STATE OF NORTH CAROLINA UNION COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 1286
In re: RADIATOR SPECIALTY COMPANY, INC.; RSC HOLDINGS, INC.; RSC CHEMICAL SOLUTIONS, LLC; GUNK LLC; LIQUID WRENCH LLC; TITE SEAL LLC; RSC BRANDS, LLC; and RSC LICENSOR, LLC, Debtors.	**ORDER AND OPINION ON RECEIVER'S MOTION TO APPROVE CLAIMS RESOLUTION AND DISTRIBUTION PROCESS**

1. At the outset of this case, Michael L. Martinez was appointed as Receiver for Radiator Specialty Company, Inc. and its affiliates.[1] The appointment order directed him to recommend a process for resolving claims against the receivership estate. Pending is the Receiver's motion to approve his proposed claims process, (ECF No. 42), as well as one objection to that proposal by an interested nonparty, (ECF No. 53). For the following reasons, the Court **GRANTS** the motion and **OVERRULES** the objection.

Grier Wright Martinez, PA, by Anna S. Gorman, Michael L. Martinez, and A. Cotton Wright, for Receiver Michael L. Martinez.

Bradley Arant Boult Cummings LLP, by Jonathan E. Schulz, and Fishkin Lucks LLP, by Matthew Cairone, for Interested Nonparty United States Steel Corp.

Wallace and Graham, P.A., by John Hughes and Mark Doby, and Locks Law Firm, by Andrew J. DuPont, for Interested Nonparties Certain Putative Plaintiffs.

[1] The debtors include Radiator Specialty's parent company and six subsidiaries. For simplicity, the Court refers to them all, together, as Radiator Specialty.

North Carolina Department of Justice, by T. Davis Hill, III, for Interested Nonparty North Carolina Department of Environmental Quality, ex rel. Joshua H. Stein, Attorney General.

Conrad, Judge.

I.
BACKGROUND

2. Radiator Specialty opened its doors in North Carolina in the 1920s with a single product for radiator repair. It flourished in the ensuing decades, adding new product lines, annexing other companies, and building a national footprint. At its peak, Radiator Specialty and its affiliates had hundreds of employees and coast-to-coast operations in "the automotive aftermarket, plumbing, hardware, industrial, traffic safety and appliance industries." (Compl. ¶¶ 8, 9, 19, ECF No. 3.)

3. But those days are long gone. Radiator Specialty has succumbed to financial distress brought on by a wave of tort litigation, including thousands of personal-injury lawsuits in which claimants allege that long-term exposure to products containing benzene or asbestos caused them to develop cancer or another similarly grave disease. Settlements and legal bills to date have topped $50 million—a number that is sure to grow. Unable to bear these expenses on its own, Radiator Specialty sued its insurance carriers to compel them to provide coverage under more than 100 product-liability policies that it had accumulated over the years. That litigation ended in defeat,[2] however, and left Radiator Specialty with virtually no insurance coverage and no way to meet the projected cost of future tort cases. Out of

[2] The North Carolina Supreme Court had the final word in the case. *See generally Radiator Specialty Co. v. Arrowood Indem. Co.*, 383 N.C. 387 (2022).

options, it filed this action and entered receivership. (*See* Compl. ¶¶ 24, 25, 27, 31, 32, 37, 38; R'ship Order 10, ECF No. 4.)

4. Administering claims against the receivership estate is one of the Receiver's many duties. As directed, he has recommended a process for resolving known and unknown claims and distributing funds to holders of allowed claims. His proposal divides claims into three groups. (*See* R'ship Order 13.)

5. The first and largest group of claims includes the tort claims that led to Radiator Specialty's demise. There are hundreds of active claims already, and there will likely be hundreds more to follow. The Receiver proposes to resolve all of them through a liquidating trust. A comprehensive Liquidating Trust Agreement spells out the details. The short version is this: the trust will absorb the remaining assets of the receivership estate, minus some cash; a claimant need submit only a simple form and proof of a medical diagnosis to make out a valid claim for payment; the trustee will approve and pay claims on a rolling basis until the trust runs dry; and acceptance of payment triggers a release of all claims against the trust and receivership estate. Claimants will receive $325 for an allowed asbestos claim, $5,500 for an allowed product-liability claim, and somewhere between $750 and $60,000 for an allowed benzene claim depending on the underlying diagnosis. These amounts equate to 40% of what Radiator Specialty has paid on average to settle similar claims in the past. (*See generally* Rev'd Proposed Liquidating Trust Agrmt. ["Rev'd Liquidating Trust Agrmt."], ECF No. 54.2.)

6. The second group of claims is environmental in nature, stemming from Radiator Specialty's ongoing responsibility under state and federal laws to investigate, monitor, and remediate contamination on real property that it owns or used to own. Radiator Specialty established a trust in 2017 to assure the North Carolina Department of Environmental Quality ("the Department") that there would be enough funds to continue and complete these remediation activities if it ever went out of business. This environmental trust has nearly $2 million in assets. Given the availability of those assets, the Receiver contends, the assets of the receivership estate and the liquidating trust should not be expended for continued cleanup and monitoring activities.

7. The third group of claims is a catchall for overdue taxes, outstanding invoices, unpaid insurance premiums, and other miscellaneous claims. The Receiver proposes to handle these claims through the receivership, not the liquidating trust. As proposed, claimants will have sixty days to submit a claim form. The Court will then allow or disallow claims based on the submitted materials and the Receiver's recommendation, with payment for each allowed claim capped at 40% of its value. To ensure that the receivership estate has enough funds to pay allowed claims, the Receiver will reserve $750,000 from the assets earmarked for the liquidating trust.

8. After the Receiver tendered his proposed claims process, the Court received an objection from United States Steel Corporation, an interested nonparty. United States Steel is often named as a codefendant alongside Radiator Specialty in litigation in Pennsylvania state courts involving benzene exposure. Its worry is that

a benzene claimant who receives only 40% of the value of his or her allowed claim will try to recover the shortfall from other accused tortfeasors, contrary to Pennsylvania law. This does not mean that United States Steel opposes the liquidating trust outright. Rather, what it seeks is to change the form of the release in a way that would stop the claimant from pursuing the unpaid amount from anyone else. A group of putative claimants responded to United States Steel's objection to state their support for the Receiver's proposal and to oppose any change to the form of the release. (*See* U.S. Steel Corp.'s Opp'n, ECF No. 53; Putative Claimants' Reply in Supp., ECF No. 60.)

9. The Court also received an objection from the Department, which sought to ensure that the assets of the preexisting environmental trust would be used only for their intended purpose—cleanup and remediation activities. (*See* N.C. Dept. of Env. Quality's Objection, ECF No. 51.) The Receiver agreed to revise the Liquidating Trust Agreement to make this clear. Satisfied, the Department withdrew its objection.

10. All briefing is complete. On 16 January 2024, the Court held a hearing on the motion and United States Steel's objection. The motion is ripe for decision.

II.
ANALYSIS

11. In supervising a receivership, the trial court must "establish the claims process to be followed in the receivership addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place where the proofs of claim must be filed, the deadline or deadlines for filing the proofs of claim, and other matters bearing on the claims process." N.C.G.S. § 1-507.49(b). How to do so is a matter of

discretion. Receiverships vary in scope and purpose and often affect the interests of many individuals and entities. Balancing these competing interests demands a flexible approach, tailored to the circumstances of the receivership and its creditors. *See Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) (discussing equitable nature of receiverships).

12. A few points are most salient here. One is that Radiator Specialty is no longer a going concern. The claims process is part and parcel of a broader plan to dissolve the company, liquidate its assets, and distribute them to creditors.

13. Another is that the receivership estate's most significant liabilities come from tort litigation. Dealing with the sheer volume of tort claims is a challenge. Plus, there are many unknowns. In addition to existing claims, new claims will continue to arise as more individuals develop symptoms that they allege to have been caused by exposure to harmful chemicals in Radiator Specialty's products. Projecting and accounting for these future claims are complex problems.

14. A further point is that the receivership estate does not have enough funds to make every claimant whole—or anywhere close to it. The weight of existing and impending tort litigation is simply too great. In this situation, when the value of allowed claims is certain to exceed the value of the estate's assets, there is a genuine risk that a poorly designed claims process might favor some claimants at the expense of others. The goal is to minimize that risk and fairly distribute scarce resources in a way that treats each claimant as equitably as possible.

15. The Receiver's proposal accomplishes that goal. His recommendation to resolve all tort claims through a liquidating trust is well suited to the needs of this case. The concept comes from bankruptcy law, where liquidating trusts are commonly created "as successor entities to Chapter 11 debtors" and "tasked with the responsibility of liquidating and distributing the assets that remain after confirmation of the plan of reorganization." *LaSala v. Bordier et Cie*, 519 F.3d 121, 127 n.1 (3d Cir. 2008). Creating a liquidating trust will not only facilitate the process of dissolving Radiator Specialty but also protect tort claimants down the road. It is an efficient way to deal with the high volume of these claims over an extended time horizon, long after Radiator Specialty has been dissolved.

16. Furthermore, the trust's plan of distribution, as detailed in the Revised Liquidating Trust Agreement, is fair. Using data from settlements of past cases, the Receiver has grouped anticipated tort claims into seven categories, estimated their values, and fixed the payout amounts for allowed claims at 40% of those values. Starting from a historical baseline is a sensible, reasoned approach that accounts for the differences among tort claims while treating similarly situated claimants the same. And fixing the payout amount at 40% of claim value means that there won't be an immediate run on the trust's assets—a measure designed to ensure that tomorrow's claimants will be no worse off than today's.

17. Likewise, the trust's procedural rules are more than reasonable. Included in the Receiver's proposal is a tort claim form (attached as exhibit B to his motion). All that a claimant needs to do to make a valid claim is to submit that form to the

trustee with some basic proof. For benzene and asbestos claims, this would include an affirmation that the claimant used Radiator Specialty's products and proof of a medical diagnosis. For product-liability claims, it would include some additional detail about the product at issue and the timing of the injury. This means that the trust will be easy to administer, enabling the trustee to act quickly without the burden of having to review voluminous submissions. Claimants will receive money faster and with less hassle, and administrative fees will not deplete the trust's assets. Indeed, no claimant has objected to the fairness of these procedures, and one group of putative claimants has thrown its support behind the proposed liquidating trust.

18. The only objection to the liquidating trust comes from United States Steel, whose aim is to limit its own potential liability to benzene-related tort claimants. In many cases, claimants who blame their injuries on Radiator Specialty also blame others, including United States Steel. Traditional rules of joint and several liability allow a claimant injured by multiple tortfeasors to seek full and complete relief from any one of them. Here, the liquidating trust guarantees each claimant 40% of an allowed claim—thus paying just part of Radiator Specialty's share of the overall liability for the claimant's injury. The risk, as United States Steel sees it, is that claimants may look to recover the shortfall from other joint tortfeasors. United States Steel seeks amendments to the Revised Liquidating Trust Agreement to keep that from happening.

19. United States Steel bases its objection partly on Pennsylvania law because it often defends against benzene-related tort actions in Pennsylvania state courts. In

recent years, Pennsylvania "abolished joint and several liability in most tort cases" so that each defendant is liable only for its apportioned share of the fault. *Rhoads Indus. v. Shoreline Found., Inc.*, 2022 U.S. Dist. LEXIS 36386, at *8 (E.D. Pa. Mar. 1, 2022). Of note, any party (such as United States Steel) may ask the trier of fact to allocate part or all of the fault to a nonparty (such as Radiator Specialty) that settled and entered into a release with the plaintiff. The party asking to allocate fault to a settling nonparty must do so with "appropriate requests and proofs." 42 Pa. Cons. Stat. § 7102(a.2).

20. According to United States Steel, the release provisions in the Revised Liquidating Trust Agreement risk depriving it of the "appropriate . . . proofs" needed to ask Pennsylvania courts to allocate fault to Radiator Specialty in benzene-related tort cases. To be sure, a tort claimant must release all claims against Radiator Specialty in return for payment from the liquidating trust. But the claimant need not sign a standalone release document; the release takes effect automatically upon negotiation of the distribution check. To ensure its ability to prove the release to the satisfaction of Pennsylvania courts, United States Steel seeks to modify the Revised Liquidating Trust Agreement to require the trustee to obtain and keep a signed, standalone release from each claimant.

21. This concern is wholly speculative. It presumes that tort claimants who receive distributions from the liquidating trust will routinely dispute that they've cashed the check and released their claims against Radiator Specialty under the terms of the Revised Liquidating Trust Agreement. That seems unlikely. Moreover,

the Pennsylvania statute requires *appropriate*, not *unequivocal*, proofs of a release. United States Steel cites nothing—no Pennsylvania case, for example—to support its fear that courts might construe the statute narrowly to require a standalone release. On the other hand, requiring the trustee to collect and retain an extra document from hundreds of claimants would impose considerable administrative burdens. Those burdens, and the associated cost to the trust, far outweigh any likely benefit to United States Steel. The Court therefore overrules the objection to the extent it seeks an amendment to require a standalone release from each claimant.

22. Of course, Pennsylvania is not the only forum for benzene-related litigation. Many tort claimants sue in jurisdictions where joint and several liability remains the norm. It is possible that a tort claimant, having accepted a distribution from the liquidating trust and released his or her claims against Radiator Specialty, could go on to obtain a judgment against tortfeasors that are jointly liable with Radiator Specialty. In that event, the judgment must be offset to account for the partial recovery that the claimant has already received. One option is to offset the judgment by the entirety of Radiator Specialty's share of fault. Another option is to offset the judgment only by the amount of the distribution from the trust. The Receiver recommends the latter approach, known as a pro tanto release. (*See* Rev'd Liquidating Trust Agrmt. § 6.5.)

23. United States Steel objects to a pro tanto release because it would allow a claimant to recover the shortfall from one of Radiator Specialty's joint tortfeasors. Ordinarily, a tortfeasor that pays more than its share of the overall liability can seek

contribution from other jointly liable parties, but Radiator Specialty is defunct, and the Revised Liquidating Trust Agreement bars contribution claims to preserve its limited assets for claimants. The upshot, according to United States Steel, is that the liquidating trust unfairly shifts some of Radiator Specialty's liability to other liable tortfeasors. United States Steel contends that it would be more equitable for injured claimants to accept a partial recovery than to require a partly liable party to pay more than its culpable share of a monetary judgment.

24. But "shifting the risk of partial recovery from the injured party to the tortfeasor" is a feature, not a bug, of joint and several liability. *In re Joint E. & S. Dist. Asbestos Litig.*, 1991 U.S. Dist. LEXIS 7527, at *78 (E.D.N.Y. May 16, 1991). "Compensation of persons injured by wrongdoing is one of the generally accepted aims of tort law." *Haarhuis v. Cheek*, 255 N.C. App. 471, 480 (2017) (citation and quotation marks omitted). Joint and several liability furthers that aim by allowing an injured party to seek complete relief from any culpable party. *See Crescent Univ. City Venture, LLC v. AP Atl., Inc.*, 2019 NCBC LEXIS 46, at *76 (N.C. Super. Ct. Aug. 8, 2019). The underlying policy is "that it is better that the risk of an insolvent co-defendant should fall on a partially guilty defendant than on a completely innocent victim." *United States v. Cano-Flores*, 796 F.3d 83, 95 (D.C. Cir. 2015).

25. A pro tanto release is consistent with these traditional principles. The Court therefore overrules this aspect of United States Steel's objection as well.

26. Looking beyond the liquidating trust, the Court concludes that all other aspects of the proposed claims process are also sound. The Receiver's

recommendation to exclude environmental remediation and cleanup costs makes good sense. Other responsible parties and other assets (nearly $2 million in a preexisting environmental trust) are available to handle those costs. Indeed, the Department has no objection to the Receiver's recommendation, as stated in the Revised Liquidating Trust Agreement.

27. And finally, the Receiver's recommendation to handle all other claims directly through the receivership estate is reasonable. No party objects to his suggested procedures, deadlines, and claim form (attached as exhibit C to the motion). Nor does any party object to the proposal to reserve $750,000 in the estate and to pay 40% of each allowed claim's value. The decision to reserve $750,000 is based on a reasoned assessment of anticipated claims. Further, the 40% partial recovery is equivalent to the partial recovery that the liquidating trust guarantees to tort claimants—thus putting all claimants on a level footing. The Court concludes that these recommendations are fair.

28. For all these reasons, the Court concludes that the Receiver's proposed claims process is fair and that it is in the best interest of the receivership estate, the creditors, and all interested parties.

III.
CONCLUSION

29. Accordingly, the Court, in the exercise of its discretion, **ORDERS** as follows:

a. The Receiver's Motion to Approve Claims Resolution and Distribution Process is **GRANTED**, and United States Steel Corporation's objection is **OVERRULED**;

b. The Court **APPROVES** the terms of the Revised Liquidating Trust Agreement found at ECF No. 54.2. and Tort Claim Form attached as exhibit B to the motion, and **ADOPTS** the Receiver's recommended claims process for resolving tort claims;

c. Not later than 30 days after the date this Order becomes final and nonappealable ("Effective Date"), Michael L. Martinez—both as grantor and initial trustee ("Liquidating Trustee")—shall execute the Revised Liquidating Trust Agreement;

d. Within 14 days of the Effective Date, the Receiver shall file articles of dissolution for Radiator Specialty and wind up its operations under N.C.G.S. §§ 55-14-07 and 57D-6-11, including providing public notice of the dissolutions. Such notice shall disclose the existence of the liquidating trust as the means for resolving present and future tort claims;

e. Tort claimants must submit claims against the liquidating trust in the manner set forth in the Revised Liquidating Trust Agreement and Tort Claim Form. The Liquidating Trustee shall be responsible for administering the claims process, including making distributions to holders of allowed claims;

f. The Court **ADOPTS** the Receiver's recommended claims process for resolving environmental claims;

g. The Court **ADOPTS** the Receiver's recommended claims process for resolving miscellaneous claims and **APPROVES** the Miscellaneous Claim Form attached as exhibit C to the motion;

h. Within 14 days of the Effective Date, the Receiver shall send the Miscellaneous Claim Form, a copy of this Order, and notice of the right to submit a claim against the receivership estate to all known holders of miscellaneous claims;

i. Holders of miscellaneous claims must submit claims against the receivership estate not later than 60 days after the Receiver sends notice of the right to submit claims ("Claims Submission Deadline") and in the manner set forth in the Miscellaneous Claim Form;

j. Within 60 days of any Claims Submission Deadline, the Receiver shall file a report recommending the allowance or disallowance in whole or in part of any miscellaneous claim subject to the preceding Claims Submission Deadline ("Claims Report"). The Court's determination of any miscellaneous claim subject to the Claims Report shall govern that claim's allowance and any distribution to be made on such claim from the receivership property;

k. Distributions of receivership property on each allowed miscellaneous claim shall be made at 40% of the allowed amount. But if the receivership estate lacks sufficient funds to cover receivership administrative costs and pay all allowed claims at 40% of the allowed

amount, then the Receiver is authorized to reduce each holder's distribution by their pro rata share of the receivership administrative costs;

l. The Court shall retain exclusive jurisdiction to determine all claims, controversies, suits, and disputes that may arise in connection with the interpretation, enforcement, or consummation of the motion, these claim procedures, or in connection with the obligations of the Receiver or Liquidating Trustee, and to enter such orders as may be necessary or appropriate to implement any distributions to holders of allowed claims; to consider any modification, remedy any defect, or reconcile any inconsistency in these claims procedures; and to issue any order in aid of execution of these claims procedures.

SO ORDERED, this the 1st day of May, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases