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April 19, 2005

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Via U.S. Mail

Sandy Williams, Clerk
United States Court of Appeals
For The Sixth Circuit
100 East Fifth Street, Room 532
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

**Re: *GenCorp Inc. v. AIU Ins. Co., et al.*, No. 04-3244;
Recent Ruling of U.S. District Court in *Goodyear v. Hartford* (W.D. Pa. 2005)**

Dear Ms. Williams:

This firm represents American Re-Insurance Company, one of the Appellee-Insurers in the above matter. This is to advise the Sixth Circuit of a recent ruling that supports the position of Appellees in the above appeal that was issued after the oral argument in this case on March 17, 2005.

On April 14, 2005, U.S. District Judge Conti affirmed and adopted as the opinion of the District Court the rulings of the Magistrate Judge in his opinion dated March 11, 2005 in the case entitled *Goodyear Tire & Rubber Company v. Hartford Accident & Indemnity Company, et al.*, Civil Action No. 97-933 (W.D. Pa. 2005). That Order is attached.

As we advised this Court in our March 14, 2005 correspondence, the Pennsylvania *Goodyear* court, applying Ohio law, denied the policyholder's motion for partial summary


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judgment that it could select which excess policy should pay for its asbestos liability under the "all sums" ruling of the Ohio Supreme Court in *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 769 N.E.2d 835 (Ohio 2002). The affirmance by the District Court supports the Appellee-Insurers' argument in this appeal that the Ohio Supreme Court's opinion in *Goodyear* permits consideration of the policyholder's underlying settlement limits, as argued at pages 29-34 of the Appellee-Insurers' Final Brief dated September 7, 2004.

The Magistrate Judge's ruling that was affirmed by the District Court relies upon and cites with approval the District Court's opinion from which GenCorp appeals in this case: *GenCorp Inc. v. AIU Ins. Co.*, 297 F. Supp. 2d 995 (N.D. Ohio 2003), *reconsideration denied*, 304 F. Supp. 2d 955 (N.D. Ohio 2004).

Very truly yours,


Maryann C. Hayes

MCH/cl
Enclosure

cc: All Counsel of Record on attached Service List, via U.S. mail

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE GOODYEAR TIRE AND RUBBER)
COMPANY,)

Plaintiff,)

v.)

Civil Action No. 97-933)

HARTFORD ACCIDENT AND)
INDEMNITY COMPANY, et al.,)
Defendants.)

O R D E R

AND NOW, this 14th day of *April*, 2005, after the plaintiff, Goodyear Tire and Rubber Company, filed a second amended complaint against defendants Hartford Accident and Indemnity Company, American Re-Insurance Company, London Market Companies, and William W. Maitland, an underwriter at Lloyd's London, and after motions for partial summary judgment were filed by several of the parties, and after a Report and Recommendation was issued by the United States Magistrate Judge, and the parties were granted ten days after being served with a copy to file written objections thereto, and upon consideration of the objections filed by the plaintiff, as well as a response to those objections filed by defendant American Re-Insurance Company, and after independent review of the pleadings, and the Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court,

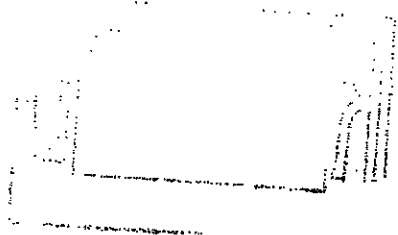
IT IS ORDERED that the plaintiff's motion for partial summary judgment on allocation, seeking a declaration that it can select which insurance policies it wants to utilize to pay for its asbestos liabilities (Docket No. [0-1] w/234) is denied, but that its motion for partial summary

judgment seeking a declaration that the asbestos claims against it constitute a single occurrence (Docket No. [0-2] w/234) is granted, that the motion for partial summary judgment filed by defendant American Re-Insurance Company seeking a declaration that there is no more than a single occurrence limit potentially available under certain of its policies (Docket No. 224) is granted, and its motion for oral argument on the motion (Docket No. [0-1] w/224) is dismissed as moot, that the motion for partial summary judgment filed by defendants William W. Maitland and London Market Companies seeking a determination that each asbestos claim against the plaintiff constitutes a separate occurrence under its policies (Docket No. 231-1) is denied, but that their alternative motion for partial summary judgment seeking a determination that its policies provide a single occurrence policy limit for each policy period and not separate annual limits (Docket No. 231-2) is granted, that the motion for summary judgment filed by defendant American Re-Insurance Company with respect to insurance policies Nos. M0084976 and M0370731 (Docket No. 228) is denied, and that the motion for partial summary judgment on Count Four of the second amended complaint filed by defendants William W. Maitland and London Market Companies (Docket No. 230) is denied.


United States District Judge

cc: All Counsel of Record

Honorable Robert C. Mitchell
United States Magistrate Judge



GENCORP v. AIU INS. CO., et al.
6th Circuit Appeal Numbers 04-3244; 04-3377
SERVICE LIST - ALL COUNSEL

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