

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 08-cv-02139-LTB-KLM

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Plaintiff,

v.

ALSTOM POWER, INC.,  
TIC - THE INDUSTRIAL COMPANY,  
ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

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**ORDER**

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THIS MATTER is before the me on Defendant Zurich American Insurance Company's ("Zurich") Motion for Partial Summary Judgment, filed June 1, 2010 (docket # 93); Plaintiff St. Paul Fire and Marine Insurance Company's ("St. Paul") Response, filed July 16, 2010 (docket # 107); and Defendant's Reply, filed August 2, 2010 (docket # 116).

Zurich requests that I find as a matter of law that St. Paul's primary and umbrella policies provide primary coverage to Alstom, and that the Zurich Policies are excess and only respond when St. Paul's polices are exhausted. At the time Zurich filed the motion, the issue was not ripe for consideration as the issue of whether St. Paul owed primary coverage to Alstom had not yet been decided. Zurich was requesting a premature advisory opinion. The issue is now ripe for consideration but is moot.

In my Order, dated August 31, 2010 (docket #128), I assumed, based on the arguments made by the parties, that Alstom was an additional insured under the policies and I found and concluded that no portion of the settlement amount was attributable to “property damage” as defined by the policies. Because the arguments raised in Zurich’s Motion are dependant on St. Paul having a duty to indemnify Alstom and I have determined that no such duty exists, Defendant Zurich American Insurance Company’s (“Zurich”) Motion for Partial Summary Judgment, filed June 1, 2010 (docket # 93) is **DENIED AS MOOT**.

Dated: September   8  , 2010.

BY THE COURT:

          s/Lewis T. Babcock            
Lewis T. Babcock, Judge