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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Chief Justice (Ret.)

Case No. 2019-CP-40-02285

Appellate Case No. 2020-001437

Peter D. Protopapas, as Receiver for Covil Corporation, Respondent,

v.

Wall, Templeton & Haldrup, P.A.; Sentry Casualty Company; United States Fidelity and Guaranty Company; Zurich American Insurance Company, Defendants,

of which

United States Fidelity and Guaranty Company is the Appellant.

RESPONSE TO USF&G'S SURREPLY ON RECEIVER'S MOTION TO DISMISS

USF&G's surreply — permitted by this Court to respond to five specific questions, but which instead makes extraneous arguments and launches unfounded accusations against the Receiver — only confirms that this appeal is moot.

Three of the Court's questions asked for specific "pending case[s]": where the issue on appeal is "alive and in dispute," where "USF&G has raised or could raise the affirmative defense at issue" here, and where any judgement rendered would have "a practical legal effect upon any case or controversy or other pending litigation between USF&G and Covil." USF&G's surreply confirms the answer to all those questions is: **none**. It identifies no pending cases where this issue is "in dispute" (instead listing inapposite asbestos cases against Covil where USF&G is not a party

and the issue is not in dispute). USF&G points to no cases where USF&G has raised or could raise this affirmative defense (indeed, it affirmatively concedes there are no such cases). And it lists no litigation between USF&G and Covil at all, let alone where this appeal could have any practical legal impact. Moreover, despite this Court's direct question, USF&G has not identified any claims or allegations between Covil and USF&G pending in the underlying litigation given the subsequent settlements and resolution of all claims below. As a result, this appeal is moot.

In its remaining question, the Court asked USF&G to "[c]larify any exception to the mootness doctrine USF&G asserts may be applicable here." Despite not identifying any applicable exception in its Return, USF&G now says that all three are implicated. In fact, none of the exceptions apply here, and this appeal should be dismissed.

DISCUSSION

USF&G's answers to this Court's questions confirm that "no actual controversy capable of specific relief exists" in this case because "judgment, if rendered, will have no practical legal effect upon the existing controversy" — or any controversy between the parties, USF&G and Covil. *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). Apparently recognizing as much, USF&G spends much of its surreply raising arguments that are not responsive to this Court's questions and baselessly attacking the integrity of the Court-appointed Receiver. The Receiver respectfully objects to these attacks, which are wrong and cannot save USF&G from the simple fact that this appeal is moot. In this brief, the Receiver will reply first to USF&G's "responses" to this Court's questions and then explain why USF&G's other arguments fail.

Question 1. USF&G fails to "[i]dentify any pending case in which 'the issue on appeal remains very much alive and in dispute.'" Instead, it lists "known active cases involving Covil"

in which "USF&G itself is not a party" and in which USF&G's affirmative defense from this case has not been raised. Surreply at 3–4. By definition, the issue on appeal (USF&G's affirmative defense) is neither alive nor *in dispute* in any of the asbestos cases USF&G lists — where USF&G concedes no party in those cases has raised it.

Unable to identify a single case responsive to this Court's question, USF&G instead argues that an order about a party's corporate status is somehow live in "every case" involving that party, and therefore a third party who disagrees with that order may challenge it at any time. *Id.* at 2–3. USF&G cites no case law supporting this expansive view of justiciability. While Covil sought an order clarifying the status of the receivership and that order undoubtedly affects Covil, that does not save *USF&G's* affirmative defense from mootness. USF&G simply cannot challenge an order that does not affect it in a pending case. *See Sloan*, 380 S.C. at 535, 670 S.E.2d at 667.

USF&G also raises a puzzling and contradictory argument that if it cannot continue with this now-moot appeal, *Covil* may be "forever barred from asserting the defense." Surreply at 5. To start, this is an appeal of USF&G's affirmative defense, not Covil's. Covil's being barred in the future, even if true, does not depend on USF&G's appeal and does not affect whether USF&G may raise a claim where it is not in dispute. Moreover, on the same page of its brief, USF&G backtracks and says this defense is "not" waivable or subject to estoppel. *Id.* at 5 n.2. And USF&G's concerns about *its* being unable to raise the issue in a future case are unwarranted. *Id.* at 6. If USF&G is ever involved in litigation with Covil on this topic, it may raise the affirmative defense just like it did in this case.[1] Until then, the issue is moot.

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[1] USF&G's purported concern about being unable to raise this defense — in addition to being wrong and irrelevant to mootness — also must be understood in light of the fact that USF&G "animated an otherwise dissolved Covil for purposes of defending Covil's asbestos litigation from 1993 to 2018," operated "Covil without input from any policyholder," and "did so *without ever raising this new claim* that Covil was not subject to suit because of a prior receivership," which

Question 2. USF&G concedes it can identify no "pending case in which USF&G has raised or could raise the affirmative defense at issue in the filings before this court." That should be the end of its response. *See* Surreply at 6 (USF&G "is not a party to [] other cases" where it could raise this affirmative defense).

Instead, USF&G asks this Court to ignore the mootness doctrine in this case because *Covil* may not raise a defense on its own behalf in pending or future cases. According to USF&G, the "statute of repose question may never arise again." *Id.* But that just ignores that USF&G could be a party in a future case (like it was in this case) and it could raise this affirmative defense then. There is nothing preventing review of this issue, should it be disputed in the future.[2]

At bottom, USF&G's complaint is that Covil will not make a defense on its own behalf that USF&G — its insurance carrier — wants Covil to make. But, as USF&G itself highlights, insurance carriers are not permitted to intervene in tort cases against their insureds. Surreply at 6 (citing *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 99–100, 847 S.E.2d 87, 90–91 (2020)). That rule applies even if the insurance carrier disagrees with the defenses raised (or not raised) by the insured. As USF&G recognizes, its disagreement with a litigation strategy does not give it the right to intervene or appeal when it is not a party to a case. Indeed, the South Carolina Supreme Court anticipated that insurance carriers and insureds may disagree about what arguments to make

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USF&G knew about for "almost three decades." *See* Exhibit A (Justice Toal's 5/6/2020 Order) at 15 (emphasis added). Before the appointment of this Receiver, when USF&G unilaterally made litigation decisions for Covil, USF&G never once raised this defense in over thirty years of litigation. Having decided against raising this defense for nearly 30 years, USF&G's incredulity at the Receiver's declining to raise it now (as supposedly "contrary to Covil's own best interests") does not make sense. Surreply at 5–6. Nor, again, is any of this discussion relevant to mootness or the Court's questions.

[2] USF&G emphasizes the Receiver's request for "finality for the parties"—but USF&G is not a "party" to any ongoing dispute, so it needs no finality. If USF&G ever becomes a party in Covil-related litigation regarding this topic (it currently is not one), it can raise this defense then.

in defense and, rather than allow insurance carriers to raise new arguments, saw those potential "conflict[s] of interest" as further grounds to reject intervention. *Builders Mut.*, 431 S.C. at 103–04, 847 S.E.2d at 92–93 (citing cases holding that an insured has a right not to "hav[e] his insurance company interfere with his defense"). If USF&G cannot intervene in a case to assert an argument its insured chooses not to make, *a fortiori* it also cannot defeat mootness in this case simply because Covil is not raising that defense in a different case.

Put differently, with its arguments against mootness here, USF&G is essentially seeking an end-run around the rule against insurance carrier intervention, pretending that it is a "real party in interest" for purposes of this statute-of-repose issue, even though the Supreme Court has held that insurance carriers "are *not* real parties in interest" and thus cannot intervene as of right. *Builders Mut.*, 431 S.C. at 99, 847 S.E.2d at 90 (internal quotation marks omitted; emphasis added) (comparing the real party in interest standard to that used to determine "constitutional standing"). The Court went on to hold that insurance carriers do not "have a direct interest in the [underlying tort] litigation," even if they may be on the hook for defense or liability later. *Builders Mut.*, 431 S.C. at 100, 847 S.E.2d at 91. Just so here. USF&G's claim in this case is moot, and it has no direct interest to insert its defense into other cases where it is not a party.

Finally, the fact that this "appeal is fully briefed," Surreply at 7, does not answer the Court's question and is irrelevant to mootness. Indeed, it is undisputed that the settlement of a case moots the issues that previously would have been decided on appeal. Motion at 4 (citing *S.C. State Highway Dep't v. McKeown Food Store No. 9*, 254 S.C. 180, 183, 174 S.E.2d 342, 343 (1970); *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 603, 567 S.E.2d 514, 517 (Ct. App. 2002)). A holding that "fully briefed" appeals cannot be mooted would conflict with these cases.

<u>Question 3.</u> In its Motion, Covil argued that none of the three South Carolina-recognized

exceptions to mootness apply in this case. In its Return, USF&G did not argue that any exception applied. Thus, it waived any such argument. *See Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 657, 780 S.E.2d 263, 275 (Ct. App. 2015) (argument not "preserved" when not made in opposition to motion).

In response to this Court's question asking USF&G to "[c]larify any exception to the mootness doctrine USF&G asserts may be applicable," USF&G now asserts for the first time that *all three* exceptions apply. These new arguments are bereft of legal support and should be rejected.

First, this is clearly not a situation where the "capable of repetition yet evading review" exception is implicated. That exception applies when a real party in interest has been aggrieved, but the offensive action is rectified before judicial review is possible—and the same pattern may repeat again. *See S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121–22, 804 S.E.2d 854, 860 (2017). For example, where a student is suspended and sues, but the short-term suspension always ends before the case can resolve. *See Byrd v. Irmo High School*, 321 S.C. 426, 432, 468 S.E.2d 861, 864 (1996) (suspensions that are, "by their very nature, completed long before an appellate court can review the issues they implicate" will evade review). Or, whether the government "can inspect bridges inside private, gated communities" also may generally evade review because the action will be complete before judicial review. *S.C. Pub. Int. Found.*, 421 S.C. at 122, 804 S.E.2d at 860.

This case is nothing like the above situations. While this issue is certainly capable of repetition—i.e., in the future USF&G may again be sued in Covil litigation and raise this affirmative defense—there is no indication that the issue "will truly evade review." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006). Just like in *Sloan*, "[s]hould another person bring an action against [USF&G]" related to Covil, and USF&G raises this

affirmative defense, "the Court will have the opportunity to review the issue." *Id.*; *see also Seabrook v. City of Folly Beach*, 337 S.C. 304, 307, 523 S.E.2d 462, 462–63 (1999) (holding that an action that is capable of repetition does not necessarily evade review and refusing to apply this exception because, if city took action against residents again, they could obtain review at that time). Personal injury litigation is not a quickly dissipating condition like a short-term student suspension or a bridge inspection, so this is not a situation evading review.

Instead, USF&G argues that *Covil* may not raise this defense in future cases *against it*. But whether or not Covil raises this (frivolous) defense in the future is up to Covil. Again, just because a third-party insurance carrier wants an argument to be made in a case against an insured does not allow the insurance carrier to raise it in a moot case. Likewise, USF&G's desire about what arguments should be raised in other cases where it is not a party does not implicate the "evading review" exception.

Second, USF&G's affirmative defense does not raise a question of "imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *S.C. Pub. Int. Found.*, 421 S.C. at 121, 804 S.E.2d at 860. USF&G has cited no South Carolina case ever applying this exception, let alone one counseling applying it here, and its contention that this case qualifies "is unsupported." *Sloan*, 369 S.C. 20, 28, 630 S.E.2d 474, 478 (2006).

Instead, USF&G asserts that the Covil receivership is somehow "unprecedented" (Surreply at 8) even though receivers are appointed for dissolved companies all the time. *See, e.g.*, Ex. B (Burlington Industries, Inc. Receivership Order appointing Peter McCoy as Receiver, South Carolina Court of Common Pleas); Ex. C (Reinz Wisconsin Gasket, LLC Order appointed Peter Protopapss as Receiver, Delaware Court of Chancery). To the extent USF&G is arguing any case involving a receiver is "important" and implicates this mootness exception, that argument is both

unsupported and wrong. Nor does mere importance qualify where there is "no imperative and manifest urgency." *Sloan*, 369 S.C. 20, 28, 630 S.E.2d 474, 478 (2006). There is no such urgency here because USF&G is not currently party to any case where this affirmative defense is relevant. *Id.* Moreover, USF&G itself represented Covil in litigation for more almost 30 years without *ever* raising this defense, Ex. A at 15, so it cannot be manifestly urgent for the public interest for it to be resolved now. Nor has the 2004 amendment to the receivership statute been addressed in the last nineteen years, further demonstrating the lack of urgency of the interpretation USF&G seeks.[3]

Third, USF&G also has not supported any invocation of the third exception: "if a decision by the trial court may affect future events, or have collateral consequences for the parties." *S.C. Pub. Int. Found.*, 421 S.C. at 121, 804 S.E.2d at 860. It is now undisputed that there are no other cases against USF&G where it could raise this affirmative defense, so a decision will have no collateral consequences in those (non-existent) cases. Without citing a single case ever applying this exception, USF&G impermissibly seeks to expand the exception to include all cases that may a company that is insured. *See* Surreply at 8 (noting it does not want to "continue expending resources defending claims" it contracted to defend). Again, insurance carriers cannot intervene in tort cases for a reason: they are not real parties in interest in those cases and have no direct interest in them. *Builders Mut.*, 431 S.C. at 99, 847 S.E.2d at 90. Applying the third exception in these circumstances (with no legal support) would create an end-run around that rule.

Question 4. USF&G fails to "[i]dentify any issue in the underlying case . . . which has not been resolved" and does not "describe any 'other claims and allegations between Covil and USF&G' . . . that remain pending." Instead, USF&G quotes Covil's claims against it that existed

[3] USF&G observes that the Receiver here is also the receiver for other companies. Surreply at 8. That fact is obviously irrelevant to whether it is manifestly urgent for this Court to answer the question on appeal, which applies only to Covil.

before the two parties settled and before *every remaining claim below* has resolved through settlement. USF&G focuses on technicalities to say the "only dismissal in the record" related to the *Finch* case, Surreply at 9, but does not dispute that all other claims have been resolved subsequently through settlement. While USF&G feigns ignorance—"to USF&G's knowledge, these claims remain pending," *id.*—it knows full well that all the underlying claims have settled and there are no issues yet to be resolved or claims pending between the parties. Indeed, footnote 4 ultimately acknowledges that it knows of no issues or claims remaining in the underlying case. *Id.* at 10 n.4. There are none.[4]

Question 5. In response to this Court's instruction to "identify" any "case or controversy or other pending litigation *between USF&G and Covil*" where this appeal "may have a practical legal effect," USF&G again identifies no such cases or controversies or pending litigation between USF&G and Covil. USF&G's assertions regarding cases against Covil, which do not involve USF&G, are simply irrelevant to this question.

Finally, USF&G makes several unfounded accusations against Covil's Receiver in its brief. Respectfully, the Receiver objects to these attacks, which are irrelevant to this Motion.

For example, USF&G accuses that "the Receiver is refusing to allow the assertion of a defense that would prevent current and future claims by the asbestos plaintiffs' counsel who appointed him." Surreply at 2. The Receiver was duly appointed by the Receivership Court, not by any plaintiffs' counsel. *See* Ex. D (Order Appointing Covil Corporation Receiver); *see also* Ex. E (Tibbs/Welch 8/21/2023 Hearing Transcript) at 23 (Justice Toal confirming in hearing last week: "I appointed Mr. Protopapas as the receiver in the first Covil case, not by anybody's

[4] The Receiver has indicated that there are no remaining issues below. If it would be helpful, the Receiver represents that he will file a dismissal of the case below to provide USF&G with the finality it claims to seek.

recommendation, but because of my knowledge of Mr. Protopapas" and rejecting idea that the Receiver "is the tool of the plaintiff or too close to the plaintiff"). Moreover, the Receiver asked the Receivership Court for clarification on its powers and duties and, having received that clarification, is carrying out the activities that the Court appointed him to do. He is not "refusing to allow" anything by complying with the court's orders (which bind the scope of his authority) and declining to make frivolous arguments. *See, e.g.*, *Porter v. Sabin*, 149 U.S. 473, 479 (1893) ("When a court exercising jurisdiction in equity appoints a receiver of all the property of a corporation, the court assumes the administration of the estate. The possession of the receiver is the possession of the court; and the court itself holds and administers the estate through the receiver, as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it.").

The Receiver also respectfully objects to USF&G's contention that the Receiver is not adequately representing Covil's interests. The Receiver was appointed to marshal Covil's insurance assets and to defend Covil's asbestos litigation:

> The Objecting Insurers repeatedly insinuate that the Receiver's key role in these proceedings is to protect the Objecting Insurers from the contractual obligations that they voluntarily assumed when they sold insurance policies to Covil. This Court views the Receiver's role differently. As the Court's appointed receiver, Mr. Protopapas is charged with marshaling Covil's assets and prudently using those assets to address Covil's asbestos liabilities in a responsible fashion.

See Ex. A at 14. USF&G is again attempting to confuse the issues surrounding the Receiver's role and responsibilities, and it has gone so far as to question the Receiver's motives. *See, e.g.*, Surreply at 8 (accusing the Receiver of refusing "to assert statutory affirmative defenses for the corporate defendants whose assets a receiver is charged to protect").

But the Receiver is an officer of this Court and the South Carolina Receivership Court. As such, the Receiver owes a duty of candor to both Courts. After a thorough review of the issues

related to USF&G's now-moot affirmative defense in this case, the Receiver determined that the argument is frivolous and based on incorrect factual assertions and incorrect citations to South Carolina law. The Receivership Court has now agreed with the Receiver in no uncertain terms:

> *This Court's appointed Receiver is certainly under no obligation to advance frivolous arguments or to assert specious defenses to Covil's asbestos cases.* Non-Party USF&G's contention that the Receiver is somehow … undermining Covil's asbestos defenses by refusing to behave unethically (at USF&G's behest) is absurd.

Ex. A at 14 (emphasis added).

The Receiver's conclusion about the merits of a defense (or lack thereof) does not mean that the Receiver is in league with Plaintiffs' attorneys, as USF&G implies; it just means that the Receiver takes his obligations of candor seriously. While the Receiver welcomes valid defenses to underlying asbestos liabilities, he will not manufacture defenses where he believes none exist. Conducting the Receiver's litigation in an appropriate way should not result in USF&G's baseless accusations. As the Receivership Court has also noted, the Receiver "is a vigorous defender in the receiverships," "[h]e protects" qualified settlement funds "as any defense lawyer would do," and he hires "well-recognized defense lawyers" to "vigorously represent the defense point of view." Ex. E at 23-24; *see also* Ex. A at 14 ("From this Court's pperspective, Mr. Protopapas has managed Covil's defense in [its asbestos] cases appropriately and professionally, while consistently meeting his obligations to Covil's insurers."). USF&G's accusation that the Receiver is operating in a manner "contrary to Covil's own best interests" (Surreply at 5) is thus divorced from reality.[5]

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[5] USF&G makes similar accusations about the Receiver's refusal to assert a defense in the Payne & Keller receivership. Surreply at 2 n.1 (claiming the "exact same dynamic is happening in … the Payne & Keller receivership, where a statute of repose blocks all claims" and the receiver "has insisted on allowing barred claims to proceed"). USF&G's brief did not mention the fact that the Receivership Court has found a prima facie case of constructive fraud related to the facts underpinning that defense and, as such, the Receiver has declined to assert the improper defense.

CONCLUSION

USF&G's responses to this Court's questions reveal that it is seeking an advisory opinion for future cases in which it concedes it has no direct interest. For the same reason USF&G cannot intervene or appeal in those other cases where it is not a party, it cannot resuscitate this settled and now-moot case with the same argument. The Court should dismiss this appeal as moot.

Respectfully submitted,

SMITH ROBINSON, LLC

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August 28, 2023.

EXHIBIT A

EXHIBIT O

ELECTRONICALLY FILED - 2020 May 07 7:51 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

STATE OF SOUTH CAROLINA COUNTY OF YORK ROXANNE FALLS, Individually and as Personal Representative of the Estate of CHARLOTTE GAYE SMITH, Plaintiffs, vs. CBS Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT C/A NO.: 2015-CP-46-02155 **ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY**
STATE OF SOUTH CAROLINA COUNTY OF YORK TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT C/A NO.: 2015-CP-46-03456 **ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY**

EXHIBIT B

ELECTRONICALLY FILED - 2020 May 07 7:51 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2019-CP-40-00076
CHARLES T. HOPPER and REBECCA HOPPER,	)	
Plaintiffs,	)	
vs.	)	**ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY**
Air & Liquid Systems Corporation, et al.,	)	
Defendants.	)	
In Re:	)	
Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A NO.: 2018-CP-40-04680
JAMES MICHAEL HILL,	)	
Plaintiff,	)	
vs.	)	**ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY**
Advance Auto Parts, Inc., et al.,	)	
Defendants.	)	
In Re:	)	
Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	

ELECTRONICALLY FILED - 2020 May 07 7:51 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND DENVER D. TAYLOR and JANICE TAYLOR, Plaintiffs, vs. Air & Liquid Systems Corporation, et al., Defendants. In Re: Receivership of Covil Corporation by and through its Receiver Peter D. Protopapas	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C/A NO.: 2018-CP-40-04940 **ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY**

This matter is before the Court on (1) Non-Party USF&G's Motion to Reconsider, Alter, or Amend this Court's Approval Order of April 10, 2020, (2) Non-Party USF&G's April 20, 2020 Motion to Stay, and (3) Non-Party Zurich American Insurance Company's Motion to Reconsider, Alter, or Amend Approval Order of April 10, 2020. In these motions and the extensive briefing and exhibits submitted in support thereof, non-party USF&G and non-party Zurich ("the Objecting Insurers") complain that this Court granted joint motions filed by Peter D. Protopapas, as Receiver for Covil Corporation, an administratively revoked South Carolina corporation (the "Receiver"), Hartford Accident and Indemnity Company and First State Insurance Company (collectively "Hartford"), TIG Insurance Company, as successor to Ranger Insurance Company ("TIG"), and Sentry Insurance a Mutual Company ("Sentry") (jointly the "Settling Insurers") to (1) establish a Qualified Settlement Fund under Section 468B of the Internal Revenue Code of

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1986, as amended ("I.R.C."), (2) keep continuing jurisdiction over that Qualified Settlement Fund, and (3) approve the settlements between the Receiver and each of Hartford, TIG, and Sentry.

The Court has ruled that the Objecting Insurers are not parties to these actions, have failed to avail themselves of the procedures available to become parties to these actions, and therefore lack standing to file any objections in these actions. During the several weeks since this Court's order, nothing has changed in this regard related to the Objecting Insurers' lack of standing. Having considered the Objecting Insurers' motions and the applicable responses, together with the exhibits submitted with these motions and responses, the Court hereby decides the matter on the filings and rules as follows:

I. FINDINGS RELATED TO CORONAVIRUS EMERGENCY PROCEDURES

On April 3, 2020, the South Carolina Supreme Court issued an Order providing guidance to the courts of South Carolina to help ensure the continued operation of the courts during the Coronavirus emergency. In the Order, the Supreme Court noted the impossibility of continuing the practice of conducting hearings on virtually all motions during this unprecedented time. The Supreme Court indicated South Carolina trial judges, after allowing all parties the opportunity to file responses to a motion, "may elect to not hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers." *See* April 3, 2020 Order of the South Carolina Supreme Court.

The Court finds these motions have been fully and exhaustively briefed, and, after reviewing all submissions, the Court further finds that hearings on these motions are not necessary and these motions may readily be decided without further input from the lawyers. Ruling on these motions is also in the best interest of the Receivership as delay in these perilous times imperils

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assets of the Receivership and the proposed liquidation of those assets into a qualified settlement fund.

II. FINDINGS REGARDING PARALLEL FEDERAL PROCEEDINGS

In the case of *Covil Corporation By Its Duly Appointed Receiver, Peter D. Protopapas v. Zurich, USF&G et al.* in the United States District Court for the District of South Carolina, Spartanburg Division, CA No. 7:18-3291-BHH, United States District Judge Bruce Howe Hendricks issued an Opinion and Order dated February 27, 2020 in which she reviewed comprehensively the procedural complexities of the insurance coverage case before her involving claims and cross-claims regarding insurance coverage for policies issued or allegedly issued by various insurance companies to Covil at various times between the 1950s and 1993.

Judge Hendricks also detailed the responsibilities assigned to this Court regarding the trial of asbestos cases in South Carolina and the supervision of the Receivership of Covil. In her order, Judge Hendricks declined to issue a broad moratorium on further proceedings before this Court as the Receivership Court. Judge Hendricks found: "It is abundantly clear that Justice Toal, for whom the undersigned has the highest respect, has done and is doing her best to keep the underlying state tort suits moving forward appropriately without interfering with the coverage issues pending here."

As this Court explained in its April 10, 2020 Order, this Court again intends to faithfully adhere to Judge Hendricks' rulings and stay out of ruling on coverage matters that are before Judge Hendricks' Court.

With regard to the proposed settlements, the three Settling Insurers were parties to the case pending before Judge Hendricks, but each Settling Insurer has now been dismissed

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without prejudice from that proceeding. In each case, the settling parties indicated to Judge Hendricks that the requested dismissals were to be without prejudice because each settlement still required the approval of this Court. In addition, the Receiver filed with Judge Hendricks the proposed Orders submitted to this Court. The settling parties also advised Judge Hendricks that, upon the Receivership Court's approval, the parties would return to Judge Hendricks' Court in order to convert the dismissals without prejudice into final dismissals with prejudice. Objecting Insurers did not object to any of these motions even though the motions were predicated on this Court's considering the proposed Orders approving settlement to which they now object.

As to each settling insurer, Judge Hendricks signed the dismissals without prejudice on this basis, and as a result the settling insurers have all been dismissed from the above-referenced case in Judge Hendricks' court. Therefore, it is not possible for this Court to rule on the coverage matters pending before Judge Hendricks in regard to the settling insurers because these matters are no longer pending as to these settling parties.

Since this Court signed its April 10, 2020 Approval Order, Judge Hendricks has continued to dismiss claims as a result of the settlement agreements approved therein. *See* April 15, 2020 Order Dismissing Sentry without Prejudice from *Peter D. Protopapas, as Receiver for Covil Corporation v. Wall Templeton & Haldrup, P.A. et al.* in the United States District Court for the District of South Carolina, Columbia Division, CA No. 3:19-01635-BHH. As such, this Court will continue to meet its responsibilities for managing the South Carolina asbestos docket, and the Covil receivership, without interfering with issues subject to coverage litigation pending before Judge Hendricks.

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III. OBJECTIONS TO THE QUALIFIED SETTLEMENT FUND

A Qualified Settlement Fund is a creature of statute based on Section 468B of the Internal Revenue Code. The establishment of a Qualified Settlement Fund serves to streamline the income tax treatment of a policyholder's settlement proceeds with an insurer, provided that the full amount of the settlement proceeds are dedicated to meeting the costs and liabilities associated with the insured risk. At the conclusion of such liability, any residual amounts in a Qualified Settlement Fund must be donated to one or more 501(c)(3) charitable institutions.

The use of a Qualified Settlement Fund is routine in the resolution of a complex insurance coverage dispute. The Receiver has satisfied the criteria established by Congress for establishing a Qualified Settlement Fund, and the QSF will remain subject to the ongoing jurisdiction and supervision of this Court. The Objecting Insurers cannot, and certainly have not even tried, to explain why they would benefit from the Settling Insurers' settlement payments being fully subject to payment of federal income tax. The Receiver is exercising financial prudence in implementing a tax planning structure for the receipt of these settlement funds. The Objecting Insurers' continued objections to this Court's approval of the Receiver's use of this ubiquitous tax planning vehicle are baseless.

IV. IMPACT OF PRIOR RECEIVERSHIP PROCEEDINGS

Non-Party USF&G waited until its Motion to Reconsider (and concurrently filed Motion to Stay) to lodge, for the first time, an objection to this Court's Approval order based on the existence of a prior receiver for Covil, Mr. Winston Lee. In lodging this objection, USF&G claims that it just recently discovered that Covil was "judicially dissolved" after the appointment of Winston Lee as Covil's general receiver. USF&G Mot. to Reconsider at 2; Mot. to Stay at 2.

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However, based on the conclusive evidence submitted in connection with this motion, it is abundantly clear that USF&G and Zurich have been aware of the first Covil receivership since at least 1991. Yet, remarkably, USF&G waited over 28 years to raise this objection and now feigns to have only recently learned about this previous receivership proceeding. USF&G even goes so far as to blame Covil, a corporation that was administratively dissolved in 1993 and operated by the Objecting Insurers until the appointment of a Receiver in 2018, for not bringing this prior receivership to this Court's attention. USF&G is not being honest with this Court.

A. Background of Objecting Insurers' Knowledge of Prior Covil Receivership

In responding to Non-Party USF&G's objections, the Receiver for Covil established the following historic timeline related to USF&G's knowledge of this prior receivership.

In 1991, Greenville County Master in Equity, Judge Simmons appointed L. Winston Lee as Receiver in a case entitled: *In Re: The First Savings Bank, FSB v. Covil Corporation, Oxytherm, Inc., and Equitable Enterprises, a South Carolina General Partnership*: C/A 1991-CP-23-4445 (Greenville County). On November 14, 1991, the lawyer retained to defend Covil by the Objecting Insurers, Mr. Danny White, wrote to inform the Objecting Insurers that "Covil Corporation has now been placed in receivership and L. Winston Lee, as Receiver, has been charged with the responsibility to gather the assets of Covil Corporation for public auction on December 5, 1991." *See* Letter from Danny White dated November 14, 1991. David N. Kappus of Maryland Casualty n/k/a Zurich and Richard L. Teal of USF&G n/k/a Travelers were recipients of this correspondence. In this letter, Mr. White further explained, "Covil does not intend to dissolve as a corporation but rather, in fact, will remain a corporation which can sue and be sued."

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Finally, White requested the permission of the insurers to "gather and store all personnel records and job files of Covil Corporation which have potential relevance to the asbestos litigation."

On that same day in November of 1991, the Objecting Insurers' appointed defense counsel Mr. White also wrote to Covil's first receiver, L. Winston Lee, requesting permission to review Covil's records and cautioning against their destruction. As to the potential destruction, Mr. White wrote, "Because of outstanding discovery requests against Covil and the potential for new lawsuits, I would suggest that the destruction of these records may violate current discovery orders and potentially be considered contempt of court." *See id.* Historical records indicate that by April 15, 1992, White had made "arrangements to retrieve Covil's personnel records and job files which may be of potential future relevance in this litigation," and was "storing those files in [his] office." *See* Letter from Danny White to Richard Teal, David Kappus, and Dave Christian, dated April 15, 1992.

Mr. White's third letter of November 14, 1991 was addressed to counsel for the underlying asbestos personal injury plaintiffs. Enclosing a copy of the Receivership's filing in Common Pleas of a Notice to Creditors, White informed the counsel that "[t]he Order indicates that there appears to be no assets available from which payment may be made to unsecured creditors." *Id.* The letter ended, "You are placed on such notice of this receivership as you deem proper to protect the interests of your clients." *Id.* After being advised of the Receivership and its status, Covil's insurers continued to pay settlements to Covil asbestos personal injury claimants. *See* Letter from Kelly Brunker to John Truzzolino and Lori Sheppard dated September 15, 1994 (noting, "This serves to reiterate our September 9, 1994 conversation in reference to the disposition of Covil in the asbestos litigation," and outlining the jointly-determined authority for payment of asbestos personal injury claims).

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The L. Winston Lee receivership continued until the Master-in-Equity signed a Final Order on November 30, 1992. The Final Order accepted the Receivership Accounting, which included a listing of all receipts and disbursements undertaken by the receiver. The receipts for Covil during the receivership included $562,500 for the sale of real estate, $26,755.27 in auction proceeds, and $80,209.74 in cash surrender value from New York Life, among others. *See id.* at 5. All remaining receivership funds, and all remaining accounts receivable of Covil, were assigned to First Savings Bank, which the receiver identified in his Final Report as a "priority line creditor." *See id.* at 2-3; *see also*, Final Report of the Receiver at 4. All other Covil assets that were not receivership funds or accounts receivable were abandoned to the shareholders and partners of Covil. *See* ("That the abandonment by the Receiver of all remaining assets of the above-named Defendants is hereby approved"); ("That your Petitioner is informed and believes that any remaining assets of the Defendants are without monetary value and that your Petitioner should be authorized and directed to abandon any and all such remaining assets, if any, to the shareholders and partners of the Defendants.").

More than six months after the Master-in-Equity entered the Final Order, on July 30, 1993, the South Carolina Secretary of State signed a Certificate of Revocation of Authority for Covil. The document indicates Covil was dissolved for failure to file its annual report and to pay its franchise tax. *See id.* No other document produced in this case demonstrates that the South Carolina Secretary of State prepared any document dissolving Covil Corporation prior to the Certificate of Revocation of Authority on July 30, 1993.

Apparently, the Objecting Insurers waited twenty-seven years to consult the public files of the prior receivership court. During that time, Covil-related litigation continued apace throughout the courts of South Carolina as well as in other states. Undeterred by this prior

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receivership, the Objecting Insurers carried on with "business as usual" for Covil as an active litigant in numerous courts for decades – never mentioning anything to any of these many courts about this prior receivership until only a few days ago.

B. Impact of Prior Receivership on Current Receivership

Non-Party USF&G contends that its late objection based on the prior receivership "raises significant doubts as to whether the Receiver possesses the authority to sell Covil's insurance policies back to the Settling Insurers, whether Covil is properly subject to suit in any of the underlying asbestos claims against Covil, and whether this Court's November 2018 order appointing Mr. Protopapas as Covil's Receiver should be vacated." Mot. to Stay at 3.

As explained above, Non-Party USF&G lacks standing to complain about these proceedings. In light of Non-Party USF&G objection, the Court will state its rationale and rulings if it were to reach Non-Party USF&G's objections.

In addition to being untimely, Non-Party USF&G's objections are simply incorrect. It does not matter if Covil was administratively or judicially dissolved in the early 1990s. The current Covil Receiver was appointed under Section 15-65-10 of the South Carolina Code of Laws, which provides, "A receiver may be appointed by a judge of the circuit court … (4) When a corporation has been dissolved . . ." *Id.* at 15-65-10(4). The statute does not require that the corporation was previously "administratively dissolved" or "judicially dissolved." It just says dissolved. Thus, whether Covil was administratively or judicially dissolved in 1992, the current Receiver's appointment is lawful. USF&G does not attempt to cite or explain away the plain language of Section 15-65-10.

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USF&G also makes the erroneous assertion that the current Receiver may not administer Covil's assets because the prior Receiver is "the permanent Receiver of Covil Corporation." Mot. to Reconsider at 3; Mot. to Stay at 6. The Final Order, however (the one USF&G fails to cite) shows that the prior receiver was "discharged as Receiver."

USF&G also claims Section 33-14-107 "bars claims against a judicially dissolved entity that are asserted more than ten years following the entity's publication of notice of dissolution." Mot. to Reconsider at 3; Mot. to Stay at 6 (citing S.C. Code Ann. § 33-14-107(c)). USF&G urges this Court to find that "Covil no longer has any underlying liabilities in the asbestos suits." Mot. to Reconsider at 3; Mot. to Stay at 6. USF&G cites no authority for this proposition, instead noting that USF&G and Zurich "are still investigating these matters." *Id.*

USF&G fails to cite the rest of the statute. Section 33-14-107 plainly provides that "[u]nknown claims . . . may be enforced under this section (1) against the dissolved corporation to the extent of its undistributed assets." S.C. Code Ann. § 33-14-107(d)(1). Under all three types of dissolution, "A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs." S.C. Code Ann. § 33-14-105(a) (voluntary); *id.* at § 33-14-210(d) (administrative); *id.* at § 33-14-330(b) (judicial dissolution statute providing, "After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 33-14-105").

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The issues raised by USF&G have been thoroughly addressed by the Delaware Supreme Court *In the Matter of Krafft-Murphy*, 82 A.3d 696 (Del. 2013). The South Carolina Supreme Court has looked to Delaware case law to inform interpretation of the South Carolina Business Corporations Act. For example, in the 1975 case of *Santee Oil Co. v. Cox*, 265 S.C. 270, 272-273, 217 S.E.2d 789, 791 (1975), the South Carolina Supreme Court addressed an issue involving the South Carolina Business Corporations Act. It stated:

> No prior decision of this Court has come to our attention which is at all helpful, but courts of other states, particularly the courts of Delaware, the home of so many corporations, have had fairly frequent occasions to define and apply such term under corporation law similar to ours.

Id. at 791. The Court then relied extensively on Delaware law to decide the matter at issue under the South Carolina Business Corporations Act. *Id.* at 791-92.

In the Matter of Krafft-Murphy, 82 A.3d 696 (Del. 2013) soundly rejects USF&G's position. There, similar to here, asbestos "tort claimants in lawsuits pending against [Krafft-Murphy] in other jurisdictions [sought] the appointment of a receiver to enable them lawfully to pursue those claims." *Id.* at 698. Krafft-Murphy had "formally dissolved in 1999" and its "only assets [were] its unexhausted insurance policies." *Id.* at 699. As here, the insurers in *Krafft-Murphy* attempted to argue that asbestos lawsuits were barred because of the dissolution. After a thorough analysis, the *Krafft-Murphy* Court held, "Delaware's dissolution statutes impose no generally applicable statute of limitations that would time-bar claims against a dissolved corporation by third parties." 82 A.3d at 698. The court also held "that as a *body corporate* a dissolved corporation ceases to exist and is not amenable to suit after the expiration of § 278's three year period. From that it does not follow, however, that § 278 extinguishes the corporation's underlying liability to third parties. To the contrary, § 279 enables a dissolved corporation to

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(through a receiver) 'sue and *be sued*' after the expiration of the § 278 three year period." *Id.* (footnotes omitted). The same is true in South Carolina.

The Delaware Supreme Court noted that its statutes expressly barred certain claims, but not the asbestos claims at issue in that case. *Id.* at 705. "The five and ten year claims planning periods were not intended to operate as general statutes of limitation." *Id.* at 706. South Carolina's statute applies the same way. *See* S.C. Code Ann. § 33-14-107(b)(3).

Moreover, there is no basis for USF&G's assertion that the current Receivership is unnecessary. After the *Krafft-Murphy* Court noted that the "Insurers are continuing to defend those lawsuits on [Krafft-Murphy's] behalf," it found that the Insurers "cannot re-infuse the Corporation with a legal existence that by statute has terminated. The only means by which the Corporation may become re-empowered to defend its interests in the litigation is through the appointment of a receiver." *Id.* at 710. USF&G also relies on *All Cases Against Sager Corp.*, 967 N.E. 2d 1203 (Ohio 2012). Mot. to Reconsider at 4. The *Sager* decision is an Ohio case applying Illinois law. It relies upon *Pielet v. Pielet*, 942 N.E.2d 606 (Ill App. 2010). *See Sager*, 967 N.E.2d at 1210. USF&G, however, may not rely on *Sager*, and should not have cited it to this Court, because the Illinois Supreme Court reversed the lower court in *Pielet v. Pielet*, 978 N.E.2d 1000 (Illinois 2012). *Id.* at 1013 ("the precedent in Illinois has consistently held that the survival provisions of section 12.80 and its antecedents may only be invoked in aid of a cause of action against a dissolved corporation where the cause of action accrued prior to the corporation's dissolution.").

In short, "*Kraf[f]t-Murphy* makes clear that there is no time limit on when a party can request a receiver be appointed to represent a dissolved corporation and there is no ten (10) year statute of limitations on bringing a suit against a dissolved corporation." *United States v.*

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Marmon Holdings, Inc., Civ. No. 2:10-cv-00526-EJL-CWD, 2015 WL 5822620, at *12 (D. Idaho Sept. 30, 2015).

Further, a review of the statutory history of the statute USF&G attempts to rely on to support its newly found, self-serving argument that Covil no longer has any underlying liabilities in asbestos cases in South Carolina due to its dissolution shows the statute was materially different at the time of Covil's dissolution. Even if the Court ignored the clear language in section 33-14-107(d), the sound analysis of the Delaware courts on this issue, and the fact that the Objecting Insurers appear to have themselves reanimated Covil for the past two decades, there is no basis for USF&G's argument that section 33-14-107(c) prohibits asbestos claims against the dissolved Covil.

The Court finds sections 33-14-107(a) and (b) are clearly inapplicable in the context of these asbestos claims against Covil. Further, section 33-14-107(c)(3) did not exist at the time of Covil's 1992 dissolution, and the Comments to section 33-14-107 show the General Assembly specifically chose not to adopt what is today subsection (c)(3), which addresses the bar of contingent claims and claims based on an event after dissolution, from the Model Act. In fact, the Comments note the clear legislative intent behind the version of the statute in effect at the time of Covil's dissolution was that "[t]he statue of repose only applie[d] *to claims existing at dissolution*." *See* South Carolina Reporter's Comments, S.C. Code Ann. 33-14-107. The General Assembly did not adopt subsection (c)(3) until 2004, and as such, this subsection, which did not exist until either eleven or twelve years after Covil's dissolution, clearly cannot apply.

The Court refuses to ignore the plain language of the statute and the clearly expressed legislative intent that section 33-14-107 does not bar claims that did not exist at the time of Covil's dissolution, regardless of whether Covil was dissolved in 1992 or 1993.

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This Court appointed Mr. Protopapas as the Receiver for Covil Corporation, pursuant to South Carolina statute, to marshal Covil's assets and administer those assets for use in the defense of Covil's asbestos litigation. Given the unusual nature of latent occupational disease, the Court understands that Mr. Protopapas may find that he is required to serve in this role for years to ensure that Covil meets its obligations to future South Carolinians diagnosed with asbestos-related disease as a result of Covil's business operations.

The Objecting Insurers repeatedly insinuate that the Receiver's key role in these proceedings is to protect the Objecting Insurers from the contractual obligations that they voluntarily assumed when they sold insurance policies to Covil. This Court views the Receiver's role differently. As the Court's appointed receiver, Mr. Protopapas is charged with marshaling Covil's assets and prudently using those assets to address Covil's asbestos liabilities in a responsible fashion. This Court's appointed Receiver is certainly under no obligation to advance frivolous arguments or to assert specious defenses to Covil's asbestos cases. Non-Party USF&G's contention that the Receiver is somehow not cooperating with Covil's insurers and is undermining Covil's asbestos defenses by refusing to behave unethically (at USF&G's behest) is absurd.

This Court manages the South Carolina docket, and has observed Covil's behavior in numerous asbestos cases since Mr. Protopapas was appointed. From this Court's perspective, Mr. Protopapas has managed Covil's defense in those cases appropriately and professionally, while consistently meeting his obligations to Covil's insurers.

Having tried a Covil asbestos case to verdict, this Court is keenly aware of Covil's history and finds that this course of action – although it may take years to conclude - is equitable to all involved, including the insurers who sold liability insurance to Covil and to the people of

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South Carolina who have been (and may in the future) diagnosed with asbestos-related diseases potentially attributable to Covil's business operations.

As to the Objecting Insurers, this Court again notes the extreme inconsistency in the positions advanced in objecting to the Court's establishment of the Covil QSF and approval of these three settlements. The Objecting Insurers knew about the previous receivership for almost three decades, yet USF&G waits until its motion to reconsider to raise an objection based on this previous receivership. At this late hour, USF&G now takes the position that the prior receivership may mean that Covil is not subject to suit in any underlying asbestos claim. *See* Motion to Stay at 2. The Court would note that USF&G, along with Zurich, animated an otherwise dissolved Covil for purposes of defending Covil's asbestos litigation from 1993 until 2018. In its role as the South Carolina Asbestos Court and as the trial court in a Covil asbestos case tried to verdict, this Court observed that the Insurers operated Covil without input from any policyholder, and they did so without ever raising this new claim that Covil was not subject to suit because of a prior receivership.

This late and seemingly frivolous objection simply raises additional questions about the propriety of the Objecting Insurers' management of Covil prior to 2018. If the Objecting Insurers really relied on the position that they now have asserted, they would not have animated an otherwise extinct Covil for twenty-five years. Having demonstrated their true view of Covil's role in asbestos litigation for more than two decades, USF&G now raises a last-minute objection that is entirely inconsistent with its course of conduct since 1993.

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V. Objecting Insurers' Motion to Stay

USF&G also contends that these proceedings should be stayed. It asserts that a stay would not harm the Receiver. Once again, USF&G is simply not being honest with this Court. As noted in the Receiver's response, at the same time that USF&G advances its argument to stay the Receiver's settlements, USF&G is also demanding that the Receiver fund portions of underlying asbestos settlements. USF&G knows that the Covil QSF lacks funding to respond to these settlement demands, and USF&G is currently leading the effort to prevent the Covil QSF from receiving the proceeds from the sale of some of its insurance assets.

The Objecting Insurers object that they were not given time nor opportunity to file additional objections. This Court provided ample time for briefing on these matters and has never prohibited any such filings, despite how repetitive and voluminous many of the Objecting Insurers' filings have been.

The Objecting Insurers object that they have standing to behave as parties despite their oft-asserted status as non-parties. The fact remains that they are not parties, despite having had months to intervene in these proceedings. The case that they cite for the proposition that they need not be parties to object to these proceedings does not stand for this proposition at all. Contrary to the way that it was represented to this Court, the entity seeking relief in *Ross Development Corporation v. Fireman's Fund Insurance Co.*, 809 F.Supp. 2d 449 (D.S.C. 2011) was a third-party defendant (*i.e.*, a party) to the litigation described therein. Once again, the Objecting Insurers took liberties in representing authority to this Court.

The Objecting Insurers object that this Court's April 10, 2020 order impairs their contribution, indemnification, and subrogation rights. This Court already has addressed these

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objections related to potential, future contribution rights. Perhaps USF&G said it best in its April 20, 2020 filing in Judge Hendricks' court: "USF&G does not, and cannot, know the extent of its contribution claims until its right to contribution is ripened by resolution of underlying claims…." *See* USF&G's April 21, 2020 Reply to Response in Opposition to Motion to Enforce Injunction at ECF 148 at 6, Case No. 7:18-cv-03291-BHH, in the United States District Court of South Carolina, Spartanburg Division. As this Court has observed before, this Court is charged with supervision of the South Carolina asbestos docket and the Covil receivership. The Receiver has reached settlements with three of Covil's insurers, and these parties seek approval and closure. The Objecting Insurers seek to prevent this settlement based on a theory that their future, possible, unknowable rights could be impaired. Yet USF&G did not even seek relief relating to these rights in the insurance coverage case pending with Judge Hendricks. *See* USF&G's January 18, 2019 Answer, ECF 39. Its motivation to assert future rights now is thus questionable.

Accordingly, this Court will not place its important business on hold while and until the Objecting Insurers' future potential rights "ripen" to the point that they are ready to have them adjudicated. The law of South Carolina favors settlements, and this Court has a complex asbestos docket to manage. The Receiver's significant settlements have already resulted in a decrease in litigation in multiple state and federal courts, and this Court stands ready to adjudicate contribution rights related to its asbestos docket and the Covil QSF that it will supervise should the necessity to adjudicate such rights ever materialize in any of this Court's cases.

Until such time, the Objecting Insurers cannot indefinitely block this Court's functions in defense of rights that they may, or may not, possess at some undetermined time in the future. Finally, the concept of subrogation, although mentioned frequently by the Objecting Insurers, is not at issue in these proceedings.

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VI. Ruling

For the reasons stated above, this Court hereby **DENIES** Non-Party United States Fidelity and Guaranty Company's ("USF&G") April 20, 2020 Motion to Reconsider, Alter or Amend Approval Order; Non-Party USF&G's April 20, 2020 Motion to Stay; and Non-Party Zurich's April 20, 2020 Motion to Reconsider, Alter or Amend Approval Order.

AND IT SO ORDERED this _____ day of ________, 2020.

____
Jean H. Toal, Chief Justice of the Supreme Court, Retired, acting as Circuit Court Judge

Columbia, South Carolina.

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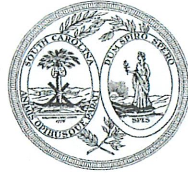

Richland Common Pleas

Case Caption: Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al

Case Number: 2018CP4004940

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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EXHIBIT B

ELECTRONICALLY FILED - 2022 May 13 8:41 AM - RICHLAND - COMMON PLEAS - CASE#2021CP4005873

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

BARBARA BULLARD MIMMS and JOHN MIMMS,

Plaintiffs,

v.

BURLINGTON INDUSTRIES, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

C/A No.: 2021-CP-40-05873

ORDER APPOINTING RECEIVER OVER DEFENDANT BURLINGTON INDUSTRIES, INC.

Before the Court is Plaintiffs' Motion to Appoint a Receiver over Defendant Burlington Industries, Inc., pursuant to S.C. Code Ann. § § 15-65-10(4). This Court finds that the appointment of a receiver in this action is meritorious under the applicable statute because Burlington Industries, Inc., by virtue of its status as a dissolved corporation, has forfeited its right to do business in South Carolina and has further failed to answer this case, and therefore, Plaintiffs' request for an expedited ruling on this motion is appropriate and granted.

Therefore, this Court hereby appoints Peter McCoy as the Receiver in this case pursuant to South Carolina Law with the power and authority to fully administer all assets of Defendant, accept service on behalf of Defendant, engage counsel on behalf of Defendant, and take any and all steps necessary to protect the interests of Defendant whatever they may be. This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Defendant, as well as any claims related to the actions or failure to act of Defendant's insurance carriers.

In addition to the powers of the Receiver as set forth herein, the Receiver shall have the following rights, authority, and powers with respect to the Defendant's property, to:

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(1) collect all accounts receivable of Defendant and all rents due to the Defendant from any tenant;

(2) to change locks to all premises at which any property is situated;

(3) open any mail addressed to the defendant and addressed to any business owned by the Defendant; redirect the delivery of any mail addressed to the Defendant or any business of the Defendant, so that the mail may come directly to the receiver;

(4) endorse and cash all checks and negotiable instruments payable to Defendant, except paychecks for current wages;

(5) hire a real estate broker to sell any real property and mineral interest belonging to the Defendant;

(6) hire any person or company to move and store the property of Defendant;

(7) to insure any property belonging to the Defendant (but not the obligation);

(8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendant;

(9) obtain from any landlord, building owner, or building manager where the Defendant or the Defendant's business is a tenant, copies of the Defendant's lease, lease application, credit application, payment history and copies of Defendant's checks for rent or other payments;

(10) hire any person or company necessary to accomplish any right or power under this Order; and

(11) take all action necessary to gain access to all storage facilities, safety deposit boxes, real property, and leased premises wherein any property of Defendant may be situated, and to review and obtain copies of all documents related to same.

In addition, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Burlington Industries, Inc., may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

IT IS SO ORDERED.

____
The Honorable Jocelyn Newman
Circuit Court Judge
Fifth Judicial Circuit

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Richland Common Pleas

Case Caption: Barbara Bullard Mimms , plaintiff, et al vs Burlington Industries Inc

Case Number: 2021CP4005873

Type: Order/Appointment of Receiver

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

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EXHIBIT C

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE REINZ WISCONSIN GASKET, LLC, a cancelled Delaware limited liability company	)))	C.A. No. 2022-0859-MTZ

ORDER APPOINTING RECEIVER OVER
REINZ WISCONSIN GASKET, LLC

WHEREAS, Petitioner Linda A. Cook, Individually and as Executor of the Estate of Roland Cook ("Petitioner") having filed her Verified Petition for Appointment of a Receiver Pursuant in Dissolution Pursuant to 6 *Del. C.* § 18-805 ("Petition") in the above-captioned action, and the Petition having been granted by the Court,

IT IS HEREBY ORDERED this 3rd day of August, 2023, that:

1. Peter D. Protopapas (the "Receiver") is appointed as receiver of and for Reinz Wisconsin Gasket, LLC ("RWG" or the "Company") for the limited purpose of investigating whether RWG had assets when it filed its notice of dissolution and cancellation. The Receiver shall be empowered to investigate the existence of these assets, including insurance policies, litigable claims, and claims or other proceedings relating to any other assets. The Receiver may also investigate how this litigation has been funded and any claims related to the same.

2. The Receiver shall have full power and authority to oversee all aspects related to the investigation into RWG and its affiliates including, but not limited to,

retaining qualified counsel and monitoring and overseeing the investigation. The Receiver shall have the power to hire any person or company (professional or otherwise) necessary to accomplish any right or power under this Order. The Receiver shall hire Delaware counsel as a condition of waiving Rule 150's requirement that the Receiver be a Delaware resident.

3. Within ten days of his acceptance, the Receiver shall identify to this Court an agent for service of process in Delaware.

4. The Receiver's compensation shall be negotiated with the Petitioner and submitted to the Court for approval within thirty days of his acceptance, including whether Rules 164–167 should be waived.

5. The Receiver shall, in accordance with Rule 161, submit a report every three months, and a final report in support of the Receiver's determination.

6. The Receiver is entitled to judicial immunity, exculpation, and to be indemnified by the Company, if applicable, in each case, to the fullest extent permitted by law. The Receiver shall have no liability to the Company, its stockholders, or any other person for actions taken in good faith pursuant to this Order. Notwithstanding anything to the contrary contained in the Company's organizing documents, charter or bylaws, the Receiver shall be entitled to all protection, limitation from liability, exculpation, and immunity available at law or in equity to a court-appointed Receiver including, without limitation, all protection,

limitation from liability, exculpation, and immunity provided by the indemnification provisions of applicable law. Expenses, including attorneys' fees, incurred by the Receiver in defending any civil, criminal, administrative, or investigative action, suit, or proceeding arising by reason of or in connection with the Receiver's designation as Receiver for the Company, or in the performance of his duties hereunder, shall be negotiated with the Petitioner and submitted to and approved by the Court in a separate order following the Receiver's appointment.

7. All interim actions of the Receiver shall be subject to review and reversal by the Court only on a showing that the Receiver abused his discretion.

8. The Court reserves jurisdiction to consider any applications that the Receiver may make for the Court's assistance in performing his duties hereunder. No person shall institute any proceeding in any forum other than this Court challenging any action, recommendation, or decision by the Receiver.

9. Pursuant to Court of Chancery Rule 148, the provisions of Court of Chancery Rules 149, 151–160, and 162–163 are hereby waived. The Receiver shall not be required to post a bond.

/s/ Morgan T. Zurn

Vice Chancellor Morgan T. Zurn

EXHIBIT D

ELECTRONICALLY FILED - 2018 Nov 02 2:42 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004940

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
DENVER D. TAYLOR and JANICE TAYLOR,	)	**CASE NO. 2018-CP-40-04940**
Plaintiffs,	)	Order Appointing a Receiver for Covil Corporation
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.	)	
Defendants.	)	

This matter comes before the Court by way of Plaintiff's Motion for Appointment of a Receiver pursuant to South Carolina Code § 15-65-10. This Court finds that the application is meritorious under the applicable statute because Covil Corporation has dissolved. Therefore, Plaintiff's motion is GRANTED.

This Court hereby appoints Attorney Peter Protopapas as Receiver at such rate of compensation as may be approved by the Court. Mr. Protopapas is hereby appointed Receiver in this case pursuant to § 15-65-10 with the power and authority to fully administer all assets of Covil Corporation ("Covil"). This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil's insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any

mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

IT IS SO ORDERED.

SIGNED this_________ day of ____________,2018.

____
JEAN TOAL, CHIEF JUSTICE (Ret.)

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Richland Common Pleas

Case Caption:	Denver D Taylor , plaintiff, et al vs Air & Liquid Systems Corporation , defendant, et al
Case Number:	2018CP4004940
Type:	Order/Appointment of Receiver

IT IS SO ORDERED.

s/ Jean H. Toal #2758

Electronically signed on 2018-11-02 13:22:24

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EXHIBIT E

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND

JOHN A. TIBBS AND MARGARET B. TIBBS,

Plaintiffs,

vs. C/A No.: 2023-CP-40-01759

ASBESTOS CORPORATION, ET AL.

Defendants.

MELVIN G. WELCH AND DONNA B. WELCH,

Plaintiffs,

vs. C/A No.: 2022-CP-40-03834

ATLAS TURNER, ET AL.

Defendants.

MOTIONS HEARING

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, August 21, 2023

TIME START: 9:27 a.m.

TIME END: 11:36 a.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.

APPEARANCES:

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I N D E X

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E X H I B I T S

(None were proffered.)

1 THE COURT: I disagree. I'll put that in
2 context for you right now, Mr. Brown.
3 When that's the beginning of any kind of
4 receivership, that case may have some
5 applicability. But this receiver has performed
6 as a receiver now in 17 or 18 different asbestos
7 cases involving different plaintiffs, involving
8 different lawyers, and the inference is made in
9 that old case. And the inference is made in
10 your brief that somehow or another the receiver
11 is the tool of the plaintiff or too close to the
12 plaintiff.
13 I appointed Mr. Protopapas as the receiver
14 in the first Covil case, not by anybody's
15 recommendation, but because of my knowledge of
16 Mr. Protopapas. And he has now operated in a
17 good many receiverships. And I will assure you,
18 he is a vigorous defender in the receiverships
19 in which a qualified settlement fund has been
20 established. He does not settle cases casually.
21 He protects the fund just as any defense lawyer
22 would do.
23 The attorneys he handles -- he hires to
24 handle the defense are well-recognized defense
25 lawyers to the nth degree in this state and

1 vigorously represent the defense point of view.
2 I'm familiar with the case you cite. It
3 has no applicability to what we're talking about
4 here, in my view.
5 MR. BROWN: I understand Your Honor's
6 position on that, but that's where that came
7 from. In response, they filed, they refer to me
8 as making a thinly veiled defamation attempt --
9 thinly veiled attempt at defamation. It was
10 simply Ms. McVey specifically requested him to
11 enter a motion.
12 THE COURT: She did because the experience
13 we have all had with Mr. Protopapas and these
14 many other receiverships.
15 MR. BROWN: I understand. Your Honor, I
16 was going by the ruling or the language that the
17 Supreme Court had used in that case and they
18 relied on by this Court in its ruling.
19 With regard to ACL, ACL, as Your Honor is
20 aware, is in Thetford Mines, Quebec. It is a
21 live Canadian corporation.
22 THE COURT: Is it set up for any other
23 purpose to handle claims -- old claims against
24 ACL?
25 MR. BROWN: Yes, Your Honor.