

RECEIVED

Sep 06 2023

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.) and Acting Circuit Court Judge

Case No. 2021-CP-40-03484

Appellate Case No. 2023-000727

Lenora Childers, Individually and as Personal Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories, Inc.; General Boiler Casing Company, Inc.; HEFCO, Inc.; J.R. Dean Company, Inc.; Payne & Keller Company; SFB, Incorporated; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Systra Engineering, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co., Defendants.

Flame Refractories, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.; and Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and as Successor to Northern Insurance Company of New York, Maryland All American General Insurance Company, and Maryland Casualty Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler; Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company;

Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

**RESPONDENT'S RESPONSE TO APPELLANTS' RETURNS TO EXPEDITED
MOTION TO CLARIFY
THE COURT'S ORDER ON APPEALABILITY**

The Respondent, Payne & Keller Company, by and through its appointed Receiver, Peter D. Protopapas, respectfully submits a response to Appellants' Returns to the Respondent's Expedited Motion to Clarify the Court's Order on Appealability and renews its requests that this Court clarify its recent order indicating that this appeal may proceed. Specifically, Respondent asks this Court to clarify that the pendency of this appeal does not stay the underlying receivership action.

Appellants' ("Carriers") Return illustrates their misunderstanding of the role of the Receiver- to protect and preserve assets in dispute.¹ Despite the assertion that Payne & Keller Company was dissolved during the Reagan administration and is without any assets, Carriers curiously continue to hire counsel to defend cases and have taken over the management and operations of the company's last remaining asset, its insurance policies. This control and management of assets and litigation is more akin to an alter-ego relationship than insured-insurer relationship. By stalling out a receivership through procedural wrangling, the Carriers are granted carte blanche continued control over the dissolved company's litigation and only remaining assets.

Those assets include over one hundred million dollars of insurance assets whose premiums were paid by Payne & Keller Company to cover injuries sustained by individuals, including mesothelioma. The Carriers have consistently shown that they will assert any argument, no matter how frivolous, and bend our rules of procedure to subvert the jurisdiction of the trial court and delay rulings on important matters of South Carolina law, particularly those involving court-appointed receiverships in an effort to avoid their contractual obligations to provide indemnity to Payne & Keller Company for injuries caused to individuals.² These defunct companies for which

¹ "A receiver is an officer of the court through whom the court takes possession of the assets of the insolvent [entity] for the purpose of preventing their waste or destruction and of reducing them to such form as may be necessary for their ratable distribution among those who may be entitled thereto...It follows that he has no personal interest in the property in his official character, except that which arises out of his responsibility in the faithful and correct discharge of his duties." *Peurifoy v. Gamble*, 145 S.C. 1, 142 S.E. 788, 790 (1928). For each receivership to which he is appointed, the Receiver's work to identify, preserve, and manage the assets of the defunct entity is extensive, including identifying responsive insurance policies, working with defense counsel for the defunct entity to provide a proper defense, and engaging in settlement negotiations in conjunction with Carrier-appointed defense counsel.

² See October 16, 2019 Order, Appellate Case No. 2019-001651 (dismissing Zurich American Insurance Company, United States Fidelity and Guaranty Company, and Sentry Insurance a Mutual Company's notices of appeal because the appealed order was an interlocutory discovery order); October 16, 2019 Order, Appellate Case No. 2019-001654 (denying petition for writ of

receivers have been appointed maintained policies of insurance. Many of those insurance carriers, until recently, have managed to dodge their responsibilities over the last 30 years by employing an organized strategy of denying coverage and often the existence of coverage despite their obligations under numerous legacy occurrence policies which provide hundreds of millions of dollars in coverage. Even after court-appointed receivers are charged with identifying and marshalling assets, which is almost always insurance assets, most carriers refuse to identify and produce evidence of coverage absent long and protracted litigation and appeals. Now, the Carriers in this appeal (and others), are engaged in a new effort to stall the appointment of and administration of court-appointed receiverships by arguing, despite clear statutory provisions to the contrary, that the receivership court and the receivership action is stayed during the ongoing and endless appeals.

The Appellants' Returns in opposition to Respondent's motion to clarify that the appeal does not stay the underlying Receivership action and the duties associated therewith, omit several key facts. First, the Carriers fail to mention that Payne & Keller Company was registered and authorized to do business in South Carolina and maintained a subsidiary facility in South Carolina. See Report of the Receiver for Payne & Keller Company, July 6, 2023 (attached as Exhibit A). Second, Carriers ignore the possibility that Payne & Keller was fraudulently dissolved. In fact, the insurers also failed to mention that the receivership court already has found a *prima facie* case

certiorari to review an interlocutory discovery order); February 13, 2020 Order, Appellate Case No. 2020-000206 (dismissing Zurich American Insurance Company and United States Fidelity and Guaranty Company's notices of appeal as improper due to timely pending post-trial motions); May 22, 2020 Order, Appellate Case No. 2020-000749 (denying petition for writ of mandamus and finding it "not appropriate" because recusal decision was not ministerial); June 17, 2020 Order, Appellate Case No. 2020-000791 (dismissing United States Fidelity and Guaranty Company's petition for a writ of supersedeas as improper due to no pending appeal); July 30, 2020 Order, Appellate Case No. 2020-000845 (dismissing United States Fidelity and Guaranty Company's appeal due to its status as a non-party to the action).

of constructive fraud regarding the facts supporting the dissolution defense advanced by the Carriers. While the Carriers cast aspersions on the Receiver for acknowledging that no evidence was introduced to contradict the underlying Plaintiff's contention that the Payne & Keller Company was fraudulently dissolved, the Carriers' motives are illuminated in their filings- protect the policies at all cost and in all circumstances. This effort is not, as Carriers might suggest, synonymous with the Receiver's obligations to identify and marshal assets; including occurrence policies of insurance which the company bargained for. The trial court has previously found that a receiver is "under no obligation to advance frivolous arguments or to assert specious defenses" in asbestos cases involving the receiver company. See Order Denying Motions to Reconsider and Motion to Stay; *Falls v. CBS Corporation*, Sixth Judicial Circuit, C/A No. 2015-CP-46-02155 (May 6, 2020), at 14 (attached as Exhibit B). Lastly, the Carriers' rendition of their activities during the brief period of this appeal is incomplete at best. Omitted from their filing are Payne and Keller Company's Expedited Second Motion to Clarify Insurers' Responsibilities and pages 6-42 of the August 21, 2023 hearing transcript on Payne & Keller Company's motion which outlines their efforts to circumvent the trial and appellate courts of South Carolina. See Payne and Keller Company's Expedited Second Motion to Clarify Insurers' Responsibilities (attached as Exhibit C) and Transcript of Record (attached as Exhibit D).

CONCLUSION

Based on the foregoing and as stated in the Respondent's Expedited Motion to Clarify the Court's Order on Appealability, Respondent respectfully asks this Court to clarify that the pendency of this appeal does not stay the underlying Receivership action and that the Receiver may continue carrying out his court-appointed duties while this appeal is pending.

Respectfully submitted,

SMITH ROBINSON, LLC

s/Jonathan M. Robinson

G. Murrell Smith, Jr. (S.C. Bar # 66263)

Jonathan M. Robinson (S.C. Bar # 68285)

Shanon N. Peake (S.C. Bar #102723)

2530 Devine Street,

Columbia, South Carolina

29205

(803) 254-5445

Attorneys for Respondent

September 6, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of LEWIS
C. CHILDERS,

Case No. 2021-CP-40-03484

Plaintiff,

v.

Davis Mechanical Contractors, Inc., *et al.*,

Defendants.

Flame Refractories, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., and Payne & Keller Company
By and Through Their Duly Appointed
Receiver Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company, *et al.*,

Third-Party Defendants.

REPORT OF THE RECEIVER FOR PAYNE & KELLER COMPANY

Peter Protopapas, as the court-appointed Receiver for Payne & Keller Company, submits this Report to provide information to the Court regarding Plaintiff's Motion to Revoke the Termination of Payne & Keller Company (filed on June 14, 2023).

BACKGROUND ON PLAINTIFF'S MOTION TO REVOKE

1. On February 23, 2022, the Receiver initiated an insurance coverage action for Payne & Keller ("P&K") by way of a third-party action against multiple carriers. *See Payne & Keller Company, by and through its duly appointed Receiver, Peter D. Protopapas v. U.S. Risk, LLC, et al.*; Case No. 2021-CP-40-03484 (Richland Cnty. Ct. Comm. Pl.) (filed as third-party complaint in *Lenora Childers et al. v. Davis Mechanical Contractors, Inc., et al.*).

2. On August 24, 2022, Third-Party Defendant Travelers Casualty and Surety Company appeared and filed a motion (1) to dismiss the Receiver's third-party claims and (2) to dissolve the P&K Receivership. Third-Party Defendants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company; The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Certain as yet Unnamed Underwriters at Lloyd's, London and Certain as yet Unnamed London Market Companies joined Travelers's motion.

3. On January 13, 2023, the Receiver filed a response in opposition to the motion. On January 25, 2023, Travelers filed a reply.

4. On January 27, 2023, the Court heard oral arguments on the motion.

5. By order dated March 31, 2023, the Court denied the motions to dismiss and requests to dissolve the P&K Receivership. In doing so, the Court found that the Receiver was properly appointed under Section 15-65-10 of the South Carolina Code and has standing to assert the third-party claims raised in this action. The Court further found the Receiver presented

sufficient evidence at the pleading stage to support a claim that P&K's 1986 dissolution was the result of, at least, constructive fraud. Order at pp. 3 - 4. In its Order, the Court found:

Travelers has not disputed the Receiver's evidence or submitted any countervailing evidence regarding the circumstances surrounding its dissolution. Accordingly, this Court finds the Receiver has made a prima facie showing that Payne & Keller "was terminated as a result of actual or constructive fraud," § 11.153(a), and dismissal on the basis of the termination is unwarranted. *See Latham v. Burgher*, 320 S.W.3d 602, 610 (Tex. App. 2010) (ruling a company's dissolution, conducted shortly after receiving notice of an intended lawsuit against it and without setting aside funds to address the liability of the lawsuit, could support a finding of fraud). This Court does not, however, find that fraud has been conclusively proven, nor does the Court order the revocation of Payne & Keller's termination at this time. Such a determination will be made after the parties have had the opportunity to explore this issue through the discovery process.

Id. at 5.

6. On March 31, 2023, Travelers, AIG, Berkshire Hathaway, Lexington Insurance Company, National Union, and Continental filed an appeal. On May 5, 2023, the Court of Appeals requested that the parties submit memoranda on the question of whether the issues raised were immediately appealable. This appeal is pending.

7. On June 14, 2023, Plaintiff filed Motion to Revoke the Termination of Payne & Keller Company. Plaintiff contends, in part, as follows:

Payne & Keller dissolved before the Charter dioxin claims matured and, contrary to the representations it made to the Secretary of State, failed to make adequate provision for the payment of either those claims or the variety of other occupational injury claims that it had faced—and reasonably expected that it would face for many decades in the future. Because the company therefore dissolved as a result of (at the very least) constructive fraud, the termination of its corporate existence should be revoked, and pursuant to section 11.153 of TBOC.

See Plaintiff's Motion to Revoke the Termination of Payne & Keller Company.

8. On June 30, 2023, the Receiver filed the carriers' written discovery responses with the Court. It appears that no carrier has provided evidence to dispute the allegations of constructive fraud surrounding P&K's dissolution.

9. The insuring carriers have requested the Receiver authorize P&K's insurer-hired defense counsel to take certain positions regarding Plaintiff's Motion to Revoke the Termination of Payne and Keller Company. See Exhibit A, June 23, 2023 Letter from Travelers, June 27, 2023 Email from the Receiver, and December 14, 2021 Email from Bowman and Brooke, filed under seal with the Court.

10. This Court has previously found that a receiver is "under no obligation to advance frivolous arguments or to assert specious defenses" in asbestos cases involving the receiver company. See Exhibit B, Order Denying Motions to Reconsider and Motion to Stay; *Falls v. CBS Corporation*, In the Sixth Judicial District for Richland County, South Carolina, C/A No. 2015-CP-46-02155 (May 6, 2020), at 14.

STATUS OF RECEIVER'S CORPORATE BACKGROUND INVESTIGATION

11. On August 27, 2021, this Court appointed Peter Protopapas to serve as the Receiver for P&K. Since being appointed, the Receiver's investigation (aided by counsel) has revealed that P&K was a contracting and engineering firm hired mainly in heavy construction projects such as building roads, highways, bridges and tunnels, deep water terminals and water distribution and sewage plants; and in the construction and maintenance of various manufacturing and processing facilities in the petroleum, chemical, and paper mill industries, among others, as well as gas pipelines and gas compressor stations. Specifically, according to historical company materials, P&K companies performed the following work: (1) chemical petroleum and petrochemical construction; (2) personnel for maintenance and operations labor; (3) manpower and equipment for shutdown and turnaround at plants; (4) installation for the production of cement, forgings, chemical and petroleum products, paper, aluminum extrusions, fertilizer, molasses and pipe, site clearance, building construction, and equipment installation at manufacturing facilities; (5)

management and supervisory staff for engineering and construction of bridges, tunnels, water distribution and control system; and (6) environmental control (*i.e.*, sewage plants and waste water collection).

12. The Receiver's investigation also indicates that P&K (or its predecessors/affiliates) were registered to conduct business in at least fourteen states: Alabama (1972), Illinois (1974), Indiana, Iowa (1981), Louisiana, Massachusetts, Michigan, Mississippi (1972), North Carolina (1966), Oregon (1984), South Carolina (1967), Tennessee (1967), Texas (1961), and Wyoming.

13. The Receiver's investigation also revealed that P&K's subsidiary, M&W Equipment Company, maintained a sales office on Highway 72 South in Rock Hill, South Carolina, in 1977. See Exhibit C, M&W Advertisement from March 26, 1977 edition of *The Evening Herald Newspaper* (Rock Hill, South Carolina).

14. The Receiver's investigation has also revealed that Daniel International Corporation, a South Carolina company, purchased P&K affiliate SKRLA, Inc. in 1977. See Exhibit D, "Daniel buys firm" Article from March 18, 1977 edition of *The Daily Mail Newspaper* (Anderson, South Carolina).

15. The Receiver's investigation has revealed that in or about 1979 or 1980, portions of P&K were sold to Jacobs and to the United States subsidiary of a French company, Dumez, S.A. Thereafter, the remaining P&K entity dissolved in 1986.

16. Other than insurance assets, the Receiver's investigation has not uncovered any provision that P&K made for any of its known (or expected) creditors at the time of its dissolution.

17. Since the Receiver's appointment, P&K has been named as a defendant in numerous asbestos cases in this Court in South Carolina as well as at least one case in Texas. See *Daniel D. Williams, et al. v. The Dow Chemical Company, et al.*; Cause No. 123060-CV; In the

District Court of Brazoria County, Texas; 149th Judicial District (filed May 23, 2023). A copy of this petition is attached as Exhibit E.

18. Moreover, the Receiver is also aware that certain of P&K's insurers have been named as "direct action" defendants in at least one asbestos case in Louisiana pursuant to Louisiana statute. See Louisiana Direct Action Statute, La. Rev. Stat. 22:1269. On June 23, 2022, this Court signed a Consent Order in this matter to regulate P&K's insurers' handling of these "direct action" cases during the ongoing receivership proceedings.

STATUS OF RECEIVER'S INSURANCE INVESTIGATION

19. In its appointment order, this Court noted that "the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership." Order at 2.

20. The Receiver has worked diligently to identify the parameters of P&K's legacy insurance program. To date, the Receiver's investigation has revealed that P&K's responsive legacy insurance program includes coverage issued by AIG entities, Berkshire Hathaway, CNA entities, Fireman's Fund, General Reinsurance, Hartford entities, Lloyd's and London Marker Insurers, Travelers, and Zurich, with facial policy limits in excess of several hundred million dollars. Copies of the Receiver's latest coverage chart and policy schedule are attached as Exhibit F.

21. On July 5, 2023, the Receiver filed copies of the insurance policies that he has discovered in the record of this matter in a document entitled "Notice of Filing of Known Payne & Keller Insurance Policies." A copy of this Notice (without the voluminous exhibits) is attached as Exhibit G.

STATUS OF RECEIVER'S INVESTIGATION INTO P&K DISSOLUTION

22. The Receiver searched the public records and identified the following claims pending at or near dissolution:

a. In 1983, the Louisiana Court of Appeals affirmed that P&K and its insurer Aetna Surety & Casualty Company (now a Travelers company, the movant here) were liable for a workers' compensation claim brought by a former Payne & Keller painter and sandblaster who was permanently disabled by silicosis. *See Thornell v. Payne & Keller, Inc.*, 442 So.2d 536 (La. App. 1st Cir. 1983), *cert. denied*, 445 So. 2d 1231 (La. 1984).

b. In 1986, P&K was also a defendant in a Texas asbestos case filed by Baron & Budd. The claims against P&K filed in that case were dismissed on May 21, 1986, but by then, asbestos-related personal injury claims were filling court dockets. In the Eastern District of Texas alone, more than 3,000 asbestos-related personal injury claims had been filed by 1981. *See Hardy v. Johns-Manville Sales Corp.*, 509 F. Supp. 1353, 1354 (E.D. Tex. 1981), *reversed in part*, 681 F.2d 334 (5th Cir. 1982).

c. In the weeks before it began its dissolution process, P&K was alleged to be liable for significant personal injury claims arising from toxic occupational exposures at a Houston refinery. In a bankruptcy proceeding filed by the Charter International Oil Company ("Charter"), P&K sought payment for services provided to Charter, which were secured by mechanic's and materialmen's liens against the refinery. *See In re Charter Co.*, 63 B.R. 568 (Bankr. M.D. Fla. 1986). Charter objected to the claim on the grounds that P&K had agreed to indemnify Charter for personal injury claims arising from the refinery work and that this indemnification obligation encompassed more than a thousand claims arising from occupational dioxin exposure. The bankruptcy court denied Charter's

objection, holding that the claims of the dioxin class had not been reduced to judgment and, as “unmatured” claims, could not be “offset” against P&K’s matured claim, unless P&K was insolvent. *Id.* at 571. No such allegation had been made. To the contrary, P&K asserted that it maintained insurance that would cover any indemnification obligation it owed to Charter. *Id.* at 570. The court ordered Charter to pay P&K’s bankruptcy claim. Immediately after this decision was issued (on July 31, 1986), P&K began taking steps to dispose of its assets and dissolve.

d. On September 29, 1986, P&K’s parent company executed a Specific Guaranty with P&K and the entity that purchased its assets, guaranteeing certain aspects of P&K’s performance under a purchase and sale agreement. The sale was initially intended to close the next day, on September 30, 1986, but was delayed. In the interim, on October 1, 1986, Charter filed a proof of claim on behalf of the dioxin plaintiffs in the bankruptcy proceeding.

e. On January 16, 1987, the dioxin class claims in the Charter bankruptcy proceeding matured. The bankruptcy court entered an order approving settlement of the dioxin class claims against Charter. The court authorized an award of \$5.275 million to the 1,105 personal injury dioxin claimants, \$1 million to the State of Missouri, and \$5 million to the United States Environmental Protection Agency for their dioxin-related contamination claims. *See In re Charter Co.*, 81 B.R. 90, 91 (M.D. Fla. 1987).

f. P&K dissolved before the Charter dioxin claims matured and, contrary to the representations it made to the Secretary of State, failed to make adequate provision for the payment of either those claims or the variety of other occupational injury claims that it had faced—and reasonably expected that it would face for many decades in the future.

STATUS OF RECEIVER'S INSURANCE COVERAGE LITIGATION

23. On November 23, 2021, the Receiver initiated an insurance coverage action against P&K's known insurers. *See Peter D. Protopapas, as the Receiver for Payne & Keller Company v. American International Group, et al.*; C.A. No. 2021-CP-40-05768 (Richland Cnty. Ct. Comm. Pl.). A copy of this complaint is attached as Exhibit H.

a. On December 22, 2021, Travelers (joined by other insurers) removed the Receiver's coverage action to federal court, and on February 24, 2023, the United States District Judge Donald C. Coggins remanded the case. A copy of the remand order is attached Exhibit I.

b. In ordering the remand of the case, Judge Coggins wrote, "Here, the receivership court has appointed a receiver who is attempting to preserve and collect assets of the defunct corporation as part of his fiduciary duty. This Court finds that *Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver to handle the administration of property; to allow this matter to continue in federal court would directly interfere with the exclusive jurisdiction of the receivership court over this dispute." *See id.* at 5-6.

c. Judge Coggins also noted that the "service of suit" clause in certain of P&K's insurance policies operate to waive that insurer's right to remove (or consent to remove) the case to federal court. Accordingly, the court concluded: "Given the waiver, and thus the inability to obtain valid consent from all defendants, Defendants have not adequately demonstrated they meet the requirement under § 1446(b)(2)(A) that all properly

joined and served Defendants must join in or consent to the removal of the action.” *See id.* at 10-11.

d. Travelers appealed this remand order, and the appeal is currently pending in the United States Court of Appeals for the Fourth Circuit. *See Peter D. Protopapas, as the Receiver for Payne & Keller Company on behalf of Payne & Keller Company v. Travelers Casualty and Surety Company f/k/a Aetna Casualty & Surety Company*; Case No. 23-01339 (4th Cir.). A copy of Travelers’ appellate brief is attached as Exhibit J.

24. On February 23, 2022, the Receiver initiated an insurance coverage action for P&K by way of a third-party action against multiple carriers in this case. *See Payne & Keller Company, by and through its duly appointed Receiver, Peter D. Protopapas v. U.S. Risk, LLC, et al.*; Case No. 2021-CP-40-03484 (Richland Cnty. Ct. Comm. Pl.) (filed as third-party complaint in *Lenora Childers et al. v. Davis Mechanical Contractors, Inc., et al.*).

a. The Receiver has asked this Court to determine the respective rights and obligations of Rexel, SKRLA, and Compass Risk because those companies contend that they have certain rights under certain of the P&K insurance policies.

b. Discovery against Rexel, SKRLA, and Compass is ongoing, including SKRLA’s June 29, 2023 production of documents regarding its corporate history. *See* Exhibit K, SKRLA, LLC’s written Responses to Requests for Production.

25. To date, no § 468B Qualified Settlement Fund has been established in connection with the P&K insurance coverage litigation.

Respectfully submitted,

/s/ Jonathan M. Robinson

G. Murrell Smith, Jr.

Jonathan M. Robinson

Tina Cundari

Shanon N. Peake

2530 Devine Street, 3rd Floor

Columbia, SC 29205

Phone: (803) 254-5445

*Counsel for the Receiver for Payne & Keller
Company*

July 6, 2023

EXHIBIT A

Filed Under Seal

June 23, 2023 Letter from Travelers, June 27, 2023 Email from the Receiver,
and December 14, 2021 Email from Bowman and Brooke

EXHIBIT B

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**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CHARLES T. HOPPER and REBECCA
HOPPER,

Plaintiffs,

VS.

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

COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

VS.

Advance Auto Parts, Inc., 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.: 2019-CP-40-00076

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
C/A NO.: 2018-CP-40-04680

ORDER DENYING MOTIONS TO RECONSIDER AND MOTION TO STAY

EEHGTQNDQALY FIEHED 2022/01/06 07:28:19/ANRICH/DRND/COMM/DN/PLH/AS/CS/AS/2022/01/06/003584

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

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

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

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

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.

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.

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."

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 Brunner 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).

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

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.

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”).

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

(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, “*Krafft-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.*

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 statute 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.

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

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.

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

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.

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.



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

EXHIBIT C

REWARD

Reduced prices on stover-saving and haymaking equipment during John Deere's Roundup of Bargains

Come on in and reward yourself two ways during this limited time offer. You get the forage harvester, stack wagon or round baler you need to save your stover as a "second crop"...and you get instant savings on that stover-saving machine. How much discount? Check the chart below. Then come on in, because we're ready to deal on the equipment you need.



MACHINES	DISCOUNT UNTIL 28 FEB. 1977	DISCOUNT 1 MAR. 1977- 30 APR. 1977
336 and 346 Balers; 15A and 16A Choppers; 100 Stack Mover; 25 and 34 Forage Harvesters	\$195	\$90
1207, 1209, and 1214 Mower/Conditioners; 800 and 830 Windrowers; 466 Baler 35 and 3800 Forage Harvesters	\$390	\$195
100 Stack Wagon	\$520	\$260
200 and 300 Stack Movers	\$650	\$325
Hydrostatic Windrowers; 200 and 300 Stack Wagons	\$1,040	\$520
Self-Propelled Forage Harvesters	\$1,950	\$975
230 Stack Shredder/ Feeder	\$2,600	\$2,600

No finance charges imposed until the next use season. Ask us for details. If dealer inventory of any product listed above is exhausted, it can be ordered.



M & W EQUIPMENT COMPANY

PHONE 328-3122

Hwy. 72 South

ROCK HILL, S.C.

Daniel buys firm

Daniel International Corporation has announced acquisition of Skrla, Inc., of Houston, Tex., for an undisclosed amount of cash. Skrla, an earth-moving, site preparation, asphalt paving and general concrete contractor, serves the Texas petroleum, industrial and commercial markets.

Announcement of the acquisition was made jointly by Buck Mickel, chairman of Daniel International, and Thomas B. Skrla, principal owner of the firm he established in 1962.

EXHIBIT E



ELECTRONICALLY FILED
2023 Jul 06 4:22 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4003484

Notice of Service of Process

TV / AL
Transmittal Number: 2704986
Date Processed: 06/06/2023

Primary Contact:	Kimberly Suslek Woods Equipment Company 2606 S II Route 2 Oregon, IL 61061-9685
Entity:	4520 Corp., Inc. Entity ID Number 2184779
Entity Served:	4520 Corp., Inc. (Individually and As successor-in-interest to Benjamin F. Shaw Coinpany)
Title of Action:	Daniel D. Williams vs. The Dow Chemical Company
Matter Name/ID:	Daniel D. Williams vs. The Dow Chemical Company (14156044)
Document(s) Type:	Citation/Petition
Nature of Action:	Asbestos
Court/Agency:	Brazos County District Court , TX
Case/Reference No:	123060-CV
Jurisdiction Served:	Texas
Date Served on CSC:	06/05/2023
Answer or Appearance Due:	10:00 a.m. on the Monday next following the expiration of Twenty days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	The Lanier Law Firm 713-659-5200

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

CAUSE NO. 123060-CV
149th District CourtDELIVERED
6 1 051 2023
BY: D20PSC: 7/14
ATX Process, LLC

CITATION

THE STATE OF TEXAS

TO: **4520 Corp., Inc.**
(individually and as successor-in-interest to Benjamin F. Shaw Company)
By serving its Registered Agent
Corporation Service Company d/b/a CSC -Lawyers Incorporating Service Company
211 E. 7th Street, Suite 620
Austin, TX 78701

Defendant

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this **Citation and Plaintiffs' Original Petition and Jury Demand** a Default Judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. If filing Pro se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

The case is presently pending before the **149th District Court** of Brazoria County sitting in Angleton, Texas, and was filed on the **23rd day of May, 2023**. It bears Cause No. **123060-CV** and Styled:

Daniel D. Williams, et al
vs.
The Dow Chemical Company, et al

The name and address of the Attorney filing this action (or Party, if Pro Se) is **W. Mark Lanier, The Lanier Law Firm, 10940 W. Sam Houston Pkwy N., Suite 100, Houston, Texas 77064**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition to be attached by Plaintiff's attorney.

Issued under my hand and the seal of said Court, at Angleton, Texas, on the **2nd day of June, 2023**.

CASSANDRA TIGNER, DISTRICT CLERK
Brazoria County, Texas

By _____, Deputy
Angela Gray

**Original**

RETURN OF SERVICE

CAUSE NO. 123060-CV 149th District Court

DANIEL D. WILLIAMS, ET AL
VS.
THE DOW CHEMICAL COMPANY, ET AL

4520 Corp., Inc.
(individually and as successor-in-interest to Benjamin F. Shaw Company)
By serving its Registered Agent
Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company
211 E. 7th Street, Suite 620
Austin, TX 78701

Came to hand on the _____ day of _____, 20__ at _____, o'clock ____m., and executed in _____ County, Texas by delivering to each of the within named parties in person, a true copy of this CITATION with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiffs' Original Petition and Jury Demand at the following times and places, to-wit:

NAME	DATE	TIME	PLACE, COURSE, AND DISTANCE FROM COURTHOUSE	MILEAGE

and not executed as to (NAME) _____

and the cause or failure to execute this process is for the following reason: _____

The diligence used in finding said (NAME) being: _____

FEES:

Serving Citation and Copy	\$ _____	_____, Officer
Mileage: _____ miles @ \$ _____ per mile	\$ _____	_____ County, Texas
Total	\$ _____	_____ Deputy/Authorized Person

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____, and my
(First, Middle, Last)
address is _____
(Street, City, State, Zip Code, Country)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____, on the ____ day of _____, 20__.

Declarant/Authorized Process Server

(Id No. and expiration of certification)

CAUSE NO. 123060-CV

DANIEL D. WILLIAMS, individually and
as personal representative of the estate of
JIMMIE LEE WILLIAMS, Deceased,
SHELIA L. WRIGHT, and **JIMMIETTA**
WILLIAMS,

Plaintiffs,

v.

THE DOW CHEMICAL COMPANY;
4520 CORP., INC. (individually and as
successor-in-interest to BENJAMIN F.
SHAW COMPANY);
AIR & LIQUID SYSTEMS
CORPORATION (individually and as
successor-in-interest to BUFFALO PUMPS,
INC.);
AMETEK INC. (individually and as
successor-in-interest to HAVEG
INDUSTRIES, INC., successor by merger to
HAVEG CORP.);
ASHLAND, INC. (individually and as
successor-in-interest to HERCULES, INC.);
A.W. CHESTERTON CO.;
BASF CATALYSTS LLC (individually
and as successor-in-interest to BADISCHE
CORPORATION);
BECHTEL CORPORATION (individually
and as successor-in-interest to BECHTEL
INC.);
BECHTEL POWER CORPORATION;
BEXAR CANYON MANAGEMENT,
INC., f/k/a H.B. ZACHRY COMPANY;
BW/IP INTERNATIONAL, INC.
(individually and as successor-in-interest to
BYRON JACKSON PUMP COMPANY);
CHAMPLAIN CABLE CORP.
(individually and as successor-in-interest to
HAVEG INDUSTRIES, INC.);
CLEAVER-BROOKS, INC., f/k/a
AQUACHEM, INC., d/b/a CLEAVER-
BROOKS DIVISION;
CONOCOPHILLIPS (individually and as

IN THE DISTRICT COURT OF

BRAZORIA COUNTY, TEXAS

149th JUDICIAL DISTRICT

successor-in-interest to PHILLIPS PETROLEUM COMPANY); **CROWN CORK AND SEAL COMPANY, INC.** (individually and as successor-in-interest to MUNDET CORK COMPANY); **ELLIOTT COMPANY** (sued individually and as successor-in-interest to ELLIOTT TURBO MACHINERY COMPANY, INC.); **FLOWSERVE (US), INC.** (individually and as successor-in-interest to BYRON JACKSON PUMP CO., DURCO INTERNATIONAL, ROCKWELL MANUFACTURING CO., EDWARD VALVE AND MANUFACTURING COMPANY, EDWARD VALVES, INC., and EDWARD VOGT VALVE CO.); **FLUOR CORPORATION (California); FLUOR CORPORATION (Delaware); FLUOR ENTERPRISES, INC.** (individually and as successor-in-interest to FLUOR CORPORATION, FLUOR ENGINEERS & CONSTRUCTORS, INC., DANIEL INTERNATIONAL CORPORATION, and FLUOR-DANIEL, INC.); **FMC CORPORATION** (individually and as successor-in-interest to CHICAGO PUMP COMPANY, NORTHERN PUMP COMPANY, and PEERLESS PUMP CO.); **GENERAL ELECTRIC COMPANY; GOULDS PUMPS, INC.; GUARD-LINE, INC.; HERCULES, INC.** (individually and as successor-in-interest to HAVEG INDUSTRIES, INC. and CHAMPLAIN CABLE CORP.); **ITT CORPORATION, f/k/a ITT INDUSTRIES, INC.** (individually and as successor-in-interest to BELL & GOSSETT PUMP CO., HOFFMAN SPECIALTY MANUFACTURING COMPANY, and KENNEDY VALVE COMPANY); **JOHN CRANE INC.; KAISER GYPSUM COMPANY, INC.; KVAERNER US, INC.** (individually and as successor-in-interest to DAVY MCKEE

CORPORATION, successor to ARTHUR G. MCKEE CORPORATION);
MCGILL MAINTENANCE PARTNERSHIP, LTD. (individually and as successor-in-interest to MCGILL MAINTENANCE SPECIALTY, INC. and MCGILL MAINTENANCE, INC.);
MUNDY MAINTENANCE AND SERVICES LLC, f/k/a THE MUNDY COMPANIES (individually and as successor-in-interest to MUNDY INDUSTRIAL SERVICE, INC.; MUNDY INDUSTRIAL CONTRACTORS, INC.; MUNDY CONTRACTORS, INC.; and MUNDY CONTRACT MAINTENANCE, INC.);
MUNDY MAINTENANCE SERVICES AND OPERATIONS LLC, f/k/a THE MUNDY COMPANIES (individually and as successor-in-interest to MUNDY INDUSTRIAL SERVICE, INC.; MUNDY INDUSTRIAL CONTRACTORS, INC.; MUNDY CONTRACTORS, INC.; and MUNDY CONTRACT MAINTENANCE, INC.);
NELES-JAMESBURY, INC., f/k/a JAMESBURY CORPORATION;
PARAMOUNT GLOBAL, f/k/a VIACOMCBS INC., f/k/a CBS CORPORATION, a Delaware Corporation, f/k/a VIACOM, Inc., successor-by-merger to CBS CORPORATION, a Pennsylvania Corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION,
PARSONS ENERGY & CHEMICALS GROUP, INC. f/k/a S.I.P., INC. (individually and as successor-in-interest to S.I.P., INC.);
PARSONS INFRASTRUCTURE & TECHNOLOGY GROUP INC.;
PAYNE & KELLER COMPANY;
PHARMACIA LLC, f/k/a PHARMACIA CORPORATION, f/k/a MONSANTO COMPANY;
REDCO CORPORATION, f/k/a CRANE CO. (individually and as successor-in-

interest to COCHRANE CORPORATION;
CHAPMAN VALVE COMPANY,
JENKINS BROS. a/k/a JENKINS VALVES,
CROSBY VALVES, and PACIFIC
VALVES);
REF-CHEM (individually and as successor-
in-interest to RC-AEL Company and
individually and as successor-in-interest to
DON LOVE, INC.);
RESCO HOLDINGS, L.L.C. (individually
and as successor-in-interest to entities
including but not limited to KELL
HOLDING CORPORATION,
HENLEY/MWK HOLDING INC.,
PULLMAN INCORPORATED, THE M. W.
KELLOGG COMPANY, and
WHEELABRATOR-CHICAGO INC.);
RILEY POWER, INC., f/k/a RILEY
STOKER CORPORATION;
SANTA FE BRAUN, INC. (individually
and as successor-in-interest to entities
including but not limited to C. F. BRAUN &
CO., C. F. BRAUN CONSTRUCTORS,
INC., and JGB, INC.);
SEQUOIA VENTURES, INC.;
S.I.P., INC. f/k/a PARSONS CHEMICAL
ENGINEERING (individually and as
successor-in-interest to S. I. P., INC.);
SPX COOLING TECHNOLOGIES, INC.
(individually and as successor-in-interest to
THE MARLEY COOLING TOWER
COMPANY);
TA COMPANY, f/k/a THE AUSTIN
COMPANY;
TRINITY CONSTRUCTION
COMPANY, INC. (individually and as
successor-in-interest to BELLCO
INDUSTRIAL PIPING COMPANY and
BELLCO INDUSTRIAL ENGINEERING
COMPANY);
TRIPLEX, INC.;
UNION CARBIDE CORPORATION
(f/k/a UNION CARBIDE CHEMICALS
AND PLASTIC COMPANY, INC.);
U.S. CONTRACTORS INC. (individually
and as successor-in-interest to U.S.

CONTRACTORS COMPANY);	§
U.S. CONTRACTORS LTD. (individually	§
and as successor-in-interest to U.S.	§
CONTRACTORS COMPANY);	§
WARREN PUMPS, LLC (individually and	§
as successor-in-interest to QUIMBY PUMP	§
COMPANY);	§
ZURN INDUSTRIES, INC. (individually	§
and as successor-in-interest to ERIE CITY	§
IRON WORKS, INC.);	§
Defendants.	§

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, DANIEL D. WILLIAMS, individually and as personal representative of the estate of JIMMIE LEE WILLIAMS, Deceased, SHELIA L. WRIGHT, and JIMMIETTA WILLIAMS, complaining of the various Defendants listed below and for causes of action would show the Court and Jury as follows:

1. Pursuant to T.R.C.P. 190.1 Discovery will be conducted under Level 3 (T.R.C.P. 190.3). Certain Defendants named herein reside in this County, maintain offices in this County and/or have their principal place of business in this County, and all or a substantial part of the acts or omissions that form the basis of this lawsuit occurred in this County; therefore, venue properly lies in this County. Certain acts or omissions, which were a proximate or producing cause of Decedent's asbestos-related injuries, occurred in Texas.

2. The damages sought by Plaintiffs, exclusive of interests and costs, exceed the minimum jurisdictional limits of the Court. As required by Texas Rule of Civil Procedure 47(c), Plaintiffs state that they seek monetary relief over \$1,000,000 for the injuries alleged in this Petition. Plaintiffs further seek any relief in equity to which they are justly entitled.

3. Plaintiff, DANIEL D. WILLIAMS, individually and as personal representative of the estate of JIMMIE LEE WILLIAMS, resides at 1019 County Road 312, Brazoria, Texas 77422.

4. Plaintiff, SHELIA L. WRIGHT, resides at 17438 County Road 729, Brazoria, Texas 77422.

5. Plaintiff, JIMMIETTA WILLIAMS, resides at 300 Silverleaf Road, #303, Sweeny, Texas 77422.

6. Prior to her death, JIMMIE LEE WILLIAMS was diagnosed with lung cancer, an asbestos-related disease which was the cause of her death, and resided at at 1019 County Road 312, Brazoria, Texas 77422.

7. Defendant, **THE DOW CHEMICAL COMPANY**, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Premises Defendant.

8. Defendant, **4520 CORP., INC.** (individually and as successor-in-interest to BENJAMIN F. SHAW COMPANY), may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701. This Defendant is being sued as a Contractor Defendant.

9. Defendant, **AIR & LIQUID SYSTEMS CORPORATION** (individually and as successor-in-interest to BUFFALO PUMPS, INC.), has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex.

Civ. Prac. & Rem. Code §§17.041-.045, at 600 Grant St., Ste. 5085 Pittsburgh, PA 15219. This Defendant is being sued as an Equipment Defendant.

10. Defendant, **AMETEK INC.** (individually and as successor-in-interest to HAVEG INDUSTRIES, INC., successor by merger to HAVEG CORP.), may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701. This Defendant is being sued as a Manufacturer Defendant.

11. Defendant, **ASHLAND, INC.** (individually and as successor-in-interest to HERCULES, INC.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer Defendant.

12. Defendant, **A.W. CHESTERTON CO.**, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer Defendant.

13. Defendant, **BASF CATALYSTS LLC** (individually and as successor-in-interest to BADISCHE CORPORATION), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Premises Defendant.

14. Defendant, **BECHTEL CORPORATION** (individually and as successor-in-interest to BECHTEL INC.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

15. Defendant, **BECHTEL POWER CORPORATION**, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

16. Defendant, **BEXAR CANYON MANAGEMENT, INC.**, f/k/a H.B. ZACHRY COMPANY, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

17. Defendant, **BW/IP INTERNATIONAL, INC.** (individually and as successor-in-interest to BYRON JACKSON PUMP COMPANY), may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201. This Defendant is being sued as an Equipment Defendant.

18. Defendant, **CHAMPLAIN CABLE CORP.** (individually and as successor-in-interest to HAVEG INDUSTRIES, INC.), has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at 175 Hercules Drive, Colchester, VT 05446. This Defendant is being sued as a Manufacturer Defendant.

19. Defendant, **CLEAVER-BROOKS, INC.**, f/k/a AQUACHEM, INC., d/b/a CLEAVER-BROOKS DIVISION, may be served through its registered agent for service of process, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701. This Defendant is being sued as an Equipment Defendant.

20. Defendant, **CONOCOPHILLIPS** (individually and as successor-in-interest to PHILLIPS PETROLEUM COMPANY), may be served through its registered agent for service of process, United States Corporation Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218. This Defendant is being sued as a Premises Defendant.

21. Defendant, **CROWN CORK AND SEAL COMPANY, INC.** (individually and as successor-in-interest to MUNDET CORK COMPANY), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer Defendant.

22. Defendant, **ELLIOTT COMPANY** (sued individually and as successor-in-interest to ELLIOTT TURBO MACHINERY COMPANY, INC.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

23. Defendant, **FLOWSERVE (US), INC.** (individually and as successor-in-interest to BYRON JACKSON PUMP CO., DURCO INTERNATIONAL, ROCKWELL MANUFACTURING CO., EDWARD VALVE AND MANUFACTURING COMPANY, EDWARD VALVES, INC., and EDWARD VOGT VALVE CO.), is a Texas Corporation and may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is a resident of the State of Texas and maintains its principal place of business in Irving, Dallas County, Texas. This Defendant is being sued as an Equipment Defendant.

24. Defendant, **FLUOR CORPORATION (California)**, a California corporation, has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent.

Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its principal place of business, 2500 South Atlantic Boulevard, Los Angeles, California 90022. This Defendant is being sued as a Contractor Defendant.

25. Defendant, **FLUOR CORPORATION (Delaware)**, is a Delaware corporation and may be served with process through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701. This Defendant is being sued as a Contractor Defendant.

26. Defendant, **FLUOR ENTERPRISES, INC.** (individually and as successor-in-interest to FLUOR CORPORATION and DANIEL INTERNATIONAL CORPORATION, a California corporation), has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its registered agent, Corporation Service Company, 2730 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833. This Defendant is being sued as a Contractor Defendant.

27. Defendant, **FMC CORPORATION** (individually and as successor-in-interest to CHICAGO PUMP COMPANY, NORTHERN PUMP COMPANY, and PEERLESS PUMP CO.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

28. Defendant, **GENERAL ELECTRIC COMPANY**, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

29. Defendant, **GOULDS PUMPS, INC.**, has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its home office, 240 Fall Street, Seneca Falls, NY 13148. This Defendant is being sued as an Equipment Defendant.

30. Defendant, **GUARD-LINE, INC.**, is a Texas Corporation and may be served through its agent for service of process, H. Lee Stanley, 215 South Louise Street, Atlanta, Texas 75551. This Defendant is a resident of the State of Texas and maintains its principal place of business in the State of Texas. This Defendant is being sued as a Manufacturer Defendant.

31. Defendant, **HERCULES, INC.** (individually and as successor-in-interest to HAVEG INDUSTRIES, INC. and CHAMPLAIN CABLE CORP.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer Defendant.

32. Defendant, **ITT CORPORATION**, f/k/a ITT INDUSTRIES, INC. (individually and as successor-in-interest to BELL & GOSSETT PUMP CO., HOFFMAN SPECIALTY MANUFACTURING COMPANY, and KENNEDY VALVE COMPANY), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

33. Defendant **JOHN CRANE, INC.**, may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer Defendant.

34. Defendant, **KAISER GYPSUM COMPANY, INC.**, has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at Corporation Service Company, 327 Hillsborough Street, Raleigh, NC 27603. This Defendant is being sued as a Manufacturer Defendant.

35. Defendant, **KVAERNER US, INC.** (individually and as successor-in-interest to DAVY MCKEE CORPORATION, successor to ARTHUR G. MCKEE CORPORATION), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

36. Defendant, **MCGILL MAINTENANCE PARTNERSHIP, LTD.** (individually and as successor-in-interest to MCGILL MAINTENANCE SPECIALTY, INC. and MCGILL MAINTENANCE, INC.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

37. Defendant, **MUNDY MAINTENANCE AND SERVICES LLC**, f/k/a THE MUNDY COMPANIES (individually and as successor-in-interest to MUNDY INDUSTRIAL SERVICE, INC.; MUNDY INDUSTRIAL CONTRACTORS, INC.; MUNDY CONTRACTORS, INC.; and MUNDY CONTRACT MAINTENANCE, INC.), may be served

with process through its registered agent for service of process, Sara J. Cole, 11150 S. Wilcrest Drive, Houston, TX 77099. This Defendant is being sued as a Contractor Defendant. This Defendant is a resident of the State of Texas and maintains its principal place of business in Houston, Harris County, Texas.

38. Defendant, **MUNDY MAINTENANCE SERVICES AND OPERATIONS LLC**, f/k/a THE MUNDY COMPANIES (individually and as successor-in-interest to MUNDY INDUSTRIAL SERVICE, INC.; MUNDY INDUSTRIAL CONTRACTORS, INC.; MUNDY CONTRACTORS, INC.; and MUNDY CONTRACT MAINTENANCE, INC.), may be served with process through its registered agent for service of process, Sara J. Cole, 11150 S. Wilcrest Drive, Houston, TX 77099. This Defendant is being sued as a Contractor Defendant. This Defendant is a resident of the State of Texas and maintains its principal place of business in Houston, Harris County, Texas.

39. Defendant, **NELES-JAMESBURY, INC.**, f/k/a JAMESBURY CORPORATION, has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. This Defendant is being sued as an Equipment Defendant.

40. Defendant, **PARAMOUNT GLOBAL**, f/k/a VIACOMCBS INC., f/k/a CBS CORPORATION, a Delaware Corporation, f/k/a VIACOM, Inc., successor-by-merger to CBS CORPORATION, a Pennsylvania Corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, may be served through its registered agent for service of process, Corporation

Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218. This Defendant is being sued as an Equipment Defendant.

41. Defendant, **PARSONS ENERGY & CHEMICALS GROUP, INC.** f/k/a S.I.P., INC. (individually and as successor-in-interest to S.I.P., INC.), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

42. Defendant, **PARSONS INFRASTRUCTURE & TECHNOLOGY GROUP INC.**, is a Nevada corporation and may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

43. Defendant, **PAYNE & KELLER COMPANY**, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

44. Defendant, **PHARMACIA LLC**, f/k/a PHARMACIA CORPORATION, f/k/a MONSANTO COMPANY, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Premises Defendant.

45. Defendant, **REDCO CORPORATION**, f/k/a CRANE CO. (individually and as successor-in-interest to COCHRANE CORPORATION; CHAPMAN VALVE COMPANY, JENKINS BROS. a/k/a JENKINS VALVES, CROSBY VALVES, and PACIFIC VALVES), may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

46. Defendant, **REF-CHEM** (individually and as successor-in-interest to RC-AEL Company and individually and as successor-in-interest to DON LOVE, INC.), is a Texas corporation doing business in the State of Texas and may be served with process through its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201. This Defendant is being sued as a Contractor Defendant.

47. Defendant, **RESCO HOLDINGS, L.L.C.** (individually and as successor-in-interest to entities including but not limited to KELL HOLDING CORPORATION, HENLEY/MWK HOLDING INC., PULLMAN INCORPORATED, THE M. W. KELLOGG COMPANY, and WHEELABRATOR-CHICAGO INC.), is a Delaware corporation and may be served with process through its registered agent, Corporation Trust Company 1209 Orange Street, Wilmington, Delaware 19801. This Defendant is being sued as a Contractor Defendant.

48. Defendant, **RILEY POWER, INC.**, f/k/a RILEY STOKER CORPORATION, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

49. Defendant, **SANTA FE BRAUN, INC.** (individually and as successor-in-interest to entities including but not limited to C. F. BRAUN & CO., C. F. BRAUN CONSTRUCTORS, INC., and JGB, INC.), is a Delaware corporation and may be served with process through its registered agent, Capitol Services, Inc., 108 Lakeland Ave, Dover, DE 19901. This Defendant is being sued as a Contractor Defendant.

50. Defendant, **SEQUOIA VENTURES, INC.**, a Delaware corporation, has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to

Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its principal place of business, 50 Beale Street, San Francisco, CA 94105. This Defendant is being sued as a Contractor Defendant.

51. Defendant, **S.I.P., INC. f/k/a PARSONS CHEMICAL ENGINEERING INC.** (individually and as successor-in-interest to S.I.P., INC.), is a Delaware corporation and may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Contractor Defendant.

52. Defendant, **SPX COOLING TECHNOLOGIES, INC.** (individually and as successor-in-interest to THE MARLEY COOLING TOWER COMPANY, may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as a Manufacturer and Equipment Defendant.

53. Defendant, **TA COMPANY, f/k/a THE AUSTIN COMPANY,** has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its registered agent, CT Corporation System, 1300 East 9th Street, Cleveland, OH 44114. This Defendant is being sued as a Contractor Defendant.

54. Defendant, **TRINITY CONSTRUCTION COMPANY, INC.** (individually and as successor-in-interest to BELLCO INDUSTRIAL PIPING COMPANY and BELLCO INDUSTRIAL ENGINEERING COMPANY, is a Texas Corporation and may be served with process through its registered agent for service of process, Sarah M. Davis, 909 Fannin St., Suite 3300, Houston, TX 77010. This Defendant is being sued as a Contractor Defendant.

55. Defendant, **TRIPLEX, INC.**, is a Texas Corporation and may be served with process through its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201. This Defendant is being sued as a Supplier Defendant.

56. Defendant, **UNION CARBIDE CORPORATION** (f/k/a UNION CARBIDE CHEMICALS AND PLASTIC COMPANY, INC.), may be served through its registered agent for service of process, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201. This Defendant is being sued as a Manufacturer and Supplier Defendant.

57. Defendant, **U.S. CONTRACTORS INC.** (individually and as successor-in-interest to U.S. CONTRACTORS COMPANY), is a Texas corporation doing business in the State of Texas and may be served with process through its registered agent, James L. Lapier, 622 Commerce Avenue, Clute, Texas 77531. This Defendant is being sued as a Contractor Defendant.

58. Defendant, **U.S. CONTRACTORS LTD.** (individually and as successor-in-interest to U.S. CONTRACTORS COMPANY), is a Texas corporation doing business in the State of Texas and may be served with process through its registered agent, James L. Lapier, 622 Commerce Avenue, Clute, Texas 77531. This Defendant is being sued as a Contractor Defendant.

59. Defendant, **WARREN PUMPS, LLC** (individually and as successor-in-interest to QUIMBY PUMP COMPANY), has at all times relevant to this litigation conducted business in this State, and although it is required to maintain a registered agent for service of process, it has not designated such an agent. Therefore, said corporation may be served with process through the Texas Secretary of State, pursuant to Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code §§17.041-.045, at its registered agent, Corporation Trust Company 1209 Orange

Street, Wilmington, Delaware 19801. This Defendant is being sued as a Manufacturer Defendant.

60. Defendant, **ZURN INDUSTRIES, INC.** (individually and as successor-in-interest to **ERIE CITY IRON WORKS, INC.**), may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201. This Defendant is being sued as an Equipment Defendant.

61. This action is brought and these allegations are made pursuant to Tex. Civ. Prac. & Rem. Code § 71.031.

COUNT ONE

ALLEGATIONS AGAINST MANUFACTURING AND EQUIPMENT DEFENDANTS

62. All of the allegations contained in the previous paragraphs are re-alleged herein.

63. Plaintiffs allege that Decedent JIMMIE LEE WILLIAMS was exposed to asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products through her husband Daniel Williams's occupations. Decedent would shake out and launder her husband's clothes on a regular basis and, in doing so inhaled asbestos-containing dust from the products that he worked with and around. Decedent was further exposed to dust from Defendants' asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products that as unknowingly brought home on her husband's work clothes, which dust contaminated the family home resulting in continued reentrainment of asbestos fibers and exposure to Decedent. Each Defendant corporation or its predecessor-in-interest, is, or at times material hereto, has been engaged in the mining, processing and/or manufacturing, sale and distribution of asbestos and asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or

asbestos-containing products. Plaintiffs would show that Decedent JIMMIE LEE WILLIAMS was exposed, on numerous occasions, to asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products produced and/or sold by Defendants and, in so doing, inhaled great quantities of asbestos fibers. Further, Plaintiffs allege, as more specifically set out below, that Decedent JIMMIE LEE WILLIAMS'S injuries and ultimate death were proximately caused by her exposure to asbestos-containing products designed, manufactured and sold by Defendants. In that each exposure to such products caused or contributed to Decedent's injuries, Plaintiffs say that the doctrine of joint and several liability should be extended to apply to each Defendant herein.

64. Decedent JIMMIE LEE WILLIAMS was exposed to asbestos-containing products and machinery requiring or calling for the use of asbestos or asbestos-containing products that were manufactured, designed, and distributed by the Defendants and their predecessors-in-interest for use as construction materials, friction products, and/or component parts of, or materials and machinery in, industrial operations. Plaintiff would show that the defective design and condition of the products rendered such products unreasonably dangerous, and that the asbestos-containing products and machinery were in this defective condition at the time they were designed by or left the hands of Defendants. Plaintiffs would show that Defendants' asbestos-containing products and machinery requiring or calling for the use of asbestos-containing products were defective in the manner in which they were marketed for their failure to contain or include warnings regarding potential asbestos health hazards associated with the use of or the exposure to the products. Plaintiffs would show that this market defect rendered such products and machinery requiring or calling for the use of asbestos-containing products unreasonably dangerous at the time they were designed or left the hands of the Defendants.

Plaintiffs would show that Defendants are liable in product liability including, but not limited to, strict product liability for the above-described defects. As a result of the Defendants' failure to warn about the dangers of asbestos, Decedent JIMMIE LEE WILLIAMS'S husband, Daniel Williams, inadvertently transported the toxic asbestos fibers home where Decedent inhaled and ingested these fibers causing Decedent to contract lung cancer, an asbestos-related disease.

65. The Defendants are or were engaged in the business of selling, manufacturing, producing, designing and/or otherwise putting into the stream of commerce asbestos-containing products and/or equipment requiring or calling for asbestos or asbestos-containing products, and these asbestos-containing products and/or equipment, without substantial change in the condition in which they were sold, manufactured, produced, designed and/or otherwise put into the stream of commerce were a proximate and/or producing cause of Decedent JIMMIE LEE WILLIAMS'S injuries and death.

66. Defendants knew that these asbestos-containing products and/or equipment would be used without inspection for defects and, by placing them on the market, represented that they would safely do the job for which they were intended, which must necessarily include safe manipulation and/or installation of the asbestos-containing products and/or operation, maintenance and/or repair of the machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

67. Decedent JIMMIE LEE WILLIAMS was unaware of the hazards and defects in the asbestos-containing products of the Defendants, which made them unsafe for purposes of manipulation and/or installation. Similarly, Decedent JIMMIE LEE WILLIAMS was unaware of the hazards and defects in the equipment requiring or calling for the use of asbestos and/or asbestos-containing materials.

68. During the periods that Decedent JIMMIE LEE WILLIAMS was exposed to the asbestos-containing products and/or equipment utilizing asbestos-containing products manufactured and sold by various Defendants, these asbestos-containing products and/or pieces of equipment were being utilized in a manner which was intended by Defendants.

69. In the event that Decedent JIMMIE LEE WILLIAMS was unable to identify each injurious exposure to asbestos-containing products and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products, Plaintiffs would show the Court that the Defendants named herein represent and/or represented a substantial share of the relevant market of asbestos-containing products and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products at all times material to the cause of action. Consequently, each Defendant should be held jointly and severally liable under the doctrines of enterprise liability, market-share liability, concert of action and alternative liability, among others.

70. The illnesses, injuries, disabilities, and death of Decedent JIMMIE LEE WILLIAMS were a direct and proximate result of the negligence of each Defendant and/or its predecessor-in-interest in that said entities produced, designed, sold and/or otherwise put into the stream of commerce, asbestos, asbestos-containing products and equipment requiring or calling for the use of asbestos which the Defendants knew, or in the exercise of ordinary care, should have known were deleterious and highly harmful to Decedent's health and well-being. Certain Defendants created hazardous and deadly conditions to which Decedent JIMMIE LEE WILLIAMS was exposed and which caused him to be exposed to a large amount of asbestos fibers. The Defendants were negligent in one, some and/or all of the following respects, among others, same being the proximate cause of Decedent JIMMIE LEE WILLIAMS'S illnesses, injuries, disabilities, and/or death:

- (a) in failing to timely and adequately warn Decedent and/or her husband, Daniel Williams, of the dangerous characteristics and serious health hazards associated with exposure to asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products;
- (b) in failing to provide Decedent JIMMIE LEE WILLIAMS and/or her husband, Daniel Williams, with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect Decedent from being harmed and disabled by exposure to asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products;
- (c) in failing to place timely and adequate warnings on the containers of said asbestos, asbestos-containing products, or on the asbestos-containing products themselves, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products to warn of the dangers to health of coming into contact with said asbestos-containing products and/or equipment;
- (d) in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan and/or safe method of handling and installing asbestos and/or asbestos-containing products, or utilizing the equipment requiring or calling for the use of asbestos and/or asbestos-containing products in a safe manner;
- (e) in failing to develop and utilize a substitute material or design to eliminate asbestos fibers in the asbestos-containing products, and/or the equipment requiring or calling for the use of asbestos and/or asbestos-containing products;

- (f) in failing to properly design and manufacture asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos for safe use under conditions of use that were reasonably anticipated;
- (g) in failing to properly test said asbestos-containing products and/or equipment requiring the use of asbestos materials before they were released for consumer use; and
- (h) in failing to recall and/or remove from the stream of commerce said asbestos-containing products or equipment or machinery requiring or calling for the use of asbestos and/or asbestos-containing products despite knowledge of the unsafe and dangerous nature of such products or equipment.

COUNT TWO

ALLEGATIONS AGAINST SUPPLIER DEFENDANTS

71. All of the allegations contained in the previous paragraphs are realleged herein.

72. For all pertinent times, **TRIPLEX, INC.** and **UNION CARBIDE CORPORATION** ("Supplier Defendants") individually sold, distributed, and supplied asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades to which Decedent's husband, Daniel Williams, was occupationally exposed, resulting in the release of asbestos dust that was brought home on Mr. Williams's work clothes and person and, therefore, subsequent exposure to Decedent JIMMIE LEE WILLIAMS, who came in contact with and inhaled said asbesto dust, thereby causing her illnesses, injuries, disabilities, and death.

73. Supplier Defendants as manufacturers, miners, shippers, distributors, and suppliers of asbestos-containing products, and/or equipment requiring and/or calling for the use

of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades to various locations owned and/or operated by asbestos product manufacturers are liable to Plaintiffs for their failure to warn of the health hazards of exposure to asbestos and failure to design and package their products so as to adequately protect and warn users and bystanders of the dangers of exposure to asbestos. As a result of the Supplier Defendants' failure to warn about the dangers of asbestos, Decedent JIMMIE LEE WILLIAMS'S husband, Daniel Williams, inadvertently transported the toxic asbestos fibers home where Decedent inhaled and ingested these fibers causing Decedent to contract lung cancer, an asbestos-related disease.

74. Further, Supplier Defendants are liable for Decedent's illnesses, injuries, disabilities, and death, and Plaintiffs' resulting damages, as professional vendors of asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades, and as such, because of the Defendants' size, volume of business and merchandising practices, knew or should have known of the defects of the asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades they sold and/or supplied, and are strictly liable and negligent for failing to warn users and bystanders of potential health hazards from the use of said products.

75. Further, Supplier Defendants made misrepresentations regarding the safety of asbestos to the asbestos-product manufacturers, thereby fraudulently inducing other sophisticated users to use Supplier Defendants' asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades instead of other types. As such, Supplier Defendants are liable

to Plaintiffs for Decedent JIMMIE LEE WILLIAMS' suffering, illnesses, injuries, disabilities, and death, from a disease caused by exposure to Supplier Defendants' asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades because Supplier Defendants' fraudulent misrepresentations were detrimentally relied upon (1) by asbestos-product manufacturers incorporating Supplier Defendants' asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades into their finished products and (2) by Decedent JIMMIE LEE WILLIAMS who was exposed to the asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades.

76. Finally, Supplier Defendants are liable to Plaintiffs because they knew or should have known that the asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products, and/or raw asbestos fiber of various kinds and grades which they sold and supplied were unreasonably dangerous in normal use, and their failure to communicate this information constitutes negligence. This negligence was the cause of Decedent JIMMIE LEE WILLIAMS'S illnesses, injuries, disabilities, and death including, but not limited to, asbestos-related lung cancer and other ill health effects.

COUNT THREE

ALLEGATIONS AGAINST PREMISES DEFENDANTS

42. All of the allegations contained in the previous paragraphs are re-alleged.

43. Decedent JIMMIE LEE WILLIAMS'S husband, Daniel Williams, worked at premises owned and/or controlled by Defendants **THE DOW CHEMICAL COMPANY**,

BASF CATALYSTS LLC (individually and as successor-in-interest to **BADISCHE CORPORATION**), Defendant, **CONOCOPHILLIPS** (individually and as successor-in-interest to **PHILLIPS PETROLEUM COMPANY**), and **PHARMACIA LLC**, f/k/a **PHARMACIA CORPORATION**, f/k/a **MONSANTO COMPANY** ("Premises Defendants"), from the 1950s through the 1980s, at which he was exposed to asbestos products and dust from asbestos products.

44. At all times mentioned herein, the Premises Defendants, owned, leased, maintained, managed and controlled the premises when Plaintiff was present.

45. While present at premises owned and/or operated by the above Premises Defendants, Decedent JIMMIE LEE WILLIAMS'S husband, Daniel Williams, was continuously exposed to asbestos and asbestos-containing dust without the provision of appropriate safeguards by Premises Defendants, who had the responsibility for such. As a result of his occupational exposure to asbestos at premises owned and/or operated by the above Premises Defendants, Decedent JIMMIE LEE WILLIAMS'S husband, Daniel Williams, inadvertently transported the toxic asbestos fibers home where Decedent inhaled and ingested these fibers causing Decedent to contract lung cancer, an asbestos-related disease.

46. Plaintiffs would show Decedent JIMMIE LEE WILLIAMS'S illnesses, injuries, disabilities, and/or death were the result of intentional acts and omissions and negligence and gross negligence in the use of asbestos at premises owned by Premises Defendants. The Premises Defendants failed to properly remove and abate said asbestos at these facilities during the time Decedent's husband, Daniel Williams, was working there.

47. Plaintiffs would show that Premises Defendants were negligent, grossly negligent, and committed certain intentional acts, all of which were the proximate cause of the disease and

injuries resulting in Decedent JIMMIE LEE WILLIAMS'S lung cancer and resulting death from exposure to asbestos.

48. In particular, Plaintiffs would show that Premises Defendants demonstrated such an entire want of care as to establish that their acts and omissions were the result of actual conscious indifference to the rights, safety, and welfare of Decedent JIMMIE LEE WILLIAMS and her husband, Daniel Williams, and that such intentional acts and omissions proximately caused Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, disabilities, and resulting death.

49. Specific intentional acts and acts constituting negligence and gross negligence committed by Premises Defendant that proximately caused Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, disabilities, and resulting death include:

- (a) Failing to timely and adequately warn Decedent JIMMIE LEE WILLIAMS, and her spouse Daniel Williams, of the dangerous characteristics and serious health hazards associated with exposure to asbestos, and/or asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products;
- (b) Failing to provide Decedent JIMMIE LEE WILLIAMS'S spouse, Daniel Williams, with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect himself and Decedent JIMMIE LEE WILLIAMS from being harmed and disabled by exposure to asbestos, and/or asbestos-containing products, and/or equipment

requiring and/or calling for the use of asbestos and/or asbestos-containing products;

- (c) Requiring Decedent's husband, Daniel Williams, to work with, install, cut, fit, manipulate, remove, and/or clean debris released by asbestos-containing products, and/or equipment requiring and/or calling for the use of asbestos and/or asbestos-containing products in the workplace without taking adequate precautions for the protection of Decedent, Mr. Williams, workers in the vicinity of such work activities performed by others, and/or on the premises generally;
- (d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;
- (e) Failure to provide safe equipment for Decedent's husband, Daniel Williams, to use;
- (f) Failure to provide adequate safety measures and protection against deadly and life-threatening asbestos dust, all despite Premises Defendant's knowledge of the extreme risk of harm inherent to asbestos exposure;
- (g) Failure to adequately warn Decedent JIMMIE LEE WILLIAMS and/or her spouse, Daniel Williams, of the inherent dangers of asbestos contamination;
- (h) Failure to provide Decedent's husband, Daniel Williams, a safe place to work by failing to maintain the ambient and environmental conditions of Defendant's premises in proper and safe condition, resulting in Mr. Williams inadvertently transporting toxic asbestos fibers home where

Decedent inhaled and ingested these fibers causing Decedent to contract lung cancer, an asbestos-related disease;

- (i) Failure to follow and adhere to various state and U.S. Governmental statutes, regulations and guidelines pertaining to asbestos and the exposure to asbestos of employees and others. Such failure constituted negligence *per se* at a minimum. Plaintiffs are not making claims for damages under federal law.

50. Plaintiffs would further show that Premises Defendants intentionally, knowingly, and due to negligence and gross negligence, failed to ensure that individuals such as Decedent JIMMIE LEE WILLIAMS and/or her spouse, Daniel Williams, were protected from the inhalation of asbestos and asbestos fibers. Such actions proximately caused Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, disabilities, and resulting death.

51. Additionally, specific actions or omissions on the part of Premises Defendant that proximately caused Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, disabilities, and resulting death were:

- (a) Attempting to remove asbestos dust in Decedent's husband's workplace without taking adequate precautions for the protection of workers in the vicinity of same and/or in the premises generally;
- (b) Failing to provide proper protective gear for individuals exposed to asbestos, including Decedent's husband;
- (c) Failing to provide adequate ventilation to ensure that individuals in the vicinity, including Decedent's husband, were not exposed to asbestos;

- (d) Failing to provide a proper and safe method for the use of asbestos and asbestos fibers;
- (e) Failing to adhere to industry safe standards and other established measures to protect workers from harm;
- (f) Failing to adequately warn of the extreme risk of danger inherent to asbestos exposure.

52. Premises Defendant demonstrated such an entire want of care as to establish that their acts and omissions alleged above were the result of actual conscious indifference to the rights, safety, and welfare of Decedent JIMMIE LEE WILLIAMS and her spouse, Daniel Williams.

COUNT FOUR

ALLEGATIONS AGAINST CONTRACTOR DEFENDANTS

53. All of the allegations contained in the previous paragraphs are re-alleged herein.

54. The injuries of Decedent JIMMIE LEE WILLIAMS were a direct and proximate result of the negligence of each Defendant or its predecessor-in-interest in that said entities produced, designed, sold or otherwise put into the stream of commerce, asbestos, asbestos-containing products or machinery requiring or calling for the use of asbestos or asbestos-containing products, which the Defendants knew, or in the exercise of ordinary care, should have known were deleterious and highly harmful to Plaintiff's health and well-being. Certain Defendants, **4520 CORP., INC.** (individually and as successor-in-interest to BENJAMIN F. SHAW COMPANY); **BECHTEL CORPORATION** (individually and as successor-in-interest to BECHTEL INC.); **BECHTEL POWER CORPORATION**; **BEXAR CANYON MANAGEMENT, INC., f/k/a H.B. ZACHRY COMPANY**; **FLUOR CORPORATION**

(California); **FLUOR CORPORATION** (Delaware); **FLUOR ENTERPRISES, INC.** (individually and as successor-in-interest to **FLUOR CORPORATION**, **FLUOR ENGINEERS & CONSTRUCTORS, INC.**, **DANIEL INTERNATIONAL CORPORATION**, and **FLUOR-DANIEL, INC.**); **KVAERNER US, INC.** (individually and as successor-in-interest to **DAVY MCKEE CORPORATION**, successor to **ARTHUR G. MCKEE CORPORATION**); **MCGILL MAINTENANCE PARTNERSHIP, LTD.** (individually and as successor-in-interest to **MCGILL MAINTENANCE SPECIALTY, INC.** and **MCGILL MAINTENANCE, INC.**); **MUNDY MAINTENANCE AND SERVICES LLC**, f/k/a **THE MUNDY COMPANIES** (individually and as successor-in-interest to **MUNDY INDUSTRIAL SERVICE, INC.**; **MUNDY INDUSTRIAL CONTRACTORS, INC.**; **MUNDY CONTRACTORS, INC.**; and **MUNDY CONTRACT MAINTENANCE, INC.**); **MUNDY MAINTENANCE SERVICES AND OPERATIONS LLC**, f/k/a **THE MUNDY COMPANIES** (individually and as successor-in-interest to **MUNDY INDUSTRIAL SERVICE, INC.**; **MUNDY INDUSTRIAL CONTRACTORS, INC.**; **MUNDY CONTRACTORS, INC.**; and **MUNDY CONTRACT MAINTENANCE, INC.**); **PARSONS ENERGY & CHEMICALS GROUP, INC.** f/k/a **S.I.P., INC.** (individually and as successor-in-interest to **S.I.P., INC.**); **PARSONS INFRASTRUCTURE & TECHNOLOGY GROUP INC.**; **PAYNE & KELLER COMPANY**; **REF-CHEM** (individually and as successor-in-interest to **RC-AEL Company** and individually and as successor-in-interest to **DON LOVE, INC.**); **RESCO HOLDINGS, L.L.C.** (individually and as successor-in-interest to entities including but not limited to **KELL HOLDING CORPORATION**, **HENLEY/MWK HOLDING INC.**, **PULLMAN INCORPORATED**, **THE M. W. KELLOGG COMPANY**, and **WHEELABRATOR-CHICAGO INC.**); **SANTA FE BRAUN, INC.** (individually and as successor-in-interest to entities including but not limited to **C. F. BRAUN &**

CO., C. F. BRAUN CONSTRUCTORS, INC., and JGB, INC.); **SEQUOIA VENTURES, INC.; S.I.P., INC.** f/k/a PARSONS CHEMICAL ENGINEERING (individually and as successor-in-interest to S. I. P., INC.); **TA COMPANY**, f/k/a THE AUSTIN COMPANY; **TRINITY CONSTRUCTION COMPANY, INC.** (individually and as successor-in-interest to BELLCO INDUSTRIAL PIPING COMPANY and BELLCO INDUSTRIAL ENGINEERING COMPANY); **U.S. CONTRACTORS INC.** (individually and as successor-in-interest to U.S. CONTRACTORS COMPANY); **U.S. CONTRACTORS LTD.** (individually and as successor-in-interest to U.S. CONTRACTORS COMPANY) (collectively “Contractor Defendants”), created hazardous and deadly conditions to which Decedent’s husband, Daniel Williams was exposed and which caused Decedent to be secondarily exposed to a large amount of asbestos fibers unknowingly carried home on her husband’s work clothes and person. The Defendants were negligent in one, some or all of the following respects, among others, same being the proximate cause of Decedent JIMMIE LEE WILLIAMS’S asbestos-related injuries, disabilities, and resulting death:

- (a) in failing to timely and adequately warn Decedent and/or her husband, Daniel Williams, of the dangerous characteristics and serious health hazards associated with exposure to asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products;
- (b) in failing to provide Decedent JIMMIE LEE WILLIAMS and/or her husband, Daniel Williams, with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect Decedent

from being harmed and disabled by exposure to asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products;

- (c) in failing to place timely and adequate warnings on the containers of said asbestos, asbestos-containing products, or on the asbestos-containing products themselves, and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products to warn of the dangers to health of coming into contact with said asbestos-containing products and/or equipment;
- (d) in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan and/or safe method of handling and installing asbestos and/or asbestos-containing products, or utilizing the equipment requiring or calling for the use of asbestos and/or asbestos-containing products in a safe manner;
- (e) in failing to develop and utilize a substitute material or design to eliminate asbestos fibers in the asbestos-containing products, and/or the equipment requiring or calling for the use of asbestos and/or asbestos-containing products;
- (f) in failing to properly design and manufacture asbestos, asbestos-containing products, and/or equipment requiring or calling for the use of asbestos for safe use under conditions of use that were reasonably anticipated;

- (g) in failing to properly test said asbestos-containing products and/or equipment requiring the use of asbestos materials before they were released for consumer use; and
- (h) in failing to recall and/or remove from the stream of commerce said asbestos-containing products or equipment or machinery requiring or calling for the use of asbestos and/or asbestos-containing products despite knowledge of the unsafe and dangerous nature of such products or equipment.

COUNT FIVE

CONSPIRACY ALLEGATIONS AGAINST ALL DEFENDANTS

52. All of the allegations contained in the previous paragraphs are re-alleged herein.

53. Plaintiffs further allege that Defendants and/or their predecessors-in-interest knowingly agreed, contrived, combined, confederated and conspired among themselves and with other entities to cause Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, disabilities, and resulting death by exposing Decedent and her husband, Daniel Williams, to harmful and dangerous asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Defendants and other entities further knowingly agreed, contrived, combined, confederated and conspired to deprive Decedent and her husband, Daniel Williams, of the opportunity of informed free choice as to whether to use said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products or to expose themselves to said dangers. Defendants committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Defendants' asbestos-containing products

and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

54. In furtherance of said conspiracies, Defendants performed the following overt acts:

- (a) for many decades, Defendants, individually, jointly, and in conspiracy with each other and other entities, have been in possession of medical and scientific data, literature and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly;
- (b) despite the medical and scientific data, literature and test reports possessed by and available to Defendants, Defendants individually, jointly, and in conspiracy with each other and other entities, fraudulently, willfully, and maliciously:
 - (1) withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases from Plaintiff who was using and being exposed to Defendants' asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;

- (2) caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Defendants knew were incorrect, incomplete, outdated and misleading; and
 - (3) distorted the results of medical examinations conducted upon workers such as Decedent's husband, Daniel Williams, who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm to which Decedent's husband, Daniel Williams, his family members, and workers such as Mr. Williams have suffered.
- (c) Other conspirators participating in the conspiracy, or in ongoing or subsequent conspiracies were (hereinafter called the "conspirators"), were member companies in the Quebec Asbestos Mining Association and/or Asbestos Textile Institute and/or the Industrial Hygiene Foundation. Acting in concert, the conspirators fraudulently misrepresented to the public and public officials, *inter alia*, that asbestos did not cause cancer and that the disease asbestosis had no association with pleural and pulmonary cancer and affirmatively suppressed information concerning the carcinogenic and other adverse effects of asbestos exposure on the human respiratory and digestive systems.

- (d) In addition, Defendants contrived, combined, confederated and conspired through a series of industry trade meetings and the creation of organizations such as the Air Hygiene Foundation (later the Industrial Hygiene Foundation) to establish authoritative standards for the control of industrial dusts which would act as a defense in personal injury lawsuits, despite knowing that compliance with such standards would not protect workers such as Decedent's husband, Daniel Williams, and his family members, from contracting asbestos disease or cancer.
- (e) In furtherance of said conspiracies, Defendants and/or their co-conspirators contributed to cause the establishment of a Threshold Limit Value for asbestos exposure, and contributed to the maintenance of such Threshold Limit Value despite evidence that this supposed "safe" level of exposure to asbestos would not protect the health of workers such as Decedent's husband, Daniel Williams, and his family members, even if complied with.
- (f) As the direct and proximate result of the false and fraudulent representations, omissions and concealments set forth above, Defendants, individually, jointly, and in conspiracy with each other, intended to induce Decedent's husband, Daniel Williams, to rely upon said false and fraudulent representations, omissions and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to Defendants' asbestos-containing products, and/or machinery requiring or

calling for the use of asbestos and/or asbestos-containing products and/or products which caused the release of respirable asbestos fibers.

55. Decedent and her husband, Daniel Williams, reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by the Defendants regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

56. As a direct and proximate result of Decedent's and her husband Daniel Williams's reliance on Defendants' false and fraudulent representations, omissions and concealments, Decedent JIMMIE LEE WILLIAMS sustained damages, including injuries, illnesses, disabilities, and death, and Decedent and her husband, Daniel Williams, were deprived of the opportunity of informed free choice in connection with the use of and exposure to Defendants' asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

COUNT SIX

GROSS NEGLIGENCE/MALICE ALLEGATIONS AGAINST ALL DEFENDANTS

57. All of the allegations contained in the previous paragraphs are re-alleged herein.

58. The actions and inactions of Defendants and their predecessors-in-interest, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of gross negligence, intentional wrongful conduct and/or malice resulting in damages, injuries, illnesses, disabilities, and death to Decedent JIMMIE LEE WILLIAMS. Defendants' conduct was specifically intended by Defendants to cause substantial injury to Decedent JIMMIE LEE WILLIAMS and her husband, Daniel Williams, or was carried out by Defendants with a flagrant disregard for the rights of others and with actual awareness on

the part of Defendant that the conduct would, in reasonable probability, result in human deaths and/or great bodily harm. More specifically, Defendants and their predecessors-in-interest, consciously and/or deliberately engaged in oppression, fraud, willfulness, wantonness and/or malice with regard to the Decedent JIMMIE LEE WILLIAMS and should be held liable in punitive and exemplary damages to Plaintiffs.

COUNT SEVEN

AIDING AND ABETTING ALLEGATIONS AGAINST ALL DEFENDANTS

59. All of the allegations contained in the previous paragraphs are re-alleged herein.

60. The actions of all Defendants aided, abetted, encouraged, induced or directed the negligent and/or intentional acts of each and every other Defendant.

61. Each of the Defendants knew or should have known that their individual actions would combine to cause the injuries, illness, disabilities, and death of Decedent JIMMIE LEE WILLIAMS.

62. The actions of each of the Defendants were a proximate cause of Decedent JIMMIE LEE WILLIAMS'S asbestos-related injuries, illnesses, disabilities, and resulting death. As a result, all Defendants are jointly liable for the damage caused by their combined actions.

COUNT EIGHT

NEGLIGENCE *PER SE* ALLEGATIONS AGAINST ALL DEFENDANTS

63. All of the allegations contained in the previous paragraphs are re-alleged herein.

64. The actions of all Defendants also constituted negligence *per se*.

65. Each Defendant violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence *per se* or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Decedent.

Plaintiffs are not making any claims under federal law; instead, Plaintiffs are simply using the violation of federal standards as proof of liability on their state-law theories. Further, the reference to Federal regulations does not create a Federal question. *See Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

66. The negligence *per se* of each Defendant was a proximate cause of Decedent JIMMIE LEE WILLIAMS'S injuries, illnesses, disabilities, and resulting death.

DAMAGES

67. The conduct of Defendants, as alleged hereinabove, was a direct, proximate and producing cause of the damages resulting from the asbestos-related lung disease and death of Decedent JIMMIE LEE WILLIAMS, and of the following general and special damages including:

- (a) Damages to punish Defendants for proximately causing Decedent JIMMIE LEE WILLIAMS'S untimely injuries, illness, disabilities, and death;
- (b) Conscious physical pain and suffering sustained by Decedent JIMMIE LEE WILLIAMS;
- (c) The disfigurement suffered by Decedent JIMMIE LEE WILLIAMS;
- (d) The physical impairment suffered by Decedent JIMMIE LEE WILLIAMS;
- (e) Reasonable and necessary medical expenses paid or incurred by Decedent JIMMIE LEE WILLIAMS;
- (f) Decedent JIMMIE LEE WILLIAMS'S lost earnings capacity;

- (g) The pecuniary loss, including the past and future loss of the care, maintenance services, support, advice, counsel, consortium, excluding loss of inheritance, that the Plaintiffs, in reasonable probability, would have received from each other if Decedent JIMMIE LEE WILLIAMS had lived;
- (h) Loss of companionship and society sustained by Plaintiffs in the past;
- (i) The loss of companionship and society that, in reasonable probability, Plaintiffs will sustain in the future;
- (j) Mental anguish sustained by Plaintiffs in the past;
- (k) Mental anguish that, in reasonable probability, will be sustained by the Plaintiffs in the future;
- (l) Loss of inheritance sustained by the Plaintiffs;
- (m) Plaintiffs seek punitive and exemplary damages;

68. The negligence *per se* of each Defendant was a proximate cause of Decedent JIMMIE LEE WILLIAMS'S injuries, illnesses, disabilities, and resulting death. By their acts and omissions described herein, Defendants intentionally, knowingly and/or recklessly caused serious bodily injury to Plaintiff within the meaning of Tex. Civ. Prac. & Rem. Code §41.008(c)(7) and Tex. Penal Code §22.04.

68. Plaintiffs filed suit within two (2) years of the date of discovering Decedent JIMMIE LEE WILLIAMS'S asbestos-related conditions or the existence of any asbestos-related causes of action.

69. Plaintiffs and Decedent JIMMIE LEE WILLIAMS discovered Decedent's injury and its cause less than two years prior to the filing of this petition.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants, and each of them, jointly and severally, for general damages, for their costs expended herein, for interest on said judgment from the date this action accrued until paid, at the legal rate, and for such other and further relief, both at law and in equity, to which Plaintiffs may show themselves justly entitled.

JURY DEMAND

Plaintiffs demand that all issues in this case be tried to a properly impaneled jury.

DATED: May 23, 2023

Respectfully submitted,

THE LANIER LAW FIRM

By:



W. Mark Lanier – TX Bar No. 11934600
Mark A. Linder – TX Bar No. 24065625
10940 W. Sam Houston Pkwy N., Suite 100
Houston, Texas 77064
Telephone: (713) 659-5200
Facsimile: (713) 659-2204
mark.linder@lanierlawfirm.com

Attorneys for Plaintiffs

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jared Culotta on behalf of Mark Linder

Bar No. 24065625

jared.culotta@lanierlawfirm.com

Envelope ID: 75928704

Filing Code Description: Original Petition (1-10 Plaintiffs) (OCA)

Filing Description: Plaintiffs' Original Petition and Jury Demand

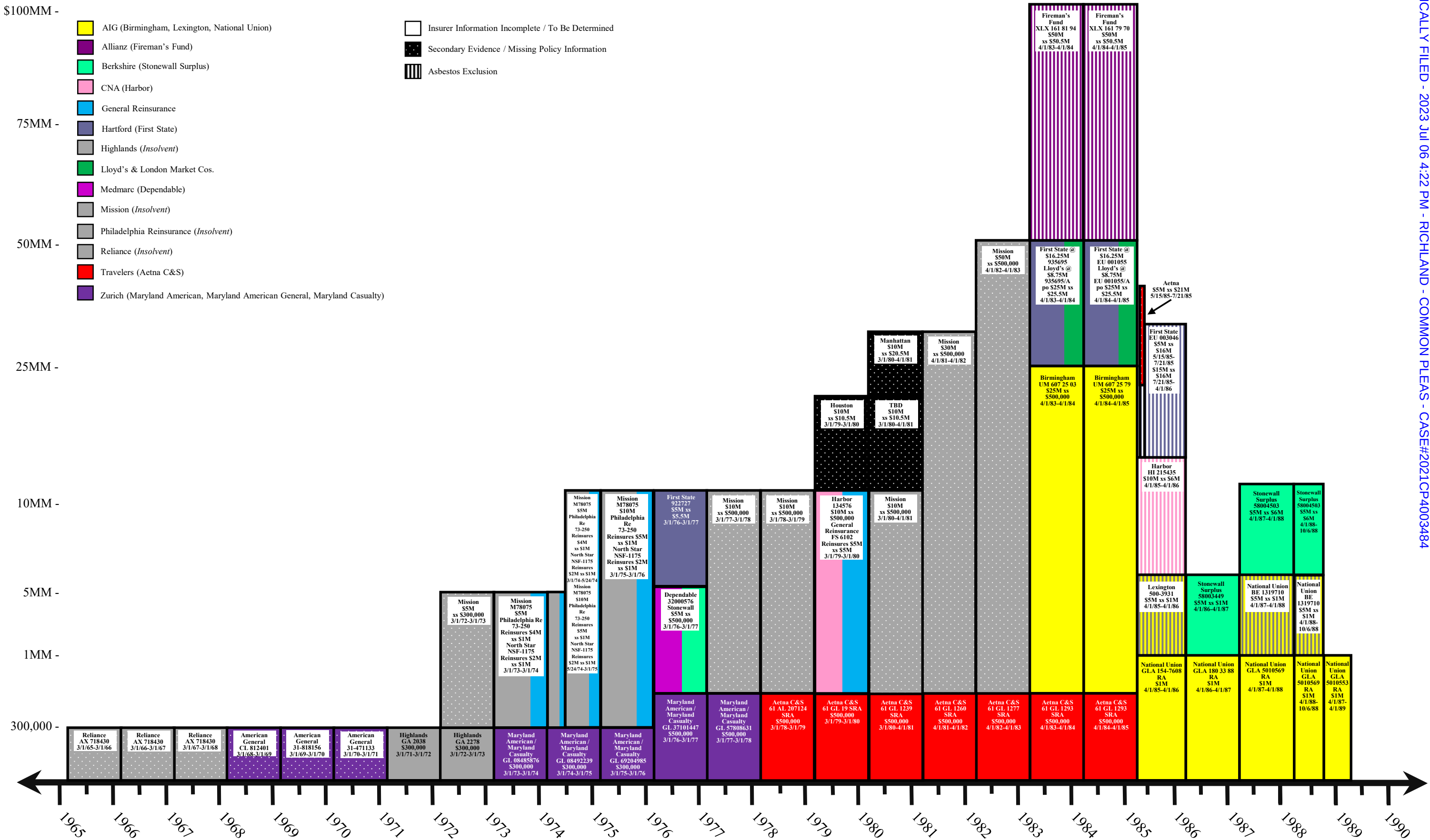
Status as of 5/24/2023 10:45 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jared Culotta		jared.culotta@lanierlawfirm.com	5/23/2023 3:55:07 PM	SENT
Luz Symphorien-Restrepo		Luz.restrepo@lanierlawfirm.com	5/23/2023 3:55:07 PM	SENT
Mark Linder		mark.linder@lanierlawfirm.com	5/23/2023 3:55:07 PM	SENT

EXHIBIT F

Policies Issued to or Covering Payne & Keller, Inc. et. al and or Payne & Keller Corp. et. al
Responsive to Bodily Injury Claims



WORKING COPY AS OF JULY 6, 2023

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1965	03/01/1966	Reliance Ins. Co.	AX 718430		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex, broker: Hancock Agency	
03/01/1966	03/01/1967	Reliance Ins. Co.	AX 718430		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex, broker: Hancock Agency	
03/01/1967	03/01/1968	Reliance Ins. Co.	AX 718430		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex, broker: Hancock Agency	
03/01/1968	03/01/1969	Maryland American General Ins. Co.	CL 812401		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex	
03/01/1969	03/01/1970	Maryland American General Ins. Co.	31-818156		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex	
03/01/1970	03/01/1971	Maryland American General Ins. Co.	31-471133		TBD	TBD	0	SE	CGL	Payne & Keller, Inc. et. al	Per Mediator Timothy Gallagher; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; TRAV_SUB_011026: Historical list of insurance for Payne and Frentex	
03/01/1971	03/01/1972	Highlands Underwriters Ins. Co.	GA 2038		300,000	300,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Detsco, Inc. (deleted 4/1), Mike Gay, Inc. (deleted 6/18), Joe Payne, Inc., Joe Payne	P&K 0000001-30; End. No. 8: this policy does not apply to hazards insured under policy no. FH2437127, nor as excess to same policy	

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1972	03/01/1973	Highlands Underwriters Ins. Co.	GA 2278		300,000	300,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Bayou Maintenance & Constructors, Inc., Payne & Keller of Louisiana, Inc., Joe Payne, Inc., Joe Payne	P&K 0000031-52; ZAIC_P&K0001 and ZAIC_P&K0033-52; End. No. 8: this policy does not apply to hazards insured under policy no. FH2437127 , nor as excess to same policy	
03/01/1972	03/01/1973	Mission Ins. Co.	M 7 03 25		5,000,000	5,000,000	300,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; GenRe072 listed as the previous policy number of M 7 80 75	
03/01/1973	03/01/1974	Maryland American General Ins. Co. (Products/Comp/Ops - TX) Maryland Casualty Co. (Products/Comp/Ops - Other States)	GL 08485876		300,000	300,000	0	X	CGL	Payne & Keller, Inc. et. al	Certificate of insurance; Zurich production MC00049-301 ; Liability payroll report ZAIC_P&K0002-23, 158-251, 266-331; COI ZAIC_P&K0024; other secondary evidence ZAIC_P&K0025-32, 92-157, 252-265 and policy ZAIC_P&K0053-91; GL 08492239 is a renewal of this policy; GL 1848-58 is the auto policy; Ex. D Affidavit of Eric Stoley of Zurich American Is. Co.--unable to locate complete copy of policy	10.21.21 P. Kalish email confirms Maryland Casualty Co. issued primary CGL policies from 3/1/73 - 3/1/78 12.10.21 P. Kalish email ZAIC_P&K1227-229: Policy is impaired by \$95,297.11 defense and \$228,0000 indemnity, total \$323,297.11
03/01/1973	03/01/1974	Mission Ins. Co.	M 7 80 75		5,000,000	5,000,000	300,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; GenRe025-081	
03/01/1973	03/01/1974	Philadelphia Reinsurance Corp.	73-250	4,000,000/occ 4,000,000/agg	5,000,000	5,000,000	1,000,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Mission Ins. Co. Policy No. # M 78075; GenRe025-081; Policy reinsures \$4M of policy attaching at \$1M	
03/01/1973	03/01/1974	North Star Reinsurance Corp. n/k/a General Reinsurance Corp.	NSF-11175	2,000,000	4,000,000	4,000,000	1,000,000	X	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Philadelphia Reinsurance Corp. Policy No. # 73-250; GenRe025-081; Policy reinsures \$2M (50%) of \$4M (GenRe025)	
04/15/1973	01/01/1974	Employers Casualty	554126				0	SE	CGL	Payne & Keller, Inc. et. al	ZAIC_P&K000256: listed as insurance for specific job on CGL rating plan for Highlands Ins. Co.	
03/01/1974	03/01/1975	Maryland American General Ins. Co. (Products/Comp/Ops - TX) Maryland Casualty Co. (Products/Comp/Ops - Other States)	GL 08492239		300,000	300,000	0	X	CGL	Payne & Keller, Inc. et. al	Zurich production MC00049-301 (Ex. E) ; GL 1848-58 is the auto policy; Ex. E Affidavit of Eric Stoley of Zurich American Is. Co.; End. No. 1 Named Insured is missing; Policy P&K 0000053-271; policy ZAIC_P&K0073-74, 770- 789; other policy evidence ZAIC_P&K0790- 803; ZAIC_P&K1384-1686	10.21.21 P. Kalish email confirms Maryland Casualty Co. issued primary CGL policies from 3/1/73 - 3/1/78 12.10.21 P. Kalish email ZAIC_P&K1230-231: Policy is impaired by \$107,076.24 defense and \$228,416.25 indemnity, total \$335,497.49

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1974	05/24/1974	Mission Ins. Co.	M 7 80 75		5,000,000	5,000,000	300,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; Partial policy GenRe025-062; GenRe072-81	
03/01/1974	05/24/1974	Philadelphia Reinsurance Corp.	73-250	4,000,000/occ 4,000,000/agg	5,000,000	5,000,000	1,000,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Mission Ins. Co. Policy No. # M 78075; GenRe025-081; Policy reinsures \$4M of policy attaching at \$1M	
05/24/1974	03/01/1975	Mission Ins. Co.	M 7 80 75		10,000,000	10,000,000	300,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; Partial policy GenRe025-081	
05/24/1974	03/01/1975	Philadelphia Reinsurance Corp.	73-250	5,000,000/occ 5,000,000/agg	5,000,000	5,000,000	1,000,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Mission Ins. Co. Policy No. # M 78075; GenRe025-081; Policy reinsures \$5M of policy attaching at \$1M	
03/01/1974	03/01/1975	North Star Reinsurance Corp. n/k/a General Reinsurance Corp.	NSF-11175	2,000,000	4,000,000	4,000,000	1,000,000	X	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Philadelphia Reinsurance Corp. Policy No. # 73-250; GenRe025-081; Policy reinsures \$2M (50%) of \$4M (GenRe025)	
03/01/1975	03/01/1976	Maryland American General Ins. Co. (Products/Comp/Ops - TX) Maryland Casualty Co. (Products/Comp/Ops - Other States)	GL 69204985		300,000	300,000	0	SE	CGL	Payne & Keller, Inc. et. al	Zurich production MC00049-301 ; hand-written notes indicating renewed 1975-1976; Ex. D Affidavit of Eric Stoley of Zurich American Is. Co.--unable to locate complete copy of policy; ZAIC_P&K0804 this policy is renewed as GL 37101447 ; 12.12.08 Zurich ROR ZAIC_P&K0804	10.21.21 P. Kalish email confirms Maryland Casualty Co. issued primary CGL policies from 3/1/73 - 3/1/78 12.10.21 P. Kalish email ZAIC_P&K1232-234: Policy is impaired by \$95,297.11 defense and \$78,416.25 indemnity, total \$173,713.36
03/01/1975	03/01/1976	Mission Ins. Co.	M 7 80 75		10,000,000	10,000,000	300,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; GenRe 028-30 end. no.2 limits increase to \$10M occ/agg	
03/01/1975	03/01/1976	Philadelphia Reinsurance Corp.	73-250	5,000,000/occ 5,000,000/agg	5,000,000	5,000,000	1,000,000	P	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Mission Ins. Co. Policy No. # M 78075; GenRe025-81; Policy reinsures \$5M of policy attaching at \$1M	
03/01/1975	03/01/1976	North Star Reinsurance Corp. n/k/a General Reinsurance Corp.	NSF-11175	2,000,000	4,000,000	4,000,000	1,000,000	X	Umbrella Liability	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Philadelphia Reinsurance Corp. Policy No. # 73-250; GenRe025-81; Policy reinsures \$2M (50%) of \$4M (GenRe025)	
07/08/1975	07/08/1976	American General Fire & Casualty Co. (Zurich)	GL 692020002		500,000	500,000	0	X	CGL	P&K Construction Venture, A Joint Venture, Payne & Keller, Inc., & E.B.L., Inc., DBA	Policy ZAIC_P&K0332; This policy is renewed as GL 57811921 ; ZAIC_P&K1689-1704	

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1976	03/01/1977	Maryland American General Ins. Co. (Products/Comp/Ops - TX) Maryland Casualty Co. (Products/Comp/Ops - Other States)	GL 37101447		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne	Partial policy; Ex. F Affidavit of Eric Stoley of Zurich American Is. Co.; Form 3423 and Form 4 could not be located; shows renewed as GL 57808631; PK 0000286 shows limits increased from \$300k to \$500k BI; Policy PK 0000272-555 (Ex. F); policy ZAIC_P&K0804-895; this policy is a renewal of GL 69204985	10.21.21 P. Kalish email confirms Maryland Casualty Co. issued primary CGL policies from 3/1/73 - 3/1/78 12.10.21 P. Kalish email ZAIC_P&K1235-237: Policy is impaired by \$95,297.11 defense and \$78,416.25 indemnity, total \$173,713.36
03/01/1976	03/01/1977	Dependable Ins. Co.	32 000 576		5,000,000	5,000,000	500,000	X	Umbrella Liability	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; P&K Construction Venture	11.3.21 Per Hartford counsel Ed Parks; underlying schedule of 922727; \$5M occ/agg; \$25k SIR; POLICY: HART-PAYKELL000035-HART-PAYKELL000044	
03/01/1976	03/01/1977	Stonewall Ins. Co.	TBD		2,500,000	5,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	11.3.21 Per Hartford counsel Ed Parks; underlying schedule of 922727; <i>limits assumed</i> ; ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; HART-PAYKELL000058-59: secondary evidence	
03/01/1976	03/01/1977	First State Ins. Co.	922727		5,000,000	5,000,000	5,500,000	X	Excess Liability	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; P&K Construction Venture	11.3.21 Per Hartford counsel Ed Parks; Policy HART-PAYKELL000001-13 ; \$5M occ/annual agg; \$5M occ/annual agg underlying; HART-PAYKELL000045-HART-PAYKELL000076; 1.11.21 Copy of policy from K. Cooke - Resolute	
07/08/1976	07/08/1977	American General Fire & Casualty Co. (Zurich)	GL 57811921		500,000	500,000	0	X	CGL	P&K Construction Venture, A Joint Venture, Payne & Keller, Inc., & E.B.L., Inc., DBA	Policy ZAIC_P&K0332; This policy is listed as a renewal of GL 69202002 ; ZAIC_P&K1689-1704; broker: John Wortham & Son	
03/01/1977	03/01/1978	Maryland American General Ins. Co. (Products/Comp/Ops - TX) Maryland Casualty Co. (Products/Comp/Ops - Other States)	GL 57808631		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc.	Ex. G Affidavit of Eric Stoley of Zurich American Is. Co.; insured Payne & Keller Gulf Caost, Inc. added and then removed (Ex. G); Policy ZAIC_P&K0411-470, 683-769; This policy is a renewal of GL 37101447 ; Reinsured by General Re; liability payroll report ZAIC_P&K0471-682	10.21.21 P. Kalish email confirms Maryland Casualty Co. issued primary CGL policies from 3/1/73 - 3/1/78 12.10.21 P. Kalish email ZAIC_P&K1238-241: Policy is impaired by \$231,413.10 defense and \$136,166.25 indemnity, total \$367,579.35

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1977	03/01/1978	Mission Ins. Co.	TBD		10,000,000	10,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	
03/01/1977	03/01/1978	American General Fire & Casualty Co. (Zurich)	GL 57808631		500,000	500,000	0	SE	CGL	Payne & Keller, Inc. et. al	REINSURANCE POLICY for American General Fire & Casualty Co., policy no. GL 57808631; GenRe083-86	
03/01/1977	03/01/1978	General Reinsurance Corporation	FM 5265	200,000/occ 200,000/agg	500,000	500,000	300,000	X	CGL - Reinsured	Payne & Keller, Inc. et. al	REINSURANCE POLICY for American General Fire & Casualty Co., policy no. GL 57808631; GenRe083-86	
07/08/1977	07/08/1978	American General Fire & Casualty Co. (Zurich)	GL 37814838		500,000	500,000	0	X	CGL	P&K Construction Venture, A Joint Venture, Payne & Keller, Inc., & E.B.L., Inc., DBA	Policy ZAIC_P&K0332-410; This policy is a renewal of GL 57811921; ZAIC_P&K1705-1747	
03/01/1978	03/01/1979	Aetna Casualty & Surety Co.	61 AL 207124 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., and others	TRAV_SUB_001014 - 1067; TRAV_SUB_009926 - 9927 Supplemental defense; End. No. 5: this policy does not apply to hazards insured under policy no. FH2437127	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense
03/01/1978	03/01/1979	Mission Ins. Co.	TBD		10,000,000	10,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	
03/01/1979	03/01/1980	Aetna Casualty & Surety Co.	61 AL 211857 SRA		500,000		0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc.	TRAV_SUB_001832 - 1944; TRAV_SUB_009928 - 9929 Supplemental defense; End. No. 4: this policy does not apply to BI or PD claims under policy no.61 GL 19 SRA and 61 FJ 1015 SRA (3/1/79-3/1/80) - shared aggregate limit; End. No. 25: this policy does not apply to hazards insured under policy no. FE 2437127	
03/01/1979	03/01/1980	Aetna Casualty & Surety Co.	61 GL 19 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., and others	TRAV_SUB_001068 - 1115; TRAV_SUB_009930 - 9931 Supplemental defense; End. No. 3: this policy does not apply to BI or PD claims under policy no. 61 AL 211857 SRA (3/1/79-3/1/80); End. No. 18: this policy does not apply to hazards insured under policy no. 61 HO 027288	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1979	03/01/1980	Harbor Ins. Co.	134576		10,000,000	10,000,000	500,000	X	Umbrella Liability	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., and others	\$10M occ/ annual agg; Resolute 000001; Resolute 000003-22 ; CNA0002618-2637	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
03/01/1979	03/01/1980	General Reinsurance Corporation	FS 6102	5,000,000/occ 5,000,000/agg	10,000,000	10,000,000	5,000,000	X	Umbrella Liability - Reinsured	Payne & Keller, Inc. et. al	REINSURANCE POLICY for Harbor Ins. Co., policy no. 134576; GenRe087-90	
03/01/1979	03/01/1980	Houston	TBD		10,000,000	10,000,000	10,500,000	SE	Excess Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; Unknown which "Houston" insurer--Houston Casualty [Tokio Marine] or Houston General [Bedivere/Liquidation] or ?	
03/01/1980	04/01/1981	Aetna Casualty & Surety Co.	61 AL 211893 SRA		500,000		0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne; Keller Corp.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc.	TRAV_SUB_001945 - 2054 Supplemental defense; End. No. 4: this policy does not apply to BI or PD claims under policy no.61 GL 1239 SRA and 61 FJ 1035 SRA (3/1/80-4/1/81) - shared aggregate limit	
03/01/1980	04/01/1981	Aetna Casualty & Surety Co.	61 GL 1239 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., and others	TRAV_SUB_001117 - 1184 Supplemental defense; End. No. 3: this policy does not apply to BI or PD claims under policy no. 61 AL 211893 SRA (3/1/80-3/1/81); End. No. 46: policy extended to 4/1/81	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense
03/01/1980	04/01/1981	Mission Ins. Co.	TBD		10,000,000	10,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	
03/01/1980	04/01/1981	TBD	TBD		10,000,000	10,000,000	10,500,000	SE	Excess Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; unknown insurer	

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
03/01/1980	04/01/1981	Manhattan	TBD		10,000,000	10,000,000	20,500,000	SE	Excess Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; Unknown which "Manhattan" insurer--Manhattan Fire [Westport] or Manhattan Casualty [liquidated] or ?	
04/01/1981	04/01/1982	Aetna Casualty & Surety Co.	61 AL 211939 SRA		500,000	500,000	0	X	CGL	Payne & Keller Corp. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Payne & Keller Inc.; Skrla, Inc., Payne & Keller Gulf Coast, Inc.	TRAV_SUB_002055 - 2129 Supplemental defense; End. No. 4: this policy does not apply to BI or PD claims under policy no.61 GL 1260 SRA (4/1/81-4/1/82) - shared aggregate limit	
04/01/1981	04/01/1982	Aetna Casualty & Surety Co.	61 GL 1260 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., Cardinal Service Co., Cardinal Engineering Co. and others	TRAV_SUB_001185 - 1234 Supplemental defense; End. No. 3: this policy does not apply to BI or PD claims under policy no. 61 AL 211939 SRA (4/1/81-4/1/82); blanket additional insured endorsement	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense
04/01/1981	04/01/1982	Mission Ins. Co.	TBD		30,000,000	30,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	
04/01/1982	04/01/1983	Aetna Casualty & Surety Co.	61 AL 473326 SRA		500,000	500,000	0	X	CGL	Payne & Keller Corp. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Payne & Keller Inc.; Skrla, Inc., Payne & Keller Gulf Coast, Inc.	TRAV_SUB_002130 - 2199 Supplemental defense; End. No. 4: this policy does not apply to BI or PD claims under policy no.61 GL 1277 SRA (4/1/82-4/1/83) - shared aggregate limit	

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
04/01/1982	04/01/1983	Aetna Casualty & Surety Co.	61 GL 1277 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Joe Payne, Inc.; Joe Payne; Skrla, Inc., Payne & Keller Gulf Coast, Inc., Cardinal Service Co., Cardinal Engineering Co., Payne & Keller Co. and others	TRAV_SUB_001235 - 1274 Supplemental defense; End. No. 3: this policy does not apply to BI or PD claims under policy no. 61 AL 473326 SRA (4/1/82-4/1/83); blanket additional insured endorsement	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense
04/01/1982	04/01/1983	Mission Ins. Co.	TBD		50,000,000	50,000,000	500,000	SE	Umbrella Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	
04/01/1982	04/01/1983	Aetna Casualty & Surety Co.	61 PC 3922SCA		500,000	500,000	0	SE	Public Liability	Payne & Keller Corp. et. al Dumez, USA	CGL Policy produced; Under Employee Benefits section, there are endorsements for policy M883701 issued by Mission Ins. Co. to Payne & Keller 3/25/82; broker: Sayre & Toso, Inc.	
04/01/1982	04/01/1983	Mission Ins. Co.	M883701		1,000,000	1,000,000		P	Public Liability	Payne & Keller Corp. et. al Dumez, USA	CGL Policy produced; Under Employee Benefits section, there are endorsements for policy M883701 issued by Mission Ins. Co. to Payne & Keller 3/25/82; broker: Sayre & Toso, Inc.; DIC (difference in conditions); HART-PAYKELL000123-146: underwriting files; Cameron Iron Works covered as named insured for excess coverage, underlying policy Aetna C&S 61PC3922SCA	
04/01/1983	04/01/1986	Aetna Casualty & Surety Co.	61 AL 473361 SRA		500,000	500,000	0	X	CGL	Payne & Keller Corp. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Payne & Keller Inc.; Skrla, Inc., Payne & Keller Gulf Coast, Inc.	TRAV_SUB_002200 - 2333 Supplemental defense; End. No. 6: this policy does not apply to BI or PD claims under policy no.61 GL 1293 SRA (4/1/83-4/1/86) - shared aggregate limit	
04/01/1983	04/01/1984	Aetna Casualty & Surety Co.	61 GL 1293 SRA		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al	TRAV_SUB_001275 - 1358; 1014 Supplemental defense; End. No. 5: this policy does not apply to BI or PD claims under policy no. 61 AL 473361 SRA (4/1/83-4/1/86); blanket additional insured endorsement; difference in conditions endorsement for wrap-up or joint venture projects with separate CGL policies; policy issued 4/1/83-86 and cancelled 4/1/85	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
04/01/1983	04/01/1984	Birmingham Fire Ins. Co.	UM 607 25 03		25,000,000	25,000,000	500,000	P	Umbrella Liability	Payne & Keller Corp. et. al Cardinal Insulation Dumez, USA	XLX1618194 policy produced included endorsement from UM6072503 for named insured; dec page of UM6072579 shows is a renewal of this policy; non-cumulation provision; supplemental defense; per underlying schedule and end. no. 2 of 935695; per underlying schedule XLX01618194; ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	01.28.22 policy produced by FFIC
04/01/1983	04/01/1984	First State Ins. Co.	935695	16,250,000	25,000,000	25,000,000	25,500,000	X	Excess Liability	Payne & Keller Corp. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Payne & Keller Inc.; Skrla, Inc., Payne & Keller Gulf Coast, Inc., Dumez, USA (Inc.), Dumez S.A., Cardinal Service Co., Inc., Cardinal Engineering Co., Inc., Bayou Maintenance Cardinal Insulation	Policy HART-PAYKELL000014-18 ; 65% of \$25M occ/agg; \$25M occ/agg underlying; HART-PAYKELL000077-102: underwriting files	
04/01/1983	04/01/1984	Lloyd's & London Market Cos.	935695/A	8,750,000	25,000,000	25,000,000	25,500,000	X	Excess Liability	Payne & Keller Corp. et. al	Policy HART-PAYKELL000014-18 ; 35% of \$25M occ/agg - H.S. Weavers Underwriters Agencies, Ltd.; \$25M occ/agg underlying	02.25.22 Ltr from Resolute re Lloyd's and the "alleged policies" are excess and not triggered
04/01/1983	04/01/1984	Fireman's Fund Ins. Co.	XLX 161 81 94		50,000,000	50,000,000	50,500,000	X	Excess Liability	Payne & Keller Corp. et. al Dumez, USA	Policy produced; follow form excess; Dumez, USA ia added as an insured w/regard to liability arising out of ownership of payne & Keller Corp.; broker: Alexander & Alexander of Texas, Inc.; ASBESTOS EXCLUSION ; ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	01.24.22 J. Pointer from Allianz advises found National Surety Corp. policies; 01.28.22 policy produced
04/01/1984	04/01/1985	Aetna Casualty & Surety Co.	61 GL 1293 SRA 61 AL 473361 SRA (TX only)		500,000	500,000	0	X	CGL	Payne & Keller, Inc. et. al	TRAV_SUB_001275 - 1358; 1014 Supplemental defense; End. No. 5: this policy does not apply to BI or PD claims under policy no. 61 AL 473361 SRA (4/1/83-4/1/86); blanket additional insured endorsement; difference in conditions endorsement for wrap-up or joint venture projects with separate CGL policies; policy issued 4/1/83-86 and cancelled 4/1/85	11.23.21 Insurer provides loss run of impairment of policies and advises "in light of Highland's financial difficulties, the below carriers have agreed to the following defense cost share percentages, reserving all rights: Zurich 31.09%; Travelers 44.04%; AIG 28.87%; 11.29.21 Travelers agree to participate in defense

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al Responsive to Bodily Injury Claims												
Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
04/01/1984	04/01/1985	Birmingham Fire Ins. Co.	UM 607 25 79		25,000,000	25,000,000	500,000	P	Umbrella Liability	Payne & Keller Corp. et. al	policy produced; non-cumulation provision; supplemental defense; per underlying schedule and end. no. 2 of EU 001055; per underlying schedule XLX1617970; ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	01.28.22 policy produced by FFIC
04/01/1984	04/01/1985	First State Ins. Co.	EU 001055	16,250,000	25,000,000	25,000,000	25,500,000	X	Excess Liability	Payne & Keller Corp. et. al Includes: J. G. McCullough Construction Co.; Gibraltar Foundation Co.; M & W Equipment Co., Inc., Payne & Keller of Louisiana, Inc.; Payne & Keller Inc.; Skrla, Inc., Payne & Keller Gulf Coast, Inc., Dumez, USA (Inc.), Dumez S.A., Cardinal Service Co., Inc., Cardinal Engineering Co., Inc., Bayou Maintenance Cardinal Insulation	Policy HART-PAYKELL000019-25 ; 65% of \$25M occ/agg; \$25M occ/agg underlying; HART-PAYKELL000103-122 / 146-: underwriting files	
04/01/1984	04/01/1985	Lloyd's & London Market Cos.	EU 001055/A	8,750,000	25,000,000	25,000,000	25,500,000	X	Excess Liability	Payne & Keller Corp. et. al	Policy HART-PAYKELL000019-25 ; 35% of \$25M occ/agg - H.S. Weavers Underwriters Agencies, Ltd.; \$25M occ/agg underlying	02.25.22 Ltr from Resolute re Lloyd's and the "alleged policies" are excess and not triggered
04/01/1984	04/01/1985	Fireman's Fund Ins. Co.	XLX 161 79 70		50,000,000	50,000,000	50,500,000	SE	Excess Liability	Payne & Keller Corp. et. al Dumez, USA	Policy produced; follow form excess; Dumez, USA ia added as an insured w/regard to liability arising out of ownership of payne & Keller Corp.; broker: Alexander & Alexander of Texas, Inc.; ASBESTOS EXCLUSION ; Under Employee Benefits section, there is an endorsement for policy M883701 issued by Mission Ins. Co. to Payne & Keller 3/25/82; ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.	01.24.22 J. Pointer from Allianz advises found National Surety Corp. policies; 01.28.22 policy produced
04/01/1985	04/01/1986	National Union Fire Ins. Co.	GLA 154-7608 RA		1,000,000	1,000,000	0	X	CGL	Payne & Keller Corp.	\$1M occ/annual agg CSL; Resolute 000001; Resolute 000023-137 ; products exclusion amendment: "exclusion does not apply to damages, claimed for the withdrawal, inspection, repair, replacement, or loss or use of the products of others which have been damaged by the named insured's products or work"; Resolute 000410-523; AIG0000001-114	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
04/01/1985	04/01/1986	Lexington Ins. Co.	500-3931		5,000,000	5,000,000	1,000,000	X	Umbrella Liability	Payne & Keller, Inc. et. al	underlying schedule of HI 215435; per underlying schedule and end. no. 2 of EU 003046; Resolute 000709-728; Asbestos exclusion ; CNA0002535-2553	

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
04/01/1985	04/01/1986	Harbor Ins. Co.	HI 215435		10,000,000	10,000,000	6,000,000	X	Excess Liability	Payne & Keller, Inc. et. al	\$10M occ/ annual agg; Resolute 000001; Resolute 000138-148 ; CNA0002516-2529; 2600-2617; follows form to 500-3931	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
05/15/1985	07/21/1985	First State Ins. Co.	EU 003046		5,000,000	5,000,000	16,000,000	X	Excess Liability	Payne & Keller Corp. et. al	Policy HART-PAYKELL000026-34 ; \$5M occ/agg; \$15M occ/agg underlying; limits changed per end. as of 7/21/85; follows form to 500-3931	"drop down" exclusion
05/15/1985	07/21/1985	Aetna Casualty & Surety Co.	TBD		5,000,000	5,000,000	21,000,000	SE	Excess Liability	Payne & Keller, Inc. et. al	ZAIC_P&K1286 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.; dates assumed based on the First State policy EU 003046	
07/21/1985	04/01/1986	First State Ins. Co.	EU 003046		15,000,000	15,000,000	16,000,000	X	Excess Liability	Payne & Keller Corp. et. al	Policy HART-PAYKELL000026-34 ; \$5M occ/agg; \$15M occ/agg underlying; limits changed per end. as of 7/21/85; follows form to 500-3931	"drop down" exclusion
04/01/1986	04/01/1987	National Union Fire Ins. Co.	GLA 180 33 88 RA		1,000,000	1,000,000	0	X	CGL Products Completed Operations	Payne & Keller Corp.	\$1M occ/agg CSL; Resolute 000001; Resolute 000149-173 ; Resolute 000524-646	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
04/01/1986	04/01/1987	Stonewall Surplus Lines Ins. Co.	58003449		5,000,000	5,000,000	6,000,000	X	Excess Liability	Payne & Keller including Frentex Enterprises Corp.	9/28/2021 Resolute produced two policies as a response for Berkshire Hathaway; \$5M occ/agg CSL; Resolute 000001; Resolute 000174-186 ; end. no. 7 \$25k deductible; STW00000036-48; STW00000084-110; STW00000254-276	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
04/01/1987	04/01/1989	National Union Fire Ins. Co.	GLA 5010553 RA		1,000,000	1,000,000	0	X	CGL	SKRLA, Inc. et. al (Formerly Payne & Keller see Resolute 000317) including Frentex Enterprises Corp.	Resolute 000001; Resolute 000271-381 ; parts of policy illegible; blanket additional insured end.; end. no. 26 policy extended to 4/1/89; ZAIC_P&K1285 historical policy schedule for Payne & Keller Co / Frentex Enterprises Cop / SKRLA, Inc.: National Union is \$1M plus \$5M for P&K completed operations 4/1/87-88 and \$1M plus \$5M for P&K completed operations until 10/6/88 4/1/88-89; Resolute 000647-708 ; AIG0000187-348 ; STW0000169-205	10.28.21 A. Love advises of policy coverage for Resolute administered insurers
04/01/1987	04/01/1988	National Union Fire Ins. Co.	BE 1319710		5,000,000	5,000,000	1,000,000	X	Umbrella Liability	SKRLA, Inc. et. al Payne & Keller	Policy Resolute 000382-409 ; Underlying schedule confirms GLA 5010553 RA is \$1M occ/agg CSL and includes products; asbestos exclusion	11.23.21 A. Love advises of umbrella policy copy
04/01/1987	10/06/1988	National Union Fire Ins. Co.	GLA 5010569 RA		1,000,000	1,000,000	0	X	CGL Products Completed Operations	Payne & Keller Corp. et. al including Frentex Enterprises Corp.	\$1M occ/agg CSL; Resolute 000001; Resolute 000198-270 ; parts of policy illegible; premium dated 6/21/93 - see Resolute 00269; AIG0000115-186	10.28.21 A. Love advises of policy coverage for Resolute administered insurers

Policies Issued to or Covering Payne Keller, Inc. et. al and or Payne Keller Corp. et. al
Responsive to Bodily Injury Claims

Policy Begin Date	Policy End Date	Insurer	Policy No.	BI Quota Share Limits	BI Occurrence Limits	BI Aggregate Limits	Attachment	Policy	Type of Policy	Named Insured	Policy Notes	Insurer Correspondence
04/01/1987	04/01/1988	National Union Fire Ins. Co.	BE 1319710		5,000,000	5,000,000	1,000,000	X	Umbrella Liability Products Completed Operations	SKRLA, Inc. et. al Payne & Keller	Policy Resolute 000382-409 ; Underlying schedule confirms GLA 5010569 RA is \$1M occ/agg CSL and is completed operations hazard only; end. no. 3 policy provides a separate \$5M completed ops hazard aggregate for Payne & Keller - also responds to claims arising from 4/1/80-10/6/86; asbestos exclusion	11.23.21 A. Love advises of umbrella policy copy
04/01/1987	10/06/1988	Stonewall Surplus Lines Ins. Co.	58004503		5,000,000	5,000,000	6,000,000	X	Excess Liability	Payne & Keller	9/28/2021 Resolute produced two policies as a response for Berkshire Hathaway; \$5M occ/annual agg; end. no. 7 policy extended from 4/1/87 to 10/6/88; Pollution Exclusion; Resolute 000001; Resolute 000187-197 ; end. no. 1 \$25k deductible; end. no. 7 policy extended to 10/6/88; per end. no. 5 follow form to "primary insurer" [GLA 5010569RA]	10.28.21 A. Love advises of policy coverage for Resolute administered insurers

EXHIBIT G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Lenora Childers, Individually and as	)	C/A NO.: 2021-CP-40-03484
Personal Representative of the Estate of	)	
Lewis C. Childers,	)	In Re:
	)	Asbestos Personal Injury Litigation
Plaintiff,	)	Coordinated Docket
	)	
vs.	)	
	)	
Davis Mechanical Contractors, Inc., et.	)	
al.,	)	RECEIVER FOR PAYNE AND KELLER
	)	COMPANY'S NOTICE OF FILING
Defendants.	)	
	)	

Peter D. Protopapas, as Receiver for Payne and Keller Company ("the Receiver"), by and through the undersigned counsel, respectfully submits this Notice of Filing. The Receiver hereby files with this Court, policies of insurance attach as Exhibit A.

SMITH ROBINSON, LLC

s/Jonathan M. Robinson

Jonathan M. Robinson

Shanon N. Peake

2530 Devine Street, 3rd Floor

Columbia, SC 29205

803-254-5445

*Attorneys for Receiver for Payne and Keller
Company*

July 5, 2023

Receiver's Payne & Keller Company's Filing Index
Notice of Filing Insurance Policies

 GL 08485876_COI
 GL 08492239_P&K 0000053-271
 GL 37101447_PK 0000272-555
 GL 57808631_Exhibit G_Eric Stoley exhibit
 HART-PAYKELL000001-HART-PAYKELL000013_First State_922727
 HART-PAYKELL000014-HART-PAYKELL000018_First State_935695
 HART-PAYKELL000014-HART-PAYKELL000018_Lloyd's_935695A
 HART-PAYKELL000019-HART-PAYKELL000025_First State_EU001055
 HART-PAYKELL000019-HART-PAYKELL000025_Lloyd's_EU001055A
 HART-PAYKELL000026-HART-PAYKELL000034_First State_EU003046
 HART-PAYKELL000035_Stonewall_32 000 576
 Highlands_GA 2038_PK 0000001-30
 Highlands_GA 2278_PK 0000031-52
 Lexington_5003931_Resolute 000709-728 4-29-22
 MC000049-MC000301_Zurich-74-75
 National Union_BE1319710_Resolute 382-409
 Payne & Keller GL47811921 eft. 7-8-76
 Production - Payne and Keller - Birmingham_UM6072579
 Production - Payne and Keller - Firemans_XLX01617970
 Production - Payne and Keller - Firemans_XLX01618194
 Production - Payne and Keller - Mission_M883701
 Resolute 000003-22_Harbor_134576
 Resolute 000024-137_National Union_GLA 154-7608RA
 Resolute 000139-148_Harbor_HI215435
 Resolute 000150-173_National Union_GLA5010553RA
 Resolute 000199-270_National Union_GLA5010569RA
 Stonewall_58003449
 Stonewall_58004503
 Travelers_61 AL 207124 SRA_TRAV_SUB_001014 -1067

EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Peter D. Protopapas, as the Receiver for Payne
& Keller Company,

Plaintiff,

v.

American International Group; Zurich
American Insurance Company; Travelers
Casualty & Surety Company, formerly known
as Aetna Casualty & Surety Company;
Continental Insurance Company; National
Union Fire Insurance Company of Pittsburgh;
Medmarc Casualty Insurance Company;
Berkshire Hathaway Specialty Insurance
Company, formerly known as Stonewall
Insurance Company; Hartford Accident and
Indemnity Company; Certain Underwriters at
Lloyd's of London and Various London Market
Companies; South Carolina Property and
Casualty Insurance Guaranty Association; R.L.
Jarrett (Underwriting) Agency, Inc.; and U.S.
Risk, LLC,

Defendants.

Civil Action No.

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said complaint upon the subscribers at 2110 N. Beltline Blvd., Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such complaint.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
bb@rplegalgroup.com

Attorney for the Plaintiff

This 23rd Day of November, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Peter D. Protopapas, as the Receiver for Payne
& Keller Company,

Plaintiff,

v.

American International Group; Zurich
American Insurance Company; Travelers
Casualty & Surety Company, formerly known
as Aetna Casualty & Surety Company;
Continental Insurance Company; National
Union Fire Insurance Company of Pittsburgh;
Medmarc Casualty Insurance Company;
Berkshire Hathaway Specialty Insurance
Company, formerly known as Stonewall
Insurance Company; Lexington Insurance
Company; Hartford Accident and Indemnity
Company; Certain Underwriters at Lloyd's of
London and Various London Market
Companies; South Carolina Property and
Casualty Insurance Guaranty Association; R.L.
Jarrett (Underwriting) Agency, Inc.; and U.S.
Risk, LLC,

Defendants

Civil Action No.

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**COMPLAINT FOR DECLARATORY
JUDGMENT AND BREACH OF
CONTRACT**

COMES NOW Peter D. Protopapas, as the Receiver for Payne & Keller Company, (“plaintiff” or “Payne & Keller”), complaining of the defendants American International Group, individually and as successor in interest to American General Indemnity Company (“American General”) and Birmingham Fire Insurance Company (“Birmingham”); Zurich American Insurance Company, individually and as successor in interest to Maryland American General Insurance Company and Maryland Casualty Company (“Zurich”); Travelers Casualty & Surety Company,

formerly known as Aetna Casualty & Surety Company (“Aetna”); Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company (“Continental”); National Union Fire Insurance Company of Pittsburgh (“National Union”); Medmarc Casualty Insurance Company, individually and as successor in interest to Dependable Insurance Company, Inc. (“Dependable”); Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company, individually and as successor in interest to Stonewall Surplus Lines Insurance Company (“Stonewall”); Lexington Insurance Company (“Lexington”); Hartford Accident and Indemnity Company (“Hartford”); Certain Underwriters at Lloyd’s of London and various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association (the “Guaranty Association”); R.L. Jarrett (Underwriting) Agency, Inc. (“R.L. Jarrett”); and U.S. Risk, LLC (“U.S. Risk”), who through undersigned counsel respectfully shows unto the Court as follows:

PARTIES

1. Payne & Keller Company, appearing by and through its duly appointed Receiver, Peter D. Protopapas, who maintains his principal place of business in Richland County, South Carolina, brings this action. The Receiver was appointed over Payne & Keller and entities related to the historic operations of Payne & Keller Company, including Payne & Keller, Inc.; Payne & Keller of Louisiana, Inc.; Bayou Maintenance, Inc.; Bayou Maintenance and Constructors, Inc.; Payne & Keller Gulf Coast, Inc.; Frentex Enterprises Company; and Frentex Enterprises Company of Texas (collectively “Payne & Keller”). This Court appointed the Receiver to administer all assets of Payne & Keller, including without limitation its insurance policies. (See Ex. A, Receiver Order, at 1–2 (“This order is inclusive of, but not limited to, the right and obligation to administer

any insurance assets of Payne & Keller as well as any claims related to the actions or failure to act of Payne & Keller's insurance carriers."); *see also* Ex. B, Order Granting Motion to Clarify.)

2. Plaintiff is informed and believes that defendant American International Group, sued individually and as successor in interest to American General Indemnity Company ("American General") and Birmingham Fire Insurance Company ("Birmingham"), referred to collectively, together with defendants National Union and Lexington, as "AIG", is a corporation organized under the laws of Delaware, with its principal place of business located in the State of New York.

3. Plaintiff is informed and believes that defendant Zurich American Insurance Company, sued individually and as successor in interest to Maryland American General Insurance Company and Maryland Casualty Company ("Zurich") is a corporation organized under the laws of the State of New York, with its principal place of business in the State of Illinois.

4. Plaintiff is informed and believes that defendant Travelers Casualty & Surety Company, formerly known as Aetna Casualty & Surety Company ("Aetna"), is a corporation organized under the laws of the State of Connecticut, with its principal place of business located in the State of Connecticut.

5. Plaintiff is informed and believes that defendant Continental Insurance Company, sued individually and as successor in interest to Harbor Insurance Company ("Continental") is a corporation organized under the laws of the State of Illinois, with its principal place of business located in the state of Pennsylvania.

6. Plaintiff is informed and believes that defendant National Union Fire Insurance Company of Pittsburgh PA ("National Union") is a corporation organized under the laws of the

Commonwealth of Pennsylvania, with its principal place of business located in the Commonwealth of Pennsylvania.

7. Plaintiff is informed and believes that defendant Medmarc Casualty Insurance Company, individually and as successor in interest to Dependable Insurance Company, Inc. (“Dependable”) is a corporation organized under the laws of the State of Vermont, with its principal place of business located in the State of Vermont.

8. Plaintiff is informed and believes that defendant Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company, sued individually and as successor in interest to Stonewall Surplus Lines Insurance Company (“Stonewall”) is a corporation organized under the laws of the State of Nebraska, with its principal place of business located in the State of Nebraska.

9. Plaintiff is informed and believes that defendant Lexington Insurance Company (“Lexington”) is a corporation organized under the laws of the State of Maryland, with its principal place of business in the State of Massachusetts.

10. Plaintiff is informed and believes that defendant Hartford Accident and Indemnity Company (“Hartford”) is a corporation organized under the laws of the State of Connecticut, with its principal place of business located in the State of Connecticut. Further, Hartford agreed that “in any suit instituted against it upon this contract this Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.” Moreover, by including the “service of suit clause” in its contract of insurance with Payne & Keller, Hartford has consented to the jurisdiction of this Court. In pertinent part, the Hartford policies contain the following service of suit clause:

It is agreed that in the event of the failure of this Company to pay any amount claimed to be due hereunder, this Company, at the request of the Insured, will submit to the jurisdiction of any Court of Competent Jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

By virtue of the foregoing service of suit clause, Hartford agreed to comply with all requirements necessary to give this Court jurisdiction, and further agreed that all matters pertinent to the instant dispute shall be determined by this Court. The portion of the “service of suit” clause which states that “all matters arising hereunder shall be determined in accordance with the law and practice of such Court” is a valid “choice of forum” clause. Hartford has consented to the jurisdiction of this Court and, accordingly, this action may not be removed or transferred to any other court.

11. Plaintiff is informed and believes that defendants Certain Underwriters at Lloyd’s, London (“Lloyd’s Underwriters”), and any and all London Market Insurers that participated in any of the policies at issue in this action (“London Market Insurers”), are an association of underwriters and individual insurance companies existing under the laws of the United Kingdom or another foreign sovereign with their principal place of business in London, England, that sold or subscribed to insurance policies covering plaintiff (generally referred to herein as “Lloyd’s Underwriters and London Market Insurers”). At all times relevant hereto, Lloyd’s Underwriters and London Market Insurers were authorized, through their respective agents, to underwrite insurance policies covering risks in the State of South Carolina and elsewhere. Lloyd’s Underwriters and London Market Insurers agreed further that “in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.” Moreover, Lloyd’s Underwriters and London Market Insurers, and those defendant insurers which issued follow form policies or otherwise incorporate the “service of suit”

language in the Lloyd's Underwriters and London Market Insurer policies by the terms of the policies issued and subscribed by them, have consented to the jurisdiction of this Court. In pertinent part, the Lloyd's Underwriters and London Market Insurer policies, and those defendant insurers that issued follow form coverage policies to the same, contain the following service of suit clause:

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

By virtue of the foregoing service of suit clause, Lloyd's Underwriters and London Market Insurers, and the following form defendant insurers agreed to the jurisdiction of this Court, agreed to comply with all requirements necessary to give this Court jurisdiction, and further agreed that all matters pertinent to the instant dispute shall be determined by this Court. The portion of the "service of suit" clause which states that "all matters arising hereunder shall be determined in accordance with the law and practice of such Court" is a valid "choice of forum" clause. The financial responsibility for Lloyd's Underwriters and certain of the London Market Insurers currently rests with National Indemnity Company ("NICO"), a subsidiary of Berkshire Hathaway, Inc., the largest insuring organization in the United States as measured by total admitted assets (in excess of \$135 billion) and by policyholder surplus (in excess of \$65 billion). Resolute Management, Inc., another Berkshire Hathaway subsidiary, makes claims decisions for Lloyd's Underwriters and certain of the London Market Insurers. The term "Lloyd's Underwriters" when used in this complaint includes its agent and reinsurers including without limitation NICO, Resolute Management, and Equitas Limited, a successor to Lloyd's Underwriters. On information

and belief, NICO is also financially responsible for the obligations of defendants AIG, Continental and Stonewall whose claims decisions are also made by Resolute Management.

12. Plaintiff is informed and believes that the Guaranty Association is an association formed under the laws of South Carolina.

13. Plaintiff is informed and believes that R.L. Jarrett Underwriting Agency, Inc. is a corporation organized under the laws of the State of Texas, with its principal place of business located in the State of Texas.

14. Plaintiff is informed and believes that U.S. Risk LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located in the State of Texas.

15. Plaintiff is informed and believes that one or more additional insurance companies issued policies of insurance to plaintiff that are responsive to the losses described herein (“Additional Defendants”). Such Additional Defendants may include one or more insurance companies managed by organizations located in New Hampshire, Massachusetts, or other jurisdictions. When the identities of these Additional Defendants become known to plaintiff, this Complaint will be amended *nunc pro tunc* to state the true identity of such Additional Defendants.

JURISDICTION

16. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court’s plenary powers. This Court appointed Peter D. Protopapas as Receiver of Payne & Keller.

17. Payne & Keller is a defendant in multiple asbestos suits pending in South Carolina, including the following: 2021-CP-40-04877; 2021-CP-40-5068; 2021-CP-40-03484.

18. In those suits, it is alleged that Payne & Keller was authorized to do business in South Carolina and that it regularly conducted business in the State of South Carolina.

19. The South Carolina Secretary of State's website shows that it was authorized to conduct business in South Carolina from at least 1967 to 1986.

20. It is further alleged that based on Payne & Keller's conduct in South Carolina, South Carolina citizens suffered permanent injuries while working in South Carolina, including but not limited to, mesothelioma and other lung damage.

VENUE

21. Venue is proper in this Court as it is the Receiver Court with cases pending and anticipated new filings in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in this state to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the state court system. Thus, the Honorable Jean H. Toal will have jurisdiction over this matter.

FACTUAL BACKGROUND

22. Payne & Keller's historic operations included the installation, repair, replacement, removal, or disturbance of thermal insulation and other building materials. Those operations allegedly exposed persons to asbestos who thereby suffered bodily injury (the "Asbestos Allegations"). The alleged bodily injury resulting from the Asbestos Allegations has resulted in suits against Payne & Keller, including those referenced above ("Payne & Keller Asbestos Suits").

1. The American General Policies

23. Defendant American General issued primary general liability policies to Payne & Keller (“The American General Policies”). The American General Policies have standard terms and conditions. The American General Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The American General Policies require American General fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any American General Policy period. The American General Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any American General Policy period. It is the burden of American General to prove any limitation on or exclusion of coverage. Specifically, American General issued primary general liability coverage to Payne & Keller for at least the three policy periods March 1, 1968 – March 1, 1971. Payne & Keller continues to search for additional policies issued by American General or any of its predecessors, successors, subsidiaries, or affiliates. Should such additional policies be located this Complaint will be amended to include such additional American General Policies.

24. American General has failed to fully acknowledge or accept its insuring obligations under the American General Policies. An actual and justiciable dispute exists between these parties.

2. The Zurich Policies

25. Defendant Zurich, individually and as successor in interest to Maryland American General Insurance Company, issued general liability policies to Payne & Keller (“The Zurich

Policies”). The Zurich Policies have standard terms and conditions. The Zurich Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Zurich Policies require Zurich fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any Zurich Policy period. The Zurich Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Zurich Policy period. It is the burden of Zurich to prove any limitation on or exclusion of coverage. Specifically, Zurich issued primary general liability coverage to Payne & Keller for at least the five policy periods March 1, 1973 – March 1, 1978.

26. Zurich has failed to fully acknowledge or accept its insuring obligations under the Zurich Policies. An actual and justiciable dispute exists between these parties.

3. *The Aetna Policies*

27. Defendant Aetna issued general liability policies to Payne & Keller (“The Aetna Policies”). The Aetna Policies have standard terms and conditions. The Aetna Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false or fraudulent. The duty to defend is joint, several, indivisible and supplemental. The Aetna Policies require Aetna fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any Aetna Policy period. The Aetna Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Aetna Policy Period. It is the burden of Aetna to prove any limitation on or exclusion of coverage.

Specifically, Aetna issued primary general liability coverage to Payne & Keller for at least the seven policy periods March 1, 1978 – April 1, 1985.

28. Aetna has failed to fully acknowledge or accept its insuring obligations under the Aetna Policies. An actual and justiciable dispute exists between these parties.

4. *The Continental Policies*

29. Defendant Continental issued umbrella liability policies to Payne & Keller (“The Continental Policies”). The Continental Policies have standard terms and conditions. The Continental Umbrella Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Continental Policy Period. It is the burden of Continental to prove any limitation on or exclusion of coverage. Specifically, Continental issued umbrella liability coverage to Payne & Keller for at least the two policy periods March 1, 1979 – March 1, 1980 and April 1, 1985—April 1, 1986.

30. Continental, by and through Resolute Management and NICO, has failed to fully acknowledge or accept its insuring obligations under the Continental Policies. An actual and justiciable dispute exists between these parties.

5. *The National Union Policies*

31. Defendant National Union issued general liability policies to Payne & Keller (“The National Union Policies”). The National Union Policies have standard terms and conditions. The National Union Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false or fraudulent. The duty to defend is joint, several, indivisible and supplemental. The National Union Policies require National Union fully to defend any Payne &

Keller Asbestos Suit alleging bodily injury during any National Union Policy period. The National Union Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any National Union Policy Period. It is the burden of National Union to prove any limitation on or exclusion of coverage. Specifically, National Union issued primary general liability coverage to Payne & Keller for at least the three policy periods April 1, 1985—April 1, 1989, and issued umbrella liability coverage to Payne & Keller for at least the three policy periods April 1, 1985—October 6, 1988.

32. National Union, by and through Resolute Management and NICO, has failed to fully acknowledge or accept its insuring obligations under the National Union Policies. An actual and justiciable dispute exists between these parties.

6. *The Dependable Policy*

33. Defendant Dependable issued at least one umbrella liability policy to Payne & Keller (“The Dependable Policy”). The Dependable Policy has standard terms and conditions. The Dependable Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Dependable Policy Period. It is the burden of Dependable to prove any limitation on or exclusion of coverage. Specifically, Dependable issued umbrella liability coverage to Payne & Keller for at least the policy period March 1, 1976—March 1, 1977.

34. Dependable has failed to fully acknowledge or accept its insuring obligations under the Dependable Policy. An actual and justiciable dispute exists between these parties.

7. *The Stonewall Policies*

35. Defendant Stonewall issued umbrella liability policies to Payne & Keller (“The Stonewall Policies”). The Stonewall Policies have standard terms and conditions. The Stonewall Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Stonewall Policy Period. It is the burden of Stonewall to prove any limitation on or exclusion of coverage. Specifically, Stonewall issued umbrella liability coverage to Payne & Keller for at least the three policy periods March 1, 1976—March 1, 1977 and April 1, 1986—October 6, 1988.

36. Stonewall, by and through Resolute Management and NICO, has failed to fully acknowledge or accept its insuring obligations under the Stonewall Policies. An actual and justiciable dispute exists between these parties.

8. *The Lexington Policy*

37. Defendant Lexington issued at least one umbrella liability policy to Payne & Keller (“The Lexington Policy”). The Lexington Policy has standard terms and conditions. The Lexington Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Lexington Policy Period. It is the burden of Lexington to prove any limitation on or exclusion of coverage. Specifically, Lexington issued umbrella liability coverage to Payne & Keller for at least the policy period April 1, 1985—April 1, 1986.

38. Lexington, by and through Resolute Management and NICO, has failed to fully acknowledge or accept its insuring obligations under the Lexington Policy. An actual and justiciable dispute exists between these parties.

9. *The Hartford Policy*

39. Defendant Hartford issued at least four umbrella liability policies to Payne & Keller (“The Hartford Policies”). The Hartford Policies have standard terms and conditions. The Hartford Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Hartford Policy Period. It is the burden of Hartford to prove any limitation on or exclusion of coverage. Specifically, Hartford issued umbrella liability coverage to Payne & Keller for at least the policy periods March 1, 1976—March 1, 1977, April 1, 1983—April 1, 1985, and May 15, 1985—April 1, 1986.

40. Hartford has failed to fully acknowledge or accept its insuring obligations under the Hartford Policies. An actual and justiciable dispute exists between these parties.

10. *The Birmingham Policies*

41. Defendant Birmingham issued at least two umbrella liability policies to Payne & Keller (“The Birmingham Policies”). The Birmingham Policies have standard terms and conditions. The Birmingham Policies have a separate duty fully to indemnify Payne & Keller from any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Birmingham Policy Period. It is the burden of Birmingham to prove any limitation or exclusion of coverage. Specifically, Birmingham issued umbrella liability coverage to Payne & Keller for at least the policy periods April 1, 1983—April 1, 1985.

42. Birmingham, by and through Resolute Management and NICO, has failed to fully acknowledge or accept its insuring obligations under the Birmingham Policies. An actual and justiciable dispute exists between these parties.

11. The Lloyd's Underwriters & London Market Insurers Policy

43. Defendants Lloyd's Underwriters and London Market Insurers issued at least one umbrella policy to Payne & Keller ("The Lloyd's Policy"). The Lloyd's Policy has standard terms and conditions. The Lloyd's Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Lloyd's Policy Period. The Lloyd's Policy also contains the "service of suit" clause as set forth above. It is the burden of Lloyd's to prove any limitation on or exclusion of coverage. Specifically, Lloyd's issued umbrella liability coverage to Payne & Keller for at least the policy period April 1, 1984—April 1, 1985.

44. Defendant Lloyd's Underwriters, by and through Resolute Management and NICO, have failed to fully acknowledge or accept their insuring obligations under the Lloyd's Policy. An actual and justiciable dispute exists between these parties.

12. The Reliance Policies and the Guaranty Association

45. Reliance Insurance Company ("Reliance") issued general liability policies to Payne & Keller ("The Reliance Policies"). The Reliance Policies have standard terms and conditions. It is the burden of any insurer, or an entity standing in the place of the insurer, to prove any limitation on or exclusion of coverage. Reliance issued primary general liability coverage to Payne & Keller for at least the three policy periods March 1, 1965—March 1, 1968.

46. On information and belief, Reliance Insurance Company was liquidated on October 3, 2001.

47. The Guaranty Association was statutorily created to protect the policy holders of insolvent insurance companies like Reliance. The Guaranty Association "is considered the insurer

to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.” S.C. Code Ann. § 38-31-60(b).

48. On March 16, 2021, Plaintiff was appointed Receiver of Payne & Keller, giving him the power and authority fully to administer all assets of Payne & Keller, accept service on behalf of Payne & Keller, engage counsel on behalf of Payne & Keller, and take any and all steps necessary to protect the interests of Payne & Keller, whatever they may be. Since appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies and to defend Payne & Keller Asbestos Suits in fulfillment of his responsibilities as Receiver. The Receiver will continue to expend substantial time and incur expenses in connection with Payne & Keller Asbestos Suits.

13. R.L. Jarrett and U.S. Risk Broker Services

49. R.L. Jarrett served as an insurance broker to Payne & Keller.

50. Upon information and belief, in or before 1990, U.S. Risk acquired one or more entities related to R.L. Jarrett, which makes U.S. Risk the successor-in-interest to R.L. Jarrett.

FIRST CAUSE OF ACTION **DECLARATORY JUDGMENT**

51. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

52. Pursuant to *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989), a Receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver.

53. Upon information and belief, Payne & Keller purchased insurance policies from defendants American General, Zurich, Aetna, National Union, Continental, Lexington, Hartford, Dependable, Birmingham, Lloyd's Underwriters and London Market Insurers, Stonewall, and Reliance (the "Insurers").

54. These policies are the property of Payne & Keller.

55. The Receiver has requested these policies and related documents, but the Insurers have failed to provide them.

56. Plaintiff seeks a judicial declaration that all policies, evidence of policies and documents relating to their placement, purchase and underwriting, and claims handling, including but not limited to such documents in the possession of defendants are the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession.

SECOND CAUSE OF ACTION **DECLARATORY JUDGMENT**

57. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

58. The Receiver seeks a declaration and order that defendants American General, Zurich, and Aetna issued primary general liability coverage to Payne & Keller, subject to the per occurrence and aggregate limits of those policies, and that defendants have an unlimited supplemental duty to defend or to pay or reimburse defense costs.

59. The Receiver seeks a further declaration and order that defendants National Union, Continental, Lexington, Hartford, Dependable, Birmingham, Lloyd's Underwriters and

London Market Insurers, and Stonewall issued umbrella coverage to Payne & Keller that “drops down” to provide “first dollar” coverage in the event there is no primary coverage, or in the event such coverage is unavailable or not responding, subject to the per occurrence and aggregate limits of those policies.

60. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that defendants American General, Zurich, Aetna, National Union, Continental, Lexington, Hartford, Dependable, Birmingham, Lloyd’s Underwriters and London Market Insurers, and Stonewall issued to Payne & Keller (the “Payne & Keller Insurance Policies”), as follows:

- a. The Payne & Keller Insurance Policies cover all Payne & Keller Asbestos Suits that allege bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;
- b. Each Payne & Keller asbestos suit “triggers” the Payne & Keller Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
- c. Payne & Keller may select the policy or policy years to which to assign or allocate in full each Payne & Keller Asbestos Suit-related loss;
- d. In the case of any claimed ambiguity in any Payne & Keller Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Payne & Keller Insurance Policies;

- e. Defense costs for the Payne & Keller asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Payne & Keller Insurance Policies;
- f. If any allegation or cause of action in a Payne & Keller Asbestos Suit is potentially covered under the Payne & Keller Insurance Policies, then the insurer must fully defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- g. Each Payne & Keller Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of Payne & Keller Asbestos Suits;
- h. Each Payne & Keller Insurance Policy must indemnify covered Payne & Keller Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;
- i. The Payne & Keller Asbestos Suits that allege exposure to asbestos during Payne & Keller’s work are subject only to the “per occurrence” limits of the Payne & Keller Insurance Policies;
- j. Any aggregate limit on coverage in any of the Payne & Keller Insurance policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that a Payne & Keller Asbestos Suit is subject to the aggregate limit in the Payne & Keller Insurance Policies, if any; and
- k. Each insurer has the burden to prove, based on the evidence, that any particular Payne & Keller Asbestos Suit is either a “products” claim or a “completed

operations” claim, as those terms are defined in the Payne & Keller Insurance Policies, in order for the insurer to disclaim coverage for a Payne & Keller Asbestos Suit against Payne & Keller otherwise alleging injury during any Payne & Keller Insurance policy period.

61. Actual and justiciable controversies therefore exist between Payne & Keller and defendants concerning their obligations under the Payne & Keller Insurance Policies.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT

62. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

63. At the time that Reliance was liquidated on October 3, 2001, the Guaranty Association became statutorily required to take on the liabilities of Reliance.

64. Plaintiff seeks the same declarations sought in paragraphs 58 and 60 of this Complaint against the Guaranty Association under the Reliance policies, and incorporates by references paragraphs 58 and 60 as though fully set forth against the Guaranty Association under the Reliance policies.

65. Plaintiff seeks a declaration that the Guaranty Association is responsible for any and all amounts Reliance owes to Payne & Keller under the terms of the Reliance insurance policies.

FOURTH CAUSE OF ACTION
BREACH OF CONTRACT

66. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

67. Payne & Keller was insured by one or more policies issued by defendants American General, Zurich, and Aetna.

68. Payne & Keller provided timely notice to defendants American General, Zurich, and Aetna of the Payne & Keller Asbestos Suits.

69. Defendants American General, Zurich, and Aetna unreasonably and without proper cause, have failed to defend Payne & Keller in the Payne & Keller Asbestos Suits as required by the policies they issued to Payne & Keller, and/or have failed to cooperate or consult with Payne & Keller in connection with their duty to defend fully their insured.

70. The foregoing failure of defendants American General, Zurich, and Aetna to provide a proper defense to Payne & Keller in the Payne & Keller Asbestos Suits has caused, and will continue to cause, harm and damages to Payne & Keller, including, but not limited to, incurring legal fees that should be paid for by Defendants American General, Zurich, and/or Aetna.

FIFTH CAUSE OF ACTION
ACCOUNTING

71. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

72. Upon information and belief, Payne & Keller purchased insurance policies from Defendants American General, Zurich, Aetna, National Union, Continental, Lexington,

Hartford, Dependable, Birmingham, Lloyd's Underwriters and London Market Insurers, Stonewall, and Reliance during the periods 1965 to 1989.

73. Upon information and belief, Payne & Keller have had claims made against the Payne & Keller Policies, including, but not limited to, Payne & Keller Asbestos Suits filed and disposed of prior to the appointment of the Receiver. The Defendants possess information related to the past claims, expenses, and payments associated with the historic claims against Payne & Keller, but the Receiver is not in possession of that information. The Receiver is not aware of the number of past claims against the Defendants' policies, the handling of those claims, or the allocation methods for those claims.

74. Plaintiff therefore seeks an accounting to evaluate the past claims practices of the Defendants to ensure the appropriate characterization of prior claims and expenses.

SIXTH CAUSE OF ACTION **FAILURE TO PROCURE INSURANCE**

75. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

76. R.L. Jarrett had a duty to exercise reasonable skill, care, and diligence to procure appropriate insurance for Payne & Keller.

77. Upon information and belief, R.L. Jarrett was negligent and breached its duty to procure appropriate insurance coverage for Payne & Keller during each of the years R.L. Jarrett was obligated to procure insurance.

78. This failure on the part of R.L. Jarrett includes, but is not limited to, the failure to procure products coverage for Payne & Keller.

79. Defendant U.S. Risk is the successor-in-interest to R.L. Jarrett and assumed responsibility for R.L. Jarrett's acts and omissions and, therefore, is responsible for any shortfall or deficiency in coverage for the Payne & Keller Asbestos Suits.

80. In the alternative, R.L. Jarrett is responsible for its own acts and omissions and, therefore, is responsible for any shortfall or deficiency in coverage for the Payne & Keller Asbestos Suits.

81. R.L. Jarrett's failure to procure appropriate insurance for Payne & Keller was not discovered until the Receiver's appointment.

SEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT

82. Plaintiff incorporates by reference paragraphs 1 through 50 as if repeated verbatim herein.

83. An actual and justiciable controversy exists between the Receiver for Payne & Keller and Defendants American General, Zurich, Aetna, National Union, Continental, Lexington, Hartford, Dependable, Birmingham, Lloyd's Underwriters and London Market Insurers, and Stonewall concerning defendants' obligations to Payne & Keller, including their obligations to pay for, or reimburse as ultimate net loss, the Receiver's defense of Payne & Keller.

84. Judicial declarations are necessary and appropriate at this time, under the circumstances alleged above, so that plaintiff may ascertain his rights against defendants.

85. Pursuant to S.C. Code Ann. § 15-65-100, the Receiver shall be allowed such commissions as may be fixed by the Court appointing the Receiver.

86. Pursuant to the Supreme Court of South Carolina's ruling in *Ex Parte Simons*, 289 S.C. 1, 344 S.E.2d 151 (1986), a Receiver's fee is based on the value of the Receiver's services and at the appointing Court's discretion.

87. Plaintiff is dedicating a substantial amount of time and incurring substantial expenses in his role as Receiver for Payne & Keller, including in connection with the defense of asbestos suits against Payne & Keller. The Receiver is continuing to devote such time to the defense of Payne & Keller and will continue to incur expenses in his role as Receiver, which defense obligations are those of Defendants.

88. Plaintiff respectfully requests this Court to declare that Defendants must fairly compensate Plaintiff for the substantial time, effort, and expenses Plaintiff expended in connection with the defense of asbestos suits potentially covered under the Defendants' policies and to further declare that this obligation is unlimited and shall continue as long as there is any Payne & Keller Asbestos Suit pending.

PRAYER FOR RELIEF

WHEREFORE, Payne & Keller, by and through its duly appointed Receiver, demands judgment against defendants as follows:

- A. For Plaintiff's compensation in connection with the defense of asbestos suits against Payne & Keller in an amount set by this Court;
- B. For an order requiring that Defendants provide to plaintiff complete and authentic copies of any general liability and excess liability insurance policies it issued to Payne & Keller together with all other documents and things relating to these policies, including (but not

limited to) certificates of insurance, underwriting manuals and documents, and claims files;

- C. For an order requiring Defendants to defend Payne & Keller in full against all asbestos suits alleging bodily injury during the Defendants' policy periods unless and until either Defendants can show unequivocally, based on the evidence adduced in the litigation, that an exclusion in their respective policies otherwise bars coverage for a suit;
- D. The Receiver seeks a further declaration as to the interpretation and meaning of the Payne & Keller insurance policies:
 - i. The Payne & Keller Insurance Policies cover all Payne & Keller Asbestos Suits that allege any bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of its policy periods;
 - ii. Each Payne & Keller asbestos suit "triggers" at least one Payne & Keller Insurance policy as long as an asbestos plaintiff alleges injury during the period of the policy;
 - iii. Payne & Keller may select the policy or policy years to which to assign or allocate in full each Payne & Keller asbestos loss;
 - iv. In the case of a claimed ambiguity in any Payne & Keller Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Defendants' policies, and Defendants bears the burden of proof as to any such ambiguity;

- v. Defense costs for the Payne & Keller asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Payne & Keller Insurance policies;
- vi. If any allegation in a Payne & Keller Asbestos Suit is potentially covered under the Payne & Keller Insurance Policies, then the insurer must defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- vii. Each Payne & Keller Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of the Payne & Keller Asbestos Suits;
- viii. Each Payne & Keller Insurance Policy must indemnify covered Payne & Keller Asbestos Suits, in full, up to its “per occurrence” limits, regardless of whether a continuing injury spans multiple policy periods;
- ix. The Payne & Keller Asbestos Suits that allege exposure to asbestos during Payne & Keller’s work are subject only to the “per occurrence” limits of the Payne & Keller Insurance policies;
- x. Any aggregate limit on coverage in any of the Payne & Keller Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that a Payne & Keller Asbestos Suit is subject to the aggregate limit in the Payne & Keller Insurance Policies, if any; and
- xi. Each insurer and the Guaranty Association has the burden to prove, based on the evidence, that any particular Payne & Keller Asbestos Suit is either a “products”

claim or a “completed operations” claim, as those terms are defined in the Payne & Keller Insurance Policies, in order for the insurer to disclaim coverage for a Payne & Keller Asbestos Suit against Payne & Keller otherwise alleging injury during the Payne & Keller insurance policy period;

- E. For an order declaring that Defendant Guaranty Association is responsible for any and all amounts Reliance owes to Payne & Keller under the terms of their respective insurance policies;
- F. For an order declaring that Defendants American General, Zurich, and Aetna are liable for the damages incurred by Payne & Keller due to their breaches of contract, including, but not limited to, reimbursing Payne & Keller for any legal fees and costs incurred by defending the Payne & Keller Asbestos Suits;
- G. For an accounting of Defendants’ past claims practices for claims against Payne & Keller and its Historic Affiliates, including but not limited to historical Payne & Keller Asbestos Suits;
- H. For an order declaring that Defendant R.L. Jarrett or, in the alternative, Defendant U.S. Risk as its successor, breached its obligations by not procuring the appropriate insurance for Payne & Keller and is liable to the Receiver for money damages in an amount to be proven at trial; and
- I. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Brian M. Barnwell
Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
bb@rplegalgroup.com

Attorney for the Plaintiff

This 23rd Day of November, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
LENORA CHILDERS , Individually and as	)	C/A NO. 2021-CP-40-03484
Personal Representatives of the Estate of	)	
LEWIS C. CHILDERS ,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
Plaintiff,	)	Coordinated Docket
	)	
v.	)	
	)	<u>ORDER</u>
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

CAME ON _____, 2021, to be heard the Plaintiff's Motion to Appoint a Receiver Over Payne & Keller Company, pursuant to S.C. Code §15-65-10(4). This Court finds that the application is meritorious under the applicable statute because Payne & Keller Company ("Payne & Keller") dissolved and Payne & Keller, a Texas Corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiff requests for an expedited ruling on this motion is appropriate and also granted.

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

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, 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 Payne & Keller Insulation, Inc. may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT SO ORDERED this _____ day of _____ 2021.

Jean Hoefer Toal, Chief Justice of the Supreme Court of
South Carolina (Retired), acting as Circuit Court Judge



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of
Lewis C. Childers,

Plaintiff,

v.

**DAVIS MECHANICAL
CONTRACTORS, INC.**, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-40-03484

**ORDER GRANTING THE RECEIVER
FOR
PAYNE & KELLER COMPANY'S
MOTION TO CLARIFY THE
RECEIVER ORDER**

This matter comes before the Court by way of the Receiver for Payne & Keller Company's Motion to Clarify Order Appointing a Receiver for Payne & Keller Company issued by this Court on August 27, 2021. The Receiver's Motion is hereby GRANTED.

Peter D. Protopapas (the "Receiver") was appointed for Payne & Keller Company on August 27, 2021. Since his appointment, the Receiver has discovered that Payne & Keller Company did business under a series of corporate names before its final dissolution. The entities now known to the Receiver to be related to the historic operations of Payne & Keller Company are as follows: Payne & Keller, Inc.; Payne & Keller of Louisiana, Inc.; Bayou Maintenance, Inc.; Bayou Maintenance and Constructors, Inc.; Payne & Keller Gulf Coast, Inc.; Frentex Enterprises Company; and Frentex Enterprises Company of Texas (collectively the "P&K Entities").

This Order hereby clarifies that the Receiver's Order of Appointment entered on August 27, 2021, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to all of the P&K Entities and their predecessors, successors, affiliates, parents, assigns, and subsidiaries that may be discovered in the future. This Order also clarifies

that the reference to Payne & Keller Insulation, Inc. on page 3 of the Order of Appointment is a scrivener's error and is amended to state that neither the Receiver nor the P&K Entities may be sued outside this Court without obtaining the Receiver's consent or an order of this court prior to doing so.

IT IS SO ORDERD.

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Other

So Ordered

Jean H. Toal

EXHIBIT I

Peter D. Protopapas, as the Receiver
for Payne & Keller Company,

Plaintiff,

v.

Zurich American Insurance Company;
Travelers Casualty & Surety
Company, *formerly known as Aetna
Casualty & Surety Company*;
Continental Insurance Company;
National Union Fire Insurance Company
of Pittsburgh, PA; Medmarc Casualty
Insurance Company; Berkshire
Hathaway Specialty Insurance
Company, *formerly known as
Stonewall Insurance Company*;
Lexington Insurance Company; Certain
Underwriters at Lloyd's of London and
Various London Market Companies;
South Carolina Property and Casualty
Insurance Guaranty Association; First
State Insurance Company; and
Birmingham Fire Insurance Company.

Defendants.¹

¹ Defendants R.L. Jarrett (Underwriting) Agency, Inc. and U.S. Risk, LLC have been deleted from the caption to reflect their dismissal as parties to this action. ECF Nos. 176, 177.

2022, the Magistrate Judge held a hearing on the Motion. ECF No. 163. On October 20, 2022, the Magistrate Judge issued a Report recommending that the Motion to Remand be granted because not all properly joined and served Defendants validly joined in or consented to removal as required by 28 U.S.C. § 1446(b)(2)(A). ECF No. 167. Plaintiff filed objections to the Report. ECF No. 169. Defendant Travelers Casualty and Surety Company (“Travelers”) filed a partial objection to the Report, in which Defendants Zurich American Insurance Company, Medmarc Casualty Insurance Company, and U.S. Risk, LLC (collectively, “the Objecting Defendants”) joined. ECF Nos. 168, 170, 171, 172. Plaintiff and the Objecting Defendants filed Replies. ECF Nos. 173, 174, 175.

BACKGROUND

Plaintiff filed this action in the Richland County Court of Common Pleas on November 23, 2021, as the Receiver for Payne & Keller, a defunct corporation facing personal injury lawsuits by non-party claimants who were allegedly exposed to asbestos. ECF No. 1-1. Defendants removed the case to this Court on December 20, 2021, based on diversity jurisdiction under 28 U.S.C. § 1332. ECF No. 1.

On January 18, 2022, Plaintiff filed a Motion to Remand. ECF No. 24. Defendants filed Responses in Opposition, Plaintiff filed a Reply, and Defendants filed a Sur-Reply. ECF Nos. 47, 48, 49, 50, 52, 118, 145, 150. Both parties also filed supplemental briefing, and Travelers filed a Reply to Plaintiff’s Supplement. ECF Nos. 141, 142, 143, 144. On October 20, 2022, the Magistrate Judge issued a Report recommending that the Motion to Remand be granted. ECF No. 167. Plaintiff and the Objecting Defendants filed

objections to the Report as well as Replies to the objections. ECF Nos. 168, 169, 170, 171, 172, 173, 174, 175.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261, 96 S. Ct. 549, 46 L. Ed. 2d 483 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." (citation omitted)).

DISCUSSION

The Report contains a thorough recitation of the facts and the applicable law, which the Court incorporates by reference, except as specifically noted below. Because neither Plaintiff nor Defendants object to the Magistrate Judge's finding that Defendant South Carolina Property and Casualty Insurance Guaranty Association was fraudulently joined,

the Court finds no clear error concerning this portion of the Report and adopts the Report's finding that diversity jurisdiction exists.

A. Removal Generally

28 U.S.C. § 1441(a) provides, "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States" Removal under § 1441(a) is governed by the requirements of 28 U.S.C. § 1446(b)(2)(A), which instruct that "[w]hen a civil action is removed solely under section 1441(a), *all* defendants who have been *properly joined and served* must join in or consent to the removal of the action." *Id.* (emphasis added); see also *Hartford Fire Ins. Co. v. Harleysville Mut. Ins. Co.*, 736 F.3d 255, 259 (4th Cir. 2013) (noting "[t]he Supreme Court has construed these statutes to require all defendants in a case to join in or consent to removal"). "The burden of establishing federal jurisdiction is placed on the party seeking removal." *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 151 (4th Cir. 1994) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)). Because removal jurisdiction raises significant federalism concerns, courts must strictly construe removal jurisdiction. *Bartnikowski v. NVR, Inc.*, 307 F. App'x 730, 739 (4th Cir. 2009). Thus, remand is necessary if federal jurisdiction is doubtful. *Mulcahey*, 29 F.3d at 151 (citing *In re Business Men's Assur. Co. of Am.*, 992 F.2d 181, 183 (8th Cir. 1993)).

B. Plaintiff's Objections

Plaintiff objects to the Magistrate Judge's interpretation of the *Barton* doctrine, insisting that the *Barton* doctrine bars a party from litigating a claim of or against a court-appointed receiver without first obtaining leave of the appointing court based on the Supreme Court's decision in *Porter v. Sabin*, 149 U.S. 473, 479–80 (1893). ECF No 169 at 5. The Court agrees. Albeit old law, *Porter* is clear that it is in the appointing court's discretion "to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere" and that the appointing court "may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit." *Porter*, 149 U.S. at 479. *Porter* further states "[t]he reasons are yet stronger for not allowing a suit against a receiver appointed by a state court to be maintained, or the administration by that court of the estate in the receiver's hands to be interfered with, by a court of the United States, deriving its authority from another government, though exercising jurisdiction over the same territory." *Id.* at 480.

Here, the receivership court has appointed a receiver who is attempting to preserve and collect assets of the defunct corporation as part of his fiduciary duty. This Court finds that *Barton*, and its subsequent application in *Porter*, act as a limitation on federal jurisdiction when a state court has previously exercised its authority by appointing a receiver to handle the administration of property; to allow this matter to continue in federal court would directly interfere with the exclusive jurisdiction of the receivership

court over this dispute. Accordingly, Plaintiff's objections are sustained, and the Court respectfully declines to adopt this section of the Report.

C. Objecting Defendants' Partial Objection

The Objecting Defendants challenge the Magistrate Judge's determination that they have failed to meet the requirements for removal under 28 U.S.C. § 1446(b)(2)(A). ECF No. 167 at 14. They argue first that under *Mayo v. Board of Education*, 713 F.3d 735, 741–42 (4th Cir. 2013), they have met this Circuit's standard for obtaining proper consent. ECF No. 168 at 3. Relying on *Mayo*, they assert that, because Defendant Travelers signed and filed a notice of removal "representing unambiguously that the other defendants consent[ed] to the removal," removal was proper under the Fourth Circuit's requirements. *Id.* However, this matter is distinguishable from *Mayo*, which concerned the risk of one defendant misrepresenting a co-defendant's decision to remove the case. *Mayo*, 713 F.3d at 742. The *Mayo* court's analysis is based on the premise that the defendants retained their right to remove and exercised their option to invoke that right, in contrast to the matter at hand. Simply because Defendants in this case have all authorized the removal of their case to federal court via a signed affidavit does not necessarily mean they each retained a right to do so and that their authorization was valid; Defendant Berkshire Hathaway's "service of suit" clause effectively waived its right to validly consent to removal for the reasons set forth below. As such, Defendants' affidavit does not satisfy the Fourth Circuit's standard for establishing compliance with 28 U.S.C. § 1446(b)(2)(A)'s requirements that all defendants who have been properly joined and served must join in or consent to the removal of the action.

The Objecting Defendants also argue that the Policy's "service of suit" clause does not act as a bar to removal. ECF No. 168 at 2. Specifically, they argue that 1) Plaintiff has provided limited evidence that this provision is in any other Defendants' policy; 2) the clause's jurisdictional language should be interpreted as a waiver of personal jurisdiction alone, rather than a waiver of one's right to remove to federal court, and 3) that Plaintiff has not sufficiently pled his complaint to trigger the clause's necessary "triggering events." *Id.* at 4–12. Upon review, the Court finds Plaintiff has provided sufficient evidence to merit remand. Plaintiff's allegations in conjunction with his filed supplement suggest to the Court that at least one Defendant (Berkshire Hathaway) is unable to consent to removal. ECF Nos. 141, 141-1. While there is a dispute as to which other, if any, Defendants have a "service of suit" clause with Plaintiff, Plaintiff has sufficiently established that Defendant Berkshire Hathaway is bound by one and thus could not consent to removal.

The "service of suit" language in Defendant Berkshire Hathaway's policy has been widely litigated across this Circuit, with courts consistently finding the clause acts as a waiver of an insurer's right to remove a case from the forum selected by the plaintiff. See *C3 Invs. of N.C., Inc. v. Ironshore Specialty Ins. Co.*, No. 2:19-cv-2609-DCN, 2020 U.S. Dist. LEXIS 24498, at *11 (D.S.C. Feb. 12, 2020) ("Most courts that have enforced service-of-suit provisions have done so in the context of removal, finding that an insurer waives its right to remove a matter to federal court where the relevant policy includes a service-of-suit provision and the insured brought suit in state court."); see also *Welborn v. Classic Syndicate Inc.*, 807 F. Supp. 388, 390 (W.D.N.C. 1992) ("Based upon the numerous cases which have held that service of suit clauses such as the one at issue

here act as waivers of the right to remove, the Court finds that the defendants have waived their removal rights in the insurance contract.”); *Black & Decker, Inc. v. Twin City Fire Ins. Co.*, No. HAR 92-3352, 1993 U.S. Dist. LEXIS 2838, at *11 (D. Md. Feb. 9, 1993) (“[T]he specific language of the Service of Suit Clause, ‘and will comply with all requirements to give such Court jurisdiction,’ implies that [defendants] would not avail themselves of procedures like 28 U.S.C. § 1441(a) which would deprive a court of [the plaintiff’s] choosing the opportunity to adjudicate the case.”); *United States Fire Ins. Co. v. Arch Specialty Ins. Co.*, No. WDQ-08-1249, 2008 U.S. Dist. LEXIS 125175, at *6 (D. Md. July 15, 2008) (“Inclusion of a Service of Suit Clause in an insurance policy generally waives an insurer’s right of removal.”). This application is not unique to the Fourth Circuit, as multiple other circuits have held that “service of suit” provisions have acted as a waiver of a defendant’s right to removal. See, e.g., *Suter v. Munich Reinsurance Co.*, 223 F.3d 150, 160 (3d Cir. 2000); *McDermott Int’l, Inc. v. Lloyds Underwriters of London*, 944 F.2d 1199, 1206 (5th Cir. 1991); *In re Delta Am. Re Ins. Co.*, 900 F.2d 890, 894 (6th Cir. 1990). Based upon this Circuit’s case law, the Court agrees that Defendant Berkshire Hathaway’s “service of suit” clause acts as a waiver of its right to remove.

Next, the Objecting Defendants contend that the “service of suit” clause should be interpreted as a waiver of personal jurisdiction, rather than a waiver of its right to remove, based upon the remaining paragraphs listed in the “Service of Suit” section that detail how service of process should be perfected. ECF No. 168 at 6–7. They argue that for the right to removal to be waived, it must have been “clear and unequivocal,” citing both *Grubb v. Donegal Mutual Insurance Company*, 935 F.2d 57, 59 (4th Cir. 1991) and

London Manhattan Company v. CSA-Credit Solutions of America, Incorporated, No. 2:08-cv-00465-PMD, 2008 U.S. Dist. LEXIS 38163, at *9 (D.S.C. May 9, 2008). ECF No. 168 at 9.

However, the facts of these cases are significantly different from the facts at hand. *Grubb* deals exclusively with a litigation-based waiver premised on the defendant's failure to immediately assert their right to removal after the dismissal of a necessary party. *Grubb*, 935 F.2d at 58. *London*, on the other hand, disputed whether a clause agreeing that the forum would be in "Charleston County, South Carolina" could include a federal court within Charleston County or whether the clause exclusively meant the state court. *London*, 2008 U.S. Dist. LEXIS 38163, at *2. Neither address contractual waiver, much less one that explicitly states that a party would "submit to the jurisdiction of any court of competent jurisdiction," as is the case here. ECF No. 167 at 14. In fact, other courts in this Circuit have held the "clear and unequivocal" standard cited by the Objecting Defendants is not appropriate in the realm of similar contractual waivers. See, e.g., *Welborn*, 807 F. Supp. at 390–91 ("We think the 'clear and convincing' [sic] standard so stringent as to be contrary to the right of parties to contract in advance regarding where they will litigate. A court simply should determine contractual waiver of the right to remove using the same benchmarks of construction and, if applicable, interpretation as it employs on resolving all preliminary contractual questions." (citing *Foster v. Chesapeake Ins. Co., Ltd.*, 933 F.2d 1207, 1218 n.15 (3d Cir. 1991))).

As such, courts should "resolve any such ambiguity against the insurer and in favor of the insured party." *Am. S.S. Owners Mut. Prot. & Indem. Ass'n v. Dann Ocean Towing*,

Inc., 756 F.3d 314, 319 (4th Cir. 2014); *see also Welborn*, 807 F. Supp. at 391 (“Applying the basic contract construction principle that any ambiguities in a contract are to be resolved against the party who drafted the contract, this Court finds that the service of suit clause in the insurance contract waived the defendants’ right to remove.”); *Black & Decker, Inc.*, 1993 U.S. Dist. LEXIS 2838, at *11 (“Finally, had the sophisticated [Defendants], not unfamiliar with the insurance industry’s widespread experience with the effects of Service of Suit clauses, desired to reserve the right of removal, they could have bargained for a clause ‘reserving the insurer’s right to remove to federal court.’” (internal citations omitted)). This Court likewise concludes that the “service of suit” clause waives removal and that any ambiguities as to the meaning of the clause should be resolved in favor of the insured.

Lastly, the Objecting Defendants argue the “triggering events” necessary for the “service of suit” clause to be applicable have not yet occurred, making any effect the clause has irrelevant. ECF No. 168 at 9–11. However, the Court agrees with the Magistrate Judge that this argument disregards Plaintiff’s allegations. *See* ECF No. 1-1 at 16, 18 (expressly alleging that the Lloyds Defendants and Defendant Berkshire Hathaway have “failed to fully acknowledge or accept their insuring obligations”); *id.* at 27–30 (seeking damages against all defendants); *see also* ECF No. 23 at 16, 20 (same).

Given the waiver, and thus the inability to obtain valid consent from all defendants, Defendants have not adequately demonstrated they meet the requirement under § 1446(b)(2)(A) that all properly joined and served Defendants must join in or consent to

the removal of the action. Accordingly, the Objecting Defendants' partial objection to the Report is overruled.

CONCLUSION

For the reasons set forth above, the Court **SUSTAINS** Plaintiff's Objections [169], **OVERRULES** the Objecting Defendants' Partial Objection [168], and **ADOPTS IN PART** and respectfully **DECLINES TO ADOPT IN PART** the Report [167]. Accordingly, Plaintiff's Motion to Remand [24] is **GRANTED**. This case is hereby remanded to the Richland County Court of Common Pleas.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

February 24, 2023
Spartanburg, South Carolina

EXHIBIT J

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASE NO. 23-01339

Peter D. Protopapas, as the Receiver for Payne & Keller Company on behalf of
Payne and Keller Company,

Plaintiff-Appellee,

v.

Travelers Casualty and Surety Company, f/k/a Aetna Casualty & Surety Company,

Defendant-Appellant

And

Zurich American Insurance Company; Continental Insurance Company; National
Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance
Company; Berkshire Hathaway Specialty Insurance Company, f/k/a Stonewall
Insurance Company; Lexington Insurance Company; Certain Underwriters at
Lloyd's of London and Various London Market Companies; South Carolina
Property and Casualty Insurance Guaranty Association; First State Insurance
Company, Birmingham Fire Insurance Company,

Defendants.

On Appeal from the U.S. District Court for the District of South Carolina
No. 3:21-cv-04086-DCC (Hon. Donald C. Coggins, Jr.)

DEFENDANT-APPELLANT TRAVELERS CASUALTY AND SURETY
COMPANY, f/k/a AETNA CASUALTY & SURETY COMPANY'S OPENING
APPELLATE BRIEF

WOMBLE BOND DICKINSON (US) LLP

Kevin A. Hall
kevin.hall@wbd-us.com
M. Todd Carroll
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803-454-6504

M. Elizabeth O'Neill
elizabeth.oneill@wbd-us.com
One Wells Fargo Center, Suite 3500
301 South College Street
Charlotte, North Carolina 28202-6037
704-350-6310

STEPTOE & JOHNSON LLP

Harry Lee
hlee@steptoe.com
Pro Hac Vice
1330 Connecticut Avenue, NW
Washington, DC 20036

*Attorneys for Defendant-Appellant Travelers Casualty
and Surety Company, f/k/a Aetna Casualty & Surety
Company*

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 23-1339 Caption: Protopapas v. Travelers Casualty and Surety Company

Pursuant to FRAP 26.1 and Local Rule 26.1,

Travelers Casualty and Surety Company
(name of party/amicus)

who is _____ Appellant _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO

2. Does party/amicus have any parent corporations? ☒ YES ☐ NO
If yes, identify all parent corporations, including all generations of parent corporations:

Travelers Casualty and Surety Company is 100% owned by Travelers Insurance Group Holdings Inc.; which is 100% owned by Travelers Property Casualty Corp.; which is 100% owned by The Travelers Companies, Inc. The Travelers Companies, Inc. is a publicly owned company.

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☒ YES ☐ NO

If yes, identify all such owners:

Please see Answer to #2 above. The Travelers Companies, Inc. is a publicly owned company.

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐ YES ☒ NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? ☐ YES ☒ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ M. Todd CarrollDate: April 13, 2023Counsel for: Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE ISSUES.....2

STATEMENT OF THE CASE.....3

SUMMARY OF THE ARGUMENT 6

STANDARD OF REVIEW 7

ARGUMENT 8

I. The Barton Doctrine is Inapplicable.....8

II. The Forum-Selection Clause is Inapplicable.....12

 A. The Berkshire Hathaway Policy is Irrelevant.....14

 B. The Forum-Selection Clause Has Not Been Triggered.....15

 C. No One Waived Their Removal Rights.....20

CONCLUSION 21

STATEMENT REGARDING ORAL ARGUMENT 21

CERTIFICATE OF COMPLIANCE.....24

TABLE OF AUTHORITIES

Cases

BAE Sys. Tech. Sol. & Serv., Inc. v. Republic of Korea’s Def. Acquisition Program Admin., 884 F.3d 463 (4th Cir. 2018) 19

Barton v. Barbour, 104 U.S. 126 (1881) 8

Empire Buggy Co. v. Moss, 151 S.E. 788 (S.C. 1930) 20

FindWhere Holdings, Inc. v. Sys. Env’t Optimization, LLC, 626 F.3d 752 (4th Cir. 2010) 1, 8

Francis v. Allstate Ins. Co., 709 F.3d 362 (4th Cir. 2013) 14

Gordon v. Nick, No. 96-1858, 162 F.3d 1155 (Table), 1998 WL 559734 (4th Cir. 1998) 10

Gross v. Weingarten, 217 F.3d 208 (4th Cir. 2000) 10

Grubb v. Donegal Mut. Ins. Co., 935 F.2d 57 (4th Cir. 1991) 20

Hadi v. McCune Wright Arevalo LLP, No. 2:18-cv-05104-SVW-FFM, 2018 WL 6675622 (C.D. Cal. Dec. 17, 2018) 11

Hunter v. Earthgrains Co. Bakery, 281 F.3d 144 (4th Cir. 2002) 7

Jarmuth v. Cox, 278 F. App’x 246 (4th Cir. 2008) 14

Johnson v. Key Equip. Fin., 627 S.E.2d 740 (S.C. 2006) 18

Mayo v. Bd. of Educ. of Prince George’s County, 713 F.3d 735 (4th Cir. 2013) ...13

McDaniel v. Blust, 668 F.3d 153 (4th Cir. 2012) 8, 9, 11

McGill v. Moore, 672 S.E.2d 571 (S.C. 2009) 15

Morris v. Jones, 329 U.S. 545 (1947) 9

Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC, 865 F.3d 181 (4th Cir. 2017) 20

Pinney v. Nokia, Inc., 402 F.3d 430 (4th Cir. 2005) 14

Poulter v. Bank of Am., N.A. by BAC Home Loans Servicing, LP, No. 9:14-cv-01921-RMG, 2014 WL 12770233 (D.S.C. July 30, 2014) 14

Quackenbush v. Allstate Ins. Co., 517 U.S. 706 (1996) 1

Seitz v. Freeman (In re CitX Corp.), 302 B.R. 144 (Bankr. E.D. Pa. 2003) 9

Town of Nags Head v. Toloczko, 728 F.3d 391 (4th Cir. 2013) 7

Statutes

28 U.S.C. § 1291 1

28 U.S.C. § 1332 1

28 U.S.C. § 1446(b)(2)(A) 13

JURISDICTIONAL STATEMENT

The district court had diversity subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.

The district court entered an order on February 24, 2023, granting a motion to remand filed by Plaintiff-Appellee Payne & Keller Company, by and through its Receiver, Peter D. Protopapas. Defendant-Appellant Travelers Casualty and Surety Company timely filed a notice of appeal on March 24, 2023.

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because the district court's remand order is based on abstention and the application of a forum-selection clause. *See generally Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 715 (1996) (holding that remand order based on abstention is appealable); *FindWhere Holdings, Inc. v. Sys. Env't Optimization, LLC*, 626 F.3d 752, 755 (4th Cir. 2010) (holding that “a remand order based on a forum selection clause is reviewable on appeal” and collecting cases).

STATEMENT OF THE ISSUES

I. The *Barton* doctrine protects court-appointed receivers from being sued outside of the receivership court for actions taken in the receiver's official capacity. Here, the district court, relying on the *Barton* doctrine, abstained from exercising jurisdiction despite the fact that a receiver is the plaintiff in this case and has no exposure to liability. Did the district court err in expanding the *Barton* doctrine beyond the limited boundaries this Court and others have established for *Barton* abstention?

II. A liability insurance policy issued to a company in receivership by one of the defendant insurers contains a service-of-suit or forum-selection provision stating that the insurer will not contest the jurisdiction of a court if the insured sues the insurer for "failure of the [insurer] to pay any amount claimed to be due" under the policy. Here, neither the insured nor its receiver has ever made a claim for any amount under that policy, the insurer has never failed to pay any amount claimed to be due under the policy, and there are no claims for money damages against the insurer. Despite the clearly unsatisfied conditions precedent to trigger the forum-selection provision, the district court construed the clause to require remand. Did the district court misinterpret the clause?

STATEMENT OF THE CASE

Payne & Keller Company is a defunct Texas entity that dissolved nearly 40 years ago, in 1986. JA182. It has become an occasional defendant in asbestos personal injury cases in several states, including in South Carolina. JA116. In one of those cases, a South Carolina state court judge, the Honorable Jean Hoefer Toal (ret.), sitting as Circuit Court Judge in the Court of Common Pleas for the Fifth Judicial Circuit, appointed Peter D. Protopapas to serve as the Receiver for Payne & Keller. JA83, JA87.

The appointment order provides that neither the Receiver nor Payne & Keller “may be sued outside this Court [*i.e.*, South Carolina Circuit Court] without obtaining the Receiver’s consent or an order of this court prior to doing so.” JA88; *see also* JA85. The appointment order does not purport to prevent a federal court from obtaining jurisdiction over a case like this one, where the Receiver is the plaintiff and has not been sued. After his appointment, the Receiver filed this lawsuit in South Carolina state court against Defendant-Appellant Travelers Casualty and Surety Company (“Travelers”) and several other insurers, seeking declarations regarding Payne & Keller’s historic liability insurance program. JA53.

Travelers removed the case to the U.S. District Court for the District of South Carolina on December 20, 2021, with the express consent of all properly joined and served defendants. *See* JA34. Travelers exercised its right to invoke the district

court's diversity jurisdiction under 28 U.S.C. § 1332, because the properly joined and served parties are completely diverse and the amount in controversy exceeds \$75,000.

On January 18, 2022, the Receiver moved to remand the case on two main grounds. JA595. First, he argued that complete diversity is lacking because both he and one of the defendants named by the Receiver, the South Carolina Property and Casualty Insurance Guaranty Association (the "Guaranty Association"), are citizens of the same state. JA604. Second, he argued that service-of-suit clauses in certain defendants' policies not only prevent them from removing the case to federal court, but also preclude them from consenting to another defendant's removal. JA609. Several months after the close of briefing, on June 17, 2022, the Receiver belatedly added a third argument based on the *Barton* doctrine. JA985.

The district court referred the Receiver's motion to a magistrate judge. After a hearing, the magistrate judge recommended remand because "[a]lthough the court has diversity jurisdiction and the *Barton* doctrine does not apply," the forum-selection clause in one defendant's policy contract effected a waiver of its right to remove the case or to consent to another defendant's removal. JA1042–1044. Travelers and the Receiver filed limited objections to the magistrate judge's report and recommendation. JA1046; JA1059. Travelers objected to the magistrate judge's report and recommendation with respect to the forum-selection clause,

JA1046, and the Receiver objected to the magistrate judge's conclusion that the *Barton* doctrine does not apply, JA1059. The Receiver abandoned his "lack of complete diversity jurisdiction" argument, effectively conceding that he had fraudulently joined the Guaranty Association as a defendant in a thinly-veiled effort to prevent diversity jurisdiction. JA1100–1101.

The district court adopted the magistrate judge's report and recommendation in part and declined to adopt it in part. JA1098. The district court first held that "[b]ecause neither Plaintiff nor Defendants object to the Magistrate Judge's finding that [the Guaranty Association] was fraudulently joined, the Court finds no clear error concerning this portion of the Report and adopts the Report's finding that diversity jurisdiction exists." JA1100–1101. Next, the district court declined to adopt the magistrate judge's finding that the *Barton* doctrine is inapplicable, finding instead that *Barton* and its progeny "act as a limitation on federal jurisdiction" and "to allow this matter to continue in federal court" would "interfere" with the state receivership court. JA1102–1103. Finally, the district court held that the alleged forum-selection clause in at least one of the defendant's insurance policies "acts as a waiver of its right to remove," rejecting various arguments as to the existence and applicability of the clause. JA1105–1107.

SUMMARY OF THE ARGUMENT

Both conditions for diversity subject matter jurisdiction indisputably exist: there is complete diversity of citizenship and the amount in controversy exceeds \$75,000. It is also undisputed that, prior to timely removing this case to federal district court, Travelers in fact obtained the express consent of all of the other defendants. The district court nonetheless granted the Receiver's motion to remand based on (1) its unprecedented expansion of the so-called "*Barton* doctrine," a narrow common law doctrine that has no applicability where, as here, the Receiver is the plaintiff and has no exposure to personal liability; and (2) its application of an irrelevant and inapplicable "service-of-suit" or forum-selection clause in an insurance policy of one of the defendants that in fact consented to Travelers' removal. The district court erred in both respects.

First, the *Barton* doctrine only requires authorization from an appointing court before a plaintiff can bring suit against a receiver in another forum. It does not apply where, as here, the Receiver is the plaintiff, he has not been sued, and he has no exposure to liability. Indeed, since its creation in 1881, not one court has ever applied the *Barton* doctrine in a case like this one, that is, until the district court's remand order below. The *Barton* doctrine simply does not apply here.

Second, the district court incorrectly held that the presence of a service-of-suit clause, often referred to as a forum-selection clause, in another defendant's

insurance contract with Payne & Keller effected a waiver of that defendant's removal rights and somehow precluded it from consenting to Travelers' removal. The service-of-suit clause did no such thing. Nor could it. The district court erred and its decision should be reversed because: (1) the lone policy with the service-of-suit clause is irrelevant to this dispute; (2) in any event, by its plain terms, the clause has not been triggered, so it cannot apply to effect a waiver of anyone's removal rights in this case, much less their right to *in fact* consent to Travelers' removal; and (3) no party intentionally relinquished their removal rights.

Travelers respectfully requests that this Court reverse the district court's remand order and direct this case back to the district court for further proceedings.

STANDARD OF REVIEW

Abstention: Although this Court reviews the district court's abstention order for an abuse of discretion, it must measure a decision to abstain against "the truism that the federal courts have a virtually unflagging obligation to exercise their jurisdiction." *Town of Nags Head v. Toloczko*, 728 F.3d 391, 395 (4th Cir. 2013) (internal quotation marks omitted) (quoting *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 280 (4th Cir. 2008)). Similarly, "an error of law by a district court"—such as the misapplication of the *Barton* doctrine in this case—"is by definition an abuse of discretion." *Hunter v. Earthgrains Co. Bakery*, 281 F.3d 144, 150 (4th Cir. 2002) (citations omitted).

Forum-Selection Clause: The Fourth Circuit reviews a lower court's interpretation of a contract *de novo*. See *FindWhere Holdings*, 626 F.3d at 755 (“This court reviews ‘de novo a district court’s decision on an issue of contract interpretation.’” (quoting *Seabulk Offshore v. American Home Assurance*, 377 F.3d 408, 418 (4th Cir. 2004))).

ARGUMENT

I. The Barton Doctrine is Inapplicable

The *Barton* doctrine is a narrow common law doctrine that sets forth the “general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained.” *Barton v. Barbour*, 104 U.S. 126, 128 (1881) (citation omitted) (emphasis added). The purpose behind such a limitation is straightforward and well-established: “The *Barton* doctrine serves the principle that a [receiver] ‘is an officer of the court that appoints him,’ and therefore that court ‘has a strong interest in protecting him from unjustified personal liability for acts taken within the scope of his official duties.’” *McDaniel v. Blust*, 668 F.3d 153, 157 (4th Cir. 2012) (quotation omitted). It is designed to ensure that serving as a receiver does not “‘become a more irksome duty,’” making it “‘harder for courts to find competent people to appoint[.]’” *Id.* (quotation omitted).

Courts agree that the doctrine is limited only to the distribution of an estate’s assets—litigation that may be related to the receivership in some capacity—but

litigation that does not involve actually distributing an estate's property is beyond *Barton's* reach. See generally *Morris v. Jones*, 329 U.S. 545, 549 (1947) ("The establishment of the existence and amount of a claim against the debtor in no way disturbs the possession of the liquidation court, in no way affects the title to the property, and does not necessarily involve a determination of what priority the claim should have."); *Seitz v. Freeman (In re CitX Corp.)*, 302 B.R. 144, 152-53 (Bankr. E.D. Pa. 2003) ("In cases decided after *Barton*, however, the Supreme Court explained that there were two separate components to the receivership court's supervision of property under its control: liquidation of claims against the property and distribution of property to satisfy allowed claims according to the appropriate priority. . . . The Supreme Court explained that the federal common law restriction upon suits against receivers in non-appointing courts was actually designed to protect only the latter component." (citation omitted)).

Accordingly, the *Barton* doctrine plays no role unless a receiver is being summoned into court as a defendant with potential exposure for personal liability—which, of course, is not the case here. See, e.g., *McDaniel*, 668 F.3d at 157 ("To determine whether a complained-of act falls under the *Barton* doctrine, courts consider the nature of the function that the [receiver] or his counsel was performing during commission of the actions for which liability is sought." (citation omitted)); *Gordon v. Nick*, No. 96-1858, 162 F.3d 1155 (Table), 1998 WL 559734, at *2 (4th

Cir. 1998) (“This holding, generally referred to as the ‘*Barton* doctrine,’ prohibits a party from suing a trustee in a non-appointing court for acts done in the official capacity of the trustee and within the trustee’s authority as an officer of the court.”).

For more than 100 years, until the district court issued its remand order in this case, not one court has ever construed the *Barton* doctrine in the manner advanced by the Receiver. As the magistrate judge aptly explained in her report and recommendation:

[S]ince the pronouncement of *Barton* in 1893 [sic: 1881], no precedential authority has extended the doctrine to the vast expanses [the Receiver] suggests. And no American court has apparently applied it in the manner urged by [the Receiver] here. Rather, the doctrine has consistently been applied to protect receivers or trustees from liability for conduct undertaken in their court-appointed capacities.

JA1039. *Barton* abstention simply does not pertain here—there are no claims pending against the Receiver, who is the plaintiff, and no one seeks to impose liability on him.

Because an order from a state court generally cannot divest a federal court of jurisdiction where, as here, the U.S. Constitution or Congress otherwise confers it, *see, e.g., Gross v. Weingarten*, 217 F.3d 208, 221 (4th Cir. 2000) (“The Supreme Court has repeatedly and unequivocally rejected the deputy receiver’s contention that a state may oust the federal courts of jurisdiction by creating an exclusive forum for claims against an estate.”), and because *Barton* serves a limited function of

preventing both harassing litigation against a receiver and attempts by a claimant to secure an estate's assets other than in "the appropriate priority," courts have crafted a three-part test to determine when the *Barton* doctrine prevents litigation outside of the appointing court without that court's consent:

- (1) "The plaintiff is attempting to 'initiate[] an action in another forum'";
- (2) "The action is 'against a [receiver] or other officer appointed by the . . . court'"; and
- (3) "The allegedly unlawful acts were 'done in the officer's official capacity.'"

Hadi v. McCune Wright Arevalo LLP, No. 2:18-cv-05104-SVW-FFM, 2018 WL 6675622, at *5 (C.D. Cal. Dec. 17, 2018) (quotation and other citation omitted) (first set of brackets supplied by the *Hadi* court).

This Court agrees with this framework. *See, e.g., McDaniel*, 668 F.3d at 157 ("To determine whether a complained-of act falls under the *Barton* doctrine, courts consider the nature of the function that the [receiver] or his counsel was performing during commission of the actions for which liability is sought.").

Here, none of the *Barton* elements are met. The Receiver is the plaintiff. He has not been sued. There is no action "against" him. No one alleges that he has engaged in any "unlawful acts" in his "official capacity" as the Payne & Keller Receiver or otherwise. There are no "actions for which liability is sought," and he

has no exposure to personal liability. Indeed, none of the defendants are attempting to secure any assets from the Payne & Keller estate, much less out of proper priority.¹

Because the *Barton* doctrine is wholly inapplicable here, the district court was required to retain jurisdiction over the case because diversity subject matter jurisdiction plainly exists.

II. The Forum-Selection Clause is Inapplicable

The district court held that the presence of a service-of-suit or forum-selection clause in another defendant's insurance contract with Payne & Keller not only effected a waiver of that defendant's right to remove the case to federal court, it also somehow prohibited that defendant from giving Travelers its consent to remove—which all parties agree in fact occurred. Specifically, the district court held that “Defendant Berkshire Hathaway's ‘service of suit’ clause acts as a waiver of its right

¹ In addition to the absence of any elements of the *Barton* doctrine, there is no way to square the Receiver's argument that all claims involving a receivership, including claims the Receiver initiated, must be addressed before the appointing court, with basic norms of personal jurisdiction and due process. For instance, a South Carolina state court cannot require defendants who lack minimum contacts with the state to come into that court at the insistence of a receiver. It cannot be the law that a state-court appointed receiver can force out-of-state defendants to appear in a state-court proceeding that the receiver himself initiated, and no court has ever held as much. And it is not the law that a receiver can sue a defendant in the state appointing court and thereby *ipso facto* destroy the defendant's right to a federal forum in which to defend itself, where diversity jurisdiction exists. A state court judge does not wield the extraordinary power to altogether strip a federal court of jurisdiction where the U.S. Constitution or Congress otherwise confers it, as is the case here.

to remove,” JA1105, and “effectively waived its right to validly consent to” Travelers’ removal, JA1103. The contract provision did no such thing.

Berkshire Hathaway indisputably consented to Travelers’ removal, as did all of the other properly joined and served defendants, as the removal statute requires. See 28 U.S.C. § 1446(b)(2)(A) (providing that “all defendants who have been properly joined and served must join in or consent to the removal of the action”). This Court uses a “less formal process” for satisfying this statutory requirement: “[A] notice of removal signed and filed by an attorney for one defendant representing unambiguously that the other defendants consent to the removal satisfies the requirement of unanimous consent for purposes of removal.” *Mayo v. Bd. of Educ. of Prince George’s County*, 713 F.3d 735, 741-42 (4th Cir. 2013). Travelers did just that in an affidavit filed with its notice of removal. See JA145–146. Standing alone, the affidavit satisfies this Court’s test for compliance with the statutory “rule of unanimity,” and Travelers has carried its burden of proving that removal was proper.

The district court nonetheless held that, in effect, it was impossible for all of the defendants to consent to the removal, because the forum-selection clause in Berkshire Hathaway’s policy somehow rendered its consent “invalid,” thereby preventing Travelers from exercising its own removal rights. The district court erred and its decision should be reversed for three main reasons: (1) the Berkshire Hathaway policy is irrelevant to this dispute, so the forum-selection clause in that

policy is likewise irrelevant; (2) even if the Court were to consider the forum-selection clause in Berkshire Hathaway's policy, or similar clauses alleged to be in certain other defendants' policies, the clause has not been triggered, so it cannot possibly effect a waiver of anyone's removal rights; and (3) no party knowingly and intentionally relinquished its known rights, *i.e.*, no party waived anything..

A. The Berkshire Hathaway Policy is Irrelevant

In his Complaint, the Receiver alleges that three defendants—Hartford/First State, Lloyd's, and the London Market Insurers—issued policies to Payne & Keller with service-of-suit clauses. *See* JA58–60 (Compl. ¶¶ 10-11).² But there is no competent evidence that any such policies exist. Perhaps recognizing the weakness of his allegations, in a supplemental filing made months after his motion to remand,

² Nearly a month after this case was removed to federal court, the Receiver filed an Amended Complaint, which, among other things, added First State as a defendant. JA557. Given the timing of the Amended Complaint, it can have no bearing on the removal analysis. *See, e.g., Francis v. Allstate Ins. Co.*, 709 F.3d 362, 367 (4th Cir. 2013) (“The removability of a case ‘depends upon the state of the pleadings and the record at the time of the application for removal’” (quotation and other citation omitted)); *Jarmuth v. Cox*, 278 F. App'x 246, 247 (4th Cir. 2008) (“When amendment to the complaint occurs after removal, the court looks to the original complaint to determine the propriety of removal.” (citations omitted)); *Pinney v. Nokia, Inc.*, 402 F.3d 430, 443 (4th Cir. 2005) (“Because amendment occurred after removal, we look at the original complaints rather than the amended complaints in determining whether removal was proper.” (citation omitted)); *Poulter v. Bank of Am., N.A. by BAC Home Loans Servicing, LP*, No. 9:14-cv-01921-RMG, 2014 WL 12770233, at *3 (D.S.C. July 30, 2014) (“[L]ong-standing precedent holds that the right to remove is determined according to the pleadings at the time of removal.” (citations omitted)).

the Receiver submitted an excerpt of a policy issued by a different defendant, Berkshire Hathaway, which contains a service-of-suit clause. See JA962. At no point prior to that supplemental filing did the Receiver even suggest that Berkshire Hathaway issued a policy to Payne & Keller with a service-of-suit clause. In any event, the Berkshire Hathaway policy is irrelevant. It did not go into effect until 1987, see JA962, after Payne & Keller ceased operations in South Carolina, see JA62 (Compl. ¶ 19, alleging Payne & Keller “was authorized to conduct business in South Carolina from at least 1967 to 1986”). In other words, this litigation does not implicate that policy.

A forum-selection clause in an irrelevant contract cannot apply to waive Berkshire Hathaway’s removal rights in this case, let alone prevent it from consenting to Travelers’ removal.

B. The Forum-Selection Clause Has Not Been Triggered

Even if the Receiver could get past that issue, the forum-selection clause in Berkshire Hathaway’s policy has not been triggered. South Carolina law requires contracts to be read as a whole. See, e.g., *McGill v. Moore*, 672 S.E.2d 571, 574 (S.C. 2009) (“A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause.” (citation omitted)). By its plain terms, the clause comes into play only after the insurer (Berkshire Hathaway)

has failed to pay an “amount claimed to be due” under the policy upon “the request of the insured” (Payne & Keller):

It is agreed that in the event of the failure of the company hereon to pay any amount claimed to be due hereunder, the company hereon, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. . . .

JA970 (emphasis added) (capitalization omitted). Those triggering events have not happened. Indeed, they are not even alleged to have happened.

There is no allegation, much less evidence, that Berkshire Hathaway failed to pay any amount claimed to be due under the policy, or that Payne & Keller requested such payment in the first place. The Receiver’s Complaint does not include a cause of action against Berkshire Hathaway for failing to pay amounts allegedly owed to Payne & Keller. There is only one breach of contract claim, and it is not asserted against Berkshire Hathaway. JA75 (Compl. ¶¶ 66–70).

The absence of such allegations is not a surprise. Berkshire Hathaway provided only excess (umbrella) insurance coverage—coverage Payne & Keller would never have a reason to demand unless its primary coverages were exhausted. JA67 (Compl. ¶ 35). And there is no suggestion in the Receiver’s Complaint that the primary policies below the umbrella policies are exhausted such that Berkshire Hathaway would have any present duty to pay anything. The same is true for the

other excess insurers that allegedly issued policies with forum-selection clauses (Hartford/First State, Lloyd's, and the London Market Insurers).³

The clause thus cannot apply to preclude removal in this case. To hold otherwise would effectively rewrite the clause to say that Berkshire Hathaway agrees to litigate in the Receiver's chosen forum no matter what. But that is not what the clause says. To the contrary, the parties expressly agreed that it only applies in the event Berkshire Hathaway fails to pay an amount that Payne & Keller claims is due under the policy. JA970. The Receiver cannot seriously suggest that Payne & Keller has satisfied those triggering conditions here.

The district court held that a generic allegation in the Receiver's Complaint was sufficient to trigger the service-of-suit clause—specifically, an allegation that Berkshire Hathaway and Lloyd's have failed to fully acknowledge or accept their “insuring obligations.” See JA1107. That is not sufficient. By its plain terms, the forum-selection clause only applies when two specific events have taken place: (1)

³ See JA58-60 (Compl. ¶¶ 10–11) (alleging similar service-of-suit clauses in these three insurers' insurance contracts with Payne & Keller that are triggered only “in the event of the failure of [the insurer] to pay any amount claimed to be due” under the policy at the request of the insured); JA75 (Compl. ¶¶ 66–70) (asserting a breach of contract claim only against different insurers); JA81 (Compl. ¶ Prayer for Relief (F) (seeking contract damages only against insurers that do not have this forum-selection clause in their policies). Accordingly, even if every insurer alleged to have a service-of-suit clause with Payne & Keller actually does have such a contractual agreement, those clauses are inapplicable because, like the clause in the Berkshire Hathaway policy, the triggering events have not occurred, nor are they even alleged to have occurred.

the policyholder makes a request for payment under the policy, and (2) the insurer fails to pay the amount claimed to be due. Neither of those triggering events are alleged to have happened, and the Receiver specifically does not seek money damages from Berkshire Hathaway.

By disregarding the condition precedent to activating the forum-selection clause, the district court expanded the clause far beyond the limited circumstance in which those parties agreed it would apply. That was legal error. *See, e.g., Johnson v. Key Equip. Fin.*, 627 S.E.2d 740, 742 (S.C. 2006) (holding that a case challenging the formation of a lease agreement could rightly be brought in South Carolina despite the parties' New York forum-selection clause because the clause was "narrowly tailored to certain activities between the parties," rather than broadly applying to "all claims arising between the two parties").

The district court also suggested that, in the prayer for relief at the end of his Complaint, the Receiver "seek[s] damages against all defendants[.]" JA1107. Respectfully, that is incorrect. What the prayer for relief actually says is that the Receiver only seeks damages against American General, Zurich, Aetna, R.L. Jarrett, and U.S. Risk—not against Berkshire Hathaway or the other excess insurers that allegedly issued policies with service-of-suit clauses. *See* JA78–81 (Compl. Prayer for Relief at ¶¶ F, H).

Notably, the forum-selection clause is merely permissive; it is not mandatory and thus it is not presumptively enforceable. The “presumption of enforceability” of a forum-selection clause “only applies if the forum selection clause is mandatory rather than permissive.” *BAE Sys. Tech. Sol. & Serv., Inc. v. Republic of Korea’s Def. Acquisition Program Admin.*, 884 F.3d 463, 470 (4th Cir. 2018) (citation omitted). “A mandatory clause requires litigation to occur in a specified forum; a permissive clause permits litigation to occur in a specified forum but does not bar litigation elsewhere.” *Id.* (citation omitted).

“A forum selection clause is permissive unless it contains ‘specific language of exclusion.’” *Id.* at 472 (citation omitted). The clause here does not contain any such language. Rather, it simply says that, in the event certain specified events have occurred—*i.e.*, the insured requests and the insurer fails to pay an amount claimed to be due under the policy, neither of which has happened—then the insurer “will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.” JA970. It contains no language that excludes jurisdiction in any particular court. In effect, the clause merely waives objections to personal jurisdiction.

As a conditional consent to jurisdiction, the clause does not bind the parties to litigate in any particular forum, nor does it bar removal to federal court. And it certainly does not require remand when the conditions required to trigger the clause are not even alleged to have been satisfied. The forum-selection clause simply does not apply here, and the district court erred by misconstruing it to require remand.

C. No One Waived Their Removal Rights

There is no evidence that any party intended to relinquish their removal rights. Under South Carolina law, a party will not be found to have waived a right unless it is clear, purposeful, and intentional, and no acts are taken contrary to the supposed waiver. *See Empire Buggy Co. v. Moss*, 151 S.E. 788, 792 (S.C. 1930) (adopting the trial court's decision as its own, which held "[t]he proof must be clear that the party against whom the doctrine of waiver and estoppel is invoked knew what his rights in the premises were, and purposely, intentionally, relinquished them," and "one cannot be held to have waived his rights under a contract if he continues to demand them"). This Court has likewise held that a party will not be deemed to have waived its right to remove a case unless such a waiver is "clear and unequivocal." *See Grubb v. Donegal Mut. Ins. Co.*, 935 F.2d 57, 59 (4th Cir. 1991) ("[A]lthough a defendant may yet waive its 30-day right to removal by demonstrating a 'clear and unequivocal' intent to remain in state court, such a waiver should only be found in 'extreme situations.'" (citation omitted)). "[A] finding of

waiver is appropriate only in ‘extreme situations,’ when judicial economy, fairness, and comity demand it.” *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*, 865 F.3d 181, 186 (4th Cir. 2017) (citation omitted).

The forum-selection clause in Berkshire Hathaway’s policy (and the similar alleged clauses in certain other defendants’ policies) cannot be construed as a clear and intentional expression of an intent to waive removal rights. The provision does not say anything about removal, much less clearly express an intent to forego federal jurisdiction. And of course, there is no indication that Berkshire Hathaway or any of the other defendants intended to contract away Travelers’ removal rights (nor could they). The district court’s decision to the contrary should be reversed.

CONCLUSION

The district court improperly expanded the *Barton* doctrine far beyond the limited circumstances this Court and others have established for it to apply. It likewise applied a forum-selection clause despite the failure to allege, let alone prove, satisfaction of important conditions precedent. Accordingly, Travelers respectfully requests that this Court reverse the district court’s order and send this case back to the district court to proceed on its merits.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a) and Fourth Circuit Rule 34(a), Travelers respectfully requests oral argument. This appeal presents

important questions concerning the *Barton* doctrine—the district court’s opinion represents the first time nationally that any court has applied this abstention doctrine when a receiver is the plaintiff and when the receiver has no potential liability—and the applicability of service-of-suit or forum-selection clauses to removal. A robust discussion of these novel issues will assist the Court in its consideration of this appeal.

Signature Page Attached

Dated: June 21, 2023

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

Kevin A. Hall
kevin.hall@wbd-us.com
M. Todd Carroll
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803-454-6504

M. Elizabeth O'Neill
elizabeth.oneill@wbd-us.com
One Wells Fargo Center, Suite 3500
301 South College Street
Charlotte, North Carolina 28202-6037
704-350-6310

STEPTOE & JOHNSON LLP

Harry Lee
hlee@steptoe.com
Pro Hac Vice
1330 Connecticut Avenue, NW
Washington, DC 20036

*Attorneys for Defendant-Appellant Travelers Casualty
and Surety Company, f/k/a Aetna Casualty & Surety
Company*

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7), I certify that this Appellant's Opening Brief has 5,209 words and was prepared using Times New Roman, 14-point font.

s/ M. Todd Carroll

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 21st day of June, 2023, I caused this Appellant's Opening Brief to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to counsel of record:

John B. White, Jr.
Marghretta Hagood Shisko
JOHN B. WHITE, JR., P.A. LAW FIRM
291 S. Pine Street P.O. Box 2465 (29304)
Spartanburg, SC 29302 (864) 594-5988
jwhite@johnbwhitelaw.com
mshisko@johnbwhitelaw.com

Jonathan McLean Robinson
Shanon N. Peake
SMITH ROBINSON HOLLER DUBOSE & MORGAN, LLC
126 North Main Street
P.O. Box 580
Sumter, SC 29151
(803) 778-2471
jon@smithrobinsonlaw.com
shanonp@smithrobinsonlaw.com

David B. Salmons
Bryan M. Killian
Amanda L. Salz
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 739-3000
david.salmons@morganlewis.com
bryan.killian@morganlewis.com
amanda.salz@morganlewis.com

Brian Montgomery Barnwell
RIKARD & PROTOPAPAS, LLC
2110 North Beltline Boulevard
Columbia, SC 29204
(803) 978-6111
bb@rplegalgroup.com

Counsel for Appellee

s/ M. Todd Carroll

EXHIBIT K

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO. 2021-CP-40-03484

**LENORA CHILDERS, Individually and as
Personal Representative of the Estate of
LEWIS C. CHILDERS,**

Plaintiffs,

v.

**Davis Mechanical Contractors, Inc., Flame
Refractories, Inc., General Boiler Casing
Company, Inc., HEFCO, Inc., J.R. Deans
Company, Inc., Payne & Keller Company,
SFB, Incorporated, Stafford Insulation
Company, Standard Insulation Company of
N.C., Inc., Systra Engineering, Inc., United
Construction, Co. of Rome, Inc., Wind Up,
Ltd., Individually and as Successor-in-
Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.,**

Defendants.

**Flame Refractories, Inc., United
Construction Co. of Rome, Inc., Wind Up,
Ltd., Individually and as Successor-in-
Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co., and
Payne & Keller Company By and Through
Their Duly Appointed Receiver Peter D.
Protopapas,**

Third-Party Plaintiffs,

v.

**Zurich American Insurance Company
Individual and as Successor to Northern
Insurance Company of New York,
Maryland American General Insurance
Company, and Maryland Casualty**

**SKRLA, LLC'S RESPONSES TO
THIRD-PARTY PLAINTIFF PAYNE &
KELLER COMPANY'S
FIRST SET OF REQUESTS FOR
PRODUCTION**

Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddle; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company); Hartford Accident and Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., and Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor in interest to CCI Insurance Company, as successor in interest to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party Defendants.

TO: MARGHRETTA H. SHISKO, ESQ., COUNSEL FOR THIRD-PARTY PLAINTIFF PAYNE & KELLER COMPANY

COMES NOW Third-Party Defendant SKRLA, LLC (“SKRLA”), by and through its undersigned counsel, and hereby responds to Third-Party Plaintiff Payne & Keller Company’s (“Payne & Keller” or “Receiver”) First Set of Document Requests pursuant to Rule 34 of South Carolina Rules of Civil Procedure. SKRLA responds to these Requests for Production and makes the accompanying production without prejudice to its objections to the Court’s exercise of personal jurisdiction over SKRLA.

GENERAL OBJECTIONS

SKRLA makes the following General Objections to each of the Receiver’s Requests for Production. These General Objections are incorporated into each of SKRLA’s specific responses to the Receiver’s Requests for Production.

1. SKRLA objects to the Definitions and Instructions contained in the Requests to the extent that they attempt to impose obligations upon it that are inconsistent with or beyond those imposed by the South Carolina Rules of Civil Procedure, the applicable law, or any orders issued by the Court.

2. SKRLA construes each document request not to seek the identification or contents of legal memoranda, drafts of pleadings, attorney notes, or documents created for this litigation. To the extent any Requests seek production of these materials, SKRLA objects to these Requests as seeking materials protected by the attorney-client privilege and/or the work product doctrine.

3. SKRLA objects to responding to any of the Requests to the extent that they call for the production of documents protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege, protection, restriction or immunity from discovery.

4. SKRLA objects to the Requests’ definitions of “Concerning,” “Relating,” and

“You” on the basis that these definitions are so broad that they render the Requests containing those words incomprehensible or, at best, overly broad. In responding to these Requests, SKRLA construes these words to have their commonly understood meanings.

5. To the extent the Receiver’s Requests for Production and the definitions therein seek the production of documents beyond those in the custody and control of SKRLA, SKRLA objects to the Requests for Production as overly broad and as inconsistent with South Carolina Rule of Civil Procedure 34. Also, to the extent the Receiver’s Requests for Production and the definitions therein seek the production of documents that are in the custody and control of Rexel USA, Inc. (“Rexel”) and/or Compass Risk Services, Inc. (“Compass”) but that do not relate specifically to SKRLA, SKRLA objects to the Requests for Production as duplicative, overly broad, unduly burdensome, and inconsistent with South Carolina Rule of Civil Procedure 34.

6. SKRLA has custody and control over dozens of case files of asbestos lawsuits related to “Payne & Keller,” as that term is defined in the definition section of these Requests. SKRLA objects to any Requests to the extent they require SKRLA to review those files because doing so would be overly burdensome and not proportional to the needs of the case. SKRLA further objects to any Requests to the extent they seek the production of materials contained in such case files that are protected by the attorney-client privilege or work product doctrine.

RESPONSES TO REQUESTS

1. All Documents Concerning Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation.

2. All Documents Concerning the Corporate and Transactional History of Payne & Keller, including, but not limited to, as they Relate to You and/or Rexel.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

3. All Documents Concerning Your Corporate and Transactional History.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

4. All Documents Concerning the Corporate and Transactional History of Rexel.

RESPONSE: None.

5. All Documents Concerning any agreement, including the agreement itself, between You and Compass or Taylor Risk.

RESPONSE: None.

6. All Documents Related to any claims that You have ever submitted or tendered to any insurer of Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. To the extent that this Request seeks production of the underlying case files, SKRLA objects to the Request as seeking documents that are not relevant to any claim or defense in this litigation, not proportional to the needs of the case, and seeking documents protected by the attorney-client privilege and work product doctrine.

7. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Payne & Keller.

RESPONSE: None.

8. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Compass or Taylor Risk.

RESPONSE: None.

9. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Rexel.

RESPONSE: None.

10. All Documents Concerning any Correspondence, including the Correspondence itself, between You and AIG.

RESPONSE: None.

11. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Bowman and Brooke.

RESPONSE: None.

12. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Continental.

RESPONSE: None.

13. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Berkshire.

RESPONSE: None.

14. All Documents Concerning any Correspondence, including the Correspondence itself, between You and the Guaranty Association.

RESPONSE: None.

15. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Hartford.

RESPONSE: None.

16. All Documents Concerning any Correspondence, including the Correspondence itself, between You and First State.

RESPONSE: None.

17. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Lloyd's.

RESPONSE: None.

18. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Medmarc.

RESPONSE: None.

19. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Resolute Management.

RESPONSE: None.

20. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Travelers.

RESPONSE: None.

21. All Documents Concerning any Correspondence, including the Correspondence itself, between You and AIG.

RESPONSE: None.

22. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Allianz.

RESPONSE: None.

23. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Zurich.

RESPONSE: None.

24. All Documents Concerning any Correspondence, including the Correspondence itself, between You and Highlands.

RESPONSE: None.

25. All Documents Concerning any Correspondence, including the Correspondence itself, between You and any insurer Related to insurance coverage for, and claims arising from, Payne & Keller.

RESPONSE: None.

26. All Documents Concerning any agreement, including the agreement itself, between You and any Person involved in any Dispute Related to Payne & Keller.

RESPONSE: Subject to the general objections, none.

27. All Documents Relating to any invoices Concerning any work performed for any Person involved in any Dispute Related to Payne & Keller.

RESPONSE: SKRLA objects to this Request as vague, ambiguous, overly broad, and unduly burdensome, as SKLRA has no way to discern each and every “Person involved in any Dispute Related to Payne & Keller,” as those terms are defined in the definitions provided herein. Subject to this objection, SKRLA states that it is not aware of any responsive documents in its possession.

28. All Correspondence Concerning any Dispute Related to Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. To the extent that this Request seeks production of the underlying case files, SKRLA objects to the Request as seeking documents that are not relevant to any claim or defense in this litigation, not proportional to the needs of the case, and seeking documents protected by the attorney-client privilege and work product doctrine.

29. All Documents or case files Related to any Dispute Related to Payne & Keller.

RESPONSE: SKRLA objects to this Request as vague, ambiguous, overly broad, and unduly burdensome, as SKLRA has no way to discern each and every "any Dispute Related to Payne & Keller," as those terms are defined in the definitions provided herein. SKRLA further objects to this Request as seeking documents that are not relevant to any claim or defense in this litigation, not proportion to the needs of the case, and seeking documents protected by the attorney-client privilege and work product doctrine. Producing all documents or case files regarding any litigation related to Payne & Keller would require SKRLA to conduct a privilege and work product review with respect to thousands of pages of documents, all or most of which would not be expected to have any relevance to this litigation.

30. All Correspondence with any attorney responsible for handling the defense of Payne & Keller in any Dispute Related to Payne & Keller.

RESPONSE: SKRLA objects to this request on the grounds of the attorney-client privilege and the work product doctrine, and because the Request is overly broad, unduly burdensome, seeks documents that are not relevant to any claim or defense in this litigation,

and is not proportionate to the needs of the case. Producing all correspondence regarding any litigation related to Payne & Keller would require SKRLA to conduct a privilege and work product review with respect to thousands of pages of documents, all or most of which would not be expected to have any relevance to this litigation.

31. All Correspondence Concerning any Dispute You tendered to any insurer of Payne & Keller, including, but not limited to, any response(s) from any such insurer of Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

32. All Documents evidencing any defense or indemnity payment from any insurer of Payne & Keller Concerning any Dispute Related to Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

33. All transcripts of any depositions, and all exhibits to such depositions, taken in any Dispute Related to Payne & Keller.

RESPONSE: None.

34. All transcripts of any trial testimony taken in any Dispute Related to Payne & Keller.

RESPONSE: None.

35. All affidavits filed, submitted, or exchanged by or between the parties in any Dispute Related to Payne & Keller.

RESPONSE: None.

36. All court papers, filings, or orders from any Dispute Related to Payne & Keller, including, but not limited to, any exhibits, attachments, appendices, or annexes to such court papers, filings, or orders.

RESPONSE: To the extent this Request seeks production of publicly filed documents, SKRLA objects on the basis that these documents are equally accessible to the Receiver. SKRLA also objects to this Request as overly broad and on the basis that it has no temporal scope. Subject to those objections, SKRLA states that it has no responsive documents beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

37. All Documents Reflecting the business activities of Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

38. All Documents Reflecting the geographic locations of Payne & Keller's work sites.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

39. All Documents Reflecting the Identities of any and all directors, officers, or employees of Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

40. All photographs, schematics, blueprints, or maps depicting anything Related to Payne & Keller.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

41. All Documents Related to any insurance policy, of any type, that was issued to Payne & Keller at any time, or any insurance policy, of any type, that has either "Payne & Keller Corporation" or "Payne & Keller Company" as the named insured or an additional insured.

RESPONSE: None.

42. All Documents Related to any insurance policy, of any type, issued to You at any time, or any insurance policy, of any type, that has You as either the named insured or an additional insured.

RESPONSE: None.

43. All Documents Related to any insurance policy, of any type, issued to Rexel at any time, or any insurance policy, of any type, that has Rexel as either the named insured or an additional insured.

RESPONSE: None.

44. All Documents concerning any release of Payne & Keller (including the release itself) Concerning any Asbestos-Related Claim or the settlement or other resolution of any Asbestos-Related Claim, and all Documents Concerning any Related settlement payment.

RESPONSE: SKRLA objects to this request on the grounds of the attorney-client privilege and the work product doctrine, and because the Request is overly broad, unduly burdensome, seeks documents that are not relevant to any claim or defense in this litigation,

and is not proportionate to the needs of the case. Producing all documents regarding the resolution of any Asbestos-Related Claim would require SKRLA to conduct a privilege and work product review with respect to thousands of pages of documents, all or most of which would not be expected to have any relevance to this litigation.

45. All Documents Concerning any actuarial studies that You, Rexel, or Compass have conducted to estimate Your current or future risk, exposure, or liability Relating to Asbestos-Related Claims.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

46. All Documents Concerning any actuarial or other studies that You, Rexel, or Compass have conducted to estimate the current or future valuation of insurance assets available to respond to Your current or future liability(ies) Relating to Asbestos-Related Claims.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

47. All Documents Reflecting any tenders or tender logs that You submitted to any insurance company Related to Asbestos-Related Claims.

RESPONSE: None beyond the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation.

48. All Documents Identifying, Stating, or Describing the relationship (including, but not limited to, the corporate relationship) between Dumez USA; Dumez, S.A.; Dumez, T.P. and/or Dumez, International, on the one hand, and SKRLA, on the other hand.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

49. All Documents Concerning any agreements, including the agreements themselves, with Dumez that were signed by Bernard Gautier on behalf of SKRLA.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

50. All Documents Concerning any bylaws, articles of incorporation, or other corporate formation or alteration Documents Relating to SKRLA.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

51. All Documents Reflecting any business activities of SKRLA.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those

third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

52. All Documents Reflecting the geographic locations of any SKRLA work sites.

RESPONSE: SKRLA refers the Receiver the documents produced herewith, Bates labeled SKRLA000001–000371.

53. All Documents reflecting the Identities of any and all directors, officers, or employees of SKRLA.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

54. All photographs, schematics, blueprints, or maps depicting anything Related to SKRLA.

RESPONSE: None.

55. All Documents Concerning the merger of Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, Inc. with and into Payne & Keller, Inc., with Payne & Keller, Inc. as the surviving entity, on or about December 30, 1982, as referenced in the document at REXEL000094.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

56. All Documents Concerning Payne & Keller, Inc. changing its name to Payne & Keller Company, on or about December 30, 1982, as referenced in the document at REXEL000094.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

57. All Documents concerning any agreements (including, but not limited to, service agreements), including the agreements themselves, in which Payne & Keller agreed to indemnify any Person from financial responsibility for any personal injury or property damage Disputes arising from work done by Payne & Keller and/or its employees.

RESPONSE: None.

58. All Documents Concerning the "Purchase Agreement," made and entered into on October 7, 1986, by and among Payne & Keller Company and Bayou-Maintenance, Inc., Dumez U.S.A. and Payne & Keller Corporation, on the one hand, and Jacobs Engineering Group, Inc., on the other, whereby substantially all of the assets of Payne & Keller Company were sold to Jacobs Engineering Group, Inc., as referenced in the document at REXEL000093 (hereinafter, the "Jacobs Purchase Agreement").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

59. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Jacobs Purchase Agreement, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

60. All Documents Concerning the intent, reason(s), and/or purpose(s) of contractually agreeing (as part of the Jacobs Purchase Agreement) to defend, indemnify, and hold harmless Jacobs Engineering Group, Inc. for losses arising prior to the date of the Jacobs Purchase Agreement, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

61. All Documents Concerning Article Nine of the Jacobs Purchase Agreement (entitled "OBLIGATIONS OF SELLERS AND SHAREHOLDER AFTER THE CLOSING").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those

third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

62. All Correspondence with any Person(s) Concerning Article Nine of the Jacobs Purchase Agreement (entitled “OBLIGATIONS OF SELLERS AND SHAREHOLDER AFTER THE CLOSING”).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

63. All Documents Concerning Payne & Keller Company changing its name to Frentex Enterprises Company, on or about October 20, 1986, as referenced in the document at REXEL000094 (hereinafter, the “P&K Co. Name Change”).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

64. All Documents Concerning the intent, reason(s), and/or purpose(s) of the P&K Co. Name Change, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers’ compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those

third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

65. All Documents Concerning Payne & Keller Corporation changing its name to Frentex Enterprises Corporation, on or about October 23, 1986, as referenced in the document at REXEL000093 (hereinafter, the “P&K Corp. Name Change”).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

66. All Documents Concerning the intent, reason(s), and/or purpose(s) of the P&K Corp. Name Change, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers’ compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

67. All Documents Concerning Frentex Enterprises Company changing its name to Frentex Enterprises Company of Texas, on or about October 24, 1986, as referenced in the document at REXEL000094 (hereinafter, the “Frentex Co. Name Change”).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those

third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

68. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Frentex Co. Name Change, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

69. All Documents Concerning the dissolution of Bayou-Maintenance, Inc., on or about November 3, 1986, as referenced in the document at REXEL000097 (hereinafter, the "BMI Dissolution").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

70. All Documents Concerning the intent, reason(s), and/or purpose(s) of the BMI Dissolution, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

71. All Documents Concerning the dissolution of Frentex Enterprises Company of Texas, on or about December 3, 1986, as referenced in the document at REXEL000094 (hereinafter, the "FECT Dissolution").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

72. All Documents Concerning the intent, reason(s), and/or purpose(s) of the FECT Dissolution, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

73. All Documents Concerning the merger of Frentex Enterprises Corporation with and into SKRLA, Inc., with SKRLA, Inc. as the surviving company, on or about May 12, 1989, as referenced in the document at REXEL000090 (hereinafter the "Frentex/SKRLA Merger").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

74. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Frentex/SKRLA Merger, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

75. All Documents Concerning the "Sale of Stock Agreement," made and entered into as of July 31, 1989, between Dumez, S.A.; Dumez, T.P.; and Dumez International, on the one hand, and Westburne Supply, Inc., on the other hand, whereby Westburne Supply, Inc. purchased the shares of SKRLA, Inc., as referenced in the document at REXEL000090 (hereinafter, the "Westburne Purchase").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

76. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Westburne Purchase, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

77. All Documents Concerning SKRLA, Inc.'s conversion from a C-corporation to a limited liability company, on or about December 19, 1997, resulting in its legal name being changed to SKRLA LLC, as referenced in the document at REXEL000090 (hereinafter, the "SKRLA LLC Conversion").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

78. All Documents Concerning the intent, reason(s), and/or purpose(s) of the SKRLA LLC Conversion, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

79. All Documents Concerning the transaction, on or about June 1, 2001, whereby Rexel S.A., through its wholly-owned subsidiary, Rexel North America, Canada, purchased the stock of Westburne Supply, Inc. (hereinafter, the "Rexel Westburne Purchase").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

80. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Rexel Westburne Purchase, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

81. All Documents Concerning the transaction, on or about June 1, 2001, whereby Rexel, Inc. acquired from Rexel North America, Canada, the U.S. electrical distribution operations of Westburne Supply, Inc. (hereinafter, the "Rexel Distribution Acquisition").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

82. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Rexel Distribution Acquisition, including, but not limited to, whether the intent, reason(s), and/or purpose(s), in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

83. All Documents Concerning the "Share Purchase Agreement," made as of June 1, 2001, by and between Westburne Supply, Inc. and Rexel, Inc., whereby Rexel, Inc. acquired all of the shares (and/or membership interests) of SKRLA LLC, as referenced in the document at REXEL000090 (hereinafter, the "Rexel SKRLA Purchase").

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

84. All Documents Concerning the intent, reason(s), and/or purpose(s) of the Rexel SKRLA Purchase, including, but not limited to, whether the intent, reason(s), and/or purpose(s),

in whole or in part, was Related to toxic tort liability, liability arising from occupational exposures, workers' compensation liability, liability arising from dioxin or silica, or Asbestos-Related Claim(s).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

85. All Documents and Correspondence Concerning the statement, including documents supporting or refuting the statement, by John C. Gschwind, Vice President, Legal, General Counsel & Corporate Secretary of Rexel USA, Inc., in an email dated April 5, 2018, that: "In closing, neither Rexel USA, Inc. nor SKRLA, LLC succeeded to the alleged tort liabilities of any Old P&K Company, including Payne & Keller Gulf Coast, Inc. and its successor entity Payne & Keller, Inc. which was subsequently named Payne & Keller Company, then Frentex Enterprises Company and finally Frentex Enterprises Company of Texas, the name of the legal entity when it was dissolved." (found at REXEL000332).

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

86. All documents concerning any analysis, study, opinion, research, inquiry, survey, examination, assessment, valuation, rating, projection, forecast, estimate, investigation, review, and/or due diligence performed by You and/or at Your request or on Your behalf, Concerning whether You or Rexel have the right to make claims against any insurance policy that has either

“Payne & Keller Corporation” or “Payne & Keller Company” as the named insured or an additional insured.

RESPONSE: None.

87. All documents concerning any analysis, study, opinion, research, inquiry, survey, examination, assessment, valuation, rating, projection, forecast, estimate, investigation, review, and/or due diligence performed by You and/or at Your request or on Your behalf, Concerning whether You or Rexel have the right to a defense or indemnity Relating to Asbestos-Related Claims under any insurance policy that has either “Payne & Keller Corporation” or “Payne & Keller Company” as the named or an additional insured.

RESPONSE: None.

88. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 25 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

89. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 26 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

90. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 143 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

91. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 144 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

92. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 231 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001-000371.

93. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 232 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver's Requests for Production served on those

third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

94. All Documents that You assert or contend, or may assert or contend, support Your denial of allegations in Paragraph 233 of the Third-Party Complaint.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

95. All Documents that You assert or contend, or may assert or contend, support Your “Second Affirmative Defense” that the “Court lacks personal jurisdiction over SRKLA [sic] for the reasons set forth in SRKLA’s [sic] motion to dismiss and memorandum in support.”

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

96. All Documents that You assert or contend, or may assert or contend, support Your position in Your motion to dismiss and memorandum in support that the Court lacks personal jurisdiction over SKRLA.

RESPONSE: SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation. SKRLA further refers the Receiver to the documents produced herewith, Bates labeled SKRLA000001–000371.

97. All Documents Concerning Your contact(s) with the State of South Carolina.

RESPONSE: None.

98. All Documents Concerning any licenses or authorizations that You had or have Concerning doing business in the State of Carolina, or any other filings You have made with the Secretary of State of South Carolina Concerning doing business in the State of South Carolina.

RESPONSE: None.

99. All Documents Concerning any contracts or agreements You had or have with any Person who was or is located in, or resided or resides in, the State of South Carolina.

RESPONSE: None.

100. All Documents concerning any business that You have transacted in the State of South Carolina.

RESPONSE: None.

101. All Documents concerning any goods or services that You have supplied or provided in the State of South Carolina.

RESPONSE: None.

102. All Documents that You assert or contend, or may assert or contend, support Your “Fifth Affirmative Defense” that the “Receiver’s claims against SKRLA [sic] are barred in whole or in part by the statute of limitations.”

RESPONSE: SKRLA objects to this Request on the basis that the Receiver has refused to specify the actions allegedly taken by SKRLA that form the basis for the Receiver’s third-party claim against SKRLA, and SKRLA therefore cannot identify all documents that support this affirmative defense at this time. Subject to this objection, SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants

in this litigation, including the documents demonstrating the dates on which SKRLA or its agents tendered claims to insurers. SKRLA reserves the right to supplement this response as discovery continues.

103. All Documents that You assert or contend, or may assert or contend, support Your “Sixth Affirmative Defense” that the “Receiver’s claims against SRKLA [sic] are barred in whole or in part by the doctrine of laches.”

RESPONSE: SKRLA objects to this Request on the basis that the Receiver has refused to specify the actions allegedly taken by SKRLA that form the basis for the Receiver’s third-party claim against SKRLA, and SKRLA therefore cannot identify all documents that support this affirmative defense at this time. Subject to this objection, SKRLA refers the Receiver to the documents previously produced by Rexel and Compass in response to the Receiver’s Requests for Production served on those third-party defendants in this litigation, including the documents demonstrating the dates on which SKRLA or its agents tendered claims to insurers. SKRLA reserves the right to supplement this response as discovery continues.

104. All Documents that You assert or contend, or may assert or contend, support Your “Seventh Affirmative Defense” that the “Receiver’s claims against SRKLA [sic] are barred in whole or in part by the doctrine of unclean hands.”

RESPONSE: SKRLA refers the Receiver to the correspondence between counsel for the Receiver and counsel for SKRLA regarding the Receiver’s claims against SKRLA and the basis for those claims. SKRLA also refers the Receiver to the Receiver’s responses to the interrogatories served on the Receiver by SKRLA, Rexel, and Compass. SKRLA reserves the right to supplement this response as discovery continues.

s/ Patrick C. Wooten

Brian C. Duffy (SC Bar No. 16247)

Patrick C. Wooten (SC Bar No. 77985)

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (phone)

(843) 720-2047 (fax)

bduffy@duffyandyoung.com

pwooten@duffyandyoung.com

Attorneys for SKRLA, LLC

June 29, 2023

Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **SKRLA, LLC'S RESPONSES TO THIRD-PARTY PLAINTIFF PAYNE & KELLER COMPANY'S FIRST REQUESTS FOR DOCUMENTS**

was served via email to:

Marghretta H. Shisko
John B. White, Jr., P.A.
291 S. Pine Street
P.O. Box 2465 (29304)
Spartanburg, SC 29302
mshisko@johnbwhitelaw.com

Attorney for Payne & Keller Company

And via email to all other counsel of record below:

BB@rplegalgroup.com; jspitz@rplegalgroup.com; kbell@robinsongray.com;
matt.bogan@nelsonmullins.com; ashley.brathwaite@elliswinters.com; Asbestos@elliswinters.com;
mitch.brown@nelsonmullins.com; jholder@dobslegal.com; TMcVey@kassellaw.com;
tgilliland@dobslegal.com; EMoultrie@kassellaw.com; jrutkoski@kassellaw.com;
morgan.drapeau@bowmanandbrooke.com; manzelmo@mcguirewoods.com;
CShytle@mcguirewoods.com; jameskennedy@piercesloan.com;
Benjamin.limbaugh@smithrobinsonlaw.com; shanonp@smithrobinsonlaw.com;
jon@smithrobinsonlaw.com; murrell@smithrobinsonlaw.com; elizabethtaylor@piercesloan.com;
kristinhoward@piercesloan.com; bjowers@nexsenpruet.com; psantos@nexsenpruet.com;
AMelling@burr.com; AShuler@burr.com; bensmoot@piercesloan.com;
robert.meriwether@nelsonmullins.com; meredith.keane@nelsonmullins.com;
susan.collings@nelsonmullins.com; Angela.strickland@bowmanandbrooke.com;
Ashley.Lord@bowmanandbrooke.com; jcuttino@gwblawfirm.com; danny@rplegalgroup.com;
cmastrianni@lawhssm.com; wsawyer@murphygrantland.com; jlay@gwblawfirm.com;
malay@lawhssm.com; cem@swblaw.com; jruggeri@ruggerilaw.com; eparks@ruggerilaw.com;
arolain@ruggerilaw.com; ejones@gwblawfirm.com; ian.ford@fordwallace.com;
Ainsley.tillman@fordwallace.com; ljones@gwblawfirm.com; mha@swblaw.com;
acraig@windelsmarx.com; vrawl@grsm.com; kmettler@gwblawfirm.com;
kedrington@gwblawfirm.com; sbook@gwblawfirm.com; robinspitz@piercesloan.com;
ljordan@gwblawfirm.com; brady.edwards@morganlewis.com; sasmith@grsm.com;
ljoyner@gwblawfirm.com; thawkins@robinsongray.com; jo.lyons@nelsonmullins.com;
jcobb@gwblawfirm.com; todd.carroll@wbd-us.com; wbd.scasbestos@wbd-us.com;
elizabeth.oneill@wbd-us.com; jhansen@gwblawfirm.com; hlee@steptoe.com; rgoetz@omm.com;
znoorani@omm.com; joe@shenkar-law.com; mia@shenkar-law.com; Griffin Lynch
<glynch@johnbwhitelaw.com>; Chris Jones <cjones@johnbwhitelaw.com>; Nicole Rice
<nrice@johnbwhitelaw.com>; jacquese.gray@bowmanandbrooke.com; jo.lyons@nelsonmullins.com;
Robert.Sumner@butlersnow.com; Jay.Berly@butlersnow.com; Lindsay@rplegalgroup.com;
nancy.patterson@morganlewis.com; rcavalchire@nexsenpruet.com; srusso@mcguirewoods.com;
dargabright@mcguirewoods.com; mflynn@collinsandlacy.com; hmcmaster@collinsandlacy.com;
cstegmaier@collinsandlacy.com; pdp@rplegalgroup.com; dharris@goldbergsegalla.com;

byntema@goldbergsegalla.com; rwroten@duanemorris.com; gmforan@duanemorris.com; reli@duanemorris.com; dwalulik@fbtlaw.com; erik@hmp-law.com; kevin.hall@wbd-us.com; kenneth.pfaehler@dentons.com; drew.marrocco@dentons.com; nick.petts@dentons.com; keith.moskowitz@dentons.com; sandra.kaczmarczyk@morganlewis.com; bnes@morganlewis.com; John B. White, Jr. <jwhite@johnbwhitelaw.com>; steven.luxton@morganlewis.com; ashuler@burr.com; landrews@burr.com; scott.schutte@morganlewis.com; mshisko@johnbwhitelaw.com; jwhite@johnbwhitelaw.com; cjones@johnbwhitelaw.com; nrice@johnbwhitelaw.com; glee.henderson@bowmanandbrooke.com; caseyhewett@piercesloan.com; glee.henderson@bowmanandbrooke.com;

Dated: June 29, 2023.

s/ Liane M. Berns
Duffy & Young, LLC

EXHIBIT B

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**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CHARLES T. HOPPER and REBECCA
HOPPER,

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.: 2019-CP-40-00076

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

JAMES MICHAEL HILL,

Plaintiff,

vs.

Advance Auto Parts, Inc., 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-40-04680

**ORDER DENYING MOTIONS TO
RECONSIDER AND MOTION TO STAY**

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

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

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

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

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.

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.

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."

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).

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

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.

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").

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

(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, “*Krafft-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.*

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 statute 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.

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

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.

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

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.

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.



York Common Pleas

Case Caption: Charlotte Gaye Smith , plaintiff, et al VS CBS Corporation ,
defendant, et al
Case Number: 2015CP4602155
Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of LEWIS
C. CHILDERS,

Case No. 2021-CP-40-03484

Plaintiff,

**EXPEDITED
SECOND MOTION TO CLARIFY
INSURERS' RESPONSIBILITIES**

v.

Davis Mechanical Contractors, Inc., et al,

Defendants.

Flame Refractories, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., and Payne & Keller Company By
and Through Their Duly Appointed Receiver
Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company, et al;

Third-Party Defendants.

Peter Protopapas, the Receiver for Payne & Keller Company ("Payne & Keller"), hereby files this Expedited Second Motion to Clarify Insurers' Responsibilities in connection with the receivership of Payne & Keller and would show the Court as follows:

1. Mr. Protopapas was appointed by this Court to serve as the receiver for Payne & Keller Company and affiliates on August 27, 2021. The Court clarified this order on September 30, 2021. This Court appointed the Receiver to administer all assets of Payne & Keller, including

without limitation its insurance policies. This Court’s appointment order “is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Payne & Keller as well as any claims related to *the actions or failure to act of Payne & Keller’s insurance carriers.*” (emphasis added).

2. Payne & Keller’s known insurers are third-party defendants in this lawsuit. These insurers are aware of the duties that this Court has assigned to the Receiver as well as the insurers’ own responsibilities.

3. This is not the first time that the Receiver has been required to file a motion based on the behavior of Payne & Keller’s insurers’ in other cases.

4. The Receiver filed his first motion to clarify the insurers’ responsibilities on May 16, 2022 after he became aware that one of the insurers, Zurich American Insurance Company (“Zurich”), was sued in its own capacity as an insurer of Payne & Keller in a Louisiana asbestos-related case. Although the asbestos plaintiff made a claim against the full proceeds of Payne & Keller’s insurance policies, Zurich filed its answer without notifying the Receiver—seven months after this Court appointed the Receiver. The Receiver’s first motion to clarify the insurers’ responsibilities resulted in a consent order, in which the insurers agreed to keep the receiver informed regarding direct actions filed against the insurers on matters involving Payne & Keller.

5. Once again, Payne & Keller’s insurers are working to thwart the Receiver’s duties – this time in a Texas asbestos case.

6. Recently, Payne & Keller was sued in a Texas asbestos-related case styled *Daniel D. Williams, individually and as personal representative of the estate of Jimmie Lee Williams, Deceased, Sheila L. Wright, and Jimmietta Williams v. The Dow Chemical Company, et al.*; In the

District Court of Harris County, Texas; 11th Judicial District; Cause No. 2023-36960-ASB (Before the Texas Asbestos MDL Pretrial Judge) (“Texas Action”).

7. Upon receipt of service, the Receiver tendered this case to Payne & Keller’s insurers. As the Court is aware, these insurers previously had retained the Bowman and Brooke firm for the defense of Payne & Keller’s asbestos litigation. The Bowman and Brooke firm has two offices in Texas. See <https://www.bowmanandbrooke.com/our-firm/offices>

8. However, possibly because Bowman and Brooke was requested by the insurers to take certain positions regarding Plaintiff’s Motion to Revoke the Termination as outlined in the Receiver’s sealed filing of July 6, 2023. For this new Texas case the insurers insisted on retaining the Texas law firm of Baker & Patterson, L.L.P. (“Baker & Patterson”). <https://www.bakpatlaw.com/>

9. On July 26, 2023, almost two full years after this Court appointed the Receiver, the Baker & Patterson firm filed an answer on behalf of Payne & Keller in the Texas Action. Inexplicably, the Baker & Patterson firm filed this answer without any previous communication with the Receiver – its client.

10. In its answer, the Baker & Patterson firm asserted two affirmative defenses: (1) “The Court does not have jurisdiction because Defendant is a terminated corporation. See Tex. Bus. Org. Code § 11.359 (formerly Tex. Bus. Corp. Act art. 7.12).” and (2) Plaintiff cannot sustain a claim against Defendant because it is a terminated corporation. See Tex. Bus. Org. Code § 11.359 (formerly Tex. Bus. Corp. Act art. 7.12).” A copy of this unauthorized answer filed in the Texas Action is attached hereto as Exhibit A.

11. The insurers are keenly aware that the issues related to Payne & Keller’s corporate status are pending before the South Carolina Receivership court. In fact, these insurers recently

contended that this Court could not act on anything on these topics by contending that a current appeal of this Court's denial of the insurer's Motion to Dismiss and Dissolve Receivership stayed these issues¹. The illusory argument to stay this Court's determination of certain matters has now been exposed.

12. Undaunted by their position in South Carolina that these matters are stayed, Payne & Keller's insurers went to Texas and instructed a new law firm to raise these issues without the Receiver's knowledge or consent in a court filing that the insurers knew the Receiver did not, and would not, authorize. The Court has previously addressed in other cases involving the same carrier, the tripartite relationship between a defendant, its insurance carrier, and its attorney.

13. These insurers are fully aware of the Receiver's responsibilities, especially after the first similar incident occurred in Louisiana. They are also fully aware of the implications of the statement related to Payne & Keller's status that they directed the new Texas firm to include in its unauthorized answer. The answer also did not disclose the existence of this receivership to the Texas Court.

14. The Receiver has attempted to communicate with the new Texas law firm but has received no response. *See* Exhibit B.

15. The Receiver cannot meet his court-appointed duties if the insurers and the insurers'-appointed defense counsel are not transparent with the Receiver regarding the matters central to the administration of the receivership.

¹ The Court heard and is currently considering the underlying Plaintiff's Motion to Revoke Termination of Payne and Keller based on constructive fraud on July 10, 2023. While the allegations of constructive fraud were uncontested, insurers argued that the appeal prevented this Court from making a determination of constructive fraud due to an alleged stay. Plaintiff asserted that the appeal of the denial of third-party defendant insurers' motion does not stay the underlying Plaintiff's motion for a finding of constructive fraud which is wholly separate from the matter under appeal in the third party action.

16. Accordingly, the Receiver seeks an order from this Court, on an expedited basis, clarifying the role of Payne & Keller's insurers in the administration of this receivership going forward.

Dated: August 18, 2023

SMITH ROBINSON, LLC

s/Jonathan M. Robinson

G. Murrell Smith, Jr. (S.C. Bar # 66263)

Jonathan M. Robinson (S.C. Bar # 68285)

Shanon N. Peake (S.C. Bar #102723)

2530 Devine Street

Columbia, South Carolina 29205

(803) 254-5445

*Attorney for the Receiver of Payne & Keller
Company*

EXHIBIT A

CAUSE NO. 2023-36960-ASB
BEFORE THE ASBESTOS MDL PRETRIAL JUDGE

DANIEL D. WILLIAMS, individually and § IN THE DISTRICT COURT
as personal representative of the estate of §
JIMMIE LEE WILLIAMS, Deceased, §
SHEILIA L. WRIGHT, and JIMMIETTA §
WILLIAMS §
Plaintiffs, §
v. § 149TH JUDICIAL DISTRICT
THE DOW CHEMICAL COMPANY, et al. §
Defendant. § BRAZORIA COUNTY, TEXAS

Transferred from:
CAUSE NO. 123060-cv

DANIEL D. WILLIAMS, individually and § IN THE DISTRICT COURT
as personal representative of the estate of §
JIMMIE LEE WILLIAMS, Deceased, §
SHEILIA L. WRIGHT, and JIMMIETTA §
WILLIAMS §
Plaintiffs, §
v. § 149TH JUDICIAL DISTRICT
THE DOW CHEMICAL COMPANY, et al. §
Defendant. § BRAZORIA COUNTY, TEXAS

DEFENDANT PAYNE & KELLER COMPANY, INC.'s
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

DEFENDANT PAYNE & KELLER COMPANY, INC. files this its Original Answer
and Affirmative Defenses:

I.
GENERAL DENIAL

Pursuant to Rule 92, Defendant PAYNE & KELLER COMPANY, INC. generally
denies all the material allegations of Plaintiffs' Original Petition and demand that
Plaintiffs provide strict proof thereof according to the applicable legal standards
pertaining to each allegation.

II.
AFFIRMATIVE DEFENSES

The Court does not have jurisdiction because Defendant is a terminated corporation. *See* Tex. Bus. Org. Code § 11.359 (formerly Tex. Bus. Corp. Act art. 7.12).

Plaintiffs cannot sustain a claim against Defendant because it is a terminated corporation. *See* Tex. Bus. Org. Code § 11.359 (formerly Tex. Bus. Corp. Act art. 7.12).

WHEREFORE, Defendant PAYNE & KELLER COMPANY, INC prays for a take-nothing judgment, for all costs, and for all other just relief.

Respectfully Submitted,

BAKER & PATTERSON, L.L.P.

By: **/s/ Kenneth C. Baker**
Kenneth C. Baker
Texas Bar No. 01584480
3100 Richmond Ave., Suite 550
Houston, Texas 77098
Telephone: 713-623-8116
Facsimile: 713-623-0290
Email: kbaker@bakpatlaw.com
Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing was served on all known counsel of record in compliance with Tex. R. Civ. P. 21 and 21a on July 26, 2023.

/s/ Kenneth C. Baker
Kenneth C. Baker

EXHIBIT B

From: Peter Protopapas
Sent: Wednesday, August 16, 2023 4:03 PM
To: 'kbaker@bakpatlaw.com' <kbaker@bakpatlaw.com>
Cc: Lindsay Valek <Lindsay@rplegalgroup.com>; Pearson, Marisa (Allianz Resolution Management US) <Marisa.Pearson@allianzrm-us.com>; sarah.kutner@genre.com; Shuler, Sam (Core Claims) <sam.shuler@thehartford.com>; jruggeri@ruggerilaw.com; Annette Rolain <arolain@ruggerilaw.com>; Wesley B. Sawyer <wsawyer@murphygrantland.com>; Chris Moss <chris.moss@compassriskllc.com>; Bonnie Aaron <baaron@resolutemgmt.com>
Subject: Williams v. Payne & Keller

Mr. Baker

I hope this email finds you well. My understanding is that the carrier group for Payne & Keller Company (P&K) has secured your firm's representation of P&K. I am the Court appointed Receiver for P&K. Attached is a copy of the Order of Appointment and Order clarifying appointment. Pursuant to the Order of Appointment, I am tasked with administering the claims against P&K.

I understand that an answer was filed on behalf of Payne & Keller raising an affirmative defense. Please provide me with a copy of the filing, who authorized the filing of the affirmative defense, and a copy of all communications regarding this matter with any person or entity.

Thank you for your attention to this matter.

Sincerely

Peter Protopapas

Peter D Protopapas



pdp@rplegalgroup.com
rplegalgroup.com

2110 N. Beltline Blvd.
Columbia, SC 29204



Confidentiality Notice:

This email transmission may contain confidential information which is legally privileged. The content of this email and any information submitted therewith or attached thereto are intended only for the use of the individuals or entities to which this email is addressed. If you

are not the intended recipient, or the person(s) responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone. Thank you.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
LENORA CHILDERS , Individually and as	)	C/A NO. 2021-CP-40-03484
Personal Representatives of the Estate of	)	
LEWIS C. CHILDERS ,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
Plaintiff,	)	Coordinated Docket
	)	
v.	)	
	)	<u>ORDER</u>
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

CAME ON _____, 2021, to be heard the Plaintiff's Motion to Appoint a Receiver Over Payne & Keller Company, pursuant to S.C. Code §15-65-10(4). This Court finds that the application is meritorious under the applicable statute because Payne & Keller Company ("Payne & Keller") dissolved and Payne & Keller, a Texas Corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiff requests for an expedited ruling on this motion is appropriate and also granted.

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

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, 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 Payne & Keller Insulation, Inc. may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT SO ORDERED this _____ day of _____ 2021.

Jean Hoefer Toal, Chief Justice of the Supreme Court of
South Carolina (Retired), acting as Circuit Court Judge



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of
Lewis C. Childers,

Plaintiff,

v.

**DAVIS MECHANICAL
CONTRACTORS, INC.**, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-40-03484

**ORDER GRANTING THE RECEIVER
FOR
PAYNE & KELLER COMPANY'S
MOTION TO CLARIFY THE
RECEIVER ORDER**

This matter comes before the Court by way of the Receiver for Payne & Keller Company's Motion to Clarify Order Appointing a Receiver for Payne & Keller Company issued by this Court on August 27, 2021. The Receiver's Motion is hereby GRANTED.

Peter D. Protopapas (the "Receiver") was appointed for Payne & Keller Company on August 27, 2021. Since his appointment, the Receiver has discovered that Payne & Keller Company did business under a series of corporate names before its final dissolution. The entities now known to the Receiver to be related to the historic operations of Payne & Keller Company are as follows: Payne & Keller, Inc.; Payne & Keller of Louisiana, Inc.; Bayou Maintenance, Inc.; Bayou Maintenance and Constructors, Inc.; Payne & Keller Gulf Coast, Inc.; Frentex Enterprises Company; and Frentex Enterprises Company of Texas (collectively the "P&K Entities").

This Order hereby clarifies that the Receiver's Order of Appointment entered on August 27, 2021, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to all of the P&K Entities and their predecessors, successors, affiliates, parents, assigns, and subsidiaries that may be discovered in the future. This Order also clarifies

that the reference to Payne & Keller Insulation, Inc. on page 3 of the Order of Appointment is a scrivener's error and is amended to state that neither the Receiver nor the P&K Entities may be sued outside this Court without obtaining the Receiver's consent or an order of this court prior to doing so.

IT IS SO ORDERD.

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Other

So Ordered

Jean H. Toal

EXHIBIT D

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) TRANSCRIPT OF RECORD

3 -----X
4 LENORA CHILDERS,)
5 Individually and as Personal)
6 Representative of the Estate)
7 of LEWIS C. CHILDERS,)

8 Plaintiff,)
9 vs.)

Case No. 2021-CP-40-03484

10 DAVIS MECHANICAL)
11 CONTRACTORS, INC., et al.,)
12 Defendants.)
13 -----X

14 FLAME REFRACTORIES, INC.,)
15 et al,)

16 Third-Party Plaintiff,)
17 vs.)
18

19 ZURICH AMERICAN INSURANCE)
20 COMPANY, et al.,)
21 Defendants.)
22 -----X

August 21, 2023

23 B E F O R E:

24 The Honorable Justice Jean H. Toal, Presiding Judge
25

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

A P P E A R A N C E S:

Thiele McVey, Esq.
Attorney for Plaintiff Childers

Jonathan Robinson, Esq.
Attorney for Payne & Keller

Wesley Sawyer, Esq.
Attorney for National Union Ins. Co. Of
Pittsburgh; Berkshire Hathaway; Continental Ins.
Co./London Market Ins; AIG Property & Casualty
Co.; Lexington Insurance Company

Aaron Hayes, Esq.
First State Ins. Co.

Kevin Bell, Esq.
Zurich American Insurance Company

Todd Carroll, Esq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

P R O C E E D I N G S

(The following proceedings started at 1:15 p.m.):

THE COURT: Now, we have got one more? All right.
The final is -- oh, boy -- Payne & Keller.

Okay. Let's get real with each other about Payne
Keller. How long is this going to take? Let's get
everybody lined up here.

Wes, I know you're the main one for one side.

Mr. Robinson?

MR. ROBINSON: 15, 20 minutes for me. Depends on
what kind of questions I get.

THE COURT: Well, I tell you what, the BBM can come
down and sit down in this room and take more time to do
everything and go 15 minutes, but I --

MR. ROBINSON: I'm hoping much less. I'm trying to
go on the --

THE COURT: Well, is this --

MR. ROBINSON: It could be five minutes, depending
on where we go.

THE COURT: All right. You may proceed.

This is Childers against Payne & Keller --
P-a-y-n-e ampersand Keller -- with the third-party thing
with U.S. Risk, LLC. It's 2021-CP-40-03484.

This is expedited second motion to clarify insurer's
responsibility.

1 Now, wait a minute. Let me get my hands on it.

2 MR. ROBINSON: Your Honor, I have prepared a
3 notebook with the motion along with the responses.

4 THE COURT: Okay. I have some little something I
5 scratched some --

6 Mr. Childers' file has gotten so out of hand here; I
7 got it spread out all over the creation. Hang on.

8 All right. I'm warning you, Mr. Robinson: Don't
9 ever say it's going to take five minutes.

10 Here are my notes from 7/10/23.

11 Don't tell me five minutes and then Wes Sawyer will
12 get up here and say, "Oh, Judge..."

13 MR. SAWYER: Your Honor, I have no idea how long it
14 will take because I'm not sure what I'm going to hear from
15 them yet.

16 THE COURT: All right. You may proceed,
17 Mr. Robinson.

18 MR. ROBINSON: Your Honor, Jon Robinson here for
19 Payne & Keller.

20 Just as a preliminary matter, I have provided to the
21 Court a copy -- a hard copy of the filings from August the
22 17th, which is Payne & Keller's expedited second motion to
23 clarify the August 18th receiver's notice of filing,
24 Travelers' objection, which was filed last night --

25 THE COURT: Yes, I have it.

1 MR. ROBINSON: -- and then National Union's
2 objections with exhibits, which was filed last night. And
3 so this is just a hard copy. I have shown Mr. Sawyer a
4 copy. And for the Court's convenience, I have a hard copy
5 in a notebook.

6 THE COURT: Yes.

7 MR. ROBINSON: Your Honor, on -- and earlier today
8 in one of the hearings, the Court stated -- and I think it
9 would be beneficial in this case -- to go through just a
10 very short procedural history of how we got to where we
11 are today.

12 THE COURT: You may proceed.

13 MR. ROBINSON: And I will do that as expeditiously
14 as possible.

15 On August 27th, 2021, the Court appointed
16 Mr. Protopapas as the receiver for Payne & Keller. In
17 that appointment, it granted him the power and authority
18 to fully administer all assets of Payne & Keller,
19 including the right and obligation to administer any
20 insurance assets of Payne & Keller, as well as any claims
21 related to the actions or failure to act of Payne &
22 Keller.

23 Shortly thereafter, on September 30th, the Court
24 clarified the receiver's authority and extended that to
25 certain specifically identified entities that were related

1 to Payne & Keller operations and their predecessors,
2 successors, affiliates, parents, assigneds, and
3 subsidiaries that may be discovered in the future.

4 Now, again, those first two orders were August 27th
5 of 2021, and the subsequent order was September 30th of
6 2021.

7 On May 16th of 2022, the receiver filed a motion to
8 clarify his responsibilities, and we'll call this the
9 Louisiana issue. After his appointment, the receiver
10 became aware of certain actions -- direct actions that
11 were filed in Louisiana against the carriers, as this
12 Court is aware, which Louisiana permits.

13 The receiver also became aware, however, that those
14 actions were proceeding without his knowledge and
15 involvement. So the Court -- the receiver filed a motion
16 requesting a number of things relating to his involvement
17 in Payne & Keller, and that resulted in a June 23rd, 2022,
18 consent order.

19 And, importantly, a number of carriers were parties
20 to that consent order. The carriers that were parties to
21 that consent order --

22 THE COURT: Now, this was the one --

23 MR. ROBINSON: This was June 23rd, 2022. And this
24 is -- it's labeled consent order, and it is in response to
25 the receiver's motion to clarify his responsibilities.

1 And, again, Your Honor, when the receiver became
2 aware that these direct actions were proceeding against
3 the carriers in Louisiana without the receiver's knowledge
4 or involvement, the receiver brought it to this Court's
5 attention, as well as the carriers'. The carriers entered
6 into a consent order, which was reduced to an order of
7 this Court, and the carriers that entered into that
8 consent order were Zurich -- they're long names, but
9 Zurich American; Birmingham Fire; Lexington Insurance,
10 London Market Companies; Berkshire Hathaway, formally
11 known as Stonewall; Stonewall Surplus Lines; and
12 importantly, National Union Fire Insurance Company, which
13 has filed something last night; Continental Insurance
14 Company, individually and as successor-in-interest to
15 Harbor Insurance Company; Metmar Casualty; Dependable
16 Insurance Company; First State Insurance; Hartford
17 Accident and Indemnity Company; Travelers -- which also
18 filed something last night -- Casualty and Surety Company,
19 formally known as the Aetna Casualty and Surety Company.

20 Now, Your Honor, in that consent order and
21 agreement, it states specifically, "The receiver and the
22 participating insurers agree that, in connection with any
23 pending or future direct action suits where Claimant has
24 sued the participating insurer as an insurer of a Payne &
25 Keller entity, subject to the receivership, the

1 participating insurer will provide to the receiver the
2 following," and then it has a list: Copies of publicly
3 filed court papers; No. 2, information on settlement
4 offers made, settlement discussions with the plaintiff;
5 and No. 3, subject to any prohibition arising from
6 confidentiality issues in a given case, facts developed
7 regarding a direct action for Plaintiff's work history in
8 connection with Payne & Keller, including discovery
9 material such as Plaintiff's responses to written
10 discoveries and depositions taken in the matter.

11 The order concludes that "the participating insurers
12 will provide to the receiver copies of these publically
13 filed papers. In addition, if such a claim may impact the
14 policy limits available to another Payne & Keller
15 plaintiff, the participating insurer will notify the
16 receiver and will provide to the receiver contact
17 information for the insured."

18 So again, Your Honor, that was in 2022. The consent
19 order was entered into on June 23rd, 2022.

20 Now, I want to step back to February 23rd, 2022,
21 where the receiver filed a third-party action against
22 those carriers. That's where the third-party action
23 happened.

24 So February of 2022, third-party action.

25 June, we'll call it the Louisiana situation.

1 And then, in August, the third-party defendants,
2 Travelers and others, filed a motion to dismiss the
3 receiver third-party claims and dissolve P&K. And this
4 Court is, of course, aware that that motion was denied on
5 March 31st, 2023, and that matter is on appeal.

6 This Court's denial of their --

7 THE COURT: Yes, the denial of motion for summary
8 judgment or motion to dissolve and dismiss, which is
9 denied on appeal of the Bluefield (ph) courts.

10 MR. ROBINSON: So that motion was denied and it was
11 appealed.

12 On June 14th, the plaintiff -- the underlying
13 plaintiff, represented by Ms. McVey, filed a motion to
14 revoke the termination of Payne & Keller. That matter was
15 heard in Charleston on -- I believe it was July 10th,
16 which was a Monday, Your Honor.

17 And, at that hearing, the plaintiff's motion to
18 terminate the revocation or to revoke the termination of
19 Payne & Keller, at that hearing, as this Court may recall,
20 evidence was presented by the plaintiff and a report was
21 filed by the receiver, which included insurance policies,
22 along with other historical information.

23 At that hearing, the plaintiff -- I'm sorry, the
24 underlying carriers argued against this Court hearing that
25 motion based on the fact that there was an automatic stay

1 presumably on all things receivership.

2 And while the evidence that the plaintiff presented
3 regarding fraud and constructive fraud -- I think I used
4 the word was "uncontested"; perhaps the better word was
5 "uncontradicted". While that evidence was uncontradicted,
6 the Court decided at that hearing to hold in abeyance any
7 decision regarding a finding of constructive fraud based
8 on this Court, I believe, said wanted to consider the
9 issue of stay. And that matter is still pending before
10 you, Your Honor.

11 So, again, that was July 10th. Your Honor, we filed
12 this motion -- this expedited motion on the 17th. And I
13 want to provide a bit of context to the motion. First of
14 all, this is the fifth year that the receivership has been
15 -- fifth year of receivership litigation before this
16 Court. This is the fifth year. And if you think back,
17 Your Honor, to the beginning of the first receivership,
18 the Court will remember that the receivership was made
19 necessary because Covil's insurers, including Travelers
20 and one of the ones represent -- that Mr. Sawyer
21 represents had spent decades pretending that Covil did not
22 exist.

23 Covil's insurers were not transparent with the
24 status of Covil with this Court. They were not
25 transparent with the status of Covil in North Carolina.

1 And, as a result, this Court appointed Mr. Protopapas to
2 be the receiver of Covil in November of 2018.

3 And according to that first appointment order, the
4 receiver was tasked with marshaling assets and managing
5 liabilities. He was not appointed to make the parties
6 happy. He was not appointed to make this Court -- or to
7 serve as this Court's receiver for any other reason than
8 to marshal assets and manage liabilities. He was
9 appointed to serve as this Court's receiver.

10 Your Honor, in the years that have followed in
11 Covil, Mr. Protopapas, as this Court is well aware, has
12 identified a number of insurance policies, has marshaled
13 those assets. He has resolved cases, he has settled
14 cases, and he has tried cases that were contested. But
15 the one thing that is -- and the one thing that has been
16 constant during his appointment in Covil and in every
17 receivership throughout the five years, he has been
18 transparent with this Court, he has been transparent with
19 the carriers, he's been transparent with the plaintiffs,
20 the claimant's counsel, and transparency has been the key
21 that this Court has required this receiver to participate
22 in.

23 I bring that up, Your Honor, because when we were in
24 Charleston on July 10th considering whether Payne & Keller
25 should be reconstituted based on the allegations of

1 constructive fraud, all of the carriers appeared -- or the
2 ones that did appear on July 10th -- argued ferociously
3 that this Court could not make any determinations
4 regarding the receivership, regarding anything relating,
5 basically, to Mr. Protopapas's appointment because of
6 Rule 241, because of their appeal of a motion to dismiss.

7 And I will point out to the Court that the Court of
8 Appeals has agreed to consider the appeal. Now, in the
9 filings last night, the carriers championed this order
10 that the Supreme -- that the Court of Appeals has agreed
11 to consider the appeal and I think, probably rightfully
12 so, it is one of the few orders that has not been
13 summarily dismissed -- one of the few appeals that has not
14 been summarily dismissed.

15 The carriers' approach to the Court considering the
16 appeal is that the receivership no longer exists; is that
17 they were correct on the appeal, as this Court is well
18 aware, most of the carriers' appeals have been dismissed
19 as unappealable, as interlocutory. We have cited a number
20 of cases in our previous filings in Payne & Keller that
21 outline the number or the amount of appeals that the
22 carriers have presented, including the Supreme Court
23 warning carriers of the interlocutory and frivolous
24 appeals. But the Court is considering this appeal, the
25 appeal of the denial of the motion to dismiss and denial

1 of the motion to dissolve.

2 I want to put that in the record because the Court
3 mentioned it, and so that matter is now being briefed.

4 What the Court of Appeals is not aware of yet and
5 what this Court may not be aware of, on July 10th, when we
6 were before this Court in Charleston and the carriers were
7 arguing that this Court did not have jurisdiction to make
8 certain determinations regarding the receivership, the
9 carriers, approximately two weeks later, went before a
10 Texas court and instructed their new counsel -- not the
11 Bowman and Brooke counsel that was here in South Carolina
12 and that also has a presence in Texas; the carriers
13 retained new counsel in Texas that filed an answer to a
14 complaint that was filed against Payne & Keller.

15 Now, that complaint in Texas was provided to
16 Mr. Protopapas by the plaintiff's attorney in that case.
17 Mr. Protopapas tendered that complaint to the carrier.
18 The carriers hired a new law firm; not Bowman and Brooke,
19 a different law firm in Texas. And on August the 4th, the
20 carriers instructed their counsel, without
21 Mr. Protopapas's knowledge or consent, to move to dismiss
22 or, as an affirmatives defense, dismiss the claim against
23 Payne & Keller on the very issues that they -- for the
24 very reasons that they argued this Court could not make
25 any determination, and that was that the Texas statute

1 barred the claims. They also filed a motion for summary
2 judgment in Texas on that very same issue in August of
3 2023.

4 Your Honor, when Mr. Protopapas became aware that an
5 answer had been filed, he wrote the counsel in Texas who
6 filed that answer and asked him for a copy of his file.
7 Again, Mr. Protopapas had not had any contact with this
8 attorney who filed an answer on his behalf, and we have
9 seen where this goes. We have heard Covil 2.0 or maybe
10 Covil 3.0 where the carriers have taken it upon themselves
11 to file responsive pleadings and motions unbeknownst to
12 this Court-appointed receiver.

13 Mr. Protopapas, on August the 17th -- and this is
14 filed with the Court -- I'm sorry, on the 16th -- asked
15 for his file. The very next day, Resolute wrote that
16 attorney and said, "Please forward the as-filed motion for
17 summary judgment and let me know if there is a hearing
18 date -- let me know if a hearing date has been set."

19 So, with this knowledge, Your Honor, Mr. Protopapas
20 filed this expedited motion to clarify the receivership.
21 Your Honor, where we are -- and I know this Court has
22 addressed this issue today and on previous occasions, but
23 I think, with the Court's indulgence, I would like to hand
24 up, if I may, a copy of two rules and a statute that has
25 been referenced today and previously in Charleston.

1 I'm addressing Rule 62, Your Honor, because the
2 carriers, last night in their filing, maintain their
3 position that this Court may not act on anything while
4 they are pursuing those issues in Texas that are alleging
5 in South Carolina those issues are stayed.

6 Rule 62 was read earlier -- 62(a). And, Your Honor,
7 perhaps I misheard it, but I thought that I understood it
8 read to say that there, for some reason, was a ten-day
9 stay on execution of judgments, which is not what the rule
10 says. And so, with the Court's permission, Rule 62(a),
11 Automatic Stay, exceptions are listed as injunctions,
12 receiverships, and accountings.

13 Now, there is a ten-day stay that is in the first
14 sentence, "Except as stated herein, no execution shall
15 issue upon a judgment nor shall proceedings be taken for
16 its enforcement until the expiration of ten days after its
17 entry." That sentence says what it says. "No execution
18 until the expiration of ten days after its entry."

19 But, Your Honor, it goes on, as it relates to this
20 matter: "Unless otherwise ordered by the Court, an
21 interlocutory or final judgment in an action for an
22 injunction or in a receivership action or a judgment or
23 order directing an accounting shall not be stayed during
24 the period after its entry and until an appeal is taken,"
25 and most importantly, Your Honor, "or during the pendency

1 of an appeal."

2 Your Honor, Rule 62 is important as it relates to
3 this receivership. The carriers may have discovered a new
4 venue or a new procedure to try to slow down this Court
5 and the receivership actions, but as has been stated,
6 receiverships are a unique statutory creation.

7 Rule 62 specifically excludes it from the automatic
8 stay, and for good reason. Receiverships are appointed in
9 extraordinary circumstances. To appoint a receiver and
10 then have that receiver -- a party just appeal that
11 appointment, while the matters that were of concern that
12 resulted in that receivership appointment can continue
13 without any type of oversight from the Court while the
14 matter is tied up in appeals, wouldn't make any sense.

15 And, in fact, it is contrary to the plain language
16 of Rule 62. The ten-day stay has nothing to do with what
17 we're talking about here. This is a receivership action
18 that the Courts have determined specifically is not
19 stayed.

20 So, Your Honor what we're asking is fairly simple.
21 I will note that there was a statement about the Rule 11
22 certification. I filed one today, as Rule 11 permits,
23 that once a party is -- or an attorney is made aware of
24 the absence of a Rule 11 certification -- it was filed
25 today, this morning. And of course it states that --

1 something to the effect that a Rule 11 consultation would
2 serve no useful purpose. And I think the filings that
3 came Sunday night are evidence of that, but I did file
4 that today.

5 So, Your Honor, what are we asking? Your Honor,
6 we're asking, number one, in the -- we'll call it the
7 Louisiana situation, if the carriers have agreed to keep
8 the receiver informed of actions that are directly against
9 them that impact the receiver, shouldn't they keep the
10 receiver informed and provide copies of pleadings that are
11 actually against the receiver and their counsel?
12 Shouldn't their counsel keep his client presumably
13 informed of his filings in other states?

14 Your Honor, you know, it is very troubling that,
15 leaving that hearing in Charleston -- and certainly
16 understanding the Court's concern relating to the stay and
17 the appeal. It is very troubling that, while all of that
18 was taking place, as has often happened, the carriers --
19 and I don't put this on their lawyers, I understand
20 that -- the carriers sought new lawyers to take positions
21 and try to circumvent this Court's jurisdiction, try to
22 circumvent this Court's receivership.

23 And so we ask, number one, that the requirements
24 that are outlined in that consent order, where they agreed
25 to keep the receiver informed, be duplicated as to the

1 receiver himself when he is named as a party and when
2 they're hiring people to defend him and hiring -- and
3 seeking motions and making statements on his behalf in
4 other courts. He's entitled to know that, Your Honor.
5 He's entitled to those pleadings.

6 I will point out -- and I can only presume that it
7 was unintentional -- when Mr. Protopapas asked for his
8 file from the attorney in Texas, the motion for summary
9 judgment was not included in the production. It was
10 found -- we found it. There was correspondence with
11 Resolute and that attorney about the motion for summary
12 judgment, but the motion itself was not produced to
13 Mr. Protopapas.

14 We have filed all of this with the Court, the
15 correspondence and the pleadings, and so it is in the
16 Court's notebook.

17 One second, Your Honor.

18 (Conferring with Mr. Protopapas off the record.)

19 MR. ROBINSON: And as the receiver has pointed out,
20 this is the same request we had of you when Wall (ph)
21 Templeton would not tell us what they were doing on the
22 receiver's behalf.

23 So, with that, Your Honor, I will say -- and I hope
24 the Court will consider the Rule 62 issue perhaps in a
25 different light than was represented -- than what was

1 represented back in Charleston and even earlier today.

2 I know this Court has Ms. McVey's motion also under
3 consideration, and I believe that Rule 62 has perhaps just
4 been overlooked and certainly misinterpreted and perhaps
5 misstated, but we believe this Court has jurisdiction over
6 these receiverships, even while these appeals continue,
7 some of which have been dismissed, some of which are
8 proceeding, none of which have been returned in favor of
9 the appellants.

10 I'll be happy to answer any questions, Your Honor.

11 THE COURT: Thank you, Mr. Robertson.

12 Mr. Sawyer?

13 MR. SAWYER: Good afternoon, Your Honor. May it
14 please the Court? Wesley Sawyer. I represent National
15 Union Fire Insurance Company of Pittsburgh; Berkshire
16 Hathaway Specialty Insurance Company; The Continental
17 Insurance Company, serving as yet unnamed London Market
18 Insurers; AIG Property and Casualty Company; and Lexington
19 Insurance Company.

20 As an administrative matter, Your Honor, the brief
21 was filed by National Union because they're the primary
22 carrier who picked up the defense when it was tendered to
23 them, but all my other clients, obviously, join in on the
24 arguments. We also join in on the arguments of Travelers
25 in their memorandum that was filed last night as well.

1 Just wanted to get that out of the way for preservation
2 purposes, Your Honor.

3 I'd rather get, of course, to the more meat of the
4 substance, which is, of course, Your Honor, the issue of
5 the stay that followed the order from this Court. And, by
6 way of background, that order was a motion to dismiss and
7 to dissolve the receivership that dealt with the matters
8 of a dissolution of Payne & Keller; the allegations of
9 constructive fraud, which were raised in the response by
10 the receiver on that motion for the first time; issues of
11 standing of the receiver to pursue an action because of a
12 dissolution.

13 All those issues were ruled upon by Your Honor and
14 appealed to the Court of Appeals. There was lengthy
15 discussion about this at the hearing on July 10th. I
16 don't want to rehash all those arguments, but they are up
17 there. The only development that's happened since your
18 decision on July 10th, to obey any rulings while we wait
19 on the appellate court to decide what to do, is the -- at
20 that time, the issue of appealability was before the Court
21 of Appeals. The parties had, on both sides, briefed
22 whether it was immediately appealable, and it was pending
23 when Your Honor heard those arguments on July 10th.

24 Since that time, earlier this month, the Court of
25 Appeals issued its order stating it was going to allow the

1 appeal to proceed. So those matters are before the Court
2 of Appeals by order of the Court of Appeals and merits and
3 briefings underway. The first deadline for the briefs is
4 a few weeks away, Your Honor.

5 So it's all there, and for all the reasons that were
6 argued very articulately by Mr. Lee at the July 10th
7 hearing, under Rule 205 and all of its constituent rules,
8 Your Honor, those matters are currently in the hands of
9 the appellate courts, not this Court.

10 I really think that that should end our discussion,
11 but of course I'm prepared to address the additional
12 arguments, Your Honor. The motion was titled as a motion
13 to clarify the insurers' responsibilities. We argued in
14 response, Your Honor, that it's really a motion to expand
15 or clarify the receivership. In fact, Mr. Robinson today
16 during arguments has said that's what they're doing; it's
17 a motion to clarify the receivership. So it looks like
18 we, at least, agree on that point.

19 This is a motion as to the receivership, not the
20 insurers' responsibilities, Your Honor, which just puts it
21 more in the forefront that, if the entirety of the
22 receivership and its proprietary are before the Court of
23 Appeals, that's where this issue stays for the time being.
24 It may well come back and --

25 THE COURT: How does the consent order impact these

1 things?

2 MR. SAWYER: Certainly. So Your Honor --

3 THE COURT: You entered into a consent order, and
4 National Union did and the rest of these companies did. I
5 don't care what you now think about this receivership,
6 whether you're contesting it or anything else, but well
7 before any of that got into the picture, you entered into
8 a consent order specifically involving Protopapas as the
9 receiver, agreeing to keep him informed about these
10 matters.

11 MR. SAWYER: And I'll give you the background of
12 that consent order, Your Honor.

13 THE COURT: You entered into it; did you not?

14 MR. SAWYER: I did, exactly. And I think the
15 background helps me to answer your question, Your Honor,
16 if you'll indulge me.

17 Zurich was named -- is not my client. They were
18 represented by Mr. Bell, who is here, was named in a
19 direct action in Louisiana. The receiver brought this to
20 everyone's attention. We had Rule 11 communications and
21 were able to resolve the issue in agreeing that we would
22 provide non-privileged publically filed documents to the
23 receiver.

24 And if a case in a settlement would implicate any
25 rogue (ph) available limits that may be available for

1 other South Carolina claims, then they would keep him
2 informed of those negotiations and that progress. That's
3 what was consented to.

4 The Texas suit, first of all, is not a direct action
5 at all, but the receiver received the Texas --

6 THE COURT: It didn't say "direct action." It
7 said --

8 MR. SAWYER: No, it does, Your Honor.

9 THE COURT: It says, "Non-privileged publicly filed
10 material."

11 MR. SAWYER: Your Honor, I'll read from page 3,
12 which is really the first substantive page of the consent
13 order: "Specifically, the receiver and the participating
14 insurers agree that, in connection with any pending or
15 future direct action or suits." So that was the context
16 of the consent order, respectfully, Your Honor.

17 But getting to the broader picture, Your Honor, a
18 suit was tendered to the carrier. The carrier accepted
19 the tendered, communicated to Mr. Protopapas in writing
20 that they were accepting the defense and were not
21 reserving their rights. That was communicated.

22 And the identity of defense counsel who was retained
23 was communicated to the receiver. That was done via email
24 to Mr. Protopapas on, I believe, July 25th. If I'm one
25 day off on it, I apologize, but roughly July 25th.

1 So he was told that they were defending under --
2 without reservation of rights and give the identity of
3 defense counsel.

4 THE COURT: But you thought it was perfectly okay if
5 you styled it in a different way as some kind of
6 third-party action seeking to challenge his status as
7 receivership. But you've not given him any information
8 about those filings; right?

9 MR. SAWYER: Judge, I'm not sure that I follow that.
10 The Texas action is a lawsuit against Payne & Keller, and
11 the answer was filed by defense counsel for Payne &
12 Keller. And all it did was assert an answer and a Texas
13 statutory defense.

14 THE COURT: And who is the receiver for Payne &
15 Keller?

16 MR. SAWYER: The receiver for Payne & Keller's
17 property located in South Carolina is Mr. Protopapas.

18 THE COURT: Well, Mr. Sawyer, I'm telling you, I am
19 not going to get into that yet one more time. The basis
20 of Payne & Keller's receivership is that its assets are
21 present here and its principal asset is its insurance
22 policies. And if those insurance policies cover its
23 potential responsibility in South Carolina for an alleged
24 tort, those policies are South Carolina present assets.
25 Sangamo, etc. That's been my position about this thing

1 throughout, and it hasn't changed.

2 Frankly, I'm not going to spend a lot of time with
3 that argument, but I think it's in defiance of what y'all
4 understand is the ruling this Court has made. And it just
5 doesn't make any sense, as a matter of politeness and
6 polity, but when you dealt with this receiver and made
7 certain representations in a document about the receiver
8 and, beyond that, sent the receiver certain information,
9 that you decide, "Well, but if we take this other little
10 kind of sideways action here in Texas that involves --
11 directly involves the receiver, we don't have to notify
12 him," that is not satisfactory to me.

13 MR. SAWYER: Your Honor -- a few points on that,
14 Your Honor. First of all, when the receiver asked for the
15 filings, they were given to him within 48 hours. This
16 motion was filed within 24 hours of an email asking for
17 the filings, without any communication about the motion.
18 But those documents were provided. He filed the documents
19 with the Court on Friday night, after this hearing had
20 been set. So they were provided in short order.

21 So they hadn't been hidden from him. They had been
22 given to him at his request. Again, the identity of
23 defense counsel was provided to him in the acceptance
24 communication accepting the tender of the defense.

25 So I want to be clear about that. I also want to be

1 very clear that, while I recognize and obviously dispute
2 but recognize Your Honor's prior rulings as to whether the
3 insurance policies are assets in the state court, a Texas
4 lawsuit is absolutely not an asset within the State of
5 South Carolina, and the receiver has been appointed over a
6 dissolved Florida corporation. The statute that
7 authorizes a receivership in South Carolina in that
8 context is very narrow. He's allowed to be a receiver
9 over property within this state. That's it. That's what
10 the statute says.

11 THE COURT: Don't argue that further to me. I
12 understand your position, and you understand mine. But
13 when that insurer funds a lawsuit in Texas regarding these
14 very issues, you know, I don't care how you skin that cat.
15 It is improper in every way, in my view, to play these
16 games with the insurers and not keep -- I mean, with the
17 receiver and not keep the receiver advised.

18 If you ultimately have some victory in this state
19 with respect to this issue, that's fine, but before that
20 happens, it is improper not to inform -- and particularly
21 for an insurer of the very corporation that the receiver
22 is appointed as fiduciary for. That's not acceptable to
23 me.

24 MR. SAWYER: And, Your Honor, my client will provide
25 copies of anything that's filed in Texas. I don't have a

1 problem with --

2 THE COURT: Well, I don't really regard that as
3 honoring your client. Your client is an insurance
4 company. It owes a direct obligation to Mr. Protopapas as
5 the receiver to keep him advised, to not file lawsuits
6 until Mr. Protopapas is given a chance to react to them.

7 He is, until he is relieved of any further
8 responsibility, the receiver for this corporation, and the
9 insurance company is acting at its peril when it
10 deliberately ignores its fiduciary responsibility to the
11 receiver.

12 MR. SAWYER: And, Your Honor --

13 THE COURT: We can litigate all these things, but
14 I'm not going to have it that matters pending in this
15 court, where orders have clearly been rendered that put
16 him in a fiduciary position that, in order to play games,
17 you're going to file things in Texas and not inform him.

18 What should be done is he should be asked for his
19 position about those matters before they're filed. And
20 shame on the lawyers who don't do that. I regard that as
21 part of their fiduciary duty because they're representing
22 the corporation.

23 MR. SAWYER: And, Your Honor, to --

24 THE COURT: They're the insurance-selected lawyer,
25 not to represent the insurance company but to represent

1 Payne & Keller.

2 MR. SAWYER: And to be clear, Your Honor, even if
3 Payne & Keller was a standalone corporation that was
4 currently viable and did not have a receiver, once it
5 tenders a defense to the insurance company and the
6 insurance company accepts that tender without a
7 reservation of rights under Texas law, the insurance
8 company controls that defense.

9 THE COURT: Well, South Carolina also has certain
10 positions with regard to how a defense is controlled, but
11 they do not include failure to keep the policyholder
12 advised before certain action is taken.

13 You may control how the defense goes and that's
14 particularly pertinent in settlements, of course, but not
15 keeping the client advised as to what's being done, that
16 doesn't have a bloomin' thing to do with this insurance
17 company controls. You owe a duty of candor and the
18 passage of information -- you, meaning the insurance
19 company -- to its insureds.

20 MR. SAWYER: And, Your Honor --

21 THE COURT: And that fiduciary duty goes back to
22 Minehart vs. Simon (ph) and all those cases, so...

23 You know, a higher court may say differently, but
24 until it does, in this court, those basic lines of
25 fiduciary responsibility are going to be enforced by me.

1 MR. SAWYER: And, Your Honor, two points: One,
2 again, when asked, it was given. They --

3 THE COURT: It's not a question of when asked,
4 Mr. Sawyer.

5 MR. SAWYER: And I'm saying we will provide it --
6 from here on out, I'm saying my client will provide
7 anything that is filed to Mr. Protopapas.

8 THE COURT: Well, that's what you need to do without
9 having to first file it and beat him over the head with
10 it, and then he finds out about it, and asks, and then you
11 reluctantly give it to him. That's not the way fiduciary
12 responsibility is supposed to work.

13 MR. SAWYER: Well -- and that gets to a second
14 point, Your Honor. Because of the limited nature of a
15 receivership over a dissolved corporation being limited to
16 property within this state, there may be problems with
17 providing him everything beforehand in a Texas lawsuit,
18 because while the insurance policies may be an asset in
19 this state -- we may dispute that, but they recognize your
20 prior opinions that's your position. I understand that,
21 but a Texas lawsuit does not.

22 THE COURT: But the vehicle you're using -- the
23 vehicle you're using in the Texas court to have it act in
24 this matter is Payne & Keller. It's not National Union is
25 not the party in this thing or any other insurance

1 company.

2 You are taking action on behalf of an outfit to whom
3 you owe fiduciary responsibilities as its insurance
4 company. And those -- the fact that you may control the
5 defense does not absolve your basic fiduciary
6 responsibilities to notify it before you take action.

7 MR. SAWYER: But, Your Honor, the receiver is not a
8 receiver in Texas -- for the Texas litigation.

9 THE COURT: Oh, no. I disagree with that
10 completely. A receiver is a receiver, and he is a
11 receiver because of the presence of assets in this state.
12 And if that receiver situation then presents itself in a
13 Texas court, the receiver is entitled to know before
14 action is taken.

15 And, furthermore, I just don't understand, on a
16 common-sense basis, why you operate like that. It's not
17 only offensive to me as a matter of the fiduciary
18 responsibilities as they were taught to me many, many
19 years ago, but it doesn't make any common sense to me that
20 lawyers would operate like that and companies of the
21 standard national union. It disappoints the heck out of
22 me.

23 So let's not talk about it anymore. I can just tell
24 you, in terms of what happens here, basic notification of
25 the insured is a requirement, in my view.

1 MR. SAWYER: And, Your Honor, just so I can be clear
2 with the order that we'll receive from you so there's no
3 ambiguity when I communicate that to my client today --

4 THE COURT: It won't be -- it will be very precise,
5 but I'm not going to be nailed down to a cross-debate with
6 you about that at this time.

7 MR. SAWYER: I just want to communicate clearly to
8 them when I leave this room today, Your Honor. Is it my
9 understanding that your order is going to be, not only
10 they have to provide publicly filed filings as soon as
11 they're filed but also documents prior to filing that they
12 intend to file?

13 THE COURT: Yes, absolutely.

14 MR. SAWYER: I want to make sure I advise them
15 correctly.

16 THE COURT: Absolutely. They've got to inform the
17 receiver as to what action is being taken on behalf of the
18 company to which he owes a fiduciary obligation as its
19 receiver.

20 MR. SAWYER: All right. And, Your Honor, I would
21 just incorporate the arguments we made in our brief about
22 custodian versus receivership difference from Shay Pasker
23 (ph), as well as was recognized in re: Whittaker Clark or
24 order that came down recently this year that a receiver
25 doesn't control a company; they only receive the assets of

1 the company and distribute those assets.

2 He has not been appointed as a custodian. South
3 Carolina law doesn't provide for the provision or
4 appointment of a custodian over a foreign dissolved
5 corporation. So I'd note that. I realize Your Honor's
6 rulings. I just want to make sure I'm clear on the
7 record.

8 THE COURT: Well, the custodial relationship has
9 nothing to do with what I'm talking about. What I am
10 talking about is the basic obligation that an insurance
11 company has to its policyholder. Its policyholder is
12 Payne & Keller. The policy is an asset held in South
13 Carolina for the benefit of claims against Payne & Keller.

14 And the fact that the insurance company has now
15 taken the strange position that it's going to litigate
16 those things in Texas when they involve South Carolina
17 claims is something I don't understand either, but --

18 MR. SAWYER: It's a Texas claim, to be clear.

19 THE COURT: Well, if they're just Texas claims,
20 that's all the more reason why you need to be notifying
21 these people that you're acting on their behalf.

22 MR. SAWYER: Okay, Your Honor.

23 THE COURT: I mean, you're talking about a conflict
24 of interest as to the asset itself then. I mean, there
25 are just so many other complexities about what's happening

1 here that I don't understand how a reputable law firm
2 wouldn't understand. And it's easy to do. Doesn't mean
3 you have to agree with Rikard about everything or with
4 Protopapas about everything, but you have got to notify
5 these people.

6 They are directly involved in the existence of that
7 asset and its protection, and whether you decide that
8 there's some other principal of law that overrides that
9 fiduciary relationship and entitlement is one thing, but
10 the idea that you'd sneak around and go on and file
11 something first and then tell them afterwards just doesn't
12 make any sense to me.

13 MR. SAWYER: Okay, Your Honor. Understood.

14 THE COURT: All right.

15 MR. SAWYER: Thank you for your time.

16 THE COURT: All right.

17 MS. McVEY: Your Honor?

18 THE COURT: Ms. McVey?

19 MS. McVEY: Yes, ma'am. This also impacts the
20 hearing that you had on July 10th, which was my motion to
21 make a finding of constructive fraud and to reconstitute
22 the company.

23 I am distraught that my friends over here argued on
24 July 10th that my case -- my case -- the first-party case,
25 Mr. Childers' case, was stayed as to my ability to even

1 seek a finding of constructive fraud.

2 And you didn't rule on that; you said, "Let me think
3 about it for a minute." Because the issues on appeal are
4 not whether or not Payne & Keller engaged in constructive
5 fraud. That's not what's on appeal.

6 I am distraught that they said I couldn't seek that
7 finding and then turned around and snuck in a filing so
8 that maybe it could be decided in Texas, when I'm first in
9 line.

10 THE COURT: Well, that's what I was alluding to in
11 the conversation I had with Mr. Sawyer about the
12 complexities of entitlement to that asset vis-à-vis the
13 situation with Lenora Childers and with the third-party
14 action that is pending in her case.

15 MS. McVEY: And the real issue is that Ms. Childers
16 can come to this court, because I have my own lawsuit, and
17 say, "Judge" -- I'm saying to you, "Judge, we gave you all
18 this evidence that Payne & Keller engaged in constructive
19 fraud, and I would like you to reconstitute or revoke the
20 termination."

21 THE COURT: Yes, I understand that.

22 MS. McVEY: That's what I'm asking you to do. And I
23 think what they have shown you to do is, if they can go do
24 it in Texas, I can certainly do it here, when the issues
25 that I am dealing with are not on appeal.

1 And, Your Honor, I would ask you to consider that
2 again. You haven't ruled yet and I understood why, but
3 now we know what they're going to do, and they're not
4 playing by the same rules, and so we would like to get
5 that finding.

6 THE COURT: Well, let me ask you this: What you
7 have contended is that Payne & Keller fraudulently sought
8 the termination or the dissolution.

9 MS. McVEY: That's right, without providing for
10 their known and future creditors.

11 THE COURT: Right, right. So what do you think the
12 posture of the matter would be if I granted your motion in
13 Childers?

14 MS. McVEY: Then I think you -- you have made a
15 factual finding of constructive fraud, and the Texas
16 statute says, "A court can revoke the termination."
17 That's you. That's how I think it should be.

18 Now, they can go on and appeal whether or not a
19 receiver is appropriate or denial of their motion to
20 dismiss. I don't think that affects their appeal at all.
21 But I think I'm entitled to that finding.

22 MR. SAWYER: Your Honor, I will read from your order
23 that is on appeal: "Relying on Robinson v. Court" -- and
24 I'll skip the cite -- "Travelers argues that applying
25 Section 11.153," which is the section that Ms. McVey is

1 relying upon under Texas law, "to Payne & Keller's
2 dissolution would violate Article I, Section 16 of the
3 Texas Constitution."

4 And then your Court goes on to say that it
5 disagrees with that. That issue is squarely before the
6 Court of Appeals. That is the order that is on appeal,
7 and the Court of Appeals has said, after briefing on
8 appealability, we're going forward.

9 It is squarely in there. It can't be argued that
10 it's not a matter affecting the appeal. It is a
11 nut-and-bolt of the order.

12 And I would also note, Your Honor, that that order
13 noted that discovery would take place. So if it gets
14 remanded, there's supposed to be discovery on that issue,
15 not just race off to the finish line. That's why Your
16 Honor made that ruling on July 10th because there's no
17 avoiding what the order that's on appeals says. It's
18 squarely within the confines of that.

19 THE COURT: Well, I didn't make a ruling. I
20 declined to make a ruling.

21 MR. SAWYER: Fair enough, Your Honor.

22 And another thing I would note, even after the
23 July 10th hearing when you declined to make a ruling, you
24 said there would be opportunity down the road to address
25 these issues when it became before the Court.

1 So the door was not closed. In fact, you'll recall,
2 I stood up to preserve issues, and Your Honor said you
3 don't need to worry about that right now.

4 THE COURT: And then the very next thing y'all do is
5 to sneak over to the Texas court, after I thought this was
6 going to be handled in an orderly way here, and file that
7 other lawsuit with no information to the receiver until
8 after it's done.

9 MR. SAWYER: Your Honor --

10 THE COURT: That's the part that's sticking in
11 everybody's craw right now, and it's certainly sticking in
12 mine. You can't have it both ways that I'm an innocent
13 little guy that's just trying to enforce these stay
14 rulings, that this is what the things say, and you stay in
15 your own guard -- so I stay in my guardrail, and then you
16 sneak back around to Texas, with no notice to the
17 policyholder, filing a --

18 MR. SAWYER: An answer.

19 THE COURT: -- file a pleading that is not in the
20 best interest of Payne & Keller in the view of its
21 receiver and is directly contrary with what the receiver
22 is trying to achieve here in South Carolina. And then
23 say, "Oh, but now, Chief, you can't do anything about this
24 because you've got to stay in your guardrails."

25 I don't see matters that way, but I specifically

1 feel like my -- I go and try to be tempered about the way
2 I rule about these things, and you-all take advantage of
3 that by sneaking around and not keeping Rikard informed as
4 you promised -- I mean Protopapas informed as you promised
5 in the consent action or certainly made him feel as if he
6 was going to be kept in the loop.

7 You deliberately don't tell him anything about this
8 Texas action. Why? Because you're trying to further prop
9 up your position in South Carolina that you don't owe any
10 duties to anybody.

11 And Ms. McVey is the one that's stuck in the
12 cross-hairs of all this because she represents the
13 claimant, who is counting on having assets preserved for
14 possible use in the lawsuit she's brought.

15 So I'm uber put out with y'all about that. And it's
16 not save by you trying to wave my order around in my face.

17 MR. SAWYER: Well, Your Honor, my client did not
18 file a suit in Texas. My client -- our defense counsel
19 filed an answer and a motion in Texas, raising a statutory
20 defense. By the way, defense counsel here in South
21 Carolina has raised in his answers, including as recently
22 as July in the Gonson (ph) case --

23 THE COURT: Enough, Mr. Sawyer.

24 MR. SAWYER: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. ROBINSON: Your Honor, I just want to point out
2 two things in response to -- this is Jon Robinson for
3 Payne & Keller.

4 Your Honor, unfortunately, the carriers are treating
5 the Texas judge like they treated this Court in Covil.
6 You brought up something interesting about sneaking and
7 filing something in Texas. What has not yet been
8 disclosed to this Court, that there doesn't appear to be
9 anything in the record in Texas, that the carriers even
10 disclosed the existence of a receivership to the Texas
11 judge; that the carriers do not appear to have disclosed
12 the fact that there has a been a motion to reconstitute
13 for constructive fraud to this Texas judge; the carriers
14 have not disclosed to this Texas judge that the motion to
15 dissolve the receivership is on appeal in this court.

16 There's nothing in the record that I found -- and
17 again, Your Honor, we're looking for a needle in a
18 haystack. We know what they did, but there's nothing in
19 the record where this -- the existence of these
20 proceedings have even been disclosed to the Texas judge.

21 So, you know, Judge, you're right. There are two
22 parallel paths going, and it's going to -- as it relates
23 to the carriers, it's the one of least resistance, and the
24 fastest one to get the results they're looking for that is
25 being pursued.

1 I'll also point out that this issue -- and I know
2 the Court's addressed this. But, you know, this is in
3 Texas. This has nothing to do with us.

4 These suits are rote with the policies, and the
5 policies are the property of the receiver. So this idea
6 that all of these suits outside the borders of this state
7 have nothing to do with this state, that's just not true,
8 Your Honor.

9 Also, I wanted to -- one of my esteemed appellate
10 lawyers in the audience has sent me something, and I want
11 to make sure that I get it on the record.

12 I think there's an important distinction in Atlas in
13 that one of the orders is on appeal in that case -- one of
14 the orders appointing the receiver is on appeal in that
15 case. And the Payne & Keller case, it's the order denying
16 the motion to dismiss and dissolve those on appeal. So
17 the stay analysis is a little bit different. Here, the
18 receiver was appointed -- and that order is still in
19 effect. There was no appellate attack on that order. The
20 receivership is valid. And if the Court of Appeals
21 determines it should be dissolved, then it would be
22 dissolved from that date, not retroactively.

23 So I just want to point out that I believe there is
24 a difference in the order that's being appealed in Atlas,
25 which has been discussed today, and the order in this

1 case.

2 As it relates to Ms. McVey's underlying motion for
3 constructive fraud, Payne & Keller either was dissolved as
4 a result of constructive fraud or wasn't regardless of a
5 receivership. I mean, the existence of a receivership
6 does not determine whether Payne & Keller was dissolved as
7 a result of constructive fraud.

8 So, you know, I know they want everything stayed
9 here, but that is not -- that is not what is happening.
10 It is moving forward, and it is moving forward all around
11 us, Your Honor.

12 THE COURT: Well, of course, you know -- there's so
13 many ways to turn this kaleidoscope, but the problem with
14 dissolving the receivership, because it was -- well, wait
15 a minute.

16 Yeah, the problem with dissolving is that you redo
17 the whole thing then. You start from scratch again. And
18 that's what I don't want to have to do. This is a decent
19 vehicle. I don't care exactly what transpired in
20 connection with the creation of the receivership.

21 The receivership was created to protect the assets
22 of Payne & Keller, and that hasn't changed. I don't care
23 under what circumstances it was obtained. And that's what
24 I'm concerned about, is how to be sure that these assets
25 are protected, because they're not being protected if you

1 can take secret and parallel tracks towards discussing
2 these issues in another jurisdiction when the receivership
3 itself is under active litigation here.

4 MR. ROBINSON: Correct, Your Honor. And what's
5 happening is, while it's being argued to you that you
6 can't rule on things relating to a receivership -- number
7 one, I think 62 throws that out the window. I think you
8 can rule on things while this receivership -- and I think
9 you can require the carriers, at a minimum, to keep the --
10 your receiver informed of all of their activities.

11 THE COURT: That -- like I said, I'm going to
12 certainly do. The question is whether to -- now that I
13 have declined twice to rule on this thing, hoping that,
14 you know, one consolidated place there would be a way to
15 do it, you know, I'm confronted with it again.

16 And what Mr. Carroll said this morning is not
17 exactly accurate. This thing is not just a reference to
18 the ten-day deal at all. (A) In the first -- in the first
19 sentence says, "Except as stated herein, no execution upon
20 a judgment nor shall proceedings be taken for its
21 enforcement until after expiration of ten days from its
22 entry." That's the ol' ten-day rule that you can give a
23 judgment but you've got to wait ten days to execute on it.
24 That's one freestanding thing.

25 And then the next thing says, "Unless otherwise

1 ordered by the Court, an interlocutory or final judgment
2 in an action for an injunction or in a receivership
3 action, or a judgment or an order directing accounting,
4 shall not be stayed during the period of its entry and
5 until appeal is taken or during the pendency of an
6 appeal." The second free-standing sentence. And it's my
7 mistake not to look at that more clearly when Mr. Carroll
8 was arguing that.

9 And then it then says, final section of (A), the
10 provisions of C of this rule governing suspending,
11 modifying, and restoring and granting an injunction are
12 the ones that govern -- (C) governs the provisions
13 regarding the suspension or modifying or restoring of an
14 injunction during appeal.

15 And that the (C), of course, is the bond section.
16 It simply says you've got to, in certain circumstances,
17 put up a bond -- an appeal bond.

18 But the more I look at (A), the more I'm convinced
19 that the arguments that were made this morning are correct
20 ones.

21 And, Mr. Carroll, do you got a dog in this
22 particular fight?

23 MR. CARROLL: Well, I do, Your Honor, in -- well,
24 I've heard my client indirectly described as sneaking
25 around, doing stuff behind people's backs, making illusory

1 arguments --

2 THE COURT: Well, you just have to take that
3 sometimes.

4 MR. CARROLL: But there are a couple of things here,
5 Your Honor. I'm standing up right at this moment because
6 of this Rule 62(a) issue.

7 THE COURT: Well, you had your time to argue that in
8 the previous case, Mr. Carroll.

9 MR. CARROLL: Yes, ma'am. Well, I was just going to
10 say there's a sentence in the note of the rule that reads
11 as if the two sentences that you just read should be
12 blended together. So I just wanted to -- because --

13 THE COURT: That note -- the note says it's drawn
14 from the federal rule.

15 MR. CARROLL: Yes, ma'am.

16 THE COURT: Provides an automatic stay for ten days
17 in all but injunctive actions or those involving a
18 receivership or accounting. That's exactly what I'm
19 saying: Provides a stay except for those involving
20 receiverships. Stays in those proceedings, as well as
21 motions for a new trial, etc., are discretionary with the
22 Court.

23 So -- I don't think this helps your argument when
24 you read this whole note, and it certainly doesn't help
25 your argument when you read the sentence in here, which is

1 a free-standing sentence all by itself.

2 MR. CARROLL: Yes, ma'am. I disagree, but that's
3 okay. The reason I wanted to pop up just now because you
4 were referencing my argument and telling the room that you
5 didn't think my argument was correct.

6 THE COURT: Right. That happens a lot.

7 MR. CARROLL: It happens to me a lot, unfortunately.

8 But the -- I wanted to interject that the note was
9 what I was relying on to blend the two sentences together.
10 I think that was the way the drafters intended them to be
11 read, not as two free-standing sentences but as one
12 consistent thought.

13 But, Your Honor, as it relates to this Payne &
14 Keller issue, when we argued this, my colleague, Mr. Lee,
15 who is on a flight right here and can't be here, so I'm
16 coming up from the minors after today.

17 THE COURT: Yeah, I doubt that.

18 MR. CARROLL: The argument was -- the argument had
19 nothing to do with a stay. It wasn't a Rule 62 issue, a
20 Rule 241 issue. It was a Rule 205 issue. It was a
21 jurisdictional issue.

22 And in the Tillman v. Oakes case, a Court of Appeals
23 case -- Judge Few, I think, wrote the decision -- but he
24 talks about the interplay between 241 and 205 and how
25 sometimes issues aren't matters affected on -- by the

1 appeal and the trial court retains the discretion to stay
2 or not stay.

3 But if something is -- if there's an issue before
4 the trial court that could affect a matter on appeal,
5 well, then that's beyond the trial court's jurisdiction
6 under Rule 205. That was our argument then.

7 And the order that we -- the order that is on appeal
8 says, "This Court finds the receiver has made prima facie
9 showing that Payne & Keller was terminated as a result of
10 actual or constructive fraud." And it cites the Texas
11 statute. We take -- we disagree with that. We don't
12 believe that there's anything anywhere in the record that
13 suggests actual or constructive fraud, and we intend to
14 make that argument with the Court of Appeals.

15 Ms. McVey's client has taken the --

16 THE COURT: Well, what's the ruling in the order?

17 MR. CARROLL: That showing that Payne & Keller
18 dissolved -- the documents showed the dissolution and what
19 led to the dissolution actually states a claim for fraud.
20 We disagree. And we were handing that issue to the Court
21 of Appeals. Ms. McVey has come forward with not one bit
22 of evidence that I'm aware of that varies from what the
23 receiver had already put in front of the Court when you
24 made this ruling.

25 THE COURT: What was the ruling in the thing,

1 Mr. Carroll? That was the discussion. What was the
2 ruling?

3 MR. CARROLL: That was the ruling, that they made --
4 so here's how the whole thing -- here's how the whole
5 thing works.

6 THE COURT: It was a denial of the motion; is it
7 not?

8 MR. CARROLL: We filed a motion to dissolve the
9 receivership.

10 THE COURT: Right.

11 MR. CARROLL: And the basis for the dissolution was
12 -- the dissolution of the receivership was that Payne &
13 Keller was a Texas company and Payne & Keller dissolved.

14 THE COURT: And I denied that motion.

15 MR. CARROLL: Payne & Keller dissolved as a matter
16 of Texas law. And as a matter of Texas law, the statute
17 of repose on claims against --

18 THE COURT: And I denied that motion.

19 MR. CARROLL: So there's no -- there's nothing for
20 the receiver to marshal. There can be no claims.

21 THE COURT: I understand that, but I denied that
22 motion. A denial of a motion is not an appealable issue.

23 MR. CARROLL: But it -- the denial resulted in the
24 receivership continuing, and that's what we argued to the
25 Court of Appeals and they have said, "Okay, we agree."

1 THE COURT: Well, I understand that. I can't do
2 anything about how you change your arguments when you get
3 up there.

4 MR. CARROLL: No, ma'am, we did not change our
5 arguments. That was our argument from the get-go.

6 THE COURT: Mr. -- this is not a fruitful
7 discussion, Mr. Carroll, with all due respect to you. I'm
8 not getting back into that whole thing right now.
9 Whatever the Court of Appeals does, they will do.

10 But, please, it is now 2:20. I've got an
11 appointment at 3:00 that I'm going to keep.

12 MR. CARROLL: Yes, ma'am.

13 THE COURT: So I'm not -- this is not helpful in
14 terms of resolving the issue Mr. Sawyer and Mr. Robinson
15 have put in front of me right now, so I would ask you to
16 conclude.

17 MR. CARROLL: Yes, ma'am. And I'll tie this all up
18 because it sounds like they're asking you to revisit what
19 you did on July 10th.

20 THE COURT: No, I didn't do anything. They're
21 asking me -- Ms. McVey is saying you ought not to reserve
22 ruling on that, y'all go ahead and reserve it --

23 MR. CARROLL: Yes, ma'am.

24 THE COURT: -- and rule on the thing.

25 MR. CARROLL: And my --

1 THE COURT: And I haven't decided what to do about
2 that, and I don't need any more argument from you about
3 it.

4 MR. CARROLL: Yes, ma'am.

5 THE COURT: Thank you.

6 MR. CARROLL: Thank you.

7 MR. BELL: Your Honor, if I may, Kevin Bell on
8 behalf of Zurich American Insurance Company. I will be
9 incredibly brief.

10 I emailed -- the first is housekeeping. I emailed
11 you on Friday afternoon and said I had a matter in North
12 Carolina and could not be here. I got an email at 6:30
13 this morning; my neutral has COVID, so here I am.

14 The second is Your Honor outlined what you think the
15 carrier should be doing in terms of sharing information
16 with Mr. Protopapas. Zurich is happy to do that. We are
17 absolutely happy to do what Your Honor outlined.

18 That said, I do want to put on the record, Zurich
19 had no role in the pleadings that were filed or motions
20 that were filed in Texas. We had no role in that. And
21 the reason that I point that out is because the references
22 have all been to "the carriers" doing these things in
23 Texas. And I just think we need to be more careful about
24 that because it's not factually correct, and it's really
25 not -- it's not a fair characterization of this situation.

1 THE COURT: I'll agree with you when you
2 specifically say it doesn't apply to Zurich.

3 MR. BELL: Thank you.

4 THE COURT: I think the carriers that are involved
5 in it understand where they are and what they're doing.

6 MR. BELL: Thank you, Your Honor. Appreciate your
7 indulgence.

8 MR. ROBINSON: And, Your Honor, we'll note that, in
9 the Louisiana situation, Zurich was very forthcoming --

10 THE COURT: Exactly.

11 MR. ROBINSON: -- in entering that consent order
12 regarding the information once it was brought to their
13 attention.

14 THE COURT: Exactly.

15 MR. ROBINSON: So we'd just put that on the record.

16 THE COURT: Exactly.

17 MR. ROBINSON: The Court did ask about the rulings
18 under appeal. You're correct. You specifically did not
19 make a finding of constructive fraud, and I think those
20 were your words. You said there was a prima facie
21 evidence --

22 THE COURT: I said there was a prima facie case. I
23 declined to use it as the basis for doing what Ms. McVey
24 asked me to do. She said that the prima facie case would
25 be plenty enough to justify dissolving it.

1 MS. McVEY: And, Your Honor, in addition, I heard
2 the comment that we didn't put forth any additional
3 evidence than what the receiver put forth, and that's not
4 true. There were a bunch of discovery responses filed
5 where they asked the carriers, "Do you have any
6 information about what happened during the time period?"
7 All of that was in addition to the various documents we
8 put forth that showed that Payne & Keller, at the time of
9 its dissolution, was in the midst of claims and knew it
10 would have future claims going forward.

11 So, Your Honor, we believe strongly that, number one
12 -- and I disagree with Mr. Carroll. The whole basis for
13 them saying you can't rule is that I was stayed. You
14 didn't decide that on that issue. You took it under
15 advisement. And, Your Honor, we believe that you were not
16 stayed, that you ought to make a finding for constructive
17 fraud and to reconstitute this company.

18 THE COURT: All right.

19 MR. HAYES: Your Honor, if I may just very
20 briefly --

21 THE COURT: You know, I can conduct these things
22 without hearing any argument from anyone. It's really not
23 fair to just keep popping up one by one because somebody
24 has something you want to say.

25 Identify yourself to begin with, if you're going to

1 have anything to say, and say who you represent.

2 MR. HAYES: Yes, sir, Aaron Hayes on behalf of First
3 State Insurance Company. We are in the same boat as
4 Zurich and just wanted to note that, for the record, that
5 we did not participate in the defense of the Texas action
6 because we don't have a duty to defend and are not doing
7 so in Texas. And we just wanted to clarify that for the
8 purposes of the forthcoming order.

9 THE COURT: Appreciate the clarification and sorry
10 I'm a little short with you.

11 RULING

12 THE COURT: I am firmly convinced, the more I read
13 Rule 62, that it does not interfere with my ability to
14 make the rulings that I'm being called upon and asked to
15 make in this receivership matter. Having said that, when
16 I conducted the hearing on July 10th in Charleston, I said
17 I would wait and see what the appellate courts did with
18 this matter. The Court of Appeals has now taken this
19 matter.

20 I sincerely believe, number one, it's not an
21 appealable issue, denial of a motion. No. 2, I am more
22 and more convinced, the more I look at Rule 62, that it
23 flat out says, as a free-standing matter, unless otherwise
24 ordered by the Court, an interlocutory or final judgment
25 in an action for a receivership action shall not be stayed

1 during the period after its entry, and until an appeal is
2 taken or in the pendency of appeal -- I think that
3 language clearly says not stayed.

4 That being said, the Court is being asked to rule
5 upon that -- and it stretches my patience badly but I feel
6 that the more I reserve rights and try to be careful about
7 not overstepping my boundaries, the more certain of these
8 parties in this matter take advantage of the Court's
9 consideration in this regard and do things they don't
10 inform the receiver about and they don't inform this Court
11 about it until after the fact, and I think that is well
12 below the level of what is acceptable conduct for the
13 litigants of the sophistication of these insurance
14 companies and well below the level of what ought to be
15 expected of attorneys appearing here.

16 But I am going to stay with what I did. I am going
17 to hold in abeyance any ruling with respect to this stay
18 or to further clarifying the position of the parties. I
19 will tell you, I don't -- with regard to this stay is
20 inhibiting the receiver one bit from continuing to pursue
21 the existence of these policies and the coverage provided
22 for them for actions of a penalty here in South Carolina,
23 which is what the receiver was empowered to do and what
24 the receiver is doing.

25 I fully expect these insurance companies to -- that

1 are not being cooperative, whose conduct has been revealed
2 in this hearing today, to follow the example of Zurich and
3 the others who are being fair with this Court and candid
4 with all courts in which these complex matters are being
5 litigated.

6 But my patience is not endless, and I know this
7 litigation well enough to know that something else is
8 going to crop up here before too much longer, with the
9 same kind of machinations are going to be doing it, and I
10 can tell you, my patience and my prudence is not going to
11 be endless in these matters.

12 I still regard it as the prudent thing for me to do,
13 as a circuit court judge, to reserve rulings on matters
14 that may be matters that should be decided by the
15 appellate court with respect to these claims of stay.

16 So that is my position on the matter, and this
17 matter -- this hearing is adjourned.

18 MR. ROBINSON: Your Honor, may I ask a quick
19 question based on what you just said?

20 THE COURT: Yes, sir.

21 MR. ROBINSON: Inasmuch as the carriers indicated
22 that they would keep the receiver informed --

23 THE COURT: I get that, that all of them, even the
24 ones that have not been, in my view, behaving as they
25 should, I am hearing from every one of these carriers, as

1 represented by their lawyers, that they will be
2 forthcoming to the receiver.

3 MR. ROBINSON: Would it be an order for a consent
4 order similar to the Louisiana consent order that would
5 allow them and require them to have the same obligations
6 to the receiver during the pendency of this appeal or any
7 matter that they keep him informed about the actions?

8 THE COURT: I think that would be a great idea. Why
9 don't you pursue it with them. If they won't do it, let
10 me know, and we'll at least try to put something in place
11 that would require that. I feel like that's their noose.

12 MR. ROBINSON: Thank you, Your Honor.

13 (The above hearing concluded at 2:31 p.m.)
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

State of South Carolina)

County of Richland)

RE: Lenora Childers v. Davis Mechanical Contractors

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter III for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of Common Pleas for Richland County, South Carolina, on the 21st of August, 2023.

Submitted: August 28, 2023

____/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

Official Court Reporter III

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES (FORM 800) OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Sep 06 2023

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice (Ret.) and Acting Circuit Court Judge

Case No. 2021-CP-40-03484

Appellate Case No. 2023-000727

Lenora Childers, Individually and as Personal Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories, Inc.; General Boiler Casing Company, Inc.; HEFCO, Inc.; J.R. Dean Company, Inc.; Payne & Keller Company; SFB, Incorporated; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Systra Engineering, Inc.; United Construction Co. of Rome, Inc.; and Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co., Defendants.

Flame Refractories, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.; and Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and as Successor to Northern Insurance Company of New York, Maryland All American General Insurance Company, and Maryland Casualty Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler; Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance

Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through its Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

PROOF OF SERVICE

I certify that a true copy of Respondent's Response to Appellants Returns to Expedited Motion to Clarify The Court's Order on Appealability in this case has been served on the following, this 6th day of September, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262(a)(1), SCACR, and *RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022)*, S.C. Sup. Ct. Order dated May 6, 2022.

Counsel served: Wesley Brian Sawyer
Murphy & Grantland, PA
P.O. Box 6648
Columbia, SC 29260
wsawyer@murphygrantland.com

Matthew Todd Carroll
M. Elizabeth O'Neill
Womble Bond Dickinson (US) LLP
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504
todd.carroll@wbd-us.com
elizabeth.oneill@wbd-us.com

Harry Lee
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
hlee@steptoe.com

Brian Montgomery Barnwell
Rikard & Protopapas, LLC
P.O. Box 5640
Columbia, SC 29250
bb@rplegalgroup.com

Brady Edwards
Morgan, Lewis & Bockius LLP
1000 Louisiana St., Suite 4000
Houston, TX 77002-5006
brady.edwards@morganlewis.com

Scott T. Schutte
Morgan, Lewis & Bockius LLP
110 North Wacker Drive
Chicago, IL 60606-1511
scott.schutte@morganlewis.com

John B. White, Jr., P.A.
John B. White, Jr.
Marghretta H. Shisko
Christopher R. Jones
291 S. Pine Street
Spartanburg, SC 29302
jwhite@johnbwhitelaw.com
mshisko@johnbwhitelaw.com
cjones@johnbwhitelaw.com

SMITH ROBINSON, LLC

s/ Jonathan M. Robinson

G. Murrell Smith, Jr.

Jonathan M. Robinson

Shanon N. Peake

2530 Devine Street, 3rd Floor

Columbia, SC 29205

murrell@smithrobinsonlaw.com

jon@smithrobinsonlaw.com

shanonp@smithrobinsonlaw.com

Attorneys for Respondent Payne & Keller
Company, By and Through its Duly
Appointed Receiver, Peter D. Protopapas

September 6, 2023