

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Hugh A. Carithers and Katherine,
S. Carithers,

Case No. 3:12-cv-890

Plaintiffs,

v.

ORDER

Mid-Continent Casualty Company,

Defendant.

This matter is before the Court on the parties' pre-trial submissions. In those submissions, Defendant Mid-Continent Casualty Company asserts that the Court should allocate whatever damages exist in this case under a "time on the risk" theory. This theory posits that, where damage accrues over time, it is inequitable for one insurance company to bear the entire cost of the damage. According to Mid-Continent, the damage alleged here accrued over time and Mid-Continent should only be liable for the portion of damage that occurred during its policy periods.

The "time on the risk" theory has no application to this case. This is not a case where damage occurred in multiple time periods. Rather, as the Court held in its Order on the cross-Motions for Summary Judgment, the damage alleged occurred at the time the defective work was performed. The "time on the risk" theory applies in cases such as those involving environmental damage, where a factory contaminates groundwater over the course of decades. See, e.g., N. States Power Co. v. Fid. & Cas. Co. of N.Y., 523 N.W.2d 657 (Minn.

1994). In a situation such as that, the allocation of the risk is necessary because the damage truly occurred over long periods of time. Here, on the other hand, the damage for purposes of insurance coverage happened at the time the defective work was performed.

Accordingly, **IT IS HEREBY ORDERED that** the “time on the risk” theory does not apply in this case.

Dated: February 10, 2014

s/Paul A. Magnuson

Paul A. Magnuson
United States District Court Judge