant for purposes of exhaustion is showing that CNA paid the potentially covered claims to the triggered policies. To the extent that Markos was not present for or directly involved in the negotiations, he is still sufficiently familiar with the cost-sharing agreements so as to be competent to testify. Markos – a claims manager on the BWC account for CNA for several years – is certainly familiar with the asbestos claims and data on the BWC account. It follows that he is familiar with agreements governing the payment of asbestos claims, even if he himself did not participate in the negotiations surrounding the agreements. Thus, Markos is competent to testify on this subject. *See City of Chicago v. Old Colony Partners., L.P.*, 364 Ill. App. 3d 806, 819 (1st Dist. 2006) ("Anyone familiar with the business and its procedures may testify as to the manner in which records are prepared and the

general procedures for maintaining such records in the ordinary course of business."). Whether Markos had "direct involvement" in the determination that CNA's umbrella policies are exhausted is not relevant. CNA does not use a determination by Markos (or anyone else) as evidence that its umbrella policies have been exhausted. Rather, the evidence supporting CNA's Umbrella Exhaustion Motion consists of documents showing that CNA made payments under those policies, and that those payments have reached the limits of the policies. Accordingly, Markos satisfies the personal knowledge requirement of Rule 191.

B. Business Records Exception

Next, CEI contends that the Umbrella Payment and Allocation Records (Ex. A, D, E, F, G), and Exhibit H are not admissible as business records. According to CEI, CNA has failed to provide a proper foundation because Markos lacks knowledge regarding the source and method of preparation of the documents.

Hearsay is an out of court statement offered to prove the truth of the matter asserted and such evidence is generally inadmissible unless it falls within an exception to the hearsay rule. *Guski v. Raja*, 409 Ill. App. 3d 686, 699 (1st Dist. 2011); Ill. R. Evid. 901. The exceptions to the hearsay rule are well established in the law as providing indicia of reliability to overcome the presumption against hearsay statements. *Old Colony Partners*, 364 Ill. App. 3d at 819. The rationale supporting the business records exception is that businesses are motivated to keep records accurately and are unlikely to falsify records upon which they depend. *Id.* Business records made in anticipation of litigation, however, do not possess the same trustworthiness as other records prepared in the ordinary course of business. *See id.*

Under the business records exception, a report or data compilation is admissible as long as testimony shows that: 1) the document "is made at or near the time by, or from information transmitted by, a person with knowledge"; 2) the document "is kept in the course of a regularly conducted business activity"; and 3) "it was the regular practice of that business activity to make the memorandum, report, record or data compilation." Ill. R. Evid. 803(6).

This Court has previously indicated that documents attached to the affidavits to prove policy payments would be admissible as business records, even though they were data compilations, if there was evidence that the compilations (*i.e.*, Loss Runs, Payment Lists) are the same kind of data compilation that insurance carriers routinely use for their own work. (*See* 11/7/13 Order, at 5.) Here, the Umbrella Payment and Allocation Records were sourced from the same records in the databases as those at issue in CNA's Primary Exhaustion Motion, which this Court found were "made at or near the time or from information transmitted by a person with knowledge and [were] kept in the ordinary course of a regularly conducted business activity." (*Id.*) Thus, while CEI argues that this dispute involves different documents, the databases from which the documents were sourced are the same. As such, there is no need to revisit the issue of CNA's ability to rely on the underlying databases.

Further, CNA performed sampling in order to confirm that the Umbrella Payment and Allocation Records accurately reflect the databases sourcing this information. This Court requested that CNA perform these same steps in connection with the Primary Exhaustion Motions, and held that CNA's affidavit describing this additional verification procedure was sufficient to show that the data compilations "bear a reasonable relation to the database from which they purport to be drawn." (*See* 11/7/13 Order, at 6.) As James McNeela did for the Primary Exhaustion Motions, Markos selected every twentieth transaction and compared it to the CNA database; in each case, the amounts were identical.

A witness need only have personal knowledge of the business and its procedures to establish the requirements of the business record exception; personal knowledge of the preparation of the specific documents at issue is not required. *Piser v. State Farm Mut. Auto Ins. Co.*, 405 Ill. App. 3d 341, 352 (1st Dist. 2010). Here, Markos stated in his affidavit that he regularly uses these types of reports to determine whether policy limits had been reached or were close to being reached, and that he uses similar reports to demonstrate to the policyholder that the policy limits are exhausted or nearing exhaustion. (Markos Aff., ¶ 12.) These records typify reports CNA regularly uses in business, and accordingly, they are admissible as business records.

CEI also objects to admission of the Allocation Summary (Ex. G) on the grounds that it was prepared for litigation purposes, not business purposes. This objection, however, is rendered meaningless without a question as to the accuracy of the documents. A document made in anticipation of litigation is inadmissible hearsay if that document was doctored for purposes of litigation, or if that document would not exist but for litigation. That is not the case here, where Markos has testified that it was the customary practice to create the regular records from which the reports are drawn, and CEI has not set forth any legitimate objection as to the accuracy of those documents. As such, although the reports were prepared for this litigation, they are the same kinds of reports in the same form that CNA routinely uses for its own work, and therefore are admissible as business records.

Finally, as to the LaSalle Plaint Explosion Records (Ex. H), Markos' lack of personal knowledge regarding these Records is not fatal; it is only required that Markos have personal knowledge regarding CNA and its procedures. Arguably, Markos did not have personal knowledge of CNA's procedures in 1983, since he did not begin working for CNA until over 20 years later. However, it seems unnecessary to require CNA to produce an affiant who worked for CNA in 1983 and can testify as to its data entry and recordkeeping procedures at that time, especially where there has been no question as to the accuracy of those documents.

And regardless, the documents in Exhibit H are admissible as "Ancient Documents or Data Compilation" under Illinois Rule of Evidence 901(b)(8), which provides that a document or data compilation is admissible where it: (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence 20 years or more at the time it is offered. Here, the LaSalle Plant Explosion

Records were made at or near the time of the plant explosion in 1983, so they have been in existence at least 30 years or more. No suspicions have been raised regarding their condition, and the records are reported from the file where authentic data would be kept at CNA. The Ancient Documents exception is likely in existence for the same reason that it is unnecessary to require CNA to produce an affiant who worked for CNA in 1983: it would be difficult, if not impossible to find an affiant who worked at CNA at the time the document was made, and the document does not need to be excluded on that basis, absent any suspicions as to its authenticity.

In conclusion, Markos, as the sole account manager of the BWC account at CNA, has sufficient knowledge to testify about CNA's payments of BWC asbestos claims and allocations of payments to policies. Exhibits A, D, E, F, G, and H, attached to Markos' Affidavit, were derived from CNA's business records and typify the type of reports CNA produces in its ordinary course of business, and are therefore admissible. CEI's Motion to Strike is denied.

II. TIG's Motion to Strike the Affidavit of Michael McNeela

CNA attaches the Affidavit of Michael McNeela in support of its Supplemental Reply. McNeela's Affidavit relates to the 2010 Asbestos Payment Report, attached as Exhibit A to the Markos Affidavit. In its Supplemental Brief, TIG contends that the 2010 Asbestos Payment Report actually supports TIG's assertion that Policy UMB 6891300 functions as three separate annual policies with $40M in total per-occurrence limits. CNA responds that the 2010 Asbestos Payment Report reflects *payments* and not *allocations* and thus it does not support the assertion that CNA paid $40M under the policy. In support of these assertions, CNA attached the Affidavit of McNeela, the CNA analyst who created the 2010 Asbestos Payment Report. McNeela worked for CNA analyzing payments made by CNA for asbestos claims for 23 years. (McNeela Aff. at ¶ 1.) Immediately following, he worked as Account Manager at Resolute Management, Inc., from 2010 to 2014, performing similar job functions. (*Id.*)

TIG argues that McNeela's Affidavit is inadmissible because it contradicts prior statements made by CNA under oath. TIG takes issue with McNeela's assertion that "based on [his] allocation process CNA treated Policy No. UMB 6891300 as having become exhausted by $20,666,195.86 in asbestos payments on January 20, 2005." (McNeela Aff., ¶ 8.) According to TIG, this statement directly contradicts CNA's June 2006 answers to interrogatories, wherein CNA stated that $7,195,880 in unexhausted limits were remaining under the policy, and that the policy had an annual occurrence limit totaling $40M. Importantly, CNA qualified this answer by stating it was CNA's "current best estimate" and stating that the "investigation continues."

TIG asserts that this answer constitutes a judicial admission, which CNA cannot contradict. A judicial admission is a "deliberate, clear, unequivocal statement of a party about a concrete fact within that party's peculiar knowledge." *Van's Material Co. v. Dep't of Rev.*, 131 Ill. 2d 196, 212 (1989). While a statement made during discovery is ordinarily an evidentiary admission that may be controverted, admissions which are "so deliberate, detailed and

unequivocal, as to matters within the party's personal knowledge, will conclusively bind the party deponent." *Id.* at 211-13 (finding that pretrial answers to interrogatories may constitute judicial admissions in the same manner as those in a discovery deposition).

Here, the 2006 interrogatory does not constitute a judicial admission. CNA qualified its answer to the 2006 interrogatory as its "current best estimate" and noted that the "investigation continues." It cannot be said, then, that this interrogatory statement is so unequivocal and deliberate to preclude contradiction by way of affidavit, when the statement itself was prefaced with a warning to TIG that the information in the interrogatory may change prior to trial. The discovery statement is merely an evidentiary admission that may be controverted.

Furthermore, the 2010 Asbestos Payment Report has been CNA's authoritative statement on how it allocated asbestos payments among its policies since it was produced to TIG and the other parties in February of 2011. CNA's experts, Markos and Barr, were questioned on the allocation summary at their depositions, and TIG had an opportunity to address any inconsistencies with that allocation statement and the 2006 interrogatories at that time.

TIG also contends that the McNeela Affidavit does not satisfy the personal knowledge requirement of Rule 191. According to TIG, the Affidavit is improper because McNeela states that he made the affidavit "based upon personal knowledge and/or after review of CNA business records" but then does not specify which business records he reviewed. As discussed above, personal knowledge under Rule 191 does not mean 'direct involvement,' and thus it is irrelevant which statements are based on personal knowledge and which are based on his review of CNA's records, since both qualify as personal knowledge for purposes of the Rule. Moreover, McNeela, having created the Allocation Summary, and having actually performed the allocations described in that document, has the requisite personal knowledge under Rule 191 to testify on this subject.

TIG further argues that the McNeela Affidavit should be stricken because it relies upon the Allocation Summary (Ex. G to the Markos Affidavit), which, according to TIG, is inadmissible hearsay. As discussed above in connection with CEI's Motion to Strike the Markos' Affidavit, the Allocation Summary is admissible as a business record. Further, McNeela testifies to the process he used to create the Allocation Summary, and provides an explanation for how he came to the conclusion that CNA's total allocation of asbestos payments to UMB 6891300 for purposes of exhaustion was $20,666,196, and not more than $40M as TIG asserts. (McNeela Aff., ¶ 8.) This testimony reinforces the Court's conclusion that the Allocation Summary is sufficiently reliable and is admissible as a business record.

Finally, TIG argues that the Affidavit should be stricken because it fails to attach the entire 2010 CNA Asbestos Payment Report and the Allocation Summary. The Court disagrees. The parties have already provided multiple copies of both the 2010 CNA Asbestos Payment Report (*see* Ex. A to Markos Aff.; Ex. 5 to TIG's Supp. Brief) and the Allocation Summary (*see*

Ex. G to Markos Aff.; Ex. 4 to TIG Mot. To Strike), and there is no need to burden this Court with copies of documents that it already has.

In its prayer for relief, in addition to asking to strike the McNeela Affidavit, TIG requests that Sections II and III in CNA's Supplemental Reply, which refer to the Affidavit, are stricken. This Court finds that the McNeela Affidavit and Allocation Summary are admissible, and thus TIG's request to strike Sections II and III of the Supplemental Reply is also denied. In the alternative, TIG seeks an opportunity to depose McNeela and file a response to CNA's Supplemental Reply. TIG has not persuaded this Court that McNeela's deposition is necessary to decide the Umbrella Exhaustion Motions. TIG had an opportunity to depose CNA's other experts, Markos and Barr, on the Allocation Summary. McNeela has been an expert for CNA for several years – nothing has prevented TIG from deposing him during that time. And nothing is stopping TIG from deposing McNeela going forward, but absent a Rule 191(b) showing that the deposition would undermine the present Motions, the Court is disinclined to delay ruling. Accordingly, TIG's Motion to Strike the McNeela Affidavit is denied in its entirety.

III. CNA's Umbrella Exhaustion Motion

Although CNA seeks a declaration that its *four umbrella policies* are exhausted, it simultaneously seeks a determination that its payments under the *umbrella policies and the two excess-level policies* count towards exhaustion. It is clear, however, that payments made under the two excess policies are not relevant to the determination of whether the umbrella policies are exhausted – which is what the Court is examining here. The Court therefore limits its discussion and analysis below to the payments made under the four umbrella policies. The two multi-year excess policies will be addressed only as to their occurrence limits. The Court declines to rule on payments made under the excess policies, and any alleged "overpayments." This is without prejudice; the parties are free to raise these issues at a later date. The Court will address these issues when necessary and when there is sufficient evidence on the record to do.

A. Occurrence Limits in Multi-Year Policies

The parties dispute whether the occurrence limits in CNA's multi-year umbrella and excess policies are annualized. CNA contends that the single-occurrence limit for each of its multi-year policies extends over the entire policy period; it contends that the limits are not annualized. York, Flowserve, TIG, and CEI dispute CNA's assertion that each of its multi-year policies pays a single occurrence limit, contending that CNA understates its umbrella limits by at least $70M.

The construction of an insurance policy's limits is generally a question of law. *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 283 Ill. App. 3d 630, 649 (2d Dist. 1996). If the words in a policy are unambiguous, then a court must afford them their plain, ordinary, and popular meaning. *Id.* "However, if the words in the policy are susceptible to more than one reasonable

interpretation, they are ambiguous and will be construed in favor of the insured and against the insurer who drafter the policy." *Id.*

The limits of four policies are in dispute: (1) umbrella policy LX 6332888; (2) umbrella policy UMB 6891300; (3) excess policy RDX 8073798; and (4) excess policy RDX 8084708.

1. Umbrella Policy LX 6332888

Umbrella policy LX 6332888 had an occurrence limit of $5M from its October 1, 1969 inception date to September 1, 1971. Effective September 1, 1971, Endorsement 12 increased the occurrence limit to $50M for a three-year period; however the policy was terminated by release effective September 1, 1973.

The policy's Limit of Liability section provides:

> In no event shall the Company be liable for an amount in excess of that set forth in Item 6 of the Declarations on account of each "occurrence" happening during the period commencing with the effective or anniversary date of this policy – subject to a limit as stated in Item 7 of the Declarations in the aggregate for all claims arising under the insurance afforded during each consecutive 12 months of the policy period.

CNA argues that the policy has a $5M occurrence limit for the period October 1, 1969 to September 1, 1971, and a $50M occurrence limit from September 1, 1971 to September 1, 1973, for a total of $55M over the four years. CNA claims that this language expressly states that the occurrence limit applies no matter when the occurrence happens during the term of the policy.

The opposition contends that LX 6332888 pays a separate occurrence limit for each "anniversary" period. They argue that it has a $5M occurrence limit for 1969 – 1970; a $5M occurrence limit for 1970 – 1971; a $50M occurrence limit for 1971 – 1972; and a $50M occurrence limit for 1972 – 1973, totaling $110M over the four years.

CNA cites to *Outboard Marine Corp. v. Liberty Mutual Ins. Co.*, 283 Ill. App. 3d 630, (2d Dist. 1996), which is instructive here. The policy in *Outboard Marine Corporation* provided:

> **In no event shall** the company be liable for an amount in excess of that set forth in the Declarations as applicable to 'each occurrence' . . .
>
> Subject to the limit of liability with respect to 'each occurrence' the aggregate limit of liability set forth in the Declaration applies separately to claims arising under the insurance afforded for Products Liability and to those arising out of personal injury by Occupational Disease sustained by any employee of the insured. If the policy is written for a period of more than one year, the limits of liability apply separately to **each annual period** that this policy remains in force.

Id. at 649 (Emphasis added). The Declarations listed a $1 million limit per occurrence. The court held that the clause was unambiguous and provided for a $1 million limit per occurrence per policy period. *Id.* at 650 ("The parties' intent to limit liability to $1 million per occurrence was clearly established by language providing that 'in no event' shall the company be liable for an occurrence beyond that set forth in the declaration.") The court reconciled its holding with the "annual period" language by stating that, when read in context, it merely modified the sentence proceeding it which begins by expressly reiterating that it is "subject to the limit of liability with respect to 'each occurrence.'" *Id.*

Similarly, here, LX 6332888 provides that "[i]n no event" shall CNA be liable for an amount in excess of that set forth in the Declarations, which was $5M from October 1, 1969 to September 1, 1971 and $50M from September 1, 1971 to September 1, 1973, on account of each occurrence. Like the policy in *Outboard Marine* which stated that the limits of liability would be applied separately to each annual period, the policy here also contains "anniversary" language, which when read in context merely modifies the sentence before it which states that "in no event" is CNA liable for an amount in excess of that set forth in the Declarations.

York notes that the policy in *Outboard Marine* also defined "occurrence" as "one happening or series of happenings arising out of or resulting from one event taking place during the term of this policy." In contrast, LX 6332888 refers to an "occurrence" "happening during the period commencing with the effective or anniversary date of the policy." However, the occurrence limits apply to an occurrence, not any period of time. Regardless of whether the event giving rise to an "occurrence" took place during a period commencing with the policy's effective date or anniversary date, there would still be one occurrence. Thus, if an event giving rise to an "occurrence" took place in 1970 and then again in 1971 (as it did here), it would still be the same occurrence, so one limit would apply.

York contends that LX 6332888's reference to the period starting with the "effective *or* anniversary date" is superfluous, and that it would have been sufficient to simply refer to the period starting with the effective date, since that would be the entire Policy period. Again, however, the limit does not apply to some period of the policy, it applies to an occurrence. The reference to the policy's "effective or anniversary date" clarifies that a single occurrence limit continues to apply even if the policy is renewed or extended at its anniversary date, so that if an event giving rise to an occurrence takes place after the policy has been renewed or extended, the single occurrence limit would still apply.

York also contends that the court in *Greene, Tweed & Co. v. Hartford Accident & Indem. Co.*, 2006 U.S. Dist. LEXIS 21447, *29 (E.D. Pa. Apr. 21, 2006) found that similar policy language annualized the policy's aggregate limits. The policy provided that:

> There is no limit to the number of occurrences during the policy period for which claims may be made, except that the company's total limit of liability arising out

> of the Products Hazard or the Completed Operations Hazard or both combined shall not exceed the amount stated in Item 3A of the Declarations as respects all occurrences during each annual period commencing with the effective or anniversary date of this policy.

The court found that the policy provided for separate annual aggregate limits. York contends that LX 6332888's occurrence limit language referring to the "period commencing with the effective or anniversary date" is similar to the annualized aggregate limit language in *Green, Tweed*. However, the policy in *Green, Tweed* also contained the words "each annual period," whereas here, the policy refers to "the period" in the singular, indicating that the occurrence limit applies across a single period (*i.e.*, the policy period), not multiple periods. As such, *Green, Tweed* actually further supports the conclusion that there is only one occurrence limit for LX 6332888's entire multi-year term.

This conclusion – that a single occurrence limit applies across the entire policy period – is further supported by a comparison with the language used for this policy's aggregate limits. The policy language draws an explicit distinction between the occurrence limit and the aggregate limit, only the latter of which applies "during each consecutive 12 months of the policy period." Thus, while the aggregate limits explicitly apply across uniform 12-month periods, the occurrence limits apply across the policy as a whole, rather than to vastly different periods of time. Accordingly, the occurrence limit of LX 6332888 is $55M over the entire policy period.

2. Umbrella Policy UMB 6891300

Umbrella Policy UMB 6891300 was issued for a three-year period, January 1, 1983 to January 1, 1986. The policy states that CNA's liability for each occurrence is limited to the occurrence limit "for all loss to which the policy applies as the result of any one occurrence," and that the aggregate limit "applies separately to each consecutive annual period of th[e] policy."

When issued, the policy had $25M occurrence and aggregate limits. Those limits were reduced to $10M by endorsement effective January 1, 1984. The limits were again reduced to $5M by endorsement effective January 1, 1985. According to CNA, the occurrence limit would depend on when the occurrence took place ($25M for 1983; $10M for 1984; $5M for 1985). CNA asserts that payments allocated to this policy were made on a horizontal, continuous trigger basis, and first "occurred" on January 1, 1983, such that the $25M occurrence limit applies.

CNA contends that a single occurrence limit applies to the entire policy, noting that the policy's Limit of Liability language is essentially identical to that of RDU 3653746. Even though RDU 3653746 contains nearly identical language, York expressly concedes that the limits of that policy are not annualized, and the other parties are silent on this issue.

York and TIG assert that CNA's own records show that CNA understood UMB 6891300 to have three separate annual occurrence limits, pointing to the 2010 CNA Asbestos Payment

Report (Ex. A to the Markos Affidavit) and the Allocation Summary (Ex. G to the Markos Affidavit). CNA first responds that the limits language of Policy UMB 6891300 is clear and must be enforced as written without reviewing extrinsic evidence. (CNA Resp. to TIG Supp. Brief, p. 3.) This argument must be rejected, however, as CNA has submitted to this Court documents supporting its assertion that the policy limits are $25M, such as the Markos Affidavit and McNeela Affidavit and their supporting documents.

With respect to the 2010 CNA Asbestos Payment Report, TIG asserts that the Report shows more than $40M allocated to Policy UMB 6891300. However, CNA explains that this Report shows *payments*, not *allocations*, and thus there is no evidence to suggest that CNA allocated $40M to Policy UMB 6891300. McNeela, the CNA analyst who created the Report, explained that CNA claim analysts would process asbestos payments, and then McNeela would subsequently allocate payments for the purpose of determining exhaustion of the policies' limits. (McNeela Aff., ¶¶ 5-7.) McNeela testified that "the assignment of a claim payment to a file opened under a particular policy did not constitute the allocation of that payment to that policy for exhaustion purposes." While the Report shows over $40M in payments were initially assigned to UMB 6891300, it does not show that those payments were ultimately allocated to the policy, and thus does not support TIG's assertion.

York further asserts that the Allocation Summary evidences CNA's intent to increase UMB 6891300's limit. In the Allocation Summary, CNA lists UMB 6891300 as having a $25M occurrence limit for the policy effective period 1/1/1983 – 1/1/1984; a $10M limit for 1/1/1984 – 1/1/1985; and a $5M limit for 1/1/1985 – 1/1/1986. In contrast, it shows RDU 3653746 as having a $5M limit, divided over three years, as shown in the image below:

RDU 3653746	1/1/1979	1/1/1980	1.667 MIL/ 5 MIL XS PRIM
RDU 3653746	1/1/1980	1/1/1981	1.667 MIL/ 5 MIL XS PRIM
RDU 3653746	1/1/1981	1/1/1982	1.667 MIL/ 5 MIL XS PRIM
UMB 6891202	1/1/1982	1/1/1983	5 MIL / 5 MIL XS PRIM
UMB 6891300	1/1/1983	1/1/1984	25 MIL / 25 MIL XS PRIM
UMB 6891300	1/1/1984	1/1/1985	10 MIL / 10 MIL XS PRIM
UMB 6891300	1/1/1985	1/1/1986	5 MIL / 5 MIL XS PRIM

However, York's "intent" argument is contradicted by the clear purpose of Endorsement 12 – which reduced the occurrence and aggregate limits (from $25M to $10M to $5M). Where the intent of the endorsement was to *reduce* the limits, it would not be reasonable to find that this resulted in three separate policies and limits, effectively increasing the total occurrence limit to $40M. Any "intent" here is evidenced in the policy itself, and not from a document created to summarize payment allocation. This is further supported by the testimony of a CNA claims handler, who testified that the limits listed in the Allocation Summary were just "a way to identify that policy" and did not reflect a $40M occurrence limit.

Further, the way that the Allocation Summary lists the limits of UMB 6891300 and RDU 3653746 can be explained by each policy's terms: For Policy RDU 3653746, a three-year policy with a single $5M occurrence limit, CNA's summary lists one-third of the limit for each year of

that the policy is in effect. But UMB 6891300 did not divide a single policy limit across three years; instead, the per-occurrence limit would depend on the year the "occurrence" took place. The separate listing of all three limits simply indicates that there were three different limits depending the date of first occurrence. Because the two policies functioned differently, it is reasonable that the limits are displayed differently in the Allocation Summary, despite both policies containing occurrence limits that are not annualized.

York also contends that CNA treated its other changing-limit policy – Endorsement 12 to LX 6332888 – as having separate occurrence limits: in its brief, CNA describes LX 6332888 as having a $5M occurrence limit for the 1969-71 period and a $50M limit for the 1971-73 period, and Markos previously stated that LX 6332888 is two separate policies. Endorsement 12 to LX 6332888 changed both its occurrence limit *and the policy period.* As such, there were two "period[s] commencing with the effective date" of the policy, and, thus, two separate limits applied. That is unlike the policy changes to UMB 6891300, which reduced the limits of an existing policy period, but did not change the policy period itself.

As a result of this Court's single-occurrence ruling, the occurrence causing injury first occurred, for purposes of UMB 6891300, on the first day of UMB 6891300's effective period—January 1, 1983. As such, the $25M occurrence limit applies to the entire policy period.

3. **Excess Policy RDX 8073798**

Excess Policy RDX 8073798 was issued for a three-year period, July 1, 1968 to July 1, 1971, and had a combined single quota share limit of $5M. It follows form to the immediate underlying policy, which states that the aggregate limit applies "during each consecutive 12 months of the policy period."

The immediate underlying policy (Royal (now Arrowood) Policy No. 100645) contains exactly the same "anniversary" language as Policy LX 6332888. As discussed above, the language in Policy LX 6332888 referred to one occurrence limit. The identical language in the underlying policy, Royal Policy No. 100645, also refers to one occurrence limit. Since RDX 8073798 follows form to the underlying policy, it is also subject to a single occurrence limit.

4. **Excess Policy RDX 8084708**

Excess Policy RDX 8084708 had a combined single limit of $5M. It followed form to the immediate underlying policy, Umbrella Policy LX 6332888, and contains identical language. Again, because this Court finds that LX 6332888 had a single occurrence limit, it also finds that RDX 8084708 had a single occurrence limit.

B. CNA's Payments Under the Umbrella Policies

Next, the parties dispute whether CNA's payments under the umbrella policies, totaling $94,274,964, can be counted towards CNA's umbrella policy limits. (As noted above, the Court

will only address payments made under the four umbrella policies, and not the two excess policies.) CNA asserts that its payments were fair and reasonable because the payments were for "potentially covered" claims alleging bodily injury from BWC's asbestos-containing products and for which BWC and the successors were exposed to liability.

CNA also contends that its method of allocating payments was fair and reasonable. CNA's allocation of defense and indemnity payments was done on an aggregate basis, according to each umbrella insurer's share (generally based on number of years of coverage), rather than claim by claim. CNA internally allocated its payments to its BWC umbrella policies on a horizontal basis. This is the same way CNA internally allocated payments to its primary policies. CNA contends that, given the number of payments it made (around 1,487 settlement payments and thousands of additional defense cost payments), it was reasonable and proper for CNA to allocate payments horizontally on a *pro rata* basis to all umbrella policies until one exhausted, then continue to allocate on a *pro rata* basis to the remaining policies.

The Excess Insurers contend that CNA must show that its payments were on account of covered claims – *i.e.*, bodily injury (dates of exposure, sickness, and disease) during the policy period – and that, because CNA's payment records do not identify the individual claimants (the loss payee is "almost exclusively" the underlying defense firms), the Excess Insurers cannot assess whether a given payment was proper or would trigger the policy to which it was allocated. However, as discussed in connection with the Primary Exhaustion Motions, the Excess Insurers may not second-guess CNA's settlement decisions – an excess insurer does not have the right to challenge exhaustion of underlying insurance by substituting its own analysis or policy requirements for underlying insurers' settlement decisions.

Further, while the Excess Insurers argue that CNA allocated payments among the policies irrespective of the dates of exposure to asbestos, the evidence does not support this assertion. Specifically, Markos testified that payments were allocated only to "triggered policies" (*i.e.* based on the exposure dates for claims) using a continuous trigger. (*See* Markos Aff.; Markos Dep. at 49-56.)

The evidence also shows that CNA only paid claims after evaluating them based on appropriate risk and exposure, and thus only paid on "potentially covered" claims. CEI is incorrect in its assertion that "CNA must show that its payments were on account of covered claims," (CEI Resp at 12); instead, CNA must show that its payments were on account of *potentially* covered claims, which it has.

The Excess Insurers also challenge the *pro rata* allocation method used by CNA and the other umbrella insurers to allocate indemnity and defense payments among themselves. Contrary to the Excess Insurers' contention, *John Crane, Inc. v. Admiral Ins. Co.*, 2013 IL App (1st) 093240 does not bar such allocation. The court in *John Crane* held that a court could not impose *pro rata* allocation of liability; however, the court did not prohibit a cost-sharing

agreement among the umbrella insurers to allocate payments on a *pro rata* basis. The cost-sharing agreements in *John Crane* were barred for another reason – because they improperly agreed to *lower* the primary insurer's policy limits to prematurely exhaust primary coverage limits – which is not at issue here.

CNA made thousands of indemnity and defense payments under its umbrella policies. Allowing the Excess Insurers to challenge each payment claim-by-claim would require a huge amount of time and resources and would go against public policy favoring the finality of settlements. It would also be inefficient, if not impossible, to require umbrella insurers such as CNA to trace every settlement back to particular trigger dates because they would essentially have to file declaratory actions before ever making indemnity and defense payments too. Thus, it was reasonable and proper for CNA to allocate payments horizontally on a *pro rata* basis to all umbrella policies.

Accordingly, CNA has established that it made the following payments under its umbrella policies:

For LX 6332888, CNA has proven payments totaling $57,555,796;

For RDU 3653746, CNA has proven payments totaling $7,985,236;

For UMB 6891202, CNA has proven payments totaling $5,000,000;

For UMB 6891300, CNA has proven payments totaling $23,733,932.

Flowserve additionally argues that CNA's reimbursement on a *pro rata* basis was improper, given that Flowserve requested reimbursement on an "all sums" basis. Flowserve argues that CNA reimbursed it improperly, because CNA paid it less than the other Policyholders under the cost-sharing agreements, which Flowserve declined to be a part of, and because CNA took what Flowserve considers to be improper deductions of defense fees.

Flowserve's arguments dispute *allocation*, rather than *exhaustion*. The outcome of these arguments will not affect the issue of exhaustion: even if, *arguendo*, CNA should have paid Flowserve more than it did, the result would not affect exhaustion, unless this Court finds that CNA has not exhausted its umbrella policy limits. However, since this Court finds that the umbrella policy limits are $90M, and its payments do exhaust the umbrella policies, Flowserve's arguments need not be addressed in connection with the Umbrella Exhaustion Motions.

That is not to say that these arguments are irrelevant to future aspects of litigation, and, in fact, Flowserve's arguments are also briefed on issues that are set for argument at a later date (such as the Motions Regarding the Burden of Proof, which are set for argument soon after the Court issues this ruling). Thus, Flowserve's arguments need not be addressed at this point.

Munich also essentially seeks reconsideration of another of this Court's rulings – the 9/30/13 ruling on defense costs, where this Court ruled that CNA must pay defense costs under Policy LX 6332888 for claims that have not resulted in settlement or judgment.

This issue has already been decided. Even Munich concedes that this Court has already determined that LX 6332888 also provides for defense costs for claims that have not resulted in settlement or judgment; Munich simply raises the issue to preserve its arguments on appeal.

C. LaSalle Plant Explosion

The parties dispute whether the $4,333,804[6] that CNA paid to BWC for claims arising out of a tank explosion at a facility of a BWC-subsidiary can erode the aggregate limit of the 1983 policy, UMB 6891300. According to CNA, because the $4.3M payments were for claims for personal injuries that fell within the "products hazard" definition, those payments erode the aggregate limit. Thus, CNA asserts it can exhaust this policy's $25M limit by paying $20,666,196 in asbestos claims. York, Flowserve, TIG, and CEI contend that these payments do not fall within the products hazard coverage of its umbrella policy.

Under UMB 6891300, only payments for "personal injury ... within the products hazard" erode the aggregate limits. "Products hazard" is defined as follows:

> "**products hazard**" includes **personal injury** and **property damage** arising out of the **named insured's products** or reliance on a representation or warranty made at any time with respect thereto, but only if the **personal injury** or **property damage** occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others
>
> ...
>
> "**named insured**" means Borg-Warner Corporation, any subsidiary (or subsidiary thereof) or division now existing or hereinafter formed or acquired, herein collectively referred to as "Borg Warner Corporation."

The personal injuries at issue occurred at a plant owned by Borg-Warner Chemical, a subsidiary of BWC (the "Subsidiary"), when a BWC-manufactured tank exploded, killing and injuring five employees of the Subsidiary. The parties do not dispute that the Subsidary is a "named insured" under the policy. Nor do they dispute that the injuries occurred on premises owned by the Subsidiary.

The dispute is one of contract interpretation. According to CNA, the definition refers singularly to "named insured," and thus it refers to the products and premises of the same single entity. It contends that this occurrence falls within the "products hazard" definition because the

[6] The various briefs are inconsistent with this number. *See* CNA Motion (contending amount is $4,333,815); CNA Reply (contending amount is $4,333,817). The Markos Affidavit and supporting documents (Ex. H to Markos Aff.) state that the amount is $4,333,804, as will this Court.

injuries arose out of BWC's products, but on a different entity's property. CNA asserts that the policy used the plural "named insureds" elsewhere, but used the singular form here.

Also pertinent here is the severability clause in the underlying Primary Policy No. CCP004725154. UMB 6891300 incorporates the underlying policy, which contains a severability clause which states that "[t]he insurance afforded applies separately to each insured against whom claim is made or suit is brought."

St. Katherine Ins. Co. v. Insurance Co. of N. Am., 11 F.3d 707 (7th Cir. 1993) (interpreting Illinois law) is instructive here. In *St. Katherine*, an employee fell in a sulphur pit on his employer's property and sued a subsidiary that had dug the pit. The issue was whether the claim fell within the "completed operations hazard," which was defined to include:

> [B]odily injury and property damage arising out of operations ... but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from the premises owned by or rented to the named insured.

Both the employer and the pit-digging subsidiary were listed under "named insured." The policy also contained a severability clause, stating that the insurance applied separately to each insured whom a claim was made against or suit was brought against. *Id.* at 710. The Seventh Circuit held that the claim fell within the completed operations clause, stating:

> [T]he plaintiffs' claim that there is only one named insured encompassing [the employer] and all of its subsidiaries is inconsistent with the severability clause. The exception of completed operations coverage for injuries occurring on the premises of the named insured applies only against [the subsidiary], for which coverage was sought. Because the injury did not occur on [the subsidiary]'s premises, the loss falls squarely within the policy's definition of a completed operations hazard.

Id. at 711. The court also looked to the purpose of severability clauses and completed operations clauses. The purpose of a severability clause is to treat each entity covered as if each were insured separately. *Id.* at 710 (citing *U.S Fid. & Guar. Co. v. Globe Indem. Co.*, 60 Ill.2d 295 (1975)). The purpose of a completed operations clause is to enhance an insured's coverage by covering claims that stem from defective workmanship on projects no longer within that insured' control. *Id.* at 711. Both purposes were best served by finding that claim fell within the completed operations clause.

Likewise, here, the severability clause requires that BWC must be treated separately from its subsidiary in the definition of "products hazard." Further, the LaSalle Plant Explosion has all the indicia of a products hazard because it arose from a product manufactured by BWC, BWC relinquished the product to its subsidiary before the injuries occurred, and the injuries did not

occur on BWC's premises. Absent the severability clause, York, Flowserve, TIG, and CEI's interpretation of the policy would be correct. *See id.* at 710 ("[T]he plaintiffs' interpretation of the policy would be correct if the "named insured" was a single, non-severable entity under the policy."). However, the severability clause works in CNA's favor here, and thus CNA's $4,333,804 in claim payments fell within the products hazard definition.

The aggregate limit (which is $25M) establishes the total limit of liability of CNA "for all loss to which this policy applies," including asbestos payments *and* the 1983 LaSalle Plant Explosion claims. CNA's documentation shows $23,733,932 in payments for asbestos related claims, but, because the payments made in connection with the LaSalle Plaint Explosion also erode UMB 6891300's aggregate limit, those payments must be taken into account. Thus, the Court finds that the $4,333,804 in payments made for claims in connection with the LaSalle Plant Explosion eroded the $25M aggregate limits of UMB 6891300 for the 1983-84 year, leaving $20,666,196 left for payments for asbestos claims.

D. Exhaustion and Attachment

Although payments were allocated horizontally among the four umbrella policies, the principles of horizontal exhaustion which apply to primary-level exhaustion (*i.e.* that the insured must exhaust all available primary coverage before proceeding against an excess carrier) do not necessarily apply at the excess levels. At the excess level, presumably, exhaustion must occur as to each individual policy. Thus, what is important for exhaustion and attachment of the umbrella policies are the payments made for each particular policy, rather than the total combined payments.[7]

Here, CNA's payments under the four umbrella policies, LX 6332888, RDU 3653746, UMB 6891202, and UMB 6891300, exhausted the applicable limits of each policy.

In its Cross-Motion, York asks the Court to clarify that the same standard of proof applies to both exhaustion of the umbrella policies and proof of next-level attachment. York contends that it would create an unnecessary double standard for this Court to hold that an umbrella insurer is exhausted with proof only of the gross amount of payments, and simultaneously hold that the policyholder is required to link claim-by-claim exposure proof to each of those payments to attach the next level policy. TIG responds that York is actually seeking a ruling that the next-level policy attaches upon exhaustion, and asserts that horizontal exhaustion across each layer of coverage for all years is required.

Although York and TIG raise the issue of attachment, it is not entirely clear what they are seeking, or why. Exhaustion and attachment are separate, though linked, issues. If this Court finds that the umbrella policies are exhausted, which it does, the issue of which excess policies

[7] Even if this Court looked at the total combined umbrella payments ($94,274,964 in total payments) and combined umbrella limits ($90M), the result would be the same: exhaustion of the umbrella policies has occurred.

attach will be before the Court. Presently, the Court does not have sufficient information to answer that question, and as such, declines to rule on attachment at this point.

IV. TIG's Motion for Reconsideration of the Primary Exhaustion Motions

TIG also filed a motion for reconsideration of the primary exhaustion motions. The Court orally denied TIG's Motion at the April 9, 2015 hearing, although it appears that ruling has not yet been expressed in a written order. To ensure a complete record of this Court's rulings, this Order shall reflect that TIG's Motion for Reconsideration is denied for the reasons set forth in the April 9, 2015 transcript (*see* 4/9/15 Tr. at 7-8).

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. CEI's Motion to Strike the Markos Affidavit is denied;
2. TIG's Motion to Strike the McNeela Affidavit is denied;
3. CNA's multi-year policies issued to BWC have occurrence limits that are not annualized and a single occurrence limit applies to the entire policy period. These policies are: LX 6332888, RDU 3653746, UMB 6891300, RDX 8073798, and RDX 8084708;
4. For LX 6332888, CNA has proven payments totaling $57,555,796, which exhausts the $55M policy limit.
5. For RDU 3653746, CNA has proven payments totaling $7,985,236, which exhausts the $5M policy limit.
6. For UMB 6891202, CNA has proven payments totaling $5,000,000, which exhausts the $5M policy limit.
7. For UMB 6891300, the $4,333,804 in payments made for claims in connection with the 1983 LaSalle Plant Explosion eroded the $25M aggregate limits, leaving $20,666,196 left for payments for asbestos claims. CNA has proven payments totaling $23,733,932, which exhausts the policy limit.
8. CNA's motion is denied, without prejudice, as to its request that this Court declare that CNA has overpaid more than $12M above its umbrella policy limits.
9. TIG's Motion for Reconsideration of the Primary Exhaustion Motions is denied.
10. The October 27, 2015 hearing date on the pending motions is stricken and rescheduled for November 13, 2015 at 10:00 a.m.

DATED:

ENTERED
JUDGE PETER FLYNN-1784
OCT 08 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER:

Circuit Judge