

In the Circuit Court of Marshall County, West Virginia

**AXIALL CORPORATION,
Westlake Chemical Corporation,**
Plaintiffs,

v.

Case No. CC-25-2019-C-59
Judge Christopher C. Wilkes

**NAT'L. UNION FIRE INS CO OF
PITTSBURGH,
ACE AMERICAN INSURANCE
COMPANY,
Great Lakes Insurance SE,
Navigators Management Co, Inc,
Allianz Global Risks US Ins Co ET AL,**
Defendants

DAY ORDER AND BRIEFING ORDER

COMES the Court this 14th day of August, 2024.

On August 14, 2024 at 11:00 a.m. a status conference was held telephonically.

John M. Sylvester, Esq., appeared for Plaintiffs Axiall Corporation and Westlake Chemical Corp., and Myles Parker, Esq. appeared for Defendants, National Union Fire Insurance Company of Pittsburgh, Pa., Allianz Global Risks US Insurance Company, ACE American Insurance Company, Zurich American Insurance Company, Great Lakes Insurance SE, XL Insurance America, Inc., General Security Indemnity Company of Arizona, Aspen Insurance UK Limited, Navigators Management Company, Inc., Ironshore Specialty Insurance Company, Validus Specialty Underwriting Services, Inc., and HDI-Gerling America Insurance Company.

On a prior day, this Court directed the parties to confer and submit a proposed Joint Final Judgment Order to the Court. This Order was contemplated to preserve each side's objections to any adverse ruling against them. Alternatively, if the parties could not agree to a joint proposed order, counsel were directed to submit to the Court individual

proposed Final Judgment Orders. The parties could not agree and submitted their individual proposed Final Judgment Orders. Of particular note is the fact that the parties differed on whether or not a finding should be made regarding a breach of the Policies.

There appearing a disputed issue exists regarding Count II – Breach of Contract (and prejudgment interest), the Court cannot enter a final Order until the matter is briefed, and the Court reviews whether a dispute/genuine issue of material fact remains.

Therefore, the parties are directed as follows:

Plaintiffs shall file a motion for summary judgment fully briefing its arguments as to its findings in its proposed final judgment order regarding Count II and whether Plaintiffs are entitled to an award of pre-judgment interest under Georgia law within twenty (20) days of the entry of this Order. The movant will provide a proposed order and serve a copy upon all non-moving parties. Non-moving parties shall then file written responses and proposed orders within 15 days of the filing of said motion(s) and serve copies of the same on the moving party. The moving party shall thereafter have 10 days to file a rebuttal memorandum, if desired. Thereafter, the Court will rule upon the motion on the pleadings and record or schedule a hearing if the Court deems it necessary.

All original proposed orders and copies of motions and/or memoranda shall be sent directly to the Judge via Carol.Miller@courtswv.gov with a courtesy copy to both Business.Court@courtswv.gov and Tessa.Bowers@courtswv.gov. Copies of the proposed orders and the original motions and memoranda shall be e-filed with the Clerk of the Circuit Court.

The issue of a potential offset was also discussed at this and prior status hearings. The Court notes that earlier in this civil action, Defendants alluded to an intent to fully seek an offset or other appropriate relief in the event that any amount is paid to Axiall in the Pennsylvania case. See Defs' Mot. for Partial Summ. J. to Enforce the Penna. Jury's

Natrium Plant Damages Verdict, p. 15 (footnote) (“In the event that any amount is paid to Axiall in the Pennsylvania matter, Defendants intend to seek an offset or other appropriate relief.”).

Therefore, Defendant is instructed to file such a motion/brief within twenty (20) days of the entry of this Order. Defendant shall provide a proposed order and serve a copy upon all non-moving parties. Non-moving parties shall then file written responses and proposed orders within 15 days of the filing of said motion(s) and serve copies of the same on the moving party. The moving party shall thereafter have 10 days to file a rebuttal memorandum, if desired. Thereafter, the Court will rule upon the motion on the pleadings and record or schedule a hearing if the Court deems it necessary.

All original proposed orders and copies of motions and/or memoranda shall be sent directly to the Judge via Carol.Miller@courtsv.gov with a courtesy copy to both Business.Court@courtsv.gov and Tessa.Bowers@courtsv.gov. Copies of the proposed orders and the original motions and memoranda shall be e-filed with the Clerk of the Circuit Court.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: August 14, 2024

/s/ Christopher C. Wilkes
Circuit Court Judge
2nd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtsv.gov/e-file/ for more details.