

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**COVESTRO, LLC  
Plaintiff,**

**v.**

**Civil Action No.: 18-C-202  
Presiding Judge: Wilkes  
Resolution Judges: Carl and Nines**

JOSEPH M. TAYLOR

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FILED

**AXIALL CORPORATION,  
ALLTRANSTEK, LLC, and  
RESCAR COMPANIES,  
Defendants,**

**and**

**AXIALL CORPORATION,  
Third-Party Plaintiff,**

**v.**

**SUPERHEAT FGH SERVICES, INC.,  
Third-Party Defendant.**

**--CONSOLIDATED WITH----**

**AXIALL CORPORATION,  
Plaintiff,**

**Civil Action No. 18-C-203  
Presiding Judge: Wilkes  
Resolution Judges: Carl and Nines**

**v.**

**ALLTRANSTEK LLC, RESCAR, INC.  
t/d/b/a RESCAR COMPANIES, and  
SUPERHEAT FGH SERVICES, INC.,  
Defendants.**

**ORDER GRANTING COVESTRO, LLC'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON THE JURY VERDICT REACHED IN PENNSYLVANIA**

This matter came before the Court this 29<sup>th</sup> day of August 2022 upon Plaintiff Covestro, LLC's Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania. The parties have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

**FINDINGS OF FACT**

1. This civil action consists of two consolidated cases<sup>1</sup> containing causes of action surrounding a chlorine leak at the Defendant Axiall Corporation's (hereinafter "Plaintiff" or "Axiall") facility, which produces chlorine and other products, in Marshall County, West Virginia. *See* Pl's Mem., p. 1. Axiall alleges the chlorine release occurred after railroad tank car AXLX 1702, owned by Axiall, sustained a crack causing the tank shell to rupture after it was loaded with liquid chlorine. In the Complaint, Axiall contends the fracture of the tank shell was caused by Defendants AllTranstek, LLC, Rescar, Inc. t/d/b/a Rescar Companies, and Superheat FGH Services, Inc. (hereinafter "Defendant" or "Superheat"). *See* Compl. Covestro is also a Plaintiff in one of the consolidated civil actions. *See* Pl's Mem., p. 2.

2. Covestro filed its Complaint against AllTranstek and Rescar for damages related to the August 2016 chlorine release/tank car rupture. *See* Pl's Mem., p. 1, 2. Covestro alleged that that the leak created a large gas cloud that traveled south and subsequently enveloped the Covestro Plant, which the Court notes is located just South of the Axiall plant facility. *Id.* at 2.

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<sup>1</sup> *See* Order of Court consolidating cases entered 2/28/19.

3. Relevant to the instant motion, Covestro asserted claims for negligence in Counts I-III against the Defendants. *Id.* at 2-3. Axiall filed Cross-Claims against AllTranstek and Rescar, seeking indemnity and contribution. *Id.* at 3. Thereafter, AllTranstek and Rescar asserted cross-claims against Axiall, alleging Axiall was solely liable to Covestro, and in the alternative, demanding contribution from Axiall if they were found to be jointly liable to Axiall to Covestro. *Id.* at 3-4.

4. There also exists a civil action referred to by the parties as “the Pennsylvania action” or “the Pennsylvania matter”, which is Axiall Corporation v. AllTranstek, LLC, et al., Civil Division No. GD-18-010944, in the Court of Common Pleas of Allegheny County Pennsylvania, wherein Axiall filed suit against AllTranstek, Rescar, and Superheat. *See* Pl’s Mem., p. 1, 4. In Count III of the Pennsylvania Complaint, Axiall asserted a claim for negligence against AllTranstek, Rescar, and Superheat, alleging their negligent conduct caused the August 2016 rupture. *Id.* at 4. Covestro was not a party to the Pennsylvania case. AllTranstek and Rescar subsequently filed an Answer and New Matter in this Pennsylvania case, alleging Axiall’s negligent conduct caused the August 2016 incident. *Id.* at 5.

5. On October 14, 2021, the jury in the Pennsylvania action reached a verdict: 1) AllTranstek, Rescar, and Axiall were each negligent with respect to the August 2016 rupture; 2) AllTranstek, Rescar, and Axiall’s negligence was a factual cause of the release; and 3) the fault for the rupture/release was attributable to each of the Defendants’ negligent as follows: AllTranstek – 20%, Rescar – 30%, and Axiall – 40%. *See* Pl’s Mem., p. 1; *see also* Pl’s Mem., p. 8-10 (photos of Jury Verdict Slip).

6. Covestro filed the instant Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania, arguing Defendants should be collaterally estopped from

relitigating the negligence issues relating the August 2016 incident. *See* Pl's Mem., p. 11.

Superficially, Covestro argues Defendants Axiall, AllTranstek, and Rescar should be estopped from relitigating the issues of: 1) whether Defendants were negligent with respect to the August 27, 2016 chlorine release; 2) if Axiall, AllTranstek, and/or Rescar were negligent, whether that Defendant's negligence was a factual cause of the release; and 3) what percentage of the factual cause of the release should be attributed to each Defendant's negligence. *See* Pl's Mot., p. 1-2. Covestro requested a finding consistent with the jury's determination in the Pennsylvania action regarding apportionment, requesting the following: 1) AllTranstek was negligent with respect to the August 27, 2016 chlorine release and 20% of the fault for the release should be attributed to AllTranstek; 2) Rescar was negligent with respect to the August 27, 2016 chlorine release and 40% of the fault for the release should be attributed to Rescar; and 3) Axiall was negligent with respect to the August 27, 2016 chlorine release and 40% of the fault for the release should be attributed to Axiall. *Id.* at 2.

7. On a prior day, Axiall filed Axiall Corporation's Response in Opposition to Covestro, LLC's Motion for Summary Judgment, arguing the fifth factor of collateral estoppel as not been met, because the prior finding must have been essential to a final judgment, not simply included on the verdict slip. *See* Def's Resp., p. 2. Further, Axiall states that findings in a verdict can be considered the equivalent of findings in a judgment, but verdict findings must still be essential to the final judgment that will ultimately issue, and this case, Axiall argues the negligence findings will not affect the judgment under the election of remedies doctrine, because with regard to the damages findings in the final judgment, Axiall will elect for the Pennsylvania court to enter judgment in Axiall's favor only on its breach of contract claim. *Id.* at 4-5. Therefore, Axiall asks that the Court deny Covestro's motion and to instead enter summary

judgment in Axiall's favor, finding the negligence questions in the verdict slip<sup>2</sup> are not necessary to the judgment, but find that the breach of contract questions in the verdict slip<sup>3</sup> meet all collateral estoppel requirements and be given collateral estoppel effect in the case at bar. *Id.* at 6.

8. On a prior day, Defendants AllTranstek and Rescar filed Response of AllTranstek LLC and Rescar Companies in Opposition to Covestro's Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania, arguing the Covestro West Virginia action does not involve the same parties, claims, or issues, and therefore, the jury's verdict in Pennsylvania should not be applied here. *See* Def's Resp., p. 2. In making this argument, AllTranstek and Rescar argue the first and second collateral estoppel factors, alleging the apportionment of fault is not "identical", the negligent claims are not "identical", and Pennsylvania verdict is not "sufficiently firm to be accorded conclusive effect". *Id.* at 4-10.

9. On a prior day, Covestro filed a Reply to Axiall's response, titled Plaintiff Covestro, LLC's Reply in Support of Its Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania, arguing "Axiall's [response] arguments do not serve as a basis for this Court to deny [the instant motion]". *See* Reply to Axiall's Response, p. 1. Covestro argues Axiall's reliance on the election of remedies doctrine is misplaced because Axiall does not have to make an election of remedies as the jury awarded one damage award, and because even if it could make an election of remedies, the issue of negligence was necessary for the breach of contract result, because in order to qualify for the contractual indemnity it sought, Axiall could not have been found to be solely liable. *Id.* at 4-9. As a result, Covestro avers the jury determination regarding who was negligent was necessary and essential to the breach of contract findings/verdict in Pennsylvania. *Id.* at 9.

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<sup>2</sup> Questions 1-5.

<sup>3</sup> Questions 6-14.

10. On a prior day, Covestro filed a Reply to AllTranstek and Rescar's response, titled Plaintiff Covestro, LLC's Reply to AllTranstek and Rescar's Opposition to Covestro's Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania, arguing the arguments posed by AllTranstek and Rescar in their Response lack merit and do not provide a basis for denial of the instant motion for partial summary judgment. *See Reply to AllTranstek and Rescar's Response*, p. 1. Specifically, Covestro argues the issues are "identical" because the reasons and the basis for the Defendants' negligence was raised in both actions, assessed by the jury in Pennsylvania, and was the same. *Id.* at 3-4. Covestro argues no evidence has been proffered in the record of this case regarding any negligent conduct on the part of Covestro. *Id.* at 5-7. Further, Covestro reiterates its position that the verdict is sufficiently firm and final for the purposes of final judgment. *Id.* at 7-8.

11. The Court now finds the instant Motion is ripe for adjudication.

#### **STANDARD OF LAW**

12. Motions for summary judgment are governed by Rule 56, which states that "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c). West Virginia courts do "not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law." *Alpine Property Owners Ass'n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

13. Therefore, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not

desirable to clarify the application of the law.” Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

14. However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).’” *Id.* at 60.

### CONCLUSIONS OF LAW

15. In this matter, Covestro filed the instant motion for partial summary judgment, seeking summary judgment as to the negligence and apportionment of fault issues in this case, alleging they are entitled to summary judgment based on the collateral estoppel effect of the jury’s findings in the Pennsylvania action. See Pl’s Mot., p. 1-2.

16. As an initial matter, under *Jordache Enterprises, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 513 S.E.2d 692 (W. Va. 1998) and *Cortez v. Murray*, No. 17-0662, 2018 WL 2447285 (W. Va. May 31, 2018), Pennsylvania law should be utilized to determine if collateral estoppel applies because the applicable jury verdict was entered in Pennsylvania. In *Jordache Enterprises, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 513 S.E.2d 692 (W. Va. 1998), the West Virginia Supreme Court of Appeals considered the effect of a prior

judgment from a New York court and which state's law to apply with respect to collateral estoppel. The court determined that "the full faith and credit clause [of the United States Constitution] generally requires the courts of this State to give the New York judgment at least the res judicata effect which it would be accorded by New York courts." *Jordache Enters., Inc.*, 513 S.E.2d at 703. As a result, the court applied New York law concerning the elements of collateral estoppel. *Id.*; see also *Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 357 (3d Cir. 1999) (applying Pennsylvania law)(to determine preclusive effect of prior state court action, courts "look to the law of the adjudicating state").

17. The West Virginia Supreme Court of Appeals applied a similar analysis in *Cortez v. Murray*, No. 17-0662, 2018 WL 2447285 (W. Va. May 31, 2018). In that case, the Supreme Court cited *Jordache Enterprises* for the proposition that a prior judgment on the merits from another state is entitled to deference. See *Cortez*, 2018 WL 2447285, at \*7. The court went on to apply Texas law concerning the preclusive effect of a prior judgment in subsequent proceedings in another state. *Id.* at \*7-8.

18. The Court finds that based on the decisions in *Jordache Enterprises* and *Cortez*, since the prior verdict at issue in the instant motion was entered in Pennsylvania, this Court applies Pennsylvania law to determine if collateral estoppel applies.

19. Pennsylvania courts generally apply the following elements when considering whether collateral estoppel applies to preclude relitigation of a matter decided in prior litigation: 1) an issue decided in a prior action is identical to one presented in a later action; 2) the prior action resulted in a judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and 4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the



issue in the prior action. *See Ream v. Commonwealth Dep't of Pub. Welfare*, 500 A.2d 1274, 1276 (Pa. Commw. Ct. 1985). Some Pennsylvania courts also require a fifth element—whether the issue determined in the prior action was “essential” to the previous judgment. *See Pitney Road Partners, LLC v. Murray Assocs., Architects, P.C.*, No. 2253 MDA 2013, 2014 WL 10575406, at \*4 (Pa. Super. Ct. Sept. 18, 2014).

20. The first collateral estoppel element is whether an issue decided in a prior action is identical to an issue presented in a later action. *See Mason v. Progressive Direct Ins. Co.*, No. 1650 EDA 2014, 2015 WL 7013630, at \*2 (Pa. Super. Ct. June 5, 2015) (quoting *Safeguard Mut. Ins. Co. v. Williams*, 345 A.2d 664, 668 (Pa. 1975)).

21. The Court notes Axiall concedes this first factor. However, in their Response, AllTranstek and Rescar argued the first factor, so the Court will analyze the first factor.

22. Here, in this case, the jury would be asked to determine issues that have already been decided in the Pennsylvania action: whether Defendants Axiall, AllTranstek, and Rescar were negligent with respect to the August 2016 chlorine release incident, if Axiall, AllTranstek, or Rescar were negligent, whether that defendant’s negligence was a factual cause of the release, and what percentage of the fault for the release incident should be attributed to each defendant’s negligence. *See* Pl’s Mem., p. 12-13. In the Pennsylvania case, the jury decided whether these issues, and this is the identical issue Plaintiff would present with respect to AllTranstek, Rescar and Axiall’s negligence here. Stated another way, the Pennsylvania action decided the issue of whether Defendants were negligent, and in answering that question in the affirmative, they also decided the issue of what percentage of fault should be attributed to each Defendant’s negligence.

23. Axiall argued its theories of negligence to the jury, and the jury was specifically directed to make a decision regarding Axiall, AllTranstek and Rescar's negligence. This specific jury finding was detailed on the verdict slip. *See* Pl's Mem., p. 13. The Court does not find AllTranstek and Rescar's argument that the issues were not identical because the Pennsylvania jury considered breaches of duties owed to Axiall, and not Covestro, to be persuasive. *See* Def's Resp., p. 4. The Court considers the fact that Covestro has been alleged to have been involved with the incident or with AXLX 1702. The Court considers that as the neighboring Plant property, and innocent, uninvolved party, Covestro was owed the general duty of care.

24. There is no evidence in the record that AllTranstek and Rescar did not owe a duty to Covestro. *See* Covestro's Reply to AllTranstek and Rescar's Opposition, p. 5. The law is clear that a party opposing a motion for summary judgment may not rest on allegations of his or her unsworn pleadings and must instead come forth with evidence of a genuine factual dispute. *Id. citing Crum v. Equity Inns, Inc.*, 685 S.E.2d 219, 227 (W. Va. 2009). The Court was not presented with any authority or anything other than bald allegations that AllTranstek and Rescar did not owe Covestro a duty. *Id.* at 6.

25. The Court considers that collateral estoppel applies even if the cause of action in the second case were to differ from the cause of action in the first case; the requirement under the law is that the issue be the same, as the Court has determined it is here. *Columbia Med. Grp., Inc. v. Herring & Roll, P.C.*, 829 A.2d 1184, 1190 (Pa. Super. 2003). For these reasons, the Court finds that there is no genuine issue of material fact as to whether collateral estoppel applies to the identical issues, notwithstanding its arguments regarding who was owed a duty.

26. The Court next addresses the second element, that the prior action resulted in a judgment on the merits. *See Ream*, at 1276. While the second element generally applies when a

final judgment has been entered in the prior action, the Pennsylvania Supreme Court has recognized that “final judgment” encompasses “any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.” *See Shaffer v. Smith*, 673 A.2d 872, 875 (Pa. 1996) (quoting Restatement (Second) of Judgments § 13 (1980)). As a result, multiple courts applying Pennsylvania law have held that a state court jury verdict on damages is considered a “final judgment” when analyzing collateral estoppel. *See Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 358-59 (3d Cir. 1999) (applying Pennsylvania law); *Allstate Ins. Co. v. Boyles*, No. 05-1778, 2007 WL 2011492, at \*3 (W.D. Pa. July 5, 2007) (applying Pennsylvania law) (“Relitigating an issue upon which a jury has already returned a verdict would be ‘unnecessarily duplicative and a waste of valuable judicial resources – the precise evils that issue preclusion is designed to combat.’”)(internal citation omitted).

27. Here, there were post-trial motions filed in the Pennsylvania action, which have now been ruled upon. However, the Court notes that Axiall mentions in its own motion for summary judgment<sup>4</sup> that it anticipates Superheat will apply for collateral estoppel effect for the Pennsylvania jury findings, and avers to the Court that Axiall has filed a notice of appeal of a judgment entered in the Pennsylvania action in Superheat’s favor. *See Axiall’s Mem.*, p. 8. Further, in its Response to the aforementioned Axiall summary judgment motion<sup>5</sup>, Covestro avers that Axiall filed a Notice of Appeal to the Superior Court of Pennsylvania in the Pennsylvania case, “but only with regard to the partial judgment entered in favor of Superheat”. *See Covestro’s Resp.*, p. 11.

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<sup>4</sup> *See Axiall Corporation’s Motion for Partial Summary Judgment on the Collateral Estoppel Effect of Certain Jury Findings in the Allegheny County Verdict and Associated Court Rulings*, filed 4/14/22.

<sup>5</sup> *See Plaintiff Covestro LLC’s Memorandum of Law in Opposition to Axiall’s Motion for Partial Summary Judgment on the Collateral Estoppel Effect of Certain Jury Findings in the Allegheny County Verdict and Associated Court Rulings*.

28. Further, the Court considers that on August 16, 2022, the Court was provided with a copy of the Praecipe for Entry of Judgment and Notice of Entry of Judgment filed in the Pennsylvania action, entering judgment in that action.

29. The Court finds that bearing this, the “final judgment” in the Pennsylvania action “sufficiently firm to be accorded conclusive effect” under *Shaffer v. Smith*, 673 A.2d 872 (Pa. 1996). For these reasons, the Court finds the second element is met.

30. The third element, that the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action (*see Ream*, at 1276), was not challenged by AllTranstek/Rescar or Axiall. As such, the Court declines to analyze this element.

31. The fourth element, that the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action (*see Ream*, at 1276), was not challenged by AllTranstek/Rescar or Axiall. As such, the Court declines to analyze this element.

32. Finally, the Court next addresses the fifth element that some Pennsylvania courts require, whether the issue determined in the prior action was essential to the previous judgment. *See Pitney Road Partners, LLC v. Murray Assocs., Architects, P.C.*, No. 2253 MDA 2013, 2014 WL 10575406, at \*4 (Pa. Super. Ct. Sept. 18, 2014). The Court notes AllTranstek and Rescar did not challenge this element, but Axiall did.

33. Axiall argues that the verdict findings regarding negligence are not essential to the final judgment because they will not affect the final judgment. *See Axiall’s Resp.*, p. 4. Axiall argues this is because in order to avoid double recovery, Axiall will elect to receive its damages in Pennsylvania by electing to receive its damages only on its breach of contract there. *Id.* at 5. As a result, Axiall argues the jury’s findings as to the negligence and apportionment of

responsibility questions will not be included in or inform the judgment, except as to Superheat, and should not be given collateral estoppel effect in the case at bar. *Id.* at 5-6.

34. As explained in this Court's Order Denying Axiall Corporation's Motion for Partial Summary Judgment on the Collateral Estoppel Effect of Certain Jury Findings in the Allegheny County Verdict and Associated Court Rulings<sup>6</sup>, the Court rejects this argument.

35. First, there is no potential for double recovery in the Pennsylvania action. Regardless, in the event that Axiall could elect its remedy in the Pennsylvania action, the Court finds the jury's findings regarding negligence were plainly essential to the award of damages and the finding related to declaratory judgment. First of all, if Axiall could elect to receive damages for AllTranstek and Rescar's breach of contract, as opposed to their negligence, that would not somehow undo the jury's findings in the Pennsylvania case regarding negligence and apportionment of fault, or render them not "essential". In deciding whether a prior determination was "essential to the judgment," Pennsylvania courts evaluate "the context of the claim" and if the issue "affected the decision or damages rendered in the prior proceeding." *Pitney Rd. Partners, LLC v. Murray Assocs. Architects, P.C.*, 2014 WL 10575406, at \*6 (Pa. Super. Sept. 18, 2014). "The appropriate question, then, is whether the issue was actually recognized by the parties as important and by the trier as necessary to the first judgment." *Zarnecki v. Shepegi*, 532 A.2d 873, 879 (Pa. Super. 1987)(citation omitted).

36. In the Pennsylvania action, the issue of the Defendants' respective negligence was unequivocally recognized by them as important and necessary to the resolution of the Pennsylvania Action. Defendants extensively litigated the questions of negligence and fault for

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<sup>6</sup> The Court notes Axiall proffered the same argument here, and notes in the instant briefing Axiall quoted Paragraph 6 of its memorandum in support of its summary judgment motion on collateral estoppel issues. *See Axiall's Resp.*, p. 5.

the Chlorine Release at every phase of the Pennsylvania Action: the parties' specifically alleged the issues of negligence and comparative/contributory negligence in their pleadings, it was in dispositive motions, and it was argued throughout trial. *See* Covestro's Reply to Axiall's Resp., p. 7. Also, it was specifically identified as being so essential or critical that it was included in the jury instructions and verdict slip. *Id.*

37. Second, and more importantly, the negligence and apportionment findings plainly affected the decision regarding the breach of contract claim. This is because Axiall's breach of contract claim against AllTranstek and Rescar was predicated entirely on their alleged negligence. *Id.* at 8-9. This is because the indemnification provision at issue provides that Axiall was entitled to indemnification only if the injury or damage was not caused by the sole negligence of Axiall. *Id.* at 9. Therefore, the Pennsylvania court could not have entered a declaratory judgment in Axiall's favor and ruled that AllTranstek and Rescar were contractually bound to indemnify Axiall from any damages, demands, losses or liabilities caused by the rupture and release of the tank car at issue on August 27, 2016 without the jury's findings that Axiall was negligent, but that negligence was only 40% of the factual cause of the chlorine release. Also, the Court notes the same conduct was the basis for both the negligence and contract claims, that by failing to competently provide the services they were contracted to provide to Axiall, AllTranstek and Rescar caused the tank car rupture and resulting damage to Axiall's property and third party property.

38. For the reasons explained above, because the Pennsylvania Court could not have been entered declaratory judgment in Axiall's favor without the jury's findings of Defendants' negligence and apportionment of liability, these findings – regardless of whether Axiall purports to elect contract remedies – were essential to the verdict in the Pennsylvania Action.

39. The Court considers this plainly essential to the verdict. The Court finds the fifth element is met.

40. Accordingly, all the elements being met, the Court finds the instant motion must be granted and summary judgment shall be awarded in favor of Covestro on this matter and the Court hereby finds as a matter of law that pursuant to the doctrine of collateral estoppel:

- (a) AllTranstek was negligent with respect to the August 27, 2016 chlorine release and 20 percent of the fault for the release is attributed to AllTranstek;
- (b) Rescar was negligent with respect to the August 27, 2016 chlorine release and 40 percent of the fault for the release is attributed to Rescar; and
- (c) Axiall was negligent with respect to the August 27, 2016 chlorine release and 20 percent of the fault for the release is attributed to Axiall.

### CONCLUSION


**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that Plaintiff Covestro, LLC's Motion for Partial Summary Judgment on the Jury Verdict Reached in Pennsylvania is hereby **GRANTED**. It is further hereby **ORDERED** and **ADJUDGED** as a matter of law that:

- (a) AllTranstek was negligent with respect to the August 27, 2016 chlorine release and 20 percent of the fault for the release is attributed to AllTranstek;
- (b) Rescar was negligent with respect to the August 27, 2016 chlorine release and 40 percent of the fault for the release is attributed to Rescar; and
- (c) Axiall was negligent with respect to the August 27, 2016 chlorine release and 20 percent of the fault for the release is attributed to Axiall.

The Court notes the objections of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

8-29-22

date of entry



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JUDGE CHRISTOPHER C. WILKES  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION