STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Terry L. Green, Sr., as the Personal Representative of the Estate of Robert J. Green, Deceased and Evelyn V. Green, Individually, Plaintiffs, v. 3M Company, et al., Defendants.	In Re: Coordinated Asbestos Docket Civil Action No: 2022-CP-40-06627 **ORDER GRANTING PARTIAL SUMMARY JUDGMENT FOR DAVIS MECHANICAL CONTRACTORS INC.**
Davis Mechanical Contractors, Inc., by and through its duly-appointed Receiver Peter D. Protopapas, Third Party Plaintiff, v. Allstate Insurance Company, et al. Third Party Defendants.	

Before the Court is Motion for Partial Summary Judgment, on behalf of the Receiver for Davis Mechanical Contractors, Inc. ("Receiver" or "Davis Mechanical"), against Third-Party Defendant Republic Insurance Company n/k/a Starr Indemnity & Liability Company ("Republic"). The Receiver asserts there is an actual and justiciable controversy regarding Republic's obligations to Davis Mechanical, and therefore certain judicial declarations are warranted at this stage of this matter. The Court has reviewed the Motion for Partial Summary Judgment and accompanying exhibits.

After full consideration of the brief and accompanying exhibits, the Court finds that there is no triable issue of material fact with regard to Davis Mechanical's declaratory judgment claims against Republic regarding Republic's obligation under Policy No. CDU 10447. Therefore, the Court GRANTS Davis Mechanical's Motion for Partial Summary Judgment. Further the Court

also grants the Receiver's Motion to Seal regarding Exhibit 5 and Exhibit 10.[1] The Court finds the sealing of the exhibits meets the requirements of Rule 41.1, SCRCP, and orders the exhibits provided to the Court be placed under seal as set forth in the Receiver's Motion to Seal.

FACTUAL BACKGROUND

Davis Mechanical was organized in 1965 and engaged in the business of electrical contracting, custom metal fabrication, and air conditioning duct fabrication and installation, and other activities.[2] In 2011, David Mechanical was administratively dissolved.[3]

On December 7, 2021, this Court entered an order appointing Peter D. Protopapas as Receiver for Davis Mechanical pursuant to South Carolina Code § 15-65-10.[4] The Order provided the Receiver "with the power and authority [to] fully administer all assets of Davis Mechanical" including "the right and obligation to administer any insurance assets of Davis Mechanical as well any claims related to the actions or failure to act of Davis Mechanical's insurance carriers.[5]

Davis Mechanical has been sued in more than twenty bodily injury asbestos lawsuits ("Davis Mechanical Asbestos Suits").[6] The plaintiffs in these lawsuits alleged causes of action for, among other things, negligence, strict liability, and product liability arising from the alleged exposure to materials or products sold, distributed, used, disturbed, or installed by Davis Mechanical or otherwise arising from the conduct of its business operations. The asbestos bodily injuries are alleged to have taken place at various times, including during the policy period covered by the insurance policies issued to David Mechanical by Employers Insurance Company

[1] The Court has reviewed *in camera* the exhibits which are confidential settlement agreements and terms that have previously been approved by this Court.
[2] Davis Mechanical's Mot. for Partial Summ. J., Ex. 2.
[3] Davis Mechanical's Mot. for Partial Summ. J., Ex. 3.
[4] Davis Mechanical's Mot. for Partial Summ. J., Ex. 1.
[5] *Id.*
[6] Including, without limitation and before this Court, *Lamm v. 4520 Corp., Inc.*, C/A No. 2022-CP-40-01241, *Davis v. 3M Co.*, C/A No. 2022-CP-40-02381, *Love v. 3M Co.*, C/A No. 2021-CP-40-06190, and *Welch v. 3M Co.*, C/A No. 2022-CP-40-03834.

of Wausau ("Wausau") and Republic.

Wausau issued Combination Casualty Policy No. 1423-00-080954 to Davis Mechanical for the October 1, 1982 to October 1, 1983 policy period (the "Wausau 82/83 Policy").[7] As is pertinent here, the Wausau 82/83 Policy covers Davis Mechanical's liability to pay damages for bodily injury during the policy period. It provides $500,000 in coverage to Davis Mechanical "per occurrence" and in the aggregate.[8]

Republic issued umbrella liability insurance coverage to Davis Mechanical with Policy No. CDU 10447 for the October 1, 1982 to October 1, 1983 policy period (the "Republic 82/83 Umbrella Policy").[9] The Republic 82/83 Umbrella Policy sits directly above the Wausau primary policy.[10] It covers Davis Mechanical's liability to pay damages for bodily injury during the policy period.[11] It provides $30,000,000 in coverage to Davis Mechanical for "each occurrence" and in the aggregate.[12]

Importantly, the Republic 82/83 Umbrella Policy includes a "Loss Payable" paragraph, which states in relevant part:

> Liability under this policy with respect to any occurrence shall not attach unless and until the Insured or the Insured's underlying insurer, shall have paid the amount of the underlying limits on account of such occurrence.[13]

Following his appointment and in furtherance of his duties, the Receiver negotiated a settlement with Wausau related to the Wausau 82/83 Policy (and other policies) issued to Davis Mechanical (the "Wausau Settlement").[14] That settlement was approved by this Court and

[7] Davis Mechanical's Mot. for Partial Summ. J., Ex. 5.
[8] Davis Mechanical's Mot. for Partial Summ. J., Ex. 6.
[9] Davis Mechanical's Mot. for Partial Summ. J., Ex. 7.
[10] *Id.*, Endorsement 2.
[11] *Id.*
[12] *Id.*
[13] Davis Mechanical's Mot. for Partial Summ. J., Ex. 8.
[14] Davis Mechanical's Mot. for Partial Summ. J., Ex. 5.

resulted in the establishment of a Qualified Settlement Fund known as the Greenville QSF, LLC Asbestos Bodily Injury Qualified Settlement Fund ("Greenville QSF" or "QSF") for the defense and payment of Davis Mechanical Asbestos Suits.[15] This Court further ordered that "upon completion and funding of the settlement to Greenville QSF, Wausau's policies to Davis [Mechanical] or under which David [Mechanical] is entitled to benefits from Wausau . . . are fully exhausted such that no further insurance coverage will be available under the polices[.]"[16] The settlement agreement also provided that funds paid by Wausau as part of the settlement agreement would be deposited into the Greenville QSF.[17] Thereafter, Wausau completed the transfer of settlement funding and the Receiver settled claims asserted by several plaintiffs in the Davis Mechanical Asbestos Suits for their claims of asbestos-related bodily injuries.

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (citing Rule 56(c), SCRCP); see also *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860 (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

The moving party "has the initial responsibility of demonstrating the absence of a genuine issue of material fact," at which point "the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362

[15] Davis Mechanical's Mot. for Partial Summ. J., Ex. 9.
[16] *Id.* at 9.
[17] *Id.* at 3.

S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). The nonmoving party "must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If [it] does not so respond, summary judgment should be entered against [it]." *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 453 (Ct. App. 1988).

ANALYSIS

In South Carolina, "[i]nsurance policies are subject to the general rules of contract construction." *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010)); *see also Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 594 (2014) (An insurance "policy's terms are to be construed according to the law of contracts."). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Whitlock*, 399 S.C. at 614, 732 S.E.2d at 628 (citation omitted).

Further, our case law favors construing insurance coverage clauses broadly in favor of the insured and in favor of coverage: "rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed. This rule of construction inures to the benefit of the insured." *McPherson By and Through McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, 319, 426 S.E.2d 770, 771 (1993). In other words, "if doubt exists as to the extent or fact of coverage, the language used in most policies will be understood in its most inclusive sense." *Id. See also Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995) (stating that insurance policies are "construed liberally in favor of the insured and strictly against the insurer.").

When there is ambiguity in the insurance context,[18] "an insurance policy is to be liberally construed in favor of the insured, and, where reasonably susceptible of a construction which will permit recovery, that construction will be adopted." *Linder v. Firemen's Ins. Co. of Newark, N.J.*, 240 S.C. 331, 334, 125 S.E.2d 645, 647 (1962).

Here, the issue before the Court on summary judgment is whether Davis Mechanical's underlying insurer, Wausau, "paid the amount of the underlying limits limits"—i.e., $500,000—"on account of such occurrence."[19] If so, then the underlying insurance has been fully exhausted[20] and Republic must begin paying up to its per occurrence limit.

The Court is persuaded by Davis Mechanical that Wausau has paid the amount of the underlying limits because it disposed of or transferred money to the Greenville QSF, which in turn was used to pay asbestos plaintiff's claims. The Receiver negotiated a settlement with Wausau related to the Wausau Policies issued to Davis Mechanical, including full payment of the limit of liability of the 82/83 Wausau Policy.[21] Further, this Court stated that "upon completion and funding of the settlement to Greenville QSF, Wausau's policies issued to David under which David is entitled to benefits from Wausau. . . are fully exhausted such that no further insurance coverage will be available under the policies.[22]

Following the funding of the Greenville QSF, the Receiver settled claims asserted by several plaintiffs that sued Davis Mechanical for their asbestos bodily injuries.

This Court finds because of the Receiver's settlement with Wausau, Wausau's policies

[18] In general, a contract or contractual provision is ambiguous "when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation." *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (1997).
[19] Davis Mechanical's Mot. for Partial Summ. J., Ex. 8.
[20] The Court adopts the short-hand reference of the term "exhaustion" as used in Davis Mechanical's Motion and as used throughout this litigation.
[21] Davis Mechanical's Mot. for Partial Summ. J., Ex. 5.
[22] Davis Mechanical's Mot. for Partial Summ. J., Ex. 9.

"are fully exhausted such that no further insurance coverage will be available under the policies."[23] Further, the Wausau's policies are exhausted as Wausau had paid funds in excess of the aggregate and "per occurrence" limits in the policy. The Court agrees the policy language does not require Wausau to pay directly to asbestos plaintiffs—it simply requires that Wausau "shall have paid the amount of the underlying limits on account of such occurrence,"[24] and the payments here were made and they were made on account of asbestos injury occurrences. Moreover, even if payment to the Greenville QSF was not sufficient to exhaust Wausau's policy—despite this Court already holding that it did—those funds being distributed to the asbestos claimants themselves plainly suffice. Therefore, Republic is now required to pay David Mechanical settlements, verdicts, and judgments up to its "per occurrence" and "aggregate" limits of liability in the Republic 82/83 Umbrella Policy, along with the appropriate defense costs, court costs, and interest "in addition to limits."

CONCLUSION

For the reasons set forth above, the Court grants Davis Mechanical's Motion for Partial Summary Judgment, and also grants Davis Mechanical's Motion to Seal in reference to Exhibit 5 and Exhibit 10.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE FOLLOWS]

[23] *Id.*
[24] Davis Mechanical's Mot. for Partial Summ. J., Ex. 8.

Richland Common Pleas

Case Caption:	Terry L Green Sr , plaintiff, et al vs Advance Auto Parts Incorporated , defendant, et al
Case Number:	2022CP4006627
Type:	Order/Summary Judgment

So Ordered

Jean H. Toal