

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

THE TRAVELERS INDEMNITY	:	
COMPANY and TRAVELERS PROPERTY	:	
CASUALTY COMPANY OF AMERICA	:	
	:	
Plaintiffs,	:	
	:	File No. 1:08-CV-92
v.	:	
	:	
ACADIA INSURANCE COMPANY	:	
	:	
Defendant.	:	
	:	

RULING ON MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Paper 38)

Now pending in this insurance case is Magistrate Judge Conroy's Report and Recommendation (R&R) (Paper 38) and Acadia Insurance Company's objection (Paper 39). The parties also submitted numerous other filings following issuance of the R&R. See Papers 40, 41, 42, 44, 45, 46. Upon de novo review, see Fed. R. Civ. P. 72(b), and for the reasons that follow, Acadia's Objection is granted in part.

The Magistrate Judge recommends Travelers' motion for summary judgment on its claim for contribution be granted because Acadia's duty to defend is established and there are no disputed facts regarding the estimated defense fees and costs. (Paper 38 at 25-26.) The R&R did not state reasons for its recommendation that Acadia be ordered to provide contribution to Travelers in the amount of one-third of all defense costs paid by Travelers. (Paper 38 at 27.) Acadia argues, under Maine law, where multiple

primary carriers have a duty to defend on the same occurrence, the allocation is based on a pro rata proportion of policy limits. (Paper 39 at 11.) Because the contribution claim (Count II) was resolved in Travelers' favor, the R&R did not address Travelers' claims for equitable subrogation (Count III) or unjust enrichment (Count IV). (Paper 38 at 26 n.11.)

Upon review of the parties' cross-motions, it appears the allocation issue was not fully briefed. Thus, despite otherwise offering a thorough and well-reasoned discussion of this case, the Court concludes that a limited recommittal is appropriate to afford the Magistrate Judge an opportunity to address the allocation issue with the benefit of full briefing from the parties. See Fed. R. Civ. P. 72(b) (in making a de novo determination "[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions").

Accordingly, it is ORDERED that:

1. To the extent Defendant requests further consideration of the allocation issue, Defendant's Objection (Paper 41) is GRANTED.
2. The Report and Recommendation is AFFIRMED, APPROVED, and ADOPTED as to Count I. Plaintiffs' Motion for Summary Judgment (Paper 21) on this count is GRANTED. Defendant's Motion for Summary Judgment (Paper 20) is DENIED in its entirety.

3. This case is respectfully REMANDED to Magistrate Judge Conroy so that he may conduct any necessary proceedings and issue a supplemental Report and Recommendation addressing Plaintiffs' Motion for Summary Judgment (Paper 21) as to Counts II, III and IV.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 8th
day of May, 2009.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
United States District Judge