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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joan H. Toal
Acting Circuit Court Judge

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.,
Payne & Keller Company, and PBI QSF, LLC, 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
American General Insurance Company, and Maryland Casualty
Company); Allstate Insurance Company; John Tighe; Sean
Anthony 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, 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., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,	Third-Party Defendants,
--	----------------------------

of which

Payne & Keller Company, by and through its 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 f/k/a Stonewall Insurance Company, individually and as successor in interest to Stonewall Surplus Lines Insurance Company; Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company are the	Appellants.
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AND ENFORCE RULE 205 - VOLUME III**

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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

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., Payne & Keller Company, and
PBI QSF, LLC, 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
American General Insurance Company, and
Maryland Casualty Company), et al.,

Third-Party Defendants.

2021-CP-40-03484

In Re:

Asbestos Personal Injury Litigation
Coordinated Docket

**TRAVELERS CASUALTY AND SURETY COMPANY'S JOINDER IN
CERTAIN INSURERS' MOTION TO VACATE OR IN THE ALTERNATIVE
MOTION TO RECONSIDER THE COURT'S OCTOBER 5, 2023 ORDER**

Third-Party Defendant Travelers Casualty and Surety Company f/k/a The Aetna Casualty and Surety Company ("Travelers") respectfully files this Joinder in the October 16, 2023 Motion to Vacate or In the Alternative Motion to Reconsider the Court's October 5, 2023 Order, filed October 16, 2023 by 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; and The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company ("Certain Insurers' Motion to Vacate or Reconsider"). The Court's October 5, 2023 Order, titled "Findings of Fact and Conclusions of Law on Plaintiffs' [sic] Motion to Revoke the Termination of Payne & Keller Company" (the "Order"), grants Plaintiff Lenora Childers's motion to revoke the termination of Payne & Keller Company ("Payne & Keller"). It purports to revoke Payne & Keller's corporate termination, which happened in Texas in 1986, and to reinstitute its corporate existence in Texas as if the termination never happened. The Order should be vacated immediately, for all of the reasons set forth in Certain Insurers' Motion to Vacate or Reconsider, as well as those set forth in Travelers' opposition to Plaintiff's motion to revoke, filed July 7, 2023, and discussed at hearings on July 11 and August 21, 2023, all of which are incorporated in full herein. The Order is legally and factually unsupported, and this Court does not have the power or jurisdiction to revoke the termination of a foreign corporation like Payne & Keller and reinstate its corporate existence in another state. It should be reconsidered and vacated pursuant to Rule 59, SCRCP.

In addition to all of the arguments and authorities set forth in Certain Insurers' Motion to Vacate or Reconsider and in Travelers' opposition to Plaintiff's motion to revoke, Travelers respectfully submits that the Order should be vacated for the following reasons.

I. The Court Did Not and Does Not Have Jurisdiction To Rule on Plaintiff's Motion to Revoke Under Rule 205, SCACR

Under Rule 205, SCACR, this Court does not have jurisdiction to rule on Plaintiff's motion to revoke, because the matters raised in the motion are affected by the appeal that is exclusively before the South Carolina Court of Appeals. *See* Travelers' Opposition to Plaintiff's Motion to Revoke at 2-3. As Travelers has explained, Plaintiff's motion to revoke is based entirely—almost word for word—on arguments Payne & Keller's Receiver made in his opposition to Travelers' motion to dissolve the Payne & Keller Receivership. This Court addressed the Receiver's argument in its order, and that order is presently on appeal. As a result, under Rule 205, this Court does not have jurisdiction to address Plaintiff's motion to revoke or any other “matters affected by the appeal”.

This jurisdictional point is not debatable. It is black-letter law. *See* Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” (emphasis added)); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534 (S.C. 2016) (Toal, J., concurring) (explaining that “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘*matters affected by the appeal*’”) (emphasis provided by the Supreme Court) (quotation and other citation omitted); *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 137 (S.C. 2013) (“Pursuant to Rule 205, SCACR, upon the service of a notice of appeal, the appellate Court

has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court.”); *Tillman v. Oakes*, 398 S.C. 245, 255 & n. 3 (S.C. Ct. App. 2012) (reiterating that “[u]nder Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal,” and explaining that this rule “deprives the lower court of the power to address a particular issue, or ‘matter,’ during the pendency of the appeal”); Jean H. Toal, et al., *Appellate Practice in South Carolina* 121 (3d ed. 2016) (explaining that “[t]he appellate court obtains exclusive jurisdiction over the appeal upon service of the notice of appeal”).

Despite the Receiver’s efforts to have the appeal dismissed, the Court of Appeals has rightly determined that the appeal shall proceed. *See* Ex. A, Order dated Aug. 9, 2023 (“this appeal shall proceed”); Ex. B, Order dated Sept. 8, 2023 (reiterating that the appeal “shall proceed”). Because Plaintiff’s motion to revoke asks this Court to issue an order that would directly impact the issues that are pending on appeal, the Court lacks jurisdiction to do so.

Neither the Court nor Plaintiff can seriously suggest that the revocation-by-fraud argument raised in Plaintiff’s motion is not a “matter affected by the appeal.” Again, Payne & Keller’s Receiver first made this argument in his opposition to Travelers’ motion to dissolve the Payne & Keller Receivership. *See, e.g.*, Travelers’ Opposition to Plaintiff’s Motion to Revoke at 2-3, 7-8, 13-15. He did so in an effort to avoid Texas’s statute of repose, which fully protects Payne & Keller from suit and has for over three decades. Rather than protecting Payne & Keller, the Receiver has asked this Court to revive potential liability for Payne & Keller that has been extinguished as a matter of law since 1989.

This Court accepted the Receiver’s argument and denied Travelers’ motion to dissolve. *See* Order Denying Motion to Dismiss and Dissolve dated Mar. 30, 2023, at 5 (filed Mar. 31, 2023)

(“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”). The Court’s order authorized the Receiver to pursue his fraud theory with the ultimate goal of revoking Payne & Keller’s termination under Texas law. *See id.* at 5. Travelers appealed that ruling, but the Plaintiff then filed a copycat motion asking for the very relief this Court lacks jurisdiction to provide.

The Court’s willingness to sign Plaintiff’s proposed order granting the motion to revoke is particularly surprising given that this Court previously acknowledged the jurisdictional rule. *See, e.g.,* Ex. C, Transcript of July 10, 2023 Hearing at 69:7-15 (“THE COURT: I am acutely aware of my role as a circuit court judge. I am not supposed to get outside my guard rails and that’s what I don’t want to do in connection with something that’s pending in front of an appellate court. MR. LEE: It [*i.e.*, Rule 205 covers] matters affected by the appeal, not the same case, not the same claim, not the same motion, but -- THE COURT: It does say that.”); *id.* at 36:3-4 (“THE COURT: The Court of Appeals is going have the right to make that finding [regarding constructive fraud]”). This Court also indicated that that there would be another hearing before it decided whether it would take any action on Plaintiff’s motion. *See id.* at 78:6-19 (“[MR. SAWYER:] Just for point of clarification, the impact holding pending a ruling by the court, will there be another hearing. I have points I wanted to put on the record, but I don’t want to waste the court’s time if we’re going to have the Court of Appeals. THE COURT: Yes, I should say that and make that clear, that this is an adjourned proceeding, not a -- MR. SAWYER: We’re not closing the book. THE COURT: Or a paused proceeding, I guess you could say. I am not declaring the hearing at an end. I am pausing it or adjourning it until I receive further information. Right now, my main concern is the Court of Appeals and my authority. . . .”).

Simply put, this Court has openly expressed its concern that it does not have jurisdiction to rule on Plaintiff's motion to revoke, because the issues raised in the motion are now squarely before the Court of Appeals. Nothing has changed.

The Order says that the Payne & Keller Receivership action is not "stayed," Order at 1-2, citing the Court of Appeals' September 8, 2023 Order, *see* Ex. B. But the Court of Appeals' Order relates only to the subject of a stay, not jurisdiction. *See* Ex. B. The existence of a stay does not address, and has nothing to do with, this Court's lack of jurisdiction to rule on Plaintiff's motion when matters affecting that motion are on appeal. It is disingenuous to equate a stay with jurisdiction—the absence of a stay obviously does not mean the presence of jurisdiction. Rule 205 and the case law enforcing it are clear that lower courts have no power (jurisdiction) to proceed with matters that are affected by a pending appeal. This Court is divested of jurisdiction to rule on Plaintiff's motion under Rule 205, SCACR.

II. Even if This Court Had Jurisdiction, The Motion to Revoke Must be Denied

Even if the Court had jurisdiction to rule on Plaintiff's motion under Rule 205, SCACR, notwithstanding the pending appeal, Plaintiff's motion fails for many other reasons.

First, this Court does not have the power to revoke the termination of a foreign corporation such as Payne & Keller and reinstate its corporate existence in another state. *See* Travelers' Opposition to Plaintiff's Motion to Revoke at 9-14. As a matter of law, this Court cannot issue an extraterritorial order that purports to change Payne & Keller's dissolution status in Texas, nor can it instruct a Texas agency, its secretary of state, attorney general, or any other Texas officer to do so. State courts are not permitted to reach beyond the territorial limits imposed on them.

Second, the provision of the Texas Business Organizations Code on which Plaintiff relies for her termination-by-fraud theory, Section 11.153, was not added to the Code until 2021, decades

after Payne & Keller's dissolution, and decades after the repose period for claims for or against Payne & Keller had already lapsed. The Texas Constitution is clear that statutory provisions cannot be applied retroactively to disrupt substantive rights that have already vested—here in 1989, when the statute of repose indisputably took effect to preclude any further claims against Payne & Keller. *See* Travelers' Opposition to Plaintiff's Motion to Revoke at 14-16. The Texas Supreme Court has also explained that the constitutional prohibition on retroactively applying new laws is strictly enforced in the exact situation where a limitations or repose period has already closed.

Third, Plaintiff does not have standing to move to revoke the termination of Payne & Keller because she has no evidence that Payne & Keller ever injured her or Decedent Lewis C. Childers. *See* Travelers' Opposition to Plaintiff's Motion to Revoke at 16-18. Plaintiff also lacks standing to move to revoke Payne & Keller's dissolution to the extent she contends the termination affects other claimants, with whom she has no relationship. *See id.* Indeed, Plaintiff's motion does not include any evidence that Payne & Keller ever conducted any activities in South Carolina, where Plaintiff contends Mr. Childers was injured, let alone any evidence that he came in contact with any Payne & Keller product or activity.

In fact, Payne & Keller's corporate designee, Robert Niemeier, acknowledged during his recent deposition that Payne & Keller is not aware of any work Payne & Keller performed in South Carolina. Ex. D, Robert Niemeier July 11, 2023 Dep. Tr. at 133:25-134:3 (Q. "Do you know, um, of any worksites Payne & Keller was at in the State of South Carolina? A. We haven't found any."); *see also, e.g.*, Ex. E, Payne & Keller's Responses and Objections to Plaintiff's First Amended Notice of 30(b)(6) Deposition and Subpoena Duces Tecum, dated June 27, 2023, at Response to Topic 6 (discovery responses and objections from Payne & Keller stating "Payne &

Keller never owned, operated, or controlled any facilities that had any connection to the manufacture, sale, purchase, distribution, advertisement, application, installation, removal, marketing, development and/or use of asbestos or asbestos-containing materials/products in the state of South Carolina.”); Ex. F, Declaration of Hannah L. Morhman dated July 7, 2023 (declaration from counsel for Payne & Keller explaining that, despite their extensive efforts, they have not identified any South Carolina worksites).

Fourth, even if this Court had jurisdiction or authority to reach into Texas’s corporate affairs and revoke Payne & Keller’s termination, and even if Plaintiff had standing, the Court cannot revoke Payne & Keller’s termination because there is no fraud claim in Plaintiff’s operative complaint. In fact, there is not a single allegation by any party that has anything to do with Payne & Keller’s supposedly fraudulent dissolution. Plaintiff’s speculation that Payne & Keller may have dissolved as a result of fraud more than 30 years ago is entirely unpled, which is reason alone to deny her motion. *See* Travelers’ Opposition to Plaintiff’s Motion to Revoke at 18-19.

Fifth, there is no admissible evidence Payne & Keller dissolved as a result of fraud or constructive fraud. *See* Travelers’ Opposition to Plaintiff’s Motion to Revoke at 19-24. Plaintiff’s motion is based entirely on speculation that Payne & Keller may have dissolved to avoid liability for asbestos claims. Plaintiff cites absolutely no evidence, admissible or otherwise, that Payne & Keller actually defrauded anyone at the time of its corporate dissolution in 1986. Indeed, the sole basis for Plaintiff’s motion is not only speculation and conjecture, all of the evidence has to do with known claimants who over the last 40-plus years have never sought to revoke Payne & Keller’s termination. The evidence has nothing to do with Plaintiff or any other asbestos claimant extant in 1986.

Moreover, the evidence does not come close to satisfying the heightened standard for proving fraud claims. The evidence merely indicates that a company facing potential non-asbestos liabilities went out of business as part of an arm's-length sale of corporate assets. There is simply no factual basis for this Court to find that Payne & Keller committed fraud vis-à-vis Plaintiff's claim or anyone else's.

Contrary to the Court's assertion that the evidence is "uncontroverted," Order at 8, Travelers' opposition to Plaintiff's motion refutes every piece of evidence set forth in Plaintiff's motion. *See* Travelers' Opposition to Plaintiff's Motion to Revoke at 20-23. And although the Court cites the "Receiver's Notice of Filing of Insurer Discovery Responses," dated June 30, 2023, that "Notice of Filing" was not mentioned in Plaintiff's motion and, in any event, it does nothing to support a finding of fraud. The Order says "the receiver sent discovery to numerous insurance carriers seeking to learn what they knew, or did not know, about Payne & Keller's history," and "the various insurance carriers disclaimed any knowledge of the facts surrounding Payne & Keller's dissolution." Order at 7. That certain insurance companies disclaimed knowledge of Payne & Keller's dissolution in 1986 is entirely unremarkable. It is neither surprising nor evidence of fraud on the part of Payne & Keller.

Notably, Payne & Keller's corporate designee confirmed during his deposition that Payne & Keller would not violate laws, rules or regulations. *See* Ex. D, Robert Niemeier July 11, 2023 Dep. Tr. at 121:20-25 ("I would think they would . . . comply with all applicable rules and regulations, um, fiduciary or business operating-wise . . ."); *id.* at 122:3-16 ("Q. As the corporate representative of Payne & Keller, based on everything, um, that you've seen to date, it is your belief that the Payne & Keller companies would follow all laws that applied to it? [objection

omitted] THE WITNESS: Again, based on what we have at this point, that would be my conclusion, yes.”).

To the extent jurisdiction over this issue ever returns to this Court and discovery is allowed to proceed on Plaintiff’s unpled fraud claim, the insurers need the opportunity to take discovery before the Court grants summary judgment to the Plaintiff on this issue, which is designed to wipe out an affirmative defense with no evidentiary basis.

Sixth, Plaintiff’s motion is barred by laches and estoppel. *See* Travelers’ Opposition to Plaintiff’s Motion to Revoke at 24-26. Plaintiff had inquiry notice of all the bases for her motion the day Mr. Childers was diagnosed in April 2020, because (i) Plaintiff was on inquiry notice that Payne & Keller may have caused the alleged injury (as she now argues, albeit without any evidence), (ii) Plaintiff was on inquiry notice that Payne & Keller had dissolved, and (iii) Plaintiff was on inquiry notice of the publicly-reported activities on which she now relies for her argument that fraud occurred in 1986. Yet, Plaintiff waited until June 2023—more than three years—to bring her motion (and has yet to even plead a fraud claim). Additionally, Plaintiff is estopped from bringing her motion now because she has asserted the validity of Payne & Keller’s dissolution when seeking appointment of the Receiver. She cannot assert the dissolution’s validity to obtain a benefit (appointment of a Receiver), and then baldly claim that the dissolution is invalid to obtain additional benefits (a reinstatement of a dissolved Texas company). The Court’s Order ignores this issue as well.

CONCLUSION

For the foregoing reasons and others appearing in the record, which Travelers incorporates by reference, the Court should vacate its Order granting Plaintiff’s motion to revoke.

Respectfully submitted,

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Attorneys for Third-Party Defendant Travelers
Casualty and Surety Company, formerly
known as The Aetna Casualty and Surety
Company

October 16, 2023

Exhibit A

The South Carolina Court of Appeals

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. 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 (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
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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

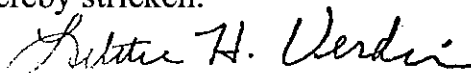
Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

Appellate Case No. 2023-000727

ORDER

After careful consideration of the parties' memoranda on appealability, this appeal shall proceed. However, nothing in this order prevents the parties from raising the issues of appealability and standing in their briefs.

Respondent's motion to strike Appellants' May 25, 2023 filings is granted. The May 25, 2023 filings which were designated by Appellants as returns to Respondent's "motion to dismiss," are hereby stricken.



FOR THE COURT

Columbia, South Carolina

cc:

Wesley Brian Sawyer, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Harry Lee, Esquire
Brian Montgomery Barnwell, Esquire
John Belton White, Jr., Esquire
Marghretta Hagood Shisko, Esquire
Brady Edwards, Esquire
Scott Shutte, Esquire
Christopher Rutledge Jones, Esquire

FILED
Aug 09 2023

Exhibit B

The South Carolina Court of Appeals

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. 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 (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;

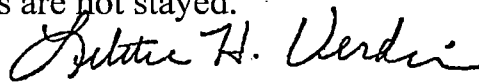
and

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

Appellate Case No. 2023-000727

ORDER

After consideration of Respondent's "motion to clarify the court's order on appealability," as well as the returns and reply, we clarify that Appellants' appeal of the circuit court's March 31, 2023 order denying their motion to dismiss third-party claims and dissolve the Payne & Keller receivership shall proceed. We further clarify that the March 31, 2023 order is not stayed during pendency of this appeal. *See* Rule 62(a), SCRCP ("Unless ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action . . . shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."); S.C. Code Ann. §14-3-450 (2017) ("In case of an appeal under item (4) of Section 14-3-330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below."). Accordingly, the receivership action and the receiver's ability to carry out his duties are not stayed.



FOR THE COURT

Columbia, South Carolina

FILED
Sep 08 2023

cc:

Wesley Brian Sawyer, Esquire
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Exhibit C

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2021-CP-40-03484
	)	
	)	
LENORA CHILDERS, INDIVIDUALLY)		
and as Personal Representative)		
of the Estate of LEWIS C.)		
CHILDERS,)		
	)	
PLAINTIFF,)		
	)	
vs.)		TRANSCRIPT OF RECORD
	)	
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.,)		
UNITED CONSTRUCTION CO. OF)		
ROME, INC.,)		
	)	
DEFENDANTS,)		

July 10, 2023
Charleston, South Carolina

BEFORE:

THE HONORABLE JEAN TOAL, JUDGE.

APPEARANCES:

THEILE MCVEY, ESQ.
Attorney for the Plaintiff

HARRY LEE, ESQ.
WESLEY SAWYER, ESQ.
TODD CARROLL, ESQ.
Attorneys representing some of the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Ladies and gentlemen of the asbestos bar,
2 we'll begin with Childers, the Estate of Lewis C. Childers
3 against Davis Mechanical and many others. This is
4 2021-CP-40-03484. This is Plaintiff's motion to revoke
5 the termination of Payne & Keller.

6 Who will speak?

7 MS. MCVEY: Good afternoon, Your Honor, Theile McVey
8 for the Childers family.

9 THE COURT: You may proceed.

10 MS. MCVEY: Thank you, Your Honor. First, Judge, let
11 me say it's been a long time since I've been to the
12 Charleston County courthouse, and it is much nicer than
13 the Richland County courthouse.

14 THE COURT: Oh, my Lord.

15 MS. MCVEY: Thank you for hearing us today. You are
16 familiar with a lot of the issues that this motion seeks
17 to have you address, but just for clarity of the record
18 and for everybody's benefit, I thought it would be
19 helpful to go through a little bit of the history about
20 what's been going on with this case.

21 Your Honor, as you know, Payne & Keller was sued in
22 this case. They did not answer the complaint. They went
23 into default. And Mr. Protopapas was appointed on the
24 motion as a receiver for Payne & Keller. That happened on
25 August 27th, 2021.

1 Payne & Keller is a dissolved Texas corporation. As
2 part of his duties, he went through and did significant
3 research, including kind of the circumstances around why
4 Payne & Keller resolved.

5 Your Honor, the Receiver's team briefed this issue
6 extensively when Travelers filed their motion to dismiss
7 the third-party complaint and to revoke the receivership.
8 So you had a lot of this in front of you before, but
9 there's some new information you didn't have.

10 THE COURT: Just to be sure the record is complete
11 for purposes of review, this matter -- Travelers' piece in
12 this matter was heard. I made a ruling adverse to
13 Travelers. The matter was then appealed and is awaiting
14 disposition at the Court of Appeals?

15 MS. MCVEY: Yes, ma'am. We're not part of that
16 appeal, but my understanding is that the Court of Appeals
17 has asked for briefing related to whether or not the
18 orders that they appealed are appealable.

19 THE COURT: Are appealable, right, so that's still
20 there?

21 MS. MCVEY: That's right.

22 THE COURT: But just making it clear, that case is a
23 different case from what you are arguing here. And your
24 arguments here are addressed in the Childers case and the
25 defaulting defendant Payne & Keller?

1 MS. MCVEY: That's right. And, Your Honor, those
2 motions were brought in the third-party case in this case,
3 but to be clear, they're different issues. The issues on
4 appeal in that case are Travelers' motion to dismiss and
5 the motion to, I think it's called revoke the
6 receivership, if I'm using that language correctly. And I
7 know that Mr. Robinson is here for the Receiver if you
8 have questions. And, of course, Mr. Carroll for
9 Travelers.

10 THE COURT: Right. And just to, I guess, complete
11 the clarifications that I'm sure Travelers will want to
12 have made on the record at the appropriate time, nothing
13 about the participation, the continuing participation in
14 this matter as it impacts Payne & Keller waives the rights
15 that have been asserted in the third-party case with
16 respect to jurisdiction and all the other things?

17 MS. MCVEY: I think that's right, Your Honor. In my
18 view, it's two separate cases. And so, Your Honor, we
19 represent the Childers family in the underlying asbestos
20 case where we allege that his disease was caused by some
21 acts or omissions from Payne & Keller itself.

22 But I think the history of Payne & Keller is
23 important for us all to remember. They operated for
24 decades building and maintaining kind of major petro
25 chemical and heavy industrial facilities. The way I

1 thought about it that we're familiar with here is a little
2 bit of a Daniel-type corporation.

3 They abruptly dissolved just as a flood of asbestos
4 claims are being filed, including thousands in Texas.
5 Immediately after Payne & Keller learned that it could
6 face significant liability as a creditor in a pending
7 bankruptcy case back in 1986, they dissolved. Payne &
8 Keller had a significant historic insurance to address
9 those issues and they still dissolved.

10 The evidence in the record before you, and, Judge,
11 it's the only evidence in the record before you is that
12 Payne & Keller dissolved with an intent to avoid or ignore
13 those liabilities in violation of the statutory duty to
14 creditors to make adequate provisions for those
15 liabilities.

16 So in our exhibits that we've sent to you in a
17 notebook, we have examples of past jobs. For example, in
18 1981, Payne & Keller worked on an insulation replacement
19 project for Archer Daniels. That's Exhibit 1 to our
20 brief. They also worked on a wall replacement at Citgo
21 Petroleum Corporation in Louisiana. We cited those two
22 cases in our brief.

23 Your Honor, by 1983, some of Payne & Keller's own
24 insurance policies explicitly excluded coverage for
25 asbestos-related claims. In the years before its

1 dissolution, Payne & Keller agreed in service contracts to
2 indemnify companies from financial responsibility for any
3 property damage or personal injury claims resulting or
4 arising from the work completed by Payne & Keller. And
5 that's in that in re Charter bankruptcy case that we cited
6 to you in our briefs.

7 During the 1980s, Payne & Keller defended itself
8 against a variety of tort claims arising from occupational
9 exposures. In fact, in 1983, the Louisiana Court of
10 Appeals affirmed that Payne & Keller and its insurer,
11 Aetna, which is now a Travelers Corporation were liable
12 for a Workers' Compensation claim bought by former
13 employee of Payne & Keller. The disability in that case
14 was silicosis.

15 In 1986, Payne & Keller was a defendant in a Texas
16 asbestos case brought by the law firm of Barron and Budd.
17 That's Exhibit 2. The claim was dismissed on May 21, 1986
18 with prejudice. And, Your Honor, although I don't know
19 the specifics of that, in my experience, a claim is
20 dismissed with prejudice when a settlement is paid.

21 By then, asbestos personal injury claims were filling
22 court dockets. In the Eastern district of Texas alone,
23 there were more than 3,000 asbestos claims that had been
24 filed by 1981.

25 In the weeks before Payne & Keller's dissolution,

1 Payne & Keller was alleged to be liable for significant
2 personal injury claims. Those were arising from toxic
3 occupational exposure to the Houston refinery.

4 In a bankruptcy proceeding, which is where we got a
5 lot of this information, filed by Charter International
6 Oil, Payne & Keller sought payment for services it had
7 provided.

8 Charter objected on the grounds that Payne & Keller
9 agreed to indemnify Charter for the personal injury claims
10 then totaling more than a 1,000. The Bankruptcy court
11 denied Charter's objection quoting the claims had not been
12 reduced to judgment and an unmatured claim could not be
13 also against Payne & Keller's mature claim unless Payne &
14 Keller was insolvent.

15 Payne & Keller told the Court that it was not
16 insolvent and asserted that it maintained insurance that
17 would cover any indemnification obligation owed to
18 Charter. Immediately after this decision was ordered by
19 the bankruptcy court, July 31 of 1986, Payne & Keller then
20 took steps to dispose of its assets and dissolve.

21 So just briefly, Your Honor, not to wear everybody
22 out, but a timeline. So the Bankruptcy court order
23 happens in July of 1986. September 29th, 1986, Payne &
24 Keller parent company executed a specific guarantee with
25 Payne & Keller.

1 They didn't even purchased its aspects guaranteeing
2 certain aspects of Payne & Keller's performance, and
3 that's Exhibit 4 to our motion. September 30th, 1986, the
4 sale was intended to close, but it was delayed.

5 October 1st, 1986, Charter filed a proof of claim on
6 behalf of plaintiffs in the bankruptcy proceeding.

7 October 7th, 1986, Payne & Keller executed its agreement
8 selling substantially all of its assets.

9 Payne & Keller retained liabilities, including those
10 arising from its operations. They agreed to indemnify and
11 hold us harmless for a range of claims, including NEPI
12 claims.

13 They agreed to maintain \$6 million of insurance
14 coverage for those claims for two years at the closing.
15 And they capped its overall liability to \$5 million in the
16 aggregate. Again, that's found in the guarantee, Exhibit
17 4.

18 October 7th, 1986, Payne & Keller changed its name to
19 Premtex Enterprise Corporation. They filed amended
20 articles of incorporation October 20th, 1986. It's found
21 in Exhibit 6. October 27th, 1986, Premtex adopted its
22 articles of dissolution. That's Exhibit 7.

23 On December 3rd of 1986, Premtex filed its articles
24 of dissolution and certification of dissolution
25 representing, and I quote, all debts, obligations and

1 liabilities of the corporation have been paid, discharged
2 or adequate provisions have been made thereof.

3 At the time they made that certification, there were
4 potentially thousands of Dioxin claims pending. The
5 guarantee was the only provision made for the payment of
6 significant known current and decades of future liability.

7 January 16th, 1987, the bankruptcy court entered an
8 order approving settlement of Dioxin claims against
9 Charter. The court ordered 5.275 million to the 1,000
10 plus PI claimants, one million to the State of Missouri,
11 five million to the US EPA.

12 Payne & Keller dissolved despite knowing those claims
13 were out there, contrary to the representation it made to
14 the secretary of state and failed to make adequate
15 provisions for the payment of those claims. And they knew
16 there would be claims going forward because, of course,
17 there were already pending asbestos claims.

18 Your Honor, you had this timeline in front of you
19 when Travelers filed their motion, but what you, also, did
20 not have in front of you and what Travelers did not come
21 forth and put forward is any contrary facts to what I've
22 just given you.

23 The Receiver filed a report this week. I assume the
24 court has seen that. And in that, he filed many of the
25 insurers for Payne & Keller, their discovery responses.

1 And in those discovery responses, the Receiver asked them
2 what information do you have about the facts surrounding
3 the dissolution? Do you have anything? Without
4 exception, they all answered no, we don't have any
5 contrary facts to what you have.

6 The Receiver, also, in his report put forth evidence
7 that the time of its dissolution, Payne & Keller had
8 extraordinary amounts of insurance and the receiver put
9 forth in its report that there were hundreds of millions
10 of dollars on its face of available insurance to cover
11 claims, future claims, including asbestos claims.

12 So, Your Honor, the only evidence, the uncontroverted
13 evidence in this record is that Payne & Keller at the time
14 of its dissolution knew that there were claims currently
15 pending in Bankruptcy court and there would be more
16 coming. And they knew that. And in spite of that, they
17 wanted to dissolve anyway without providing appropriate
18 monies for future claims.

19 Your Honor, the Texas business organization code TBOC
20 11.153 of the code authorizes the court to revoke
21 corporations termination of its own corporate existence if
22 that termination was, and I quote, a result of actual or
23 constructive fraud.

24 And it further goes on to say, notwithstanding any
25 provision of this code to the contrary, a court may order

1 the revocation of termination of its existence that is
2 terminated as a result of actual or constructive fraud.
3 The revocation of the corporate termination under the
4 Texas business code enables a corporate entity to pursue
5 claims as if it were never dissolved.

6 11.153 BI-2 says, and I quote, the revocation relates
7 back to the affected date of the termination and takes
8 effect as of that date and the entity's status as an
9 entity continues in effect as if that termination of the
10 entity's existence had never occurred.

11 So what I'm asking you to do, I'm asking you to find
12 -- and I'm going to go through what constructive and
13 actual fraud means. I'm asking you to find that Payne &
14 Keller dissolved and its dissolution was part of the
15 actual or constructive fraud.

16 So I looked to -- and it's just a red herring that --
17 let me say this. No other party has filed an objection to
18 my motion other than these insurance carriers. And their
19 only goal is that they don't have to pay any money out of
20 their policies, policies that Payne & Keller paid for.

21 Now, they can go and argue all they want that their
22 policies don't cover whatever claims that claimants are
23 making, but their only goal is they don't have to pay any
24 money for insurance that they acknowledge they had and
25 that Payne & Keller paid for.

1 So we look to see what the Texas Supreme Court has
2 said about what is the actual and constructive fraud?
3 Judge, we said it to you in our brief, but the Castleberry
4 vs. Branscum, and it's 721 S.E.2d 270, a Supreme Court of
5 Texas opinion from 1986.

6 It says, and I quote, actual fraud usually involves
7 dishonesty with purpose or intent to deceive, whereas
8 constructive fraud is the breach of a legal or equitable
9 duty, which irrespective of moral feelings, the law
10 declares fraudulent because of its tendency to deceive
11 others to violate confidence or to injure public interest.

12 And then we look at other Texas cases. There's
13 another case called Latham vs. Burgher, B-U-R-G-H-E-R, 320
14 S.W.3d 602. And there, the Court -- this case is about
15 dissolving a company after an attorney threatens to file
16 suit for damages. And the court in that case said a
17 rational juror could have decided that Latham's conduct in
18 dissolving a corporation in the face of Burgher's claims
19 represented dishonesty or purposes or an actual intent to
20 deceive, i.e. actual fraud.

21 There is ample evidence and, Judge, it's the only
22 evidence before you that Payne & Keller engaged at a
23 minimum of constructive fraud, and I would argue even
24 actual fraud.

25 The company terminated its corporate existence to

1 avoid liability for both current and future toxic torts,
2 silica and asbestos personal injury claims. And Payne &
3 Keller was keenly aware as demonstrated of those claims
4 when the decision to dissolve was made.

5 The historical record developed today suggests that
6 Payne & Keller's work included significant construction
7 projects and industries and time periods where we know
8 they used asbestos and we know that asbestos disease has a
9 long latency period from the date of exposure. That's not
10 disputed.

11 Now, in your order where you deny Travelers' motion
12 to dismiss, the parties in that case did not ask you to
13 make a finding of fraud. They simply asked you to say
14 based on what we have before us, the motion to dismiss
15 should be denied.

16 We have put forth all the evidence. We have put
17 forth information about insurance policies, about
18 potential claims and that has not been disputed. No
19 carrier has come forth in their briefing and said here's
20 an affidavit. Here's a different fact. They just make
21 procedural arguments.

22 The one thing they want you to apply is Texas
23 three-year statute of repose, but they don't want you to
24 apply the fraud exception to the Texas business code.

25 We know that Payne & Keller had hundreds of millions

1 of dollars of insurance and that this dissolution was
2 fraudulent, constructive or actual as defined by the Texas
3 business organization code. Revoking the dissolution is
4 the appropriate step.

5 Payne & Keller cannot dispute the facts that we have
6 put forth and they don't say that our facts are wrong.
7 The insurers have not put forth alternative facts. They
8 don't say that our facts are wrong. There's no affidavit,
9 no witness, no other discovery. I think you should hear
10 from these carriers. I want you to do that. They filed
11 an objection. But I do question what standing they have
12 in this case to argue about.

13 One question I would have for the carriers is if they
14 were to agree, they never will, but if they were to agree
15 we have put forth facts that establish constructive or
16 actual fraud, would they agree that the revocation would
17 be the right thing to do? I don't think they'll answer
18 your question when you ask them that, but I think it's an
19 important question to ask.

20 Many of their procedural points you've addressed in
21 other orders, so I don't want to get into them too much.
22 But I do want to address a moment -- unless you want me
23 to, I want to address for a moment the South Carolina ties
24 Payne & Keller has.

25 They make a big deal out of that. Judge, we put

1 forth in the brief that Payne & Keller was registered to
2 do business in South Carolina beginning in 1967 and was
3 here for decades.

4 Payne & Keller subsidiary, M & W Equipment maintained
5 a sales office in Rock Hill, South Carolina. Daniel
6 corporation purchased a Payne & Keller affiliate in 1977.
7 Other than insurance assets, the receiver's investigation
8 has not uncovered any provision that Payne & Keller made
9 for any of its known or expected creditors at the time of
10 dissolution.

11 Your Honor, I'm sure you're aware of this, but I
12 think it was just two weeks ago, June 27th, 2023, the
13 United States Supreme Court in the Mallory versus Norfolk
14 Southern Railroad case, it was a personal jurisdiction
15 case, but in that case Norfolk Southern had registered to
16 do business in the State of Pennsylvania. Nothing else
17 happened in Pennsylvania at that time other than them
18 registering to do business. And the Supreme Court said
19 that's enough. Your Honor, I would argue that is enough
20 here, too. And we have more than that in this case.

21 Your Honor, the only other defense I'll address, a
22 lot of the other ones I think are red herrings, but
23 Travelers makes the point at the beginning of the case
24 that we should not be able to go forward with this motion
25 because my case is stayed as a result of the pending

1 appeal to the Court of Appeals. And, Your Honor, as we
2 discussed at the beginning of the case, it is two separate
3 issues. The issues they have on appeal are different than
4 what I'm asking you to do here.

5 So let me be clear what I think we would ask this
6 court to do. We are asking you to make a finding of
7 constructive fraud as defined under the statute in Texas
8 and Texas law.

9 We're asking you to make that finding that Payne &
10 Keller dissolved and that it was constructive fraud with
11 all the pending cases out there. And then we're asking
12 that you order the receiver to go to Texas and file with
13 the Texas secretary of state to reconstitute this company
14 under Texas business code 11.153. That's what we'd ask
15 you to do. I'm happy to address any other defenses that
16 Travelers raised you'd like me to or I can sit back and
17 come back in reply.

18 THE COURT: Very well.

19 Mr. Lee. Mr. Carroll.

20 MR. CARROLL: With your permission, my colleague,
21 Harry Lee, who I believe has appeared in front of you
22 before.

23 THE COURT: Yes.

24 MR. CARROLL: Thank you.

25 THE COURT: Thank you.

1 MR. LEE: Thank you, Your Honor, may it please the
2 Court. Harry Lee, Steptoe and Johnson, for Travelers
3 defense. I'd like to start out, Your Honor, with the
4 jurisdictional point. Your Honor, raised that point.
5 Ms. McVey spoke a little bit about it at the end, but I
6 think that's where we should begin.

7 Your Honor asked whether the claims at issue in the
8 motion to dissolve the receivership are in the same case
9 as the claims at issue here for the motion to revoke the
10 termination. Yes, they're in the same case.

11 There's an original complaint and then there's third
12 party claims. So we're in the same case. And that case
13 with respect to the motion to consolidate receivership is
14 on appeal.

15 Your Honor is correct, Ms. McVey was correct, there
16 is a question that's been asked by the South Carolina
17 Court of Appeals as to appealability, submissions have
18 been made on that issue and we are awaiting word from the
19 South Carolina Court of Appeals as to whether we're going
20 forward and what the schedule would be. But the Notice of
21 Appeal has been filed.

22 THE COURT: All right. Let's be clear what you
23 appealed. What did you appeal?

24 MR. LEE: I appealed all the issues that were
25 raised --

1 THE COURT: What ruling of mine?

2 MR. LEE: Yes.

3 THE COURT: What did I rule?

4 MR. LEE: You ruled for various reasons that the
5 motion to dissolve the receivership was denied.

6 THE COURT: The motion to dissolve was denied.

7 MR. LEE: Right. And there are --

8 THE COURT: And --

9 MR. LEE: There were various findings made in order
10 to reach that decision.

11 THE COURT: And the denial of a motion is not
12 ordinarily appealable. What makes this an appealable --
13 because you're asking me to stay as you contend that this
14 is an appealable issue.

15 MR. LEE: Well, I'm asking you to --

16 THE COURT: Well, I take that back. You say as long
17 as I've got an appeal up there and they haven't said it's
18 not an appealable issue it's stayed, right?

19 MR. LEE: Well, it's not just stayed, but this court
20 is deprived of jurisdiction to handle the issues that are
21 on appeal. That's Rule 205. The State Rule is 241.

22 So the effect of your ruling, Your Honor, if -- if
23 you said as a result of my ruling, Harry, you need to go
24 down the street and do this. Theoretically, under 241, I
25 don't have to go down the street and do this unless

1 there's an exception to the stay rule of 241 or someone
2 moves to lift the stay if I've appealed.

3 THE COURT: But I didn't do anything.

4 MR. LEE: You're right.

5 THE COURT: You wanted to dissolve the receivership.

6 MR. LEE: Correct.

7 THE COURT: So the whole issue before me was the
8 legitimacy of the receivership.

9 MR. LEE: Correct.

10 THE COURT: The matters we're talking about today
11 have nothing to do with the dissolving of the
12 receivership.

13 MR. LEE: Your Honor, I --

14 THE COURT: They have to do with the status of Payne
15 & Keller, whom you do not represent. You represent an
16 insurance company.

17 MR. LEE: I do.

18 THE COURT: And this thing has to do with the status
19 of Payne & Keller as a dissolved Texas corporation.

20 MR. LEE: And the basis for the motion to dissolve
21 the receiver --

22 THE COURT: And it has to do with the management of
23 the receivership, which I created several years ago with
24 respect to Payne & Keller. It asked for certain
25 directives to the receiver in a receivership, right?

1 MR. LEE: It did, but the --

2 THE COURT: And what does that have to do with your
3 motion to dissolve the receivership?

4 MR. LEE: The grounds for the motion to dissolve the
5 receivership were the status of Payne & Keller. That was
6 the basis for dissolving the receivership. The
7 receivership should not have existed in our view because
8 Payne & Keller doesn't exist. And it doesn't exist
9 because it was terminated through a dissolution process.
10 Your Honor ruled that that dissolution process was prima
11 facie fraudulent.

12 We've appealed that issue. Your Honor ruled that the
13 revocation statute, which was issued in 2021, which we
14 believe cannot be applied retroactively, that it could be
15 applied retroactively. We've appealed that. Those issues
16 are embedded in the grounds for this motion.

17 They're the same issues. And under Rule 205, not
18 Rule 241, but Rule 205, diversity is divested in this
19 court on those issues. They are necessary issues to
20 deciding this motion.

21 And with respect to whether anyone can sue Payne &
22 Keller after 1989 decided by Your Honor in the motion for
23 the dissolution of receivership is the basis for this
24 motion. They've argued that it can be. We've argued it
25 can't be.

1 The retroactivity of the 2021 revocation statute, we
2 believe it cannot be retroactive. Your Honor said it was
3 and that issue is on appeal. It's required to decide that
4 issue here again.

5 And the whole point of 205 is when issues have been
6 decided that the trial court will not go on with the case,
7 will not go on with the issues and will not make further
8 decisions and provide further relief while the issues are
9 pending before the Court of Appeals.

10 The Court of Appeals has the notice. It's going to
11 decide those issues. It's going to say who's right and
12 who's wrong on those issues. And then when the trial
13 court is advised of that, the trial court will go on. It
14 may be that Travelers loses, and it may be the Court will
15 go on at that point, but it can't go on now is our point,
16 Your Honor, under Rule 205.

17 And that, also, includes the evidentiary presentation
18 you've heard today. That presentation was made to Your
19 Honor with respect to the motion to dissolve the
20 receivership because the status of this company, Payne &
21 Keller, is at issue as to whether there should be a
22 receiver or not.

23 THE COURT: That's not what the Court of Appeals is
24 asking you to resolve at this moment at all.

25 MR. LEE: We are --

1 THE COURT: You are asking something preliminary to
2 that. They're asking -- they don't want any briefing on
3 all this stuff about actual and constructive fraud and
4 dissolution of Payne & Keller and all that kind of thing.
5 They only want to know whether the denial of your motion
6 is appealable.

7 MR. LEE: Which depends on whether Payne & Keller was
8 dissolved fraudulently.

9 THE COURT: No, sir, it does not. Your appeal
10 doesn't depend on that one bit. Your appeal is an appeal
11 of a denial of your motion. They're not going to get into
12 whether Payne & Keller should be dissolved. That's not
13 before them at all. What is before them is strictly a
14 procedural matter, which is if you make a motion before a
15 trial judge and the motion is denied, is that an
16 appealable matter?

17 MR. LEE: The denial of the motion continuing the
18 receivership, which we believe is immediately appealable,
19 and the grounds for that will be argued. One of the
20 grounds Your Honor wrote in Your Honor's order was that
21 the evidence presented to her had made out a prime facie
22 case of constructive fraud.

23 THE COURT: Right. Just like if I deny a motion to
24 dismiss, I will deny it on the basis that the pleadings
25 make out a prime facie case. That's not the final ruling

1 in the case at all.

2 MR. LEE: Agreed.

3 THE COURT: You're trying to characterize it that way
4 because that's the only way you can get the Court of
5 Appeals to address it.

6 MR. LEE: Well, let me --

7 THE COURT: If I had made a final ruling, they could
8 address it, but they can't address something that's not a
9 final ruling.

10 MR. LEE: Your Honor, with respect to the
11 appealability of whether a receivership is continued, I
12 believe that we can make the arguments as to why that
13 receivership should not be continued and to refute --

14 THE COURT: Well, I'd be amazed if they let you do
15 that. I've been proved wrong many times by appellate
16 courts and I'm just a trial judge.

17 MR. LEE: Understood --

18 THE COURT: They get to do what they --

19 MR. LEE: And I fully understand that --

20 THE COURT: All they ought to be doing is deciding
21 whether or not the denial of the motion, which simply
22 allows the matter to go forward for further adjudication
23 is sufficient to give them complete jurisdiction to decide
24 if these matters or this thing has been constructively
25 little fraudulent or acted in a fraudulent way. I don't

1 find that it was. I find that there is sufficient
2 material in the pleadings and other information presented
3 to make that finding.

4 MR. LEE: The finding that you're being asked to make
5 today is that as a matter of law there was fraud. As a
6 matter of law --

7 THE COURT: Right.

8 MR. LEE: -- summary judgment fraud occurred.

9 THE COURT: That's right.

10 MR. LEE: And our point --

11 THE COURT: Now, what you're asking me to do in the
12 other case is to dissolve the receivership.

13 MR. LEE: Yes, because there was no constructive
14 fraud.

15 THE COURT: Because there was no constructive fraud.

16 MR. LEE: And Your Honor said --

17 THE COURT: And I said no, I'm not going to do that.
18 Now, I'm going to take up the merits of what I said no,
19 I'm not going to bypass the merits and simply dissolve the
20 receivership. That's what you want, dissolve the
21 receivership, Judge, and then you won't make any of these
22 decisions.

23 Well, all I did was say no, we're going to continue
24 on receivership. There's a bunch of static for all kind
25 of reasons, one of which is this, but not all of them.

1 There's a merits claim quite apart from whether this P and
2 K should have been dissolved.

3 I have many receiverships involving dissolved
4 corporations that are not going to be undissolved or
5 anything else. They were dissolved for abandonment of
6 their certificate or whatever reason. But they have
7 legacy insurance, that's the real situation involving this
8 file because that is who is paying for your victims' fund.
9 All right. Very, very able argument. That's the real
10 deal in this thing.

11 I created these receiverships because as long as
12 these defunct corporations are in the hands simply of
13 carrier's lawyer, their assets will not be marshaled for
14 protection and claims. They were hiding the ball. That's
15 what happened with Coble. That's what happened a bunch of
16 these other things. I said, well, we're going to get
17 somebody independent in there, a receiver, to act in the
18 best interest of the corporation. And that's what's being
19 done here. That's what you're trying to prevent being
20 done because then we'll have a specific discussion of
21 these charts that show all this insurance.

22 So that's what we're really talking about. We're not
23 talking about the Texas law or anything else or
24 receivership itself.

25 MR. LEE: Well --

1 THE COURT: We're talking about an attempt to evade
2 any kind of examination of potential insurance that Payne
3 & Keller, even if it was completely dissolved. And my
4 ability to look at that, the merits of the matter is not
5 at all impacted by whether Payne & Keller was dissolved or
6 not and, frankly, it's not even impacted by whether Payne
7 & Keller is a receivership.

8 Payne & Keller is a defendant in this lawsuit.
9 That's all that needs to be said. And I am, at this
10 point, dealing with that defendant and its potential
11 insurance.

12 MR. LEE: I believe I do understand all that, Your
13 Honor. I understand you want to keep it to the basics and
14 I fully appreciate the job that Your Honor is undertaking,
15 not just this matter --

16 THE COURT: I know you do. Listen, you've got fine
17 counsel in this room, Todd Carroll in principle and
18 honesty and so you don't have to apologize for the
19 position you take. I'm not suggesting that one darn bit.
20 You're doing a good job, as you should be.

21 MR. LEE: But just to understand, the South Carolina
22 Court of Appeals may disagree with us, but we do intend to
23 brief whether the decision that the evidence presented to
24 Your Honor before, which is exactly the same evidence
25 today, it hasn't changed one bit, is prima facie evidence

1 of constructive fraud in a situation where the facts are
2 what they are.

3 THE COURT: And that will be so contrary to the way
4 the appellate practice system is set up in this state.
5 What you're asking them to do is on an undeveloped issue
6 where I've only made a preliminary decision that the
7 pleadings allowed them to go forward and not decide
8 whether constructive fraud or actual fraud, you're asking
9 the Court of Appeals to make that decision. That's what
10 you're asking me to do.

11 MR. LEE: It may be unique, Your Honor. I understand
12 if there was a Rule 12 motion and it was simply a motion
13 to dismiss that wouldn't be appealed, but here because
14 whether the receivership should continue is appealed and
15 is based --

16 THE COURT: How is -- if I deny it, how is that
17 appealable? That's not a final decision.

18 MR. LEE: Because there's a statute that says in
19 South Carolina that one of the immediately appealable
20 things is when a trial judge continues a receivership over
21 the objection of a party. That's immediately appealable.
22 It has to go up. It is now up. The Court of Appeals will
23 tell us whether we're wrong or not.

24 THE COURT: Well, that's a South Carolina
25 receivership, is it not? You're talking about the South

1 Carolina receivership law --

2 MR. LEE: Yes, yes. Yep, but that's immediately
3 appealable. It has been appealed and the decision about
4 whether that receivership should exist or not depends upon
5 whether Payne & Keller exists or not. And so all the
6 issues as to whether Payne & Keller exist, that was the
7 argument.

8 THE COURT: It can exist or not exist. Receiverships
9 can be had for active corporations, dissolved
10 corporations --

11 MR. LEE: Understood.

12 THE COURT: That's yet to be determined exactly what
13 they are.

14 MR. LEE: But it's in front of the Court of Appeals
15 now is my issue. And I don't want to beat a horse. I
16 said what I've said. I'm not here to argue with Your
17 Honor.

18 THE COURT: I understand. I understand. I'm
19 probably being unfair for pushing this. You continue your
20 argument.

21 MR. LEE: One of the other issues that was in the
22 motion to dissolve the receivership issue, and is in this
23 issue is also whether this Court has the power to do what
24 Ms. McVey is asking you to.

25 Now, she said something for the first time, not in

1 her papers, at the end of her presentation and Your Honor
2 was busily writing that down at the end, which was what I
3 want you to do, Your Honor, after you grant our motion is
4 I want you to order the receiver to go to Texas and ask
5 the Texas Comptroller for accounts, Secretary of State to
6 revoke the termination of Payne & Keller. That had never
7 been suggested before. That's a different take.

8 We don't believe that -- we believe that what had
9 been asked before was that Your Honor revoke the
10 termination of Payne & Keller. And one of the arguments
11 we made before is Your Honor doesn't have been the power,
12 no South Carolina court has the power to do that.

13 We still believe in that. We still have that as one
14 of the issues on appeal with respect to the receivership
15 issue, but that's something that I need to think about
16 because that would then have the matter decided in Texas.
17 That would then have a Texas proceeding where Texas agency
18 folks and anybody interested in Payne & Keller would then
19 have to figure out whether that order justifies the
20 revocation. But Your Honor isn't ordering the revocation,
21 that's a different suggestion by Ms. McVey. I honestly
22 need to think about that, as to whether that's a procedure
23 that gets away from or gets around the power of this Court
24 and limits the power of this Court.

25 THE COURT: You're going right to the heart of the

1 thing I've been concerned about most of all, it's not the
2 Court of Appeal's business. You're going right to the
3 heart of it. That's why I'm fighting so hard because
4 that's the first time I heard about that, too.

5 I have a lot of questions about whether I on my own
6 albeit applying Texas law had the authority to undo the
7 Texas dissolution by order of this Court. And I think
8 there's a lot of difference between that and what is now
9 being asked, which is that I direct the receiver to pursue
10 a certain course of action before the proper tribunal.

11 In that connection, you may know, and I'm sure you
12 all do know because you follow these things all over the
13 country, but the Receiver has been directed to go into a
14 lot of different courts to pursue matters that relate to
15 receiverships in South Carolina, that is not unusual at
16 all.

17 I remember the first receivership I ever knew about,
18 which was the reason I came to brainstorm about these
19 defunct corporations and receiverships with Gann
20 (phonetic) and Coble was an old case involving New South
21 Life Insurance Company in South Carolina. And my senior
22 partner and I created a receivership for New South to
23 defend against what was going to be a bunch of claims,
24 just like P and K did, just like P and K did.

25 MR. LEE: Well, Your Honor, it's our view that the

1 Texas court is the one that should be doing what's --

2 THE COURT: They're saying, look, Judge, we think you
3 should direct the receiver to go to Texas and get their
4 determination about this dissolution. How could you
5 possibly fuss about that? That's what I don't understand.

6 MR. LEE: Tell you the truth, I'm remarking that I've
7 heard it for the first time today because until now,
8 they've been asking this court to revoke the termination.

9 THE COURT: Now, they're asking something different.

10 MR. LEE: And if they're going to go to Texas and
11 file this motion in a proceeding and then get factual
12 determinations and get people whose got personal
13 jurisdiction and get witness testimony from them and so
14 forth because there is no personal knowledge information,
15 there's nothing suggesting --

16 THE COURT: I don't know what that procedure will
17 involve and I don't think you do either, Mr. Lee, but I
18 doubt it's going to involve what you think it's going to
19 very, which is this factual hearing down here.

20 I don't know that that's at all what's going on. Be
21 that as it may, all this stern and burn about whether
22 there is evidence of constructive fraud has resolved
23 itself today into a request to direct a receiver to revoke
24 the dissolution of P and K. What's wrong with that?

25 MR. LEE: Well, for one, on this point here, it

1 should be done in Texas. A Texas court will tell a Texas
2 agency what it should and shouldn't do.

3 THE COURT: Well, in a way, I'm going to be making
4 that determination because what they're asking me to do is
5 say constructive fraud. Now, I want you to do the
6 administrative thing by going to Texas and asking Texas to
7 on behalf of your corporation to revoke the dissolution
8 admitted by you, the corporation, constructive fraud.
9 Now, how can you -- what's your -- what kind of -- I just
10 don't understand how you --

11 MR. LEE: I don't think Payne & Keller has said they
12 committed constructive fraud.

13 THE COURT: That's what they're planning on doing.

14 MR. LEE: They said it might have. That's the --

15 THE COURT: No, what they're saying is they want me
16 to make that determination. They want me to take that
17 determination down to Texas and say please exercise your
18 administrative duty and revoke this dissolution. We've
19 got it, a judge has found it. That's what they're asking.

20 MR. LEE: I don't know that Payne & Keller has yet
21 asked you to do that.

22 THE COURT: The receiver for Payne & Keller.

23 MR. LEE: The receiver for Payne & Keller -- I have
24 not seen a motion for you to revoke from the receiver to
25 revoke the termination. It's coming from the plaintiff.

1 THE COURT: Well, exactly. It is. It is.

2 MR. LEE: So the receiver has not made a motion
3 saying we committed constructive fraud, Payne & Keller did
4 and we'd like you to find that.

5 THE COURT: That's correct. That's correct.

6 MR. LEE: The plaintiff has done that. And it's a
7 very significant difference.

8 THE COURT: Exactly, and that puts it a step away
9 from this third party and Court of Appeals, as well, does
10 it not?

11 MR. LEE: Well, if there's an order to the receiver,
12 go on down to Texas, start a proceeding and decide whether
13 you think there was constructive fraud or not or find
14 out --

15 THE COURT: That's not what he's going to do at all.
16 He's going to do just like I would do as the secretary of
17 State if I'm going to represent a corporation that's
18 already dissolved. I'm going to file revocation papers.
19 It's an administrative act for the Secretary of State to
20 then revoke the dissolution. That's what he's going to
21 do.

22 MR. LEE: If he has a finding that the secretary will
23 accept the fraud.

24 THE COURT: Well, if I make that finding, Texas --

25 MR. LEE: And my only point coming full circle is we

1 don't believe Your Honor has the right to make that -- a
2 South Carolina court has a right to make that finding.

3 THE COURT: The Court of Appeals is going have the
4 right to make that finding.

5 MR. LEE: Well, the Court of Appeals could
6 potentially make the finding that the evidence they
7 presented doesn't come close or even anywhere near a prime
8 face case of fraud. I can go through that, Your Honor, as
9 to why because --

10 THE COURT: They can make that as a reversal of my
11 ruling, right?

12 MR. LEE: Yes.

13 THE COURT: Well, I haven't ruled that yet.

14 MR. LEE: Your Honor did write in an order that there
15 is a showing of a prima facie case of fraud.

16 THE COURT: Yes. That's not a permanent finding.

17 MR. LEE: Understood, but it is where we are and
18 it's the reason for continuing the receivership.

19 THE COURT: I understand.

20 MR. LEE: Let me turn, Your Honor, to the evidence.

21 THE COURT: All right.

22 MR. LEE: Because I think it's important to go
23 through that.

24 THE COURT: Let's look at it.

25 MR. LEE: This is a fraud claim, fraud.

1 THE COURT: Yes.

2 MR. LEE: 9(b) particularly requirements to plead
3 nowhere to be found. No reply to the affirmative defense
4 that Payne & Keller raised to the statute of repose. No
5 reply to that under 8(c) with any pleading of
6 particularity to fraud.

7 There's no pleading at all. Nothing for us to shoot
8 at, nothing for us to investigate. Simply someone
9 gathering documents back from 1986 and trying to tell a
10 story.

11 That story has almost nothing to do with asbestos,
12 nothing to do with asbestos. It's a story about a company
13 that's involved in the industry that worked in a lot of
14 places. That in 1986, got sidled with somebody about
15 Dioxin claims, not asbestos claims. As of that point in
16 time, they had one asbestos claim made against it that was
17 dismissed and no record or evidence suggesting that it was
18 paid, just that it was dismissed.

19 In the three years after the dissolution, from '86 to
20 '89, no record of any asbestos claims, no outrage, no
21 wondering why did Payne & Keller do this, no effort to
22 revoke the termination, no effort to revoke the
23 termination for 35 years or more until now. Payne &
24 Keller, big company, everybody knows about them.

25 All the plaintiffs' lawyers are real good at naming

1 folks and making sure every defendant is named. There is
2 a smattering of claims. They are dealt with by the
3 insurance, and they are paid. No one has been shorted.

4 THE COURT: Let me stop you right there one minute.

5 MR. LEE: Okay.

6 THE COURT: Payne & Keller was dissolved in Texas.

7 MR. LEE: With parents who have agreed to indemnify.
8 So you have people taking care of the claims, not Payne &
9 Keller.

10 THE COURT: Well, is that how your insurance company
11 and you lawyers like you and Todd got into this thing is
12 through insurance companies for the indemnitors?

13 MR. LEE: No, we are insurance companies for Payne &
14 Keller.

15 THE COURT: Exactly. That means you're insurers for
16 Payne & Keller, at least, the argument is because that was
17 before asbestos claims were excluded from the policies.
18 And at a time when policies were written as per current --

19 MR. LEE: Right.

20 THE COURT: -- not as claims made policy. That's
21 what gets you in this picture.

22 MR. LEE: Yes.

23 THE COURT: So you're directly in it as an insurer of
24 Payne & Keller. And you can't on the one hand tell me oh,
25 Payne & Keller is doing nothing. They're completely

1 dissolving everything. But you're acting for them as a
2 lawyer. The defendant in the lawsuit is not Travelers or
3 Aetna. It's Payne & Keller. And you as their insurer are
4 acting for Payne & Keller. So what gives you --

5 MR. LEE: Well, Mr. Carroll and I aren't involved in
6 any of that, okay? We're not involved in any defense --

7 THE COURT: But that's what's happening for your
8 company --

9 MR. LEE: So --

10 THE COURT: -- where these claims are being defended
11 and you're the one arguing.

12 MR. LEE: So let me tell you what happens.

13 THE COURT: All right.

14 MR. LEE: Payne & Keller gets named. Their status
15 has been revoked. They've been terminated. They get
16 dismissed. They name the right company, okay, and the
17 insurers for that company get involved. But in the
18 meantime, we have to get involved to get Payne & Keller
19 dismissed. And they're always dismissed. No one seeks to
20 revoke the termination. No one challenges it, 35 plus
21 years. No one is shorted any money. That's what
22 happened.

23 And Mr. Carroll and I weren't involved in this until
24 a year or two ago. So all that has happened way before we
25 got anywhere near. We're arguing on the coverage issues.

1 We're arguing, obviously, on the termination issues. And
2 yes, when you have a Texas insurer and you have a
3 dissolution statute that has a three-year statute of
4 repose that goes not just to 2003, but all the way before
5 1986 through the predecessor of the statute, section 7.12
6 provides that there's a three-year statute of repose.

7 And certain states, not all of them, but certain
8 states do this. They have decided for their corporations
9 that form there are going to have this finality and they
10 expect that the other states in the country will respect
11 that.

12 Now, whether they do or they don't, but that's the
13 expectation. Certainly, the South Carolina authorities
14 here knew when the Payne & Keller signed up to be
15 registered to do business here, which appears that they've
16 never done, by the way.

17 There's no evidence of anyone doing business here for
18 Payne & Keller, but we'll get to that in a minute. But
19 South Carolina knew they were a Texas company and they
20 would know that Texas has statute of repose. So that
21 three-year cut off claims by anybody is going to apply to
22 that company doing business in this state. And yet, they
23 let them do business in this state.

24 There's no condition that says you can't do business
25 in the state as a Texas company because we have a statute

1 of repose and we don't like it. It applies and it applied
2 all the way back to 1986.

3 THE COURT: The Secretary of State doesn't make any
4 determination of that domestication of foreign
5 corporations for the purposes of doing business in the --

6 MR. LEE: I'm sure they don't look into it.

7 THE COURT: Nobody does.

8 MR. LEE: But the statutes are what the statutes are
9 and they existed. And I'm sure Texas expects that they
10 will be respected. Whether they are or they aren't, I
11 don't know. But like I said, there are other states like
12 this. Not that many, but they exist. There are many
13 states that have dissolution, but you can still sue them
14 after the three-year period.

15 But turning back to the evidence, the evidence here,
16 as I said, is there was not when they dissolved. When
17 Payne & Keller dissolved, there was no evidence. There
18 was no evidence of a single asbestos claim pending against
19 them or a threat to be filed against them. Not one. Yet,
20 what's being asked here is a determination that Payne &
21 Keller defrauded this asbestos claim when it terminated.
22 This asbestos claim that was filed 35 years later. It
23 should have been expected. It should have made provision
24 for it. And somehow that was fraud by dissolving in that
25 manner.

1 This is an action mostly by the plaintiff. It's not
2 made upon a motion of every other asbestos claim. It's
3 not made on behalf of other kinds of plaintiffs. This is
4 this person's asbestos claim. And this person is saying I
5 was defrauded in 1986 when Payne & Keller didn't have a
6 single asbestos claim against it or a single threat of an
7 asbestos claim against it.

8 All it knew was that there were asbestos claims
9 against lots of companies, not Payne & Keller and not
10 Payne & Keller in the three years afterwards.

11 In addition, with respect to the claims it knew about
12 or that were threatened, it handled them in the three-year
13 repose period. They got paid. They didn't get stiffed.
14 The officers and directors made provisions for those
15 claims and they paid them.

16 THE COURT: Well, now, how does that line up with the
17 fact that you say there's this indemnity out there that
18 continues to pay claims all the way, asbestos claims? I
19 mean, link those two up for me.

20 MR. LEE: Well, Your Honor, I don't know why the
21 indemnity isn't the resolution. Maybe there's some sort
22 of cap, maybe there's some sort of argument that those
23 companies are making about what they pay or what they
24 don't pay. They're not my clients.

25 THE COURT: Well, you started this off by arguing

1 that you all relate to these indemnitors. You get these
2 things dismissed because you can send them to the
3 indemnitors. This is not some hands off relationship you
4 have with these people.

5 If you're not doing what lawyers do to the Coble
6 Corporation and trying to pass them off as somebody that's
7 making an active decision, then you're handing it off to
8 someone that can make an active decision on behalf of
9 whoever is responsible for the dues of P and K. And what
10 you're saying is it's indemnitors. I mean, that's an
11 ongoing relationship that y'all have with them.

12 MR. LEE: I don't think that P and K can have a
13 relationship with anybody. They're dissolved. They're --

14 THE COURT: Well, how are you as the insurer going to
15 these indemnitors and getting them to take over the
16 settlement for claims against Payne & Keller if what you
17 just said is true?

18 MR. LEE: Based upon the sale documents. The sale
19 documents provide that these companies are going to pick
20 this up and Payne & Keller is going to go away.

21 THE COURT: But the way you get into it is somebody
22 sues Payne & Keller and you're their insurer and that's
23 how you get into it.

24 MR. LEE: My client is their insurer and has been for
25 years and still is today.

1 THE COURT: And you're still taking some very active
2 measures on behalf of this dissolved corporation to keep
3 from paying claims yourself.

4 MR. LEE: Your Honor, with respect, we're not doing
5 anything on behalf of Payne & Keller. We're not
6 representing them, we're not advocating for them.

7 THE COURT: You're sending the claims against Payne &
8 Keller to indemnitors for them to pay, are you not? I
9 mean, that's what you said.

10 MR. LEE: I think maybe there's a misunderstanding.
11 When Payne & Keller gets named, a lawyer after the verdict
12 being paid by the insurance company shows up and says
13 Payne & Keller is not a company.

14 THE COURT: Right.

15 MR. LEE: So we're specially appearing to let the
16 court know that and have the court aware of the
17 arrangements Payne & Keller made.

18 THE COURT: Which is indemnity arrangements.

19 MR. LEE: With other companies that we don't
20 represent and we don't control what Travelers doesn't
21 insure.

22 THE COURT: But you tell through the indemnitors --

23 MR. LEE: We tell the plaintiff and then the
24 plaintiff goes out and sues however it wants to and Payne
25 & Keller goes away and nobody attempts to revoke its

1 termination.

2 THE COURT: Well, that's a lot of present involvement
3 in the affairs of a company you say you don't have
4 anything to do with is all I got to say. And the reason
5 is because it owes the insurance policies, the legacy
6 policies, still cover matters that began with an exposure
7 when the policies are in existence, but has a long latency
8 period and, therefore, goes back to that time. It can't
9 be that way for purposes of coverage and at the same time
10 say we don't have anything to do with it.

11 MR. LEE: Well, Your Honor, if the company is
12 terminated, you can't legally quote, unquote represent it.

13 THE COURT: Oh, yes, you can. You can have
14 receiverships for the first purpose of marshaling the
15 assets of that defunct or dissolved corporation in aid of
16 protection of claims.

17 MR. LEE: I don't disagree with you, but I think
18 there's a difference between dealing with assets and
19 acting for a company that doesn't exist.

20 THE COURT: Well, you act for a company that doesn't
21 exist because you have the assets. You're the insurance
22 company. So you can do it in one sense, but not in
23 another? That doesn't make any sense, Mr. Lee, with great
24 respect for your intellect and your knowledge on coverage
25 matters, although I have done it many times.

1 MR. LEE: Your Honor, the facts that we are presented
2 with is -- and we didn't do it. We weren't involved with
3 it. Payne & Keller dissolved. There's a statute that
4 says after three years, they can't be sued.

5 THE COURT: But their insurance is still viable and
6 that's who you're representing.

7 MR. LEE: Their insurance is viable to the extent
8 they can be held liable.

9 THE COURT: Right.

10 MR. LEE: And they can't be held liable anymore.
11 That's just a simple -- you can say we're taking advantage
12 of it or whatever you like, but that's fact. They can't
13 be held liable anymore, so there's nothing for us to pay.
14 They can't have a judgment against them. They can't --

15 THE COURT: Then why in the world do you do any of
16 this? Why does Travelers hire you to represent them to
17 file these claims against Payne & Keller? Because if
18 they're defunct and you don't have to do anything, then
19 why do they hire you at all?

20 MR. LEE: Because of the arguments being made in this
21 case, that they shouldn't be terminated. That they should
22 come back to life. They should have a judgment be allowed
23 to be entered against them.

24 THE COURT: This is a fairly unique set of
25 circumstances and arguments being made, but you've been

1 defending them for a long time in cases where you can make
2 exactly the argument you're making.

3 They're defunct, they're out of business, they're
4 gone, they're dissolved, therefore, we have no
5 responsibility. And that's what you tell the plaintiffs
6 when you tell them here's where you get your money. But
7 the insurance company is paying you to do that why?

8 MR. LEE: Well, they're not paying me to do that.
9 I'm not involved with that. That's --

10 THE COURT: Well, they're paying somebody to do it.

11 MR. LEE: I'm sure they have to pay somebody to do it
12 because there's nobody around to say it except for them.
13 There's no one around to tell the court hey, the plaintiff
14 is suing somebody that is terminated.

15 THE COURT: Well, why would it matter? If they're
16 out of business and can't be sued or anything else, they
17 can get a judgment for 34 million dollars against Payne &
18 Keller the next time one of these cases is tried and you
19 wouldn't have any problem with it up at Travelers. I bet
20 Travelers wouldn't want that --

21 MR. LEE: So long as the termination is upheld and
22 that judgment will be vacated, but it shouldn't get to a
23 judgment because all you do is tell the court Payne &
24 Keller is dissolved. It doesn't exist anymore, so you
25 need to stop court and the court says okay. Because

1 nobody can test it and nobody has for years because nobody
2 thinks anybody ever got defrauded.

3 THE COURT: The problem with that argument as I see
4 it, you have contractual -- and this is why they hired
5 you, so let's quit fooling. That Travelers policy or
6 Aetna policy was written back in the 80s when the exposure
7 occurred --

8 MR. LEE: Yes.

9 THE COURT: -- still applies to those obligations as
10 that occurred because of torts committed at that time.
11 And the fact that they are now no longer in existence
12 won't make any difference because the plaintiff can still
13 collect that insurance. That's why you're still in this
14 case.

15 MR. LEE: And I'm not -- again, fully respecting the
16 court and I don't want to argue with the court and I'll
17 move on as a result of this, but the insurance obligations
18 are to pay judgments or to pay settlements that can only
19 be entered into by a company that exists.

20 It can only be entered against a company that exists.
21 There is no obligation of an insurance company to pay
22 something that can't be incurred. It can't be incurred by
23 our insured. Texas has said so. It can't be incurred.
24 That company cannot incur anymore liabilities after 1989,
25 so there's nothing --

1 THE COURT: They occurred these liabilities before
2 1989. That's the point.

3 MR. LEE: Not these liabilities.

4 THE COURT: Oh, yeah. I mean, this case is not
5 existing in a vacuum. The reason for the Childers case is
6 because -- and the reason you're involved in this case is
7 because they are claiming injuries that occurred during a
8 time when Payne & Keller was alive and had insurance.

9 MR. LEE: Had injuries, yes, not judgments.

10 THE COURT: Well, the judgments relate back to that
11 time in terms of getting money from the insurance company.

12 MR. LEE: The way the Texas statute is written, Your
13 Honor, it says no liability after the dissolution repose
14 period. There's no liability.

15 THE COURT: Well --

16 MR. LEE: And, Your Honor, again, I know that the
17 court cares deeply about people who have been injured and
18 should and the court cares deeply --

19 THE COURT: Don't hang that on me. I was the first
20 member of the South Carolina Supreme Court to ever be
21 primarily a defense lawyer and a member of the South
22 Carolina Defense Lawyers Association. I care about
23 fairness of these proceedings and that's all.

24 MR. LEE: It's not --

25 THE COURT: If they end up getting a judgment for

1 nothing, that's as it should be. don't go hanging it on me
2 that I'm making these determinations because of some
3 concern for the plight of the plaintiffs. That's not it
4 at all. It's what the corporate law requires. That's
5 what drives me.

6 MR. LEE: I meant no disrespect. I actually meant it
7 as a compliment because I would say that about myself and
8 I'm a defense lawyer. You should care and I understand.
9 I understand you're trying to be fair, but the statute
10 says what it says and the facts are what they are.

11 These facts don't come close, Your Honor,
12 respectfully. They can't because there's no known or
13 threatened asbestos claims that Payne & Keller knew about
14 during that time period.

15 Beyond, Your Honor -- and I'll finish up now, beyond
16 the lack of any pleading and the evidence being
17 insufficient, Your Honor, we have also raised a latches
18 and estoppel issue. I'm not going to bother arguing that
19 and I'll be happy to answer any further questions or reply
20 to Ms. McVey if there is any.

21 THE COURT: Thank you, sir.

22 Ms. McVey, any reply?

23 MS. MCVEY: Your Honor, I don't know if you want to
24 hear from the Receiver or not. The only thing I would
25 say --

1 THE COURT: Well, yeah, I do want to hear from the
2 Receiver.

3 Mr. Robinson, are you here for the receiver?

4 MR. ROBINSON: Yes, Your Honor. You want me to come
5 up there or can I talk --

6 THE COURT: No, I'm just speaking as a batter with
7 being on the bench.

8 MR. ROBINSON: I am here for the Receiver, Your
9 Honor.

10 THE COURT: No, you come to the podium. I don't
11 think you can -- Mr. Kinard, that passed right over him.
12 I'm suggesting you need to be right up here on the bench.

13 MR. ROBINSON: I got a big bench, Your Honor.

14 THE COURT: I do that for all my former clerks.

15 MR. ROBINSON: Your Honor, John Robinson here for
16 Peter Protopapas, the Receiver for Payne & Keller. As the
17 Court is aware, the Receiver filed last week a report, the
18 Receiver's report on July 6th, 2023, along with a motion
19 to seal certain exhibits.

20 THE COURT: Yes.

21 MR. ROBINSON: We've also filed a notice of filing of
22 discovery responses, which the receiver is in -- which the
23 receiver received, and we filed a notice of filing of
24 policies of insurance.

25 Your Honor, we did that because, of course, once the

1 plaintiff filed the motion, we wanted to have all of these
2 things in the record as they may be relevant to the
3 court's consideration. And as the court-appointed
4 receiver, we wanted to make that information available to
5 the court and any parties that would be reviewing the
6 information of the receiver.

7 Your Honor, first of all, to be clear that the --
8 we're here today for the plaintiff's motion to
9 reconstitute Payne & Keller under a statute, the Texas
10 statute that allows such action to take place if a Court
11 finds constructive or actual fraud.

12 The carriers are in this case as a defendant in a
13 coverage action. They are here by virtue of them being
14 named as a defendant in a coverage action which the
15 receiver has filed against them. And that is not unusual.
16 The carriers are in a number of receivers --

17 THE COURT: The receiver starts off representing
18 Payne & Keller?

19 MR. ROBINSON: Correct.

20 THE COURT: The receiver then on behalf of Payne &
21 Keller third party, the insurance company in that case
22 assigned coverage?

23 MR. ROBINSON: That's correct.

24 THE COURT: So as Mr. Lee, quite ably began in this
25 matter, it's all in this case?

1 MR. ROBINSON: Correct.

2 THE COURT: Different aspects of this case. One is a
3 different action. It's a third-party action. And then
4 there is the main action, which is the plaintiff's action
5 against Payne & Keller?

6 MR. ROBINSON: Correct. And to that point, Your
7 Honor, the carriers are here today as named defendants in
8 a coverage action.

9 Now, they have filed an objection to the plaintiff
10 is -- to the plaintiff's petition for a motion to -- for a
11 finding of constructive fraud. And they have been
12 speaking on that today, which, you know, certainly, is
13 their right, they're a third party to the case. But I
14 want to at the outset say that the receiver has no
15 interest in being part of continuing any fraud if a fraud
16 has occurred. That is not his role in this case and I
17 don't think the court would instruct him to do so.

18 So what we have is the evidence that has been
19 presented to the court through discovery responses,
20 through public filings by the plaintiff and, also, by what
21 the receiver has found in his own investigation. And as
22 we have said in the report, the receiver has not uncovered
23 any facts that are inconsistent with the facts alleged by
24 the plaintiff or that are inconsistent with the receiver's
25 prior filings in response to the carrier's motion to

1 dissolve.

2 The issue of constructive fraud, as the plaintiff has
3 illustrated through the Texas Supreme Court, says
4 constructive fraud is the breach of some legal or
5 equitable duty, which irrespective of moral guilt, the law
6 declares fraudulent because of its tendency to deceive
7 others, to violate confidence or to injure public
8 interest.

9 Your Honor, based on the information that the
10 receiver has uncovered and based on the filings of the
11 report, the receiver has not received any evidence
12 contrary to the allegations that have been made, including
13 as late as Friday when the carriers filed their objections
14 to the plaintiff's motion, there were no facts that were
15 alleged that were contradicted.

16 So in the sense of where we are today versus where we
17 were back in January, which I want to talk about in a few
18 minutes, the receiver is not in possession nor is any
19 party of evidence not presented to the court of any facts
20 that contradict facts being alleged by the plaintiffs
21 today as it relates to a dissolution.

22 THE COURT: Let me stop you right there. Here's the
23 big pitch as I see it with respect to the dissolution of
24 Payne & Keller. They say at the time Payne & Keller was
25 dissolved, there were no asbestos cases. You say there

1 were 3,000 asbestos cases -- or the plaintiff says there
2 were 3,000 asbestos cases. Help me through that.

3 MR. ROBINSON: So, Your Honor, in our report, we have
4 identified -- and these are in the public record. There
5 is -- the plaintiff -- I want to lead up and answer that
6 question if I may.

7 So let's not forgot that it is the carriers who have
8 brought this issue to the forefront, and it's the carrier
9 who prevailed upon this Court to take -- undertake an
10 in-depth analysis of the Texas business statute when they
11 filed their motion to dismiss and their motion to dissolve
12 the receivership.

13 THE COURT: Right. And in that connection, what
14 they're saying, Mr. Robinson, is when you can't -- they
15 say it's a complete negative. They say at the time that
16 Payne & Keller receivership was -- I mean, dissolution was
17 filed way back when that there were no -- Payne & Keller
18 was not aware of nor were there any asbestos claims
19 pending against Payne & Keller.

20 MR. ROBINSON: Your Honor, I don't think that's true.
21 I think if you look at the bankruptcy case that is cited
22 both in the receiver's motion to -- or response to the
23 carrier's motion to dismiss and if you look at our report,
24 there are a number of cases that were filed in the -- from
25 1983 all the way up through their dissolution in 1986

1 against Payne & Keller.

2 THE COURT: Yeah. Now, here's what they say about
3 that. They say with respect to in re Charter, that's the
4 bankruptcy case, these were personal injury claims arising
5 from refinery work.

6 They were Dioxin, Dioxin, however you pronounce it.
7 They were Dioxin claims, not asbestos claims. So what I'm
8 asking is where are the asbestos claims? Now, what you
9 say in the report here is that they were a defendant in a
10 Texas asbestos case filed by the law firm of Baron & Rudd
11 -- or Budd.

12 MR. ROBINSON: Baron & Budd, yes.

13 THE COURT: Hank Hanniger against Brown and Roof
14 (phonetic).

15 MR. ROBINSON: Yes, Your Honor.

16 THE COURT: And that the case that Payne & Keller --
17 the claims filed against Payne & Keller in that case were
18 dismissed on May 21st, 1986, but by then, asbestos related
19 personal injury claims filled the court's docket in the
20 Eastern district of Texas alone more than 3,000
21 asbestos-related personal injury claims have been filed by
22 1981. See the party of John Mansfield. What I'm asking
23 is this, how many of those -- do any of those involve
24 directly Payne & Keller?

25 MR. ROBINSON: I don't know the answer to that off

1 the top of my head, Your Honor, but --

2 THE COURT: That's what they're asserting. There
3 were asbestos claims around, but there were none against
4 Payne & Keller.

5 MR. ROBINSON: So, Your Honor, we have a couple of
6 things that were going on between 1980 and their
7 dissolution in 1987. There were a number of toxic tort
8 claims that were being brought against Payne & Keller.

9 THE COURT: Dioxin.

10 MR. ROBINSON: And by 1986, they had been involved
11 in, at least, one --

12 THE COURT: Asbestos case.

13 MR. ROBINSON: -- asbestos, which we didn't talk
14 about. During that same time period, we also know that
15 there were thousands of claims pending relating to
16 asbestos.

17 THE COURT: Yeah, but, I mean, asbestos cases, but
18 any of them pertaining to Payne & Keller, do we know?

19 MR. ROBINSON: Again, I'm going to have to -- I'll
20 confer in a minute. I don't know the answer to that. I
21 do know that they filed with the secretary of state's
22 office a statement stating that they had made adequate
23 provisions for claims. We know that is not the case.

24 THE COURT: Well, as I understood what the argument
25 was about this is because there were asbestos claims and

1 because Payne & Keller's leadership knew that yeah,
2 they're fighting actively Dioxin, but they knew they had
3 been dealing with asbestos products and the predict was
4 that there were going to begin to be a whole bunch of
5 them, they changed their name to Premtex and attempted to
6 sell themselves and, ultimately, dissolved. The question
7 is were they making provision for impure asbestos claims?

8 MR. ROBINSON: Well, Your Honor, again, I'm going to
9 have to confer in a moment, but I think the question you
10 raised and the statements that you just said is they were
11 aware of claims and they didn't make adequate provisions
12 for them.

13 The statute from what I understand the plaintiff is
14 moving under is if there was constructive fraud in the
15 dissolution, whatever that fraud might be would be the
16 reason that the court would be reconstituting, whether
17 it's an asbestos claims, dioxin claims.

18 Whatever constructive fraud -- and there's a fairly
19 broad definition under the Texas Supreme Court. Whatever
20 that constructive fraud might be, whatever provisions or
21 liabilities that they were aware of but did not make
22 adequate provisions for, under the Texas statute, as I
23 read it, would allow for the reconstituting of the
24 company.

25 I know we are talking specifically about the asbestos

1 claims that may have been pending at the time in 1986, but
2 I don't think only asbestos claims could support a finding
3 of constructive fraud. Again, once I sit down, I'll try
4 to find out the answer if there are any pending, but I
5 don't think that the Texas statute excludes any other type
6 of claims from the constructive fraud part of the statute.

7 THE COURT: What you're arguing is even if there
8 weren't asbestos claims, if they committed constructive
9 fraud by trying to avoid the dioxin claims or whatever
10 other claims they thought they were going to avoid and not
11 making adequate provisions for the payment of those
12 claims, then they committed constructive fraud.

13 MR. ROBINSON: So, Your Honor, again, the receiver
14 does not want to be and it does not intend to be a part of
15 continuing any fraud if it occurred, whether it's an
16 asbestos claim, a Dioxin claim, we're appointed by the
17 court.

18 THE COURT: I understand.

19 MR. ROBINSON: The receiver is appointed by the court
20 to identify marshal assets. The only reason we're here on
21 this issue is because the plaintiff in January was before
22 -- I'm sorry, the carriers in January were before this
23 court trying to dissolve a corporation. And there was
24 some discussion at that time regarding the different
25 states and the dissolution statutes we talked about, for

1 instance, in Coble, you required a publication. That's
2 not required, I don't believe, in Texas and I believe
3 Mr. Carroll made that point that Texas has a different
4 statute.

5 But one of the differences, which I think they're
6 wanting to pull back from in the Texas statute is that
7 while there's no publication requirement, there is an
8 avenue after the Fifth Circuit, as this court nows,
9 determined that even in the face of fraud, you could not
10 allow a company or a carrier for that company to honor any
11 claims for the company itself and the Texas legislature
12 said no, no, we're not -- that is not what our law should
13 be. So they actually amended it in 2021 to put this exact
14 exception in here, which the plaintiffs knew about. And,
15 again, the receiver brought it up in defense of a motion
16 to dissolve.

17 The Receiver did not affirmatively file a pleading
18 saying there was fraud. They're just saying there is a
19 Texas statute that allows a company to be reconstituted,
20 which based on --

21 THE COURT: And based on what the Plaintiffs are
22 asking you to do, you're asking that you be allowed to do
23 what you need to do so that you can pursue available
24 assets.

25 MR. ROBINSON: Well, that's correct, Your Honor. I

1 want to make sure I understand exactly what you just said.
2 I think what the receiver is saying is that we have not
3 received any evidence to contradict what the filings are
4 in this case that appear to and do meet the statutory
5 requirements of the finding of constructive fraud. And
6 the carriers in their role as the third party defendants
7 or in their role today on behalf of Payne & Keller, they
8 have not presented any evidence contradicting what has
9 been put in the record.

10 I will say I want to -- I've heard it a couple of
11 times and, Your Honor, I just think we probably ought to
12 address it. I've heard a couple of times that there's no
13 connections to South Carolina, Payne & Keller. I will
14 point out that in Exhibit O of the receiver's memorandum
15 in opposition of the carrier's motion, original motion to
16 dismiss, the -- and this is in the record because it was
17 Exhibit O.

18 This is a letter from John Wartharson (phonetic)
19 dated 9/29/73 to -- it says, subject, Payne & Keller, and
20 it was produced in discovery Z-A-I-C P & K 0281. It says,
21 Recently, P and K has been awarded new jobs in South
22 Carolina and Tampa, Florida.

23 Richardson will also be involved in South Carolina
24 because of these new jobs. Please endorse the 9173 to add
25 South Carolina and Florida to P & K's WC and CL policies

1 using the same clause, presumably, for North Carolina.
2 So, Your Honor, we have this incidentally 1973. Again,
3 the --

4 THE COURT: Yes, I was trying to look at this.
5 They're giving insurance coverage for things in South
6 Carolina, that document makes that clear.

7 MR. ROBINSON: Your Honor, then the policies --

8 THE COURT: Of course, you got the regular holders,
9 which is if you domesticate yourself in South Carolina,
10 that is enough and even the US Supreme Court is now
11 agreeing with that. That's been something that's been
12 continued for years.

13 The Supreme Court recently said hey, if you -- as
14 part of a corporation, domesticate yourself in the form of
15 a corporation in a particular state, that's all you need
16 to have presence in the state, to do business in a
17 particular state.

18 MR. ROBINSON: That's correct, Your Honor, and I
19 received some of the filings over the weekend by carriers.
20 I went back and looked at our prior notice of filings of
21 the policies. And in our Receiver's report, we include
22 the Exhibit C, which is an add of imdenible [sic]
23 companies in Rock Hill, South Carolina.

24 THE COURT: Yeah.

25 MR. ROBINSON: So in our notice of filings of

1 policies in the Hartford policy, which is Page 25 of our
2 notice of filing, M and W is named as an additional
3 insurer.

4 In the Hartford broker document, which was Page 47 of
5 that filing, M and W was a holding yard for the equipment.
6 And then in the Travelers policy, interestingly, in 1978,
7 which was filed in our notice of filing on Page 107 of the
8 receiver's policy, M and W is again referenced.

9 So this whole idea that, you know, they just weren't
10 here, I just don't know that the evidence supports that.
11 I know that's not the issue before this court today. The
12 issue before this court is whether there is sufficient
13 evidence -- have the plaintiffs submitted sufficient
14 evidence for a finding of constructive fraud. I think this
15 Court has already determined it has the ability to make
16 that judgment.

17 Importantly, this court did not previously make that
18 judgment at the January hearing and, in fact, said it was
19 not making that judgment and asked the parties to conduct
20 discovery.

21 The Receiver went through the discovery that had been
22 produced, none of which was in the record in January and
23 receiver, I believe, received two additional pieces of
24 discovery and introduced those into evidence through its
25 notice of filings for this Court's consideration. Those

1 issues, as you pointed out, were not decided by this court
2 in January.

3 As we understand what the Plaintiff has done now --
4 incidentally, the responses from the carriers, who have
5 not identified anything in their discovery responses that
6 contradicts the timeline of the allegation of the
7 plaintiff or of the public documents that have been
8 referenced.

9 So with that, Your Honor, I'm going to sit down and
10 see if I can find out the answer to your question unless
11 the court has any other questions.

12 THE COURT: Go right ahead.

13 MR. ROBINSON: Thank you, Your Honor.

14 THE COURT: All right. One moment, Ms. McVey.

15 MR. ROBINSON: Your Honor, in response to the
16 question regarding pending asbestos cases in 1986, we
17 have, as you know, submitted -- well, first of all, there
18 was not one asbestos case prior to 1986. We know that's
19 not true because we've identified the one.

20 Also, Barron and Budd has filed numerous cases as
21 direct action lawsuits in Louisiana, which, incidentally,
22 are still valid claims because of the direct action
23 against carriers in Louisiana. They are one of the few
24 states that have a direct action against the carrier. But
25 those claims are still being defend by Payne & Keller's

1 carriers on the direct action statute that Louisiana has.
2 As for any other specific cases, I'm going to have to go
3 back and take a look at them. Again, Your Honor, I don't
4 think that issue is dispositive of whether there was
5 constructive fraud, but the cases that we have found are
6 in our report.

7 THE COURT: Okay.

8 MR. ROBINSON: All right.

9 THE COURT: Ms. McVey.

10 MS. MCVEY: Your Honor, I'll just be very brief. I
11 don't think there's anything that requires the pending
12 cases to be the exact same injury that Mr. Childers had.
13 I don't think it has to be asbestos, nothing that says
14 that. But, Your Honor, they knew there were going to be
15 asbestos claims.

16 They worked with asbestos. They knew that there's a
17 latency period. It's 1986. It's not like this happened
18 in 1950 where they didn't know about it. They, of course,
19 knew about it. They knew it was coming. OSHA had been
20 passed. I mean, it was out there. It's unreasonable.

21 Mr. Lee is a very good lawyer and he said we know all
22 these claims have been paid. We know they were. They
23 provided for them. There's not one shred of evidence of
24 that in the record. What we do have is a guarantee,
25 right? And the guarantee -- and I'll give it up to Your

1 Honor, but it's in one of the exhibits to our thing.
2 There was a guarantee for \$6 million.

3 THE COURT: That was in the dissolution.

4 MS. MCVEY: This is the guarantee for the parent --
5 you know, they said the parent company is going to take
6 care of all these claims. \$6 million. Well, we know in
7 1987 that the bankruptcy court ordered over one \$1 million
8 against Charter. And Charter had a right to go back after
9 Payne & Keller. And the dissolution requires and they
10 signed off on it -- not they, the insurance carrier, Payne
11 & Keller, all debts, obligations and liabilities of the
12 corporation have been paid, discharged or adequate
13 provision have been made thereof. That didn't happen,
14 Your Honor.

15 They knew there were going to be years and years of
16 asbestos claims coming, and it's not a surprise they
17 didn't have anybody in 1986. There's a long latent
18 period. That's the problem. That's the constructive
19 fraud.

20 Your Honor, we would ask you to make a finding of
21 constructive fraud today. Make that factual finding.
22 There's been no evidence contrary to that. And then ask
23 the Receiver to go to Texas and file with the Secretary of
24 State.

25 THE COURT: Let me ask you this. Biggest piece of

1 heartburn I've got about this whole thing, what to do
2 about the Court of Appeals now.

3 MS. MCVEY: Yes, ma'am.

4 THE COURT: Help me with that.

5 MS. MCVEY: Sure. I believe it's totally separate
6 issues. They filed a motion to dismiss saying the court
7 had dissolved and receivership. That has nothing to do
8 with my case against Payne & Keller. It's totally
9 separate.

10 Payne & Keller is not coming here and saying that to
11 you, the carriers are. I'm not even sure they have
12 standing to do that in this case. I believe it's two
13 separate and distinct issues.

14 THE COURT: So the fact it's a third-party claim in
15 this case, in your view, does not sufficiently integrate
16 with the things against Payne & Keller?

17 MS. MCVEY: Well, they were asking for separate
18 things. Nobody asked you to make a finding of
19 constructive fraud.

20 THE COURT: All I was asked to do was say whether
21 there was sufficient information in the pleadings to
22 justify denying their motion to -- they wanted to dissolve
23 it, get rid of it. And I said we're going to keep on
24 going because there's sufficient allegations here that
25 have to be pursued.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: But, of course, now, we're dead center on
3 the allegations and if I were to rule for you, then how
4 does that impact the appeal and the denial of the motion
5 to dismiss?

6 MS. MCVEY: I don't think it does affect the appeal.
7 I think the appeal -- either the Court of Appeals is going
8 to say this is not immediately appealable motion to
9 dismiss, but even if they do, that appeal goes on.

10 They may reverse what you ruled and say the
11 receivership shouldn't have been put in place. But for
12 me, it doesn't affect what I am doing in this underlying
13 case. They put forth no evidence, nobody else has other
14 than what we have put forth. It's uncontroverted.

15 THE COURT: But they're appealing, essentially, the
16 failure to -- it's not a motion to dismiss. It's a motion
17 to get rid of the Receiver.

18 MS. MCVEY: Well, it was two things, I think. I'm
19 not even in that case. I understood it to be a motion to
20 dismiss the third party complaint.

21 THE COURT: Right.

22 MS. MCVEY: And a motion to revoke the receivership.

23 THE COURT: Right. And I denied them both.

24 MS. MCVEY: Right. I have nothing to do with -- I
25 mean, what I'm asking you today in my view has nothing to

1 do with those two issues.

2 THE COURT: All right. I understand the argument.

3 MR. LEE: Your Honor, may I very briefly?

4 THE COURT: Certainly. Certainly. I'm struggling.

5 MR. LEE: Honestly, very briefly. The question, Your
6 Honor --

7 THE COURT: I am acutely aware of my role as a
8 circuit court judge. I am not supposed to get outside my
9 guard rails and that's what I don't want to do in
10 connection with something that's pending in front of an
11 appellate court.

12 MR. LEE: It's matters affected by the appeal, not
13 the same case, not the same claim, not the same motion,
14 but --

15 THE COURT: It does say that.

16 MR. LEE: Secondly, Your Honor, with respect to the
17 3,000 claims. I think you saw a shift here because I said
18 there were no asbestos claims pending or threatened
19 against Payne & Keller --

20 THE COURT: That doesn't give me as much heartburn --

21 MR. LEE: Okay.

22 THE COURT: I mean, if the claim is they permitted a
23 fraud on -- because they had all these claims pending,
24 they knew what the future was going to hold because they
25 knew asbestos has a much longer latency period. Dioxin

1 was, man, there was a direct exposure and the claim was
2 made.

3 The asbestos is unique in that, in that it takes so
4 long. The claim is they knew what was in front of them.
5 They were trying to get out of -- they were trying to get
6 out of the Dioxin claims, too, but they knew that the
7 other things was looming.

8 MR. LEE: Well, I would think that Ms. Childers
9 doesn't have standing to say that other people were
10 defrauded because failure to provide for Dioxin claims,
11 which, by the way, they were resolved. No Dioxin claim
12 ever moved to revoke the termination. No Dioxin claim
13 ever sued --

14 THE COURT: She's got a coverage against you people
15 and that's why Ms. Childers wants to keep the receivership
16 going.

17 MR. LEE: Absolutely, but I don't think she has
18 standing to keep the receivership going because of Dioxin
19 claims. And if she doesn't have --

20 THE COURT: She says that is evidence they knew of
21 what the future held.

22 MR. LEE: All right. So --

23 THE COURT: Asbestos was just going to take longer to
24 manifest. They knew if they were having all these Dioxin
25 claims that asbestos was next.

1 MR. LEE: And I understand that and I would posit,
2 Your Honor, respectfully, that if you're going to declare
3 fraud, you have to know they knew. You can't do it
4 through some circumstantial inference of claims against
5 other people and what's going on in the industry.

6 I think fraud requires a much more heightened set of
7 evidence than the connecting of a few dots that are
8 indirect, don't even involve a known or threatened
9 asbestos claim against Payne & Keller at the time. And
10 I'll stop there with that argument, Your Honor.

11 Lastly, with respect to the receiver's discussion --

12 THE COURT: Well, let me just stop you there for a
13 minute. I mean, what the plaintiff is trying to do is to
14 get the receiver to take certain action with respect to
15 Payne & Keller's status of being a dissolved corporation,
16 but whether they are dissolved or not, they still got a
17 coverage claim against you, they say.

18 MR. LEE: Yes, they do.

19 THE COURT: And that's going to continue.

20 MR. LEE: Well, it will continue if Payne & Keller
21 can be held liable. If Payne & Keller can't be held
22 liable, there's no reason to ever bother the carrier. And
23 they can't be held liable because it's revoked and under
24 Texas law, they can't. There is nothing to do.

25 THE COURT: Well, how does the 2021 amendment affect

1 that?

2 MR. LEE: Well, the 2021 amendment allows for -- as
3 of 2021 under the Texas constitution for folks to attempt
4 to revoke termination.

5 THE COURT: Which is exactly why they're doing this.

6 MR. LEE: And under the Texas constitution, having
7 the statute of repose already passed, it is
8 unconstitutional for them to allow --

9 THE COURT: That hasn't been determined.

10 MR. LEE: Well, Your Honor actually ruled against us
11 on that and that's going to be up on appeal. That's one
12 of the newest issues that's going to be up on appeal.
13 That's going to be a decision that are matters affecting
14 that appeal. Your Honor wrote in your order that you
15 disagreed with us, that they could apply it retroactively.
16 The appellate court is going to have to decide whether
17 that's right or wrong. It's going to decide that matter
18 for this purpose. And it's going to decide that matter
19 for the prior purpose, which is the receivership. Again,
20 no disrespect, Your Honor, but that's an issue that's
21 going to be dead center because you decided it.

22 Your Honor, lastly, with respect to the issue of
23 whether Payne & Keller was in South Carolina.

24 THE COURT: You know, you're just not going to change
25 my mind on that.

1 MR. LEE: Well --

2 THE COURT: They were domesticated here. They had a
3 subsidiary or a live corporation that had advisements all
4 over Rock Hill.

5 MR. LEE: I just want to explain, Your Honor, we
6 didn't know that until Friday. The receiver did not tell
7 us that until Friday.

8 THE COURT: Okay.

9 MR. LEE: What the receiver did tell us is with
10 respect to this plaintiff, who is the one making this
11 motion. That with respect to this plaintiff, they have
12 been on a diligent search and there is no evidence with
13 respect to this plaintiff there is any proximity, product
14 ID at all with respect to any of the job sites he pleads.

15 Now, I know Your Honor tends to wait till right
16 before trial to see what gets developed. And I understand
17 that in the context of a motion for summary judgment, what
18 I'll call prior, but here, it matters to standing. Here,
19 it matters as to whether a plaintiff can go so far as to
20 ask this court to revoke termination of a Texas company
21 without any evidence that this plaintiff ever came in
22 contact with this company.

23 There can't be fraud if the plaintiff wasn't harmed
24 by this company. And there's not a shred of evidence and
25 the receiver says there isn't any, affirmatively says

1 there isn't any. So we would ask that that issue be
2 decided or dealt with now because it decides standing for
3 this plaintiff.

4 THE COURT: I feel you want me to decide some things
5 and other things, not at all.

6 MS. MCVEY: Your Honor, sorry to interrupt, but I
7 don't know what he's reading from for that information.

8 MR. LEE: It's from Payne & Keller's responses and
9 actions to plaintiff's first amended notice of 30(b)(6)
10 deposition of Payne & Keller Company and subpoena duces
11 tecum. It was sent to the court this morning by
12 Mr. Carroll, or maybe last night, I'm not sure, and served
13 on others. It's page 28.

14 THE COURT: Hang on a minute. Don't speak so
15 quickly.

16 MS. MCVEY: Your Honor, it's Payne & Keller's
17 objections.

18 THE COURT: Let me look at it.

19 MR. LEE: It's on Page --

20 THE COURT: I think Todd sent it.

21 MR. LEE: It was cited in our papers.

22 THE COURT: No, this was something different.

23 MS. MCVEY: I sent this yesterday evening. It's a
24 separate email.

25 THE COURT: Twenty-eight.

1 MR. LEE: The second full paragraph, second sentence.

2 THE COURT: Hang on.

3 (Pause.)

4 I'm not much persuaded by the merits arguments,
5 Mr. Lee, I'll be honest with you, but I am still concerned
6 about the timing of granting this thing in the face of
7 this appeal.

8 So I am going to hold my ruling in abeyance until we
9 hear from the Court of Appeals. In the meantime, I am
10 going to cogitate upon some of these other matters
11 Mr. Carroll has sent me and kind of look back over the
12 receiver's report in the light of that.

13 I'll be very candid with you. I'm not much persuaded
14 by the merits of what's being argued on your behalf, but I
15 don't want to step beyond my boundaries with the Court of
16 Appeals. That's what's got me held up. So I am going to
17 hold it in any abeyance.

18 I would really appreciate if y'all would keep me
19 advised, both sides, about what's happening with that
20 because that's really more -- who is going to be most
21 directly impacted about that, not the plaintiffs. They're
22 more the receiver and the insurance company.

23 MR. LEE: We'll be happy to let you know immediately.

24 THE COURT: So you guys need to keep me posted as to
25 what is going on. And I don't mean when something final

1 comes down. I want to know all along the line. I would
2 appreciate y'all updating me with filings that have been
3 made in this appeal so that I understand better exactly
4 what's going on. That's another thing that I hadn't
5 thought to do was to sit down and look over the Court of
6 Appeals record in this thing, but I ought to do that.
7 Before I decide, I'm going to plunder and make these
8 rulings.

9 So that's what I'm going to do. I don't normally do
10 that. I apologize, y'all have the right to expect me to
11 rule from the bench like I ordinarily do, but I'm
12 concerned about it.

13 MR. ROBINSON: Your Honor, on behalf of the receiver,
14 if I may, the document that was e-mailed to you last
15 night -- of course, this came up in the January hearing.
16 It was mistakenly represented in the January hearing that
17 that document was prepared by a lawyer hired by
18 Mr. Protopapas. The documents that they are referring to,
19 of course, are prepared by lawyers they hired.

20 THE COURT: I understand. And I think that was an
21 honest mistake, apparently.

22 MR. ROBINSON: Right, but this is the same document
23 that they're allowing --

24 THE COURT: Yes, that's kind of what I thought when I
25 looked at it. I got that other thing marked from my other

1 hearings.

2 MR. ROBINSON: Your Honor, also, I just want for the
3 record, there was a reference that they didn't know about
4 this until Friday, their work in South Carolina. Of
5 course, these were their documents, some of which I was
6 referring to. The Travelers policy --

7 THE COURT: Yeah, but I understand that Mr. Robinson
8 and you're making the very correct argument in that
9 regard, no doubt about it. But there's been so much back
10 and forth between the parties and this discovery is
11 exactly what I anticipated and the reason why I
12 anticipated it, very strange and bizarre.

13 What all this is about is discovery and forth and,
14 ultimately, we'll get back to where we can rule. That's
15 why I have a little heartburn about whether there's
16 something else out there that will impact my ruling with
17 regard to Ms. McVey's motion.

18 Mr. Sawyer, now, you're going to come in here as a
19 complete third-party to everything?

20 MR. SAWYER: We're joining in the motions, Your
21 Honor. Everything is going in the appeal. So we were
22 involved, Your Honor. Just for point of clarification in
23 terms of --

24 THE COURT: Hang on, it's not fair for you to just
25 stand up. When you get to the podium, you tell them who

1 you are and who you're representing.

2 MR. SAWYER: Thank you, Your Honor. Wesley Sawyer,
3 and I represent National Union Fire Insurance Company and
4 five other carriers. They're all listed on my card. For
5 the ease of time, I'll do it in a way, Your Honor.

6 Just for point of clarification, the impact holding
7 pending a ruling by the court, will there be another
8 hearing. I have points I wanted to put on the record, but
9 I don't want to waste the court's time if we're going to
10 have the Court of Appeals.

11 THE COURT: Yes, I should say that and make that
12 clear, that this is an adjourned proceeding, not a --

13 MR. SAWYER: We're not closing the book.

14 THE COURT: Or a paused proceeding, I guess you could
15 say. I am not declaring the hearing at an end. I am
16 pausing it or adjourning it until I receive further
17 information.

18 Right now, my main concern is the Court of Appeals
19 and my authority. But if there are other things from the
20 plaintiff or from the insurance companies with respect to
21 what they're trying to do right now or from the receiver,
22 for that matter, I will certainly take those into account.
23 But I will reconvene these proceedings at an earlier time
24 if what I'm submitted from the Court of Appeals dictates
25 so or, at least, when the Court of Appeals has decided

1 whether they're going to do it.

2 MS. MCVEY: Your Honor, I would just ask --

3 THE COURT: I'll say the thing that gives me great
4 heartburn about that, I don't think they have any business
5 doing this. And I know what the very next thing that's
6 going to happen, they rule against you, y'all are going to
7 go to the Supreme Court.

8 I've already said several times on the record and
9 they're tired of this, taking what is clearly unappealable
10 orders and delaying proceedings in these complex cases for
11 that reason. So I just tell you, I'm trying to be
12 differential to my appellate brothers and sisters, but
13 it's not easy.

14 MS. MCVEY: Your Honor, I would just state our
15 frustration with these -- we believe the interrogatory
16 appeal is slowing down my case.

17 THE COURT: Yeah, slowing down my docket.

18 MS. MCVEY: It's pretty frustrating. The other point
19 I would make is Mr. Sawyer and others only filed joinders
20 to Travelers motions. If he has other points he wants to
21 make, he ought to file something so I know what they are.

22 THE COURT: I agree with that completely.

23 MR. SAWYER: Your Honor, it would have been points
24 that would have piggy backed part of what was discussed in
25 the briefs and then addressing the Mallory case, which was

1 not addressed at all until the arguments this morning.

2 So --

3 THE COURT: Mr. Sawyer, you knew what was going on
4 and you should have filed something.

5 MR. SAWYER: That's fine. I had no idea that Mallory
6 would come up, Your Honor. And I apologize for that.

7 THE COURT: Well, it's like a lying dog over there.
8 A: I got a real interest in this thing. Y'all don't have
9 a ruling.

10 MR. SAWYER: Well, we did argue, also, at the other
11 hearing, too. I stood up and make points in that argument
12 as well, Your Honor.

13 THE COURT: You look at that chart of existing
14 insurance, it's all over it.

15 MR. SAWYER: I understand. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. LEE: Thank you for your time, Your Honor.

18 (Whereupon, the proceedings were concluded.)
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of 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 trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 10th day of July,
2023.

September 6, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

Exhibit D

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS, COUNTY OF RICHLAND
FOR THE FIFTH JUDICIAL CIRCUIT

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

Plaintiffs,

vs.

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

3M COMPANY et al.,

Defendants.

CERTIFIED COPY

30(b)(6) DEPOSITION TESTIMONY OF
PAYNE & KELLER COMPANY
GIVEN THROUGH ITS REPRESENTATIVE
ROBERT N. NIEMEIER
ON TUESDAY, JULY 11, 2023
PHOENIX, ARIZONA

* * *

* * *

30(b)(6) Deposition Testimony of
Payne & Keller Company given through its
representative ROBERT N. NIEMEIER via remote
communication on Tuesday, July 11, 2023,
commencing at approximately 11:00 a.m. EDT
before Rebecca L. Klanderud, a Registered
Professional Reporter and Certified Shorthand
Reporter.

* * *

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* * *

(Unless indicated otherwise, all counsel
appeared remotely through Zoom communication.)

* * *

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* * *

1 THE VIDEO TECHNICIAN: Okay. We're
2 on the record at 11:07. Today's date is July
3 11th, 2023.

4 This is the video deposition of
5 Robert Niemeier, the corporate rep for Payne &
6 Keller Company in the matter of Lenora Childers
7 v 3M Company.

8 Counsels' appearances will be
9 reflected on the Stenographic record.

10 Will the reporter please swear in the
11 witness?

12 THE COURT REPORTER: Yes.

13 Good morning, everyone. This is
14 Rebecca, the court reporter for today's
15 deposition.

16 Do counsel stipulate and agree that I
17 may administer the oath remotely, and that the
18 oath so given is valid for purposes of this
19 deposition, please?

20 Mr. Chapman?

21 MR. CHAPMAN: Agreed.

22 THE COURT REPORTER: Thank you, sir.

23 Ms. Mohrman?

24 MS. MOHRMAN: Agreed.

25 THE COURT REPORTER: Thank you,

1 just find all the information we can through
2 public sources, like secretary of state records,
3 and drill down into the people that are listed
4 and try to locate them, and that's what we've
5 done to date.

6 Q. Payne & Keller in 1961 was founded as
7 a Texas company, true?

8 A. Yes.

9 Q. Do you agree, sir, that, um,
10 Payne & Keller has always followed the law?

11 MS. MOHRMAN: Objection, form.

12 THE WITNESS: I -- I can't -- I don't
13 know how to answer that because, um --

14 BY MR. CHAPMAN:

15 Q. Let me ask --

16 A. -- no document one way or the other
17 to say yes or no.

18 Q. Would you agree -- I apologize. I'm
19 talking over you. I apologize.

20 A. I said I -- I would think they would,
21 based on everything I've read about Mr. Payne
22 and -- and his company; that they would comply
23 with all applicable rules and regulations, um,
24 fiduciary or business operating-wise, safety
25 standards, what have you. I -- I think they

1 would, but I don't have any documents to -- to
2 support that.

3 Q. As the corporate representative of
4 Payne & Keller, based on everything, um, that
5 you've seen to date, it is your belief that the
6 Payne & Keller companies would follow all laws
7 that applied to it?

8 MS. MOHRMAN: Same objection.

9 THE WITNESS: Again, based on what we
10 have at this point, that would be my conclusion,
11 yes.

12 BY MR. CHAPMAN:

13 Q. You agree that a reasonable company
14 follows the laws that are applied to it -- that
15 apply to it?

16 A. Yes.

17 Q. Do you agree, in order to follow laws
18 that apply to a company, a company has to know
19 about the laws?

20 A. Yes.

21 Q. All right. I'm showing you what I'm
22 marking as -- I believe it's Exhibit 9 [sic].

23 * * *

24 (Whereupon, Deposition Exhibit 10 was
25 marked for identification.)

1 Q. Do you know if, uh, Payne & Keller
2 employees had certain uniforms they had to wear?

3 A. I don't know.

4 Q. Do you know if they had hardhats or
5 badges or anything that identified them as
6 Payne & Keller employees on third-party
7 worksites?

8 A. I don't know.

9 Q. Okay. It is true, sir, that
10 Payne & Keller, um, at some point became
11 licensed to do business in both North Carolina
12 and South Carolina, right?

13 A. Yes.

14 Q. What years?

15 A. Um, South Carolina, I believe, was
16 1967. I don't have North Carolina memorized.

17 Q. So from relatively near the beginning
18 of the company, uh, Payne & Keller was
19 authorized to do business in the State of South
20 Carolina?

21 A. Well, from 1967 on, that would be
22 right.

23 Q. All right. I'm going to save some of
24 my questions because of our agreement, um, but
25 let me ask you broadly: Do you know, um, of any

1 worksites Payne & Keller was at in the State of
2 South Carolina?

3 A. We haven't found any.

4 Q. Do you agree that the purpose of
5 registering to do business in a state is to, in
6 fact, do business in that state?

7 A. Yes.

8 MS. MOHRMAN: Objection, form.

9 THE WITNESS: Yes. I believe that
10 would be the intent or at least to -- to attempt
11 to do business in the state, yes.

12 BY MR. CHAPMAN:

13 Q. Are you aware of any other -- uh,
14 strike that.

15 Is it your belief as the
16 representative of Payne & Keller that
17 Payne & Keller registered as a -- as a -- or let
18 me reask that question.

19 Um, do you believe, as the corporate
20 representative of Payne & Keller, that
21 Payne & Keller became authorized to do business
22 in the State of South Carolina because it
23 intended to do business in the State of South
24 Carolina?

25 A. I think that's a reasonable

1 appreciate it.

2 THE WITNESS: You're welcome. Thank
3 you.

4 THE VIDEO TECHNICIAN: All right.
5 Off the record at 3:14.

6 THE COURT REPORTER: Counsel, this is
7 Rebecca, the court reporter. I would like to
8 know kindly what your orders are for the record,
9 please.

10 Mr. Chapman?

11 MR. CHAPMAN: I put it in the email.

12 THE COURT REPORTER: Very good. I'll
13 get it off the email. Thank you.

14 And how about for you, Ms. Mohrman?

15 MS. MOHRMAN: Can I email you and let
16 you know?

17 THE COURT REPORTER: Absolutely.

18 And that goes for all other counsel
19 who would like to order the transcript. Please
20 email me your order, indicating your timeline as
21 well.

22 Thank you, everybody. Have a nice
23 evening.

24 * * *

25 (Whereupon, the deposition was

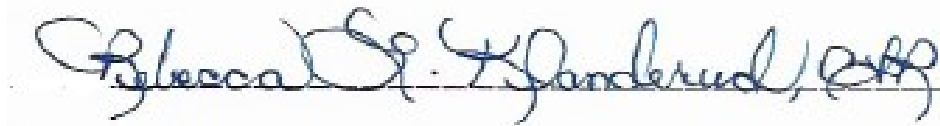
1 concluded at approximately 3:15
2 p.m. EDT)

3 * * *

C E R T I F I C A T I O N

I, REBECCA KLANDERUD, Registered Professional Reporter, Certified Shorthand Reporter, certify that the foregoing is a true and accurate transcript of the foregoing deposition; that the witness was first sworn by me at the time, place, and on the date herein before set forth.

I further certify that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action



Rebecca Klanderud
Registered Professional Reporter
Certified Shorthand Reporter

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

Exhibit E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
LENORA CHILDERS, individually and as	)	CIVIL ACTION NO: 2021-CP-40-03484
Personal Representative of the Estate of	)	
LEWIS C. CHILDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
_____	)	

**PAYNE AND KELLER COMPANY’S RESPONSES AND OBJECTIONS TO
PLAINTIFF’S FIRST AMENDED NOTICE OF 30(b)(6) DEPOSITION OF PAYNE &
KELLER COMPANY AND SUBPOENA DUCES TECUM**

Defendant Payne and Keller Company ("Payne & Keller") submits the following responses and objections to the First Amended Notice of 30(b)(6) Deposition of Defendant Payne & Keller Company and Subpoena Duces Tecum served by Lenora Childers (hereinafter "Plaintiff"), individually and as Personal Representative of the Estate of Lewis C. Childers (hereinafter, "Decedent").

INTRODUCTION

Payne & Keller is a corporate entity which is no longer in existence, has not been an active corporation for over thirty years and is currently under a court appointed receivership. Many, if not all, of the corporate records have not been retained and upon information and belief these corporate records were disposed of at a point in time well before the present receivership was entered into by this Court.

Payne & Keller had been a contracting and engineering firm hired mainly in heavy construction projects such as road and highway building, waterworks, electrical power grid distribution systems, and in the construction and maintenance of various manufacturing and processing facilities in the petroleum, chemical and lumber industries, among others. In these endeavors, materials such as structural steel, concrete, piping, valves, and other related industrial components were removed and installed. Some of this work may have included the handling of components with asbestos-containing materials such as gaskets and thermal insulation.

The undersigned counsel, along with fellow attorneys at counsel of record for Payne & Keller, has conducted exhaustive efforts and exercised great diligence to locate relevant information and as of the date of these responses no facts have been discovered identifying Payne & Keller as having designed, manufactured, distributed or sold any asbestos-containing product. Similarly, no facts have been discovered identifying Payne & Keller as having designed or manufactured any product that had asbestos-containing parts. There have been no facts discovered that Payne & Keller mined, manufactured, sold, or distributed any raw asbestos or asbestos fibers.

There is no evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e. while working as an insulator for Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC, from 1968 to 1975, or for Presnell Insulation Co., Inc., in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co., Inc., in Blacksburg, SC, and Pendelton, SC, from approximately 1981 to 2000) much less while any Payne & Keller employee

was working with products allegedly containing asbestos.

GENERAL OBJECTIONS

1. Payne & Keller objects to Plaintiff's categories and/or requests to the extent they seek information protected from discovery by (a) the attorney-client privilege, (b) work-product doctrine, (c) any applicable privilege relating to communications between counsel for Payne & Keller and counsel for other defendants regarding this or similar litigation, (d) any applicable privilege relating to communications between Payne & Keller's counsel and its insurers regarding the defense of this claim or claims of this type, (e) any privilege relating to confidential trade secrets or confidential communications, or (f) the right of privacy or any other privilege.

2. Payne & Keller objects to Plaintiff's categories and/or requests to the extent they seek information relating to products and services of companies unrelated to Payne & Keller.

3. Payne & Keller objects to Plaintiff's categories and/or requests to the extent they seek information that is not under Payne & Keller's custody or control or which is within the public domain or otherwise equally available to Plaintiff as to Payne & Keller.

4. Payne & Keller objects to each category and/or request to the extent they assume facts not in evidence and/or imply as fact matters that are in dispute.

5. Payne & Keller objects to these categories and/or requests to the extent they seek information and documents so overly broad and/or remote in time as to be beyond the scope of allowable discovery permitted under South Carolina law, any applicable Case Management Order, and/or other applicable law. Much of the requested information is impossible to reconstruct or retrieve as it spans several decades involving several corporate entities no longer in existence. Payne & Keller is no longer in existence. Payne & Keller states the responses herein represent the best knowledge at the time based on information and documents reasonably available to it.

Deposition testimony provided by a witness consistent with these objections and responses will be likewise made based on information available or reasonably available to the witness presented by Payne and Keller. Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

6. Payne & Keller objects to Plaintiff's subpoena duces tecum as overbroad, unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to discovery of admissible evidence since the requests concern locations, entities, and time periods not at issue in this case. Plaintiff has not produced or identified any evidence that Decedent worked for Payne & Keller, or around any Payne & Keller employees, much less while any Payne & Keller employees were working with products that allegedly contain asbestos.

7. Payne & Keller objects to each category and/or request on the grounds that Payne & Keller dissolved and is no longer an active company; and that no applicable employees, agents, or officers are living or otherwise available. As a result, it is difficult if not impossible for Payne & Keller to retrieve or reconstruct the information requested in these categories and/or requests.

8. Payne & Keller objects to its deposition being taken in this matter because Plaintiff has not produced or identified any evidence that Decedent was ever an employee of Payne & Keller, or worked around any Payne & Keller employees, much less while any Payne & Keller employees were working with products that allegedly contain asbestos.

9. Payne & Keller objects to each category and/or request to the extent they request information about or related to the presence of products supplied or utilized by Payne & Keller at the jobsites Plaintiff has identified on the grounds that such information is not likely to lead to the discovery of admissible evidence because mere presence at a jobsite is not sufficient to establish

an actionable level of exposure to asbestos pursuant to well-settled South Carolina law requiring sufficient exposure to asbestos from a defendant that meets the thresholds of frequency, regularity, and proximity. Moreover, Plaintiff has not produced or identified any evidence that Decedent worked for Payne & Keller, or around any Payne & Keller employees, much less while any Payne & Keller employees were working with products that allegedly contain asbestos.

10. The responses set forth below are subject to and do not waive:
 - a. Objections as to (i) the competency, relevancy, materiality, privilege, or admissibility of evidence at trial or (ii) the use of any of the responses given herein or the documents or the subject matter thereof in any subsequent proceeding or trial in this or any other action or for any other purpose;
 - b. The right to object to other discovery proceedings involving or related to the subject matter of the category or request to which these objections are directed;
 - c. The right at any time to revise, correct, add to, or clarify any or all of the responses/objections, all of which are given subject to correction of any such omissions or errors; and
 - d. The objections set forth above and/or in response to any specific category or request.

11. Any witness produced by Payne & Keller in response to this deposition notice will provide testimony on the topics to which they are designated based on information known or reasonable available to Payne & Keller. To the extent this notice calls for information beyond that requirement, Payne & Keller objects that the notice exceeds the requirements of the South Carolina Rules of Civil Procedure.

12. Each and all of the foregoing general objections are hereby explicitly incorporated into each and every individual response as if set forth fully therein.

SPECIFIC OBJECTIONS TO SUBJECT MATTER OF DEPOSITION

In addition to its general objections, Payne & Keller asserts the following specific objections to the Subject Matter of the Deposition as set forth in Exhibit A to the Notice:

1. The registered name of the answering Defendant as well as all prior names or predecessor entities by which the Defendant has existed. For each, the current address and the state of incorporation and whether or not it is an active corporation.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this deposition topic based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness's knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

2. The full and correct name, the principal place of business and the state and date of incorporation of Defendant.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this deposition topic based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

3. Whether Defendant has ever held a certificate of authority to do business in South Carolina and the addresses for your registered agents for service in South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will testify that based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller, including the South Carolina Secretary of State records, it is responding party's understanding Payne & Keller Company became qualified to conduct business in South Carolina on July 17, 1967, and dissolved on November 7, 1986. Payne & Keller objects to the extent this deposition topic calls for the witness to speculate beyond what is reasonably available to Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

4. Whether Defendant has a registered agent currently in South Carolina. If yes, the full name and full address of the registered agent located in South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have

been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Based upon the above facts and this responding party's investigation of the publicly available information and documents on Payne & Keller, it is the responding party's understanding Payne & Keller does not have a registered agent currently in South Carolina.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

5. Whether Defendant has ever owned, leased, rented or otherwise operated or used any real or personal property, facility, store or distribution center located in the State of South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller has never owned, leased, rented or otherwise operated or used any real or personal property, facility, store or distribution center located in the State of South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic .

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive

to Plaintiff's request becomes available to it.

6. Whether any property and/or facility which Defendant owned, operated, or controlled had any connection to the manufacture, sale, purchase, distribution, advertisement, application, installation, removal, marketing, development and/or use of asbestos or asbestos-containing materials/products in the state of South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. To date, Plaintiff has failed to produce any evidence that Decedent worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. Moreover, Plaintiff has not produced or identified any evidence that Decedent worked for Payne & Keller, or around any Payne & Keller employees, much less while any Payne & Keller employees were working with products that allegedly contained asbestos.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller never owned, operated, or controlled any facilities that had any connection to the manufacture, sale, purchase, distribution, advertisement, application, installation, removal, marketing, development and/or use of asbestos or asbestos-containing materials/products in the state of South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

7. The names and addresses of persons or entities in South Carolina to whom Defendant sold or distributed any asbestos or asbestos-containing material/product (including insulation contracting as a service, or insulation sold as a product, or otherwise), and the details around such sales.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller never sold or distributed any asbestos or asbestos-containing material/product. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

8. Whether it is more likely than not that any asbestos or asbestos-containing materials or products (including insulation contracting as a service, or insulation sold as a product, or otherwise) sold or distributed by Defendant would be used by, or purchased by, any person or entity with its ultimate use in South Carolina and the basis for your answer.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate

entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller never sold or distributed any asbestos or asbestos-containing materials or products in South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

9. All distributors or wholesalers of Defendant's asbestos and/or asbestos-containing product and/or asbestos covered product in South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller never sold or distributed any asbestos or asbestos-containing materials or products in South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

10. All products, other than asbestos or asbestos-containing products, Defendant has ever sold, distributed, or delivered for sale or distribution, to persons or entities in South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller has never sold or distributed any asbestos or asbestos-containing products in South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

11. Any lawsuit or other legal action taken by Defendant in any Court in the State of South Carolina against any person or entity including, but not limited to, claims for damages, counterclaims, cross-claims, or third-party claims.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to

reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, Payne & Keller has never initiated any lawsuits in South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

12. Any lawsuit against Defendant in the State of South Carolina or other legal action where Defendant was found subject to personal jurisdiction in the state of South Carolina.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents, no lawsuits were initiated against Payne & Keller initiated in South Carolina where Payne & Keller was found subject to personal jurisdiction in the state of South Carolina. Therefore, responding party will not produce a witness to speculate on this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

13. Whether any of the contracts that Defendant entered into in the normal course of business contain a forum selection clause, including but not limited to, a clause specifying the forum in which a lawsuit must be filed in the event litigation occurs between Defendant and another party to the contract and if so, which jurisdiction(s) did you specify.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address the known contracts Payne & Keller enter into based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents but may not be able to form any legal conclusions as to whether or not these contracts contain a "a clause specifying the forum in which a lawsuit must be filed in the event litigation occurs."

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

14. The complete present address of Defendant's principal place of business.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's

corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Based upon the above facts, it is the responding party's understanding Payne & Keller does not currently have a principal place of business.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

15. All documents and tangible things used, related to, or referred to in connection with the preparation of this deposition. For all such documents and tangible things state the number of the topic.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this deposition topic based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller and directs Plaintiff to documents bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

16. The identity of each person who has supplied any information or assisted in locating any documents or tangible things used in answering or responding to this notice, a year-by-year list of all positions or job titles held by each person.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products

that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness to discuss the following members of the responding party's investigation team and their investigation of the publicly available information and documents on Payne & Keller: Robert Niemeier of Robert N. Niemeier Consulting, LLC d/b/a/ R2NC, LLC and Hannah Mohrman, William Purnell, Patrick Cleary, Cassandra Esters, and Dwayne Burns of Bowman and Brooke LLP.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

17. The names and addresses of persons known to Defendant or to counsel that have knowledge concerning the jobsites of the Decedent or, otherwise the facts of this case and indicate whether or not written or recorded statements have been taken from such witnesses and indicate who has possession, custody or control of such statements.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Payne & Keller has yet to discover any evidence and Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any

product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC, from approximately 1981 to 2000), much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Despite the above facts, Payne & Keller will produce a witness to the facts stated in the paragraph above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

18. When and how Defendant first learned that inhalation of asbestos fibers can lead to the development of each of the following asbestos-related diseases:

- (a) asbestosis;
- (b) pleural plaques;
- (c) pleural thickening;
- (d) interstitial fibrosis;
- (e) scarring of the lungs;
- (f) colon cancer;
- (g) laryngeal cancer;
- (h) esophageal cancer;
- (i) lung cancer; and
- (j) mesothelioma (pleural, peritoneal, or pericardial)

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate

entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to when Payne & Keller first learned that inhalation of asbestos fibers can lead to the development of asbestos-related diseases.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

19. All trade organizations, trade associations, and any other groups to which Defendant, Defendant's representative or Defendant's current or former employees belonged in which information relating to the hazards of asbestos or nuisance dust in general was discussed, disseminated, or in any way published before 1980. This list should include (but is not limited to) any membership in the American Hygiene Foundation, Industrial Hygiene Foundation, Chemical Manufacturer's Association (or its predecessor, the MCA), American Chemical Council, American Petroleum Institute, National Safety Council, American National Standards Institute (ANSI), Asbestos Information Association, Industrial Medical Association, American Society of Mechanical Engineers; American Society for Testing and Materials, Chlorine Institute, American Industrial Hygiene Association, National Insulation Manufacturers Association, Asbestos Textile Institute, Society of Automotive Engineers, Society of Petroleum Engineers, ACGIH, American Occupational Medicine Association, American Public Health Association, Friction Materials Standards Institute, Brake Lining Manufacturer's Association, American Medical Association, NIOSH and any state safety organizations. As to each listed group, please state:

- (a) the time period when Defendant, Defendant's representative or Defendant's current or former employee(s) was a member;
- (b) the identity of Defendant's employees, former employees, or representatives who attended any of the meetings held by each listed group, as well as the dates and locations of the meetings they attended;
- (c) the identity of Defendant's employees, former employees, or representatives who served on any committees or subcommittees of any listed group (e.g., a medical advisory committee or legal committee); and
- (d) the name of the committee or subcommittee on which such person served and the position occupied on the committee, if applicable.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably

calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Thus far, responding party searched for records related to Payne & Keller from the following construction trades, association newsletters and the United States Environmental Protection Agency and were told they have no records related to Payne & Keller:

- (a) American Hygiene Foundation (AIHA);
- (b) Industrial Hygiene Foundation;
- (c) National Safety Council; and
- (d) ACGIH.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

20. The identity of each of Defendant's employees, former employees, or representatives who attended any proceeding, symposium, or conference of a scientific, medical, or technical nature, before 1972, during which information relating to the hazards of asbestos or nuisance dust in general was discussed, disseminated, or in any way published (e.g., the effects of human or non-human exposure to asbestos, populations at risk, etc.). A response to this topic should include any attendance at the Seventh Saranac Symposium in 1952, the Proceedings of the New York Academy of Sciences in October of 1964, any meetings held by any organization in Defendant's response to topic. No. 2. For each person identified, the proceeding, symposium, or conference the person attended; the date and location of the proceeding, symposium, or conference; the identity of the person within Defendant's organization who received or was designated to receive the attending person's report of the information gathered at such proceeding, symposium, or conference; and the manner in which such reports were made.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably

calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to whether Payne & Keller employees, former employees, or representatives attended any proceeding, symposium, or conference of a scientific, medical, or technical nature, before 1972, during which information relating to the hazards of asbestos or nuisance dust were discussed.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

21. Whether Defendant has ever been investigated or cited by OSHA or any other local, state, or federal governmental agency for any matter related to asbestos or asbestos exposure. If so, the dates of such investigations, the results that were communicated to Defendant, and the remedial measures (if any) which were undertaken by Defendant.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this

subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Thus far, responding party found no OSHA citations issued for the Texas parent company, Payne and Keller, Inc. and located the following OSHA citations related to asbestos standards for the Payne and Keller subsidiary, Payne & Keller of Louisiana, Inc.

- (a) OSHA Inspection number 16123200 dated April 19, 1979, for Payne & Keller Louisiana in Geismer, LA. On February 2, 2022, Counsel for P&K Company requested all documents related to this violation and was advised it would take approximately 6-8 months to process this request.
- (b) October 4, 1972, violation at Champion Papers in Blounts Creek, NC, for a Safety Violation related to an accident in Hand Protection. Per OSHA, records related to this violation have been destroyed in accordance with OSHA directives and Federal Records disposition schedule.
- (c) OSHA Inspection number 16133209 dated August 28, 1980, for Health Violations in a planned inspection in Hand Protection at the Exxon Refinery in Baton Rouge, LA.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

22. Whether and, if so, how Defendant stores its documents and records including but not limited to any document retention or document destruction policies throughout Defendant's history from inception to the present.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to Payne

& Keller's document retention policy.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

23. How Defendant's documents are stored, indexed, organized or maintained and identify all records custodians, librarians or other individuals who have presently or have had in the past access to Defendant's document repository.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to Payne & Keller's document retention policy.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

24. Defendant's complete corporate history, including its ownership, sale, acquisition, or divestiture, and any mergers, acquisitions, consolidations, or other similar events involving Defendant at any time during its history.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly

broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

25. The first time Defendant became familiar with the concept of a threshold limit value (TLV) or permissible excursion level (PEL), for airborne dust, and how was Defendant first made aware of this concept.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to the

first time Payne & Keller became familiar with the concept of a threshold limit value (TLV) or permissible excursion level (PEL), for airborne dust, and how Payne & Keller was first made aware of this concept.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

26. Information regarding each expert witness that Defendant may call during the trial of this case including:

- (a) The name, address, and job classification of each such witness;
- (b) The subject matter on which the expert is expected to testify; and
- (c) The substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds or bases for each opinion.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Responding party has yet to retain experts in this case. Accordingly, Payne & Keller will not produce a witness to address this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

27. Whether any person filed a claim against a Worker's Compensation carrier covering Defendant or any of its subsidiaries or predecessor companies alleging that he/she contracted a disease from inhaling asbestos fibers and if so:

- (a) A list of the claims, including each claimant's name, address and the date each claim was filed, and including the caption and jurisdiction of the claim;
- (b) The disease alleged in each such claim;
- (c) A brief summary of the disposition of each such claim; and
- (d) The name, address, and title of the person having custody of the records pertaining to each such claim.

RESPONSE: Payne & Keller incorporates the above General Objections herein by

reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Payne & Keller is a corporate entity which is no longer in existence, has not been an active corporation for over thirty years, and is currently under a court appointed receivership. Responding party has not investigated insurance coverage issues given the fact Payne & Keller is currently under a court appointed receivership. However, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available court records related to Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

28. The identity and address of all of Defendant's insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, policy limits and coverage dates.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Payne & Keller is a corporate entity which is no longer in existence, has not been an active corporation for over thirty years, and is currently under a court appointed receivership. Responding party has not investigated insurance coverage issues given the fact Payne & Keller is currently under a court appointed receivership.

Based upon the above, responding party will not produce a witness to address this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

29. All information regarding the first three (3) times Defendant was sued for damages related to exposure to asbestos from working with or around Defendant's products (including date of filing, jurisdiction, name of plaintiff, causes of action alleged, resolution outcome as to Defendant, etc.)

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available court records related to Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

30. The financial condition of Defendant. (The court has ruled that at the discovery phase, the Defendant's net worth for the previous 2 calendar years is sufficiently responsive to this topic.)

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Based upon the above, responding party will not produce a witness to address this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further

discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

31. The basis for the net worth value provided (this topic seeks the underlying data that supports or justifies the net worth value of Defendant for each given year, which will support how Defendant arrived at the net worth number provided).

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Based upon the above, responding party will not produce a witness to address this deposition topic.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

32. The names, phone numbers and addresses of all lay witnesses whom Defendant presently intends to call to testify at trial, and the subject matter of their testimony and what connection each such person has with matters relevant to this lawsuit (e.g., former co-workers of Decedent, former plant manager of plant X, etc.) and whether the witness is within your control and if the witness is retained by counsel.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably

calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e. Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC from approximately 1981 to 2000), much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

33. When Defendant first became aware of the Fleischer-Drinker Report and Dreessen Report and how Defendant learned of these Reports.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have

been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to when Payne & Keller first became aware of the Fleischer-Drinker Report and Dreessen Report.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

34. Whether Defendant contends that the fault of a person or entity other than this Defendant was a substantial contributing factor in the development of Decedent's mesothelioma. If Defendant's answer is anything other than no, the identify of all such entities and people by name.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC from approximately 1981 to 2000), much less while any

Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

35. Whether Defendant is asserting affirmative defenses in this case. If Defendant's answer is anything other than no, please:

- (a) State all facts in support of each affirmative defense;
- (b) Identify all witnesses with information in support of each affirmative defense; and
- (c) Identify all documents containing information in support of each affirmative defense.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where he purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC from approximately 1981 to 2000), much less while any

Payne & Keller employee was working with products allegedly containing asbestos.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Responding party also directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

36. The identity of each premise at issue of Decedent where Defendant provided any services during the same years Plaintiff alleges working at the premises.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC, from 1968 to 1975, or for Presnell Insulation Co. Inc., in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co., Inc., in Blacksburg, SC, and Pendelton, SC, from approximately 1981 to 2000) much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not

produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

37. Whether any tests were conducted by Defendant or on behalf of Defendant to determine potential health hazards associated with the use of or exposure to asbestos fibers associated with any products Defendant specified, approved, or used at any premises at issue. If tests were conducted as described above:

- (a) The names of the products tested and the date of each test;
- (b) The name, address, and job title of each person conducting the tests or involved with conducting the tests;
- (c) The results of each such test;
- (d) The reason the tests were done or if tests were not conducted, the reason that decision was made; and
- (e) Actions taken upon receipt and analysis of the results of each such test.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to whether any tests were conducted by Payne & Keller or on behalf of Payne & Keller to determine potential health hazards associated with the use of or exposure to asbestos fibers associated with any products Payne & Keller specified, approved, or used at any premises at issue.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further

discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

38. The identity of each distributor or wholesaler located or authorized to sell or distribute asbestos-containing products for Defendant (1) in or for South Carolina and (2) in or for any premise at issue outside of South Carolina. For each distributor or wholesaler:

- (a) The name and last known address;
- (b) The years of, and the geographical area encompassed by the relationship;
- (c) Whether there was a written distributorship agreement;
- (d) Whether the distributorship was exclusive; and
- (e) The extent to which sales to customers in this state were handled through distributors or wholesalers located outside this state.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Payne & Keller has yet to locate evidence and Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller in South Carolina. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC from approximately 1981 to 2000), much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

39. The identify of each asbestos-containing product that Defendant designed, specified, sold, supplied or distributed to the premises at issue at any time before Decedent's last day of alleged work at said worksite. For each product identified:

- (a) the trade name or brand name of the product mined, manufactured, marketed, produced, researched, sold, distributed, and/or patented;
- (b) the date the product was patented (if patented), placed on the market (if marketed), and the inclusive dates of the product's manufacture or sale (if manufactured or sold);
- (c) the physical and chemical composition of the product, including the type of asbestos contained in the product and the percentage or amount of asbestos in each product;
- (d) the date Defendant stopped mining, manufacturing, marketing, producing, researching, selling, and/or distributing the product;
- (e) the date the product was removed from the market (if marketed) and no longer sold or distributed and the reasons therefore;
- (f) the date asbestos was removed from the product, if ever, and the reasons for removing it;
- (g) the seller(s), distributor(s) and/or supplier(s) from whom Defendant purchased the asbestos used in each particular product, and the type (example: amosite, chrysotile) and quantity of asbestos Defendant purchased from the seller(s);
- (h) whether Defendant ever conducted any testing on the product to determine whether it posed any potential hazard to human or non-human health;
- (i) the plant or facility where the product was mined, manufactured, produced, or researched;
- (j) the foreseeable users of the product (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (k) a description of any warnings that Defendant placed on the product or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the product or its packaging where the warning was printed, and when the warning was first placed on the product. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition

topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Payne & Keller has yet to locate evidence and Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller in South Carolina. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC, from 1968 to 1975, or for Presnell Insulation Co., Inc., in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co., Inc., in Blacksburg, SC, and Pendelton, SC, from approximately 1981 to 2000), much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

40. For any asbestos-containing product identified in the topic immediately above, the identity of every asbestos fiber supplier.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 39 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

41. Whether any asbestos-containing product designed, specified, sold, supplied or distributed by Defendant to the premises at issue at any time were ever further distributed, marketed, packaged, labeled, or sold by companies or individuals other than Defendant. For each product identified: the dates those companies or individuals further distributed, marketed, packaged, labeled, or sold asbestos-containing products approved or specified by Defendant, and the specific asbestos-containing products involved.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, Payne & Keller has yet to locate evidence and Plaintiff has yet to present evidence Decedent had ever worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller in South Carolina. After a diligent search, upon information and belief there is no evidence any Payne & Keller employee worked at any of Decedent's job sites during the time frames specified in Plaintiff's discovery responses where Decedent purportedly was exposed to asbestos (i.e., Daniels Construction in Darlington, SC, Greenville, SC, Spartanburg, SC, and Salisbury, NC from 1968 to 1975, or for Presnell Insulation Co. Inc. in Catawba, SC, Kannapolis, NC, and Concord, NC, from approximately 1972 to 1974, or for Cooks Insulation Co. Inc. in Blacksburg, SC, and Pendelton, SC from approximately 1981 to 2000), much less while any Payne & Keller employee was working with products allegedly containing asbestos.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

42. Whether each asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant at any time was generally expected to reach, or packaged to reach, the consumer or user without substantial change in the condition in which it was sold. If not, with respect to each such product, the way Defendant claims such product was to be altered or substantially changed after sale or distribution and before reaching the consumer or user.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Further, responding party has yet to identify evidence Payne & Keller approved, designed, specified, sold, supplied or distributed asbestos containing products.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic but directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

43. Whether it was foreseeable to Defendant, at the time each asbestos-containing product was approved, designed, specified, sold, supplied or distributed by Defendant, that the product or one or more of its components might be removed, stripped, ripped out, or replaced at

some time after installation.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 42 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

44. When, if ever, Defendant became aware of asbestos-free substitutes or alternatives for each asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant at any time (e.g. mineral wool), regardless of Defendant's belief of the viability of such substitutes or alternatives.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party cannot speculate as to when Payne & Keller became aware of asbestos-free substitutes or alternatives for Payne & Keller's asbestos-containing product, or if Payne & Keller had or used asbestos-containing products.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

45. Each asbestos-free substitute or alternative for any asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant and when Defendant believed an asbestos-free alternative was an adequate substitute for the asbestos-containing product. If Defendant contends that asbestos free substitutes were not viable, the basis of that contention.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

46. Any information about efforts by Defendant to protect users of the asbestos-containing product(s) you approved, designed, specified, sold, supplied or distributed to the premises at issue, from potential hazards associated with the use of said asbestos containing-product(s), and any such precautions and actions taken by you.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

47. The identity of all persons with knowledge of facts relevant to the presence or absence of asbestos and/or asbestos-containing products approved, designed, specified, sold, supplied or distributed by Defendant at any of the premises at issue where Decedent, or (in a household exposure case) exposed family member was present and any information as to the nature of the individual's knowledge as it relates to this subject matter.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have

been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

48. Beginning in the year that Defendant first approved, designed, specified, sold, supplied or distributed any asbestos-containing products, and continuing through the present day, the identity of each person who has held the position of corporate medical director, corporate safety director, and corporate industrial hygienist, however characterized. For each person identified, the person's current or last known address and whether the person is currently alive or dead, if known.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

49. Whether there are any documents, including but not limited to, invoices, billing records, sales records, contracts, purchase orders, or any other like document that reflect the distribution, approval, specification or sale of asbestos-containing products (1) to premises at issue in South Carolina and (2) to premises at issue in states other than South Carolina identified in the work history of the Plaintiff previously provided.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

50. Information regarding any contention that asbestos-containing products you specified, approved, or supplied were not or could not have been sold, distributed or otherwise present at any of the premises at issue which Decedent's claims exposure to asbestos, and the reasons for this contention and the underlying basis for it. Also, the identity of the individual or individuals who will testify to this contention and the underlying basis for their testimony.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the

former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 44 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

51. Information regarding each and every piece of equipment that Defendant approved, designed, specified, sold, supplied or distributed in which asbestos containing parts were used or specified or otherwise utilized asbestos containing component parts in the design, manufacture, construction, erection, operations, service, and/or repair of such equipment including but not limited to:

- (a) the trade name or brand name of the equipment approved, designed, specified, sold, supplied or distributed by Defendant;
- (b) the type and/or brand name of asbestos or asbestos-containing product specified for use with the equipment;
- (c) the date the equipment was placed on the market, and the inclusive dates of the equipment's manufacture, sale, and distribution;
- (d) a detailed description of the equipment, including a description of how and why the equipment involved the use of asbestos or asbestos-containing products;
- (e) the date Defendant stopped approving, designing, specifying, selling, supplying or distributing the equipment;
- (f) if applicable, the date the equipment was removed from the market and no longer sold or distributed and the reasons therefore;
- (g) if applicable, the date asbestos was no longer specified for use with the equipment, and the reasons for no longer specifying it;
- (h) if applicable, the seller from whom Defendant purchased the asbestos containing equipment, and the type (example: amosite, chrysotile) and quantity of asbestos utilized in the product;
- (i) whether Defendant ever conducted any testing on the equipment to determine whether the use of the product posed any potential asbestos-related hazard to human or non-human health;
- (j) the plants or facilities where the equipment was installed and/or repaired;
- (k) the foreseeable users of the equipment (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (l) a description of any warnings regarding asbestos present on the equipment or

its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the equipment or its packaging where the warning was printed, and when the warning was first placed on the equipment. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party has yet to identify evidence indicating Payne & Keller approved, designed, specified, sold, supplied or distributed equipment with asbestos containing parts.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

52. As to any equipment identified in topic number 51, whether such equipment was generally expected to reach, or packaged to reach, the consumer or user without substantial change in the condition in which it was sold and if not, information regarding in what way Defendant claims such product was to be altered or substantially changed after sale or distribution and before reaching the consumer or user.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products

that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

53. As to any equipment identified in topic number 51, whether such equipment can be generally utilized without liberating asbestos fibers into the air. If yes, the identity of such equipment and the description of the intended use of the equipment, and how such use would not tend to liberate asbestos fibers into the air.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

54. As to any equipment identified in topic number 51, whether Defendant ever used any type of written sales contract between Defendant and the buyer of such equipment. If yes, whether such written sales contract ever included a clause that Defendant would agree to repair and/or service the equipment if necessary.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive

to Plaintiff's request becomes available to it.

55. Whether Defendant ever recommended the use of any asbestos-containing product with any equipment approved, specified, distributed or sold by Defendant.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Due to the above facts and based on this responding party's investigation of the publicly available information and documents on Payne & Keller, responding party will not produce a witness for this deposition topic as responding party has yet to identify evidence indicating Payne & Keller recommended the use of any asbestos containing products in any of the equipment approved, specified, distributed or sold by Payne & Keller.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

56. Whether it was foreseeable to Defendant, at the time each type or piece of equipment identified in topic number 51 above, was released for sale and distribution, that the asbestos or asbestos-containing products recommended or specified for use with such equipment might be removed, stripped, ripped out, or replaced at some time after installation.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic

Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

57. Whether Defendant ever sold, supplied or distributed any asbestos-containing replacement parts for any of the equipment approved, designed, specified, sold, supplied or distributed by you to the premises at issue. If so, indicate the part and when it was sold.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this subject matter on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Numbers 51 and 55 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

58. For each type or piece of equipment identified in topic number 51, whether asbestos gaskets utilized as component parts. If so, when.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic

Numbers 51 and 55 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

59. For each type or piece of equipment identified in topic number 51, if at any time asbestos packing was utilized as a component part. If so, when.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

60. For each type or piece of equipment identified in topic number 51, if at any time, was it necessary, required or recommended for asbestos insulation to be utilized in conjunction with any such equipment. If so, when and under what circumstances.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

61. The serial numbers for any equipment identified above (1) located at the premises at issue in South Carolina and (2) located at the premises at issue in states other than South Carolina identified in the work histories of the Plaintiff previously provided.

RESPONSE: Payne & Keller incorporates the above General Objections herein by

reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Numbers 51 and 55 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

62. Your knowledge regarding the hazards of asbestos.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Numbers 51 and 55 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive

to Plaintiff's request becomes available to it.

63. If there is another entity who was in an equal or better position to warn users of any asbestos related dangers of any asbestos-containing product or equipment approved, designed, specified, sold, supplied or distributed by you, the identity of that entity, the reasons you believe that entity had knowledge regarding the dangers of asbestos, when you believed that knowledge was obtained and the reasons you contend that the entity was in an equal or better position than you to make users aware of asbestos dangers relating to your products or equipment.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Numbers 51 and 55 above.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

64. Detailed information about all insurance policies available to Defendant for the damages in the *Childers* case, and/or for premises at issue in the *Childers* case.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Payne & Keller is a corporate entity which is no longer in existence, has not been an active corporation for over thirty years, and is currently under a court appointed

receivership. Responding party has not investigated insurance coverage issues given the fact Payne & Keller is currently under a court appointed receivership.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

65. What You (the company) did to prepare for this deposition (documents searched for, documents reviewed, people searched for, people interviewed, etc.)

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, responding party and its witness searched publicly available information, including Secretary of State records, OSHA records, articles and interviewed former Payne & Keller employees to investigate Payne & Keller's corporate history.

Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Responding party also directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

66. What the witness, in particular, did to prepare for this deposition, including but not limited to specifically how the witness prepared to discuss subjects outside of his/her personal knowledge (considering the former job duties and/or time period when the deponent was employed by You, if any).

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, responding party and its witness searched publicly available information, including Secretary of State records, OSHA records, articles and interviewed former Payne & Keller employees to investigate Payne & Keller's corporate history.

Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Responding party also directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

67. Information regarding document searches You (the company) has performed at any time for litigation involving asbestos (i.e. when the search occurred, where it occurred, by whom, results, total bates-stamp range applied to all documents produced, etc.).

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, responding party and its witness searched publicly available information, including Secretary of State records, OSHA records, articles and interviewed former Payne & Keller employees to investigate Payne & Keller's corporate history.

Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Responding party also directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

68. Information regarding document searches You (the company) has performed in this particular case. (i.e. when the search occurred, where it occurred, by whom, results, bates-stamp range applied to all documents produced, etc.).

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this deposition topic to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, responding party and its witness searched publicly available information, including Secretary of State records, OSHA records, articles and interviewed former Payne & Keller employees to investigate Payne & Keller's corporate history.

Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above facts, Payne & Keller will produce a witness, who will address this subject based upon information known or reasonably available to the responding party from its investigation of the publicly available information and documents on Payne & Keller. Responding party also directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

SPECIFIC OBJECTIONS TO REQUEST FOR DOCUMENTS

In addition to its general objections, Payne & Keller asserts the following objections to the Requests for Documents as set forth in Exhibit B to the Notice:

1. Please produce all documents showing any services provided by Defendant to the premises at issue or employers of Decedent during the same years Plaintiff alleges Decedent was working at the premises.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that this request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case.

To date, Plaintiff has failed to produce any evidence that Decedent worked with, or around, or was exposed to asbestos from any product supplied or installed by Payne & Keller. Moreover, Plaintiff has not produced or identified any evidence that Decedent worked for Payne & Keller, or around any Payne & Keller employees, much less while any Payne & Keller employees were working with products that allegedly contain asbestos.

Plaintiff has yet to present, and Payne & Keller has yet to locate any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

2. Please produce all documents concerning any tests conducted by you or on behalf of you to determine potential health hazards associated with the use of or exposure to asbestos fibers associated with any products Defendant specified, approved, sold to or used at any of the premises at issue.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used or tested potential health hazards of asbestos in South Carolina. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

3. Please produce all documents identifying each distributor or wholesaler located or authorized to sell or distribute asbestos-containing products for you (1) in or for South Carolina and (2) in or for any premises at issue outside of South Carolina identified in Decedent's work history previously provided. For each distributor or wholesaler, please produce documents containing the following information:

- (a) Name and last known address;
- (b) The years of, and the geographical area encompassed by the relationship;
- (c) Whether there was a written distributorship agreement;
- (d) Whether the distributorship was exclusive; and
- (e) The extent to which sales to customers in this state were handled through distributors or wholesalers located outside this state.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller sold or distributed asbestos in South Carolina. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

4. Please produce all documents identifying the names, phone numbers and addresses of all lay witnesses whom you presently intend to call to testify at trial, and briefly identify the request of their testimony and what connection each such person has with matters relevant to this lawsuit (e.g., former co-workers of Decedent, former plant manager of plant X, etc.). Indicate if the witness is within your control and if the witness is retained by counsel.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

5. Please produce all documents which identify each asbestos-containing product that Defendant designed, specified, sold, supplied or distributed to the premises at issue at any time before Decedent's last day of alleged work at said worksite. Please produce documents containing the following information:

- (a) the trade name or brand name of the product mined, manufactured, marketed, produced, researched, sold, distributed, and/or patented;
- (b) the date the product was patented (if patented), placed on the market (if marketed), and the inclusive dates of the product's manufacture or sale (if manufactured or sold);
- (c) the physical and chemical composition of the product, including the type of asbestos contained in the product and the percentage or amount of asbestos in each product;
- (d) the date Defendant stopped mining, manufacturing, marketing, producing, researching, selling, and/or distributing the product;
- (e) the date the product was removed from the market (if marketed) and no longer sold or distributed and the reasons therefore;
- (f) the date asbestos was removed from the product, if ever, and the reasons for removing it;
- (g) the seller(s), distributor(s) and/or supplier(s) from whom Defendant purchased the asbestos used in each particular product, and the type (example: amosite, chrysotile) and quantity of asbestos Defendant purchased from the seller(s);
- (h) whether Defendant ever conducted any testing on the product to determine whether it posed any potential hazard to human or non-human health;
- (i) the plant or facility where the product was mined, manufactured, produced, or researched;
- (j) the foreseeable users of the product (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (k) a description of any warnings that Defendant placed on the product or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the product or its packaging where the warning was printed, and when the warning was first placed on the product. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in

time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller designed, specified, sold, supplied or distributed asbestos at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

6. As to any asbestos-containing product designed, specified, sold, supplied or distributed by Defendant to the premises at issue at any time, produce all documents which indicate such products were ever further distributed, marketed, packaged, labeled, or sold by companies or individuals other than Defendant.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller designed, specified, sold, supplied or distributed asbestos at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

7. Please produce all documents that support Defendant's contention that as to each asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant for the premises at issue or employer of Decedent, such product was or was not to be altered or substantially changed after sale or distribution and before reaching the consumer or user.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller approved, designed, specified, sold, supplied or distributed asbestos at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

8. Please produce all documents showing at the time each asbestos-containing product was approved, designed, specified, sold, supplied or distributed by Defendant, that the product or one or more of its components might be removed, stripped, ripped out, or replaced at some time after installation.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent

that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller approved, designed, specified, sold, supplied or distributed asbestos at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

9. Please produce all documents showing when, if ever, did Defendant become aware of asbestos-free substitutes or alternatives for such product (e.g. mineral wool), regardless of Defendant's belief of the viability of such substitutes or alternatives.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos or asbestos-free substitutes in any product at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further

discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

10. Please produce all documents in Defendant's possession discussing any asbestos-free substitute or alternative for any asbestos-containing product approved, designed, specified, sold, supplied or distributed by Defendant.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos or asbestos-free substitutes in any product at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

11. If it is your contention that you took the proper precautions to protect users of the asbestos-containing product(s) you approved, designed, specified, sold, supplied or distributed to the premises at issue, please produce all documents which support this contention.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist

and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

12. Please produce all sales documents, including but not limited to, invoices, billing records, sales records, contracts, purchase orders, or any other like document that reflect the distribution, approval, specification or sale of asbestos-containing products (1) to premises at issue in South Carolina and (2) to premises at issue in states other than South Carolina identified in the work history of the Plaintiff previously provided.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

13. If it is your contention that asbestos-containing products you specified, approved, or supplied was not or could not have been sold, distributed or otherwise present at any premises at issue at which Decedent claims exposure to asbestos, please produce all documents which support this contention.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

14. Please produce all documents concerning each and every piece of equipment that Defendant approved, designed, specified, sold, supplied or distributed to the premises at issue or employers of Decedent in which asbestos containing parts are used or specified or otherwise utilized asbestos containing component parts in the design, manufacture, construction, erection, operations, service, and/or repair of such equipment. Specifically, please produce documents providing the following information:

- (a) the trade name or brand name of the equipment approved, designed, specified, sold, supplied or distributed by Defendant;
- (b) the type and/or brand name of asbestos or asbestos-containing product specified for use with the equipment;
- (c) the date the equipment was placed on the market, and the inclusive dates of the equipment's manufacture, sale, and distribution;

- (d) a detailed description of the equipment, including a description of how and why the equipment involved the use of asbestos or asbestos-containing products;
- (e) the date Defendant stopped approving, designing, specifying, selling, supplying or distributing the equipment;
- (f) if applicable, the date the equipment was removed from the market and no longer sold or distributed and the reasons therefore;
- (g) if applicable, the date asbestos was no longer specified for use with the equipment, and the reasons for no longer specifying it;
- (h) if applicable, the seller from whom Defendant purchased the asbestos containing equipment, and the type (example: amosite, chrysotile) and quantity of asbestos utilized in the product;
- (i) whether Defendant ever conducted any testing on the equipment to determine whether the use of the product posed any potential asbestos-related hazard to human or non-human health;
- (j) the plants or facilities where the equipment was installed;
- (k) the foreseeable users of the equipment (such as insulators, helpers, pipefitters, boilermakers, welders, machinists, plasterers, drywall finishers, carpenters, shipwrights, etc.); and
- (l) a description of any warnings regarding asbestos present on the equipment or its packaging, operating manuals, brochures, catalogs, or other related printed material. This description should include the precise language of the warning, the size of the warning, the location on the equipment or its packaging where the warning was printed, and when the warning was first placed on the equipment. In addition, include the explanation for why a warning or caution was added. If a warning was not given provide an explanation for why it was not given.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further

discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

15. As to any equipment identified in response to topic number 51, please produce any type of written sales contract between Defendant and the buyer of such equipment, including any agreement to repair and/or service the equipment.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this category on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this category to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

16. Please produce all documents showing the sale, supply or distribution of any asbestos-containing replacement parts of any of the equipment approved, designed, specified, sold, supplied or distributed by you to the premises at issue or employers of the Decedent.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller sold, supplied or distributed any asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

17. Please produce all documents that support your contention that for each type or piece of equipment identified in response to topic number 51, that asbestos insulation, was or was not necessary, required or recommended to be utilized in conjunction with any such equipment.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this category on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this category to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

18. Please produce all documents showing the serial numbers for any equipment identified in your responses to topics above (1) located at the premises at issue or employers of Plaintiff in South Carolina and (2) located at premises at issue in states other than South Carolina identified in the work history of the Decedent previously provided.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this category on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this category to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Not applicable. Payne & Keller refers Plaintiff to its response to Deposition Topic Number 51 above.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

19. If you contend that there is another entity who was in an equal or better position to warn users of any asbestos related dangers of any asbestos-containing product or equipment approved, designed, specified, sold, supplied or distributed by you to the worksites or employers of Decedent, please produce all documents which support this contention.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used any asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

20. Please produce all insurance policies available to Defendant for the damages in the *Childers* case, and/or for premises at issue in the *Childers* case.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Payne & Keller is a corporate entity which is no longer in existence, has not been an

active corporation for over thirty years, and is currently under a court appointed receivership. Responding party has not investigated insurance coverage issues given the fact Payne & Keller is currently under a court appointed receivership.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

21. Please produce all documents regarding Defendant's knowledge of asbestos hazards.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller sold, supplied or distributed any asbestos containing products at the South Carolina worksites identified by Plaintiff. Further, responding party cannot speculate as to Payne & Keller's knowledge of asbestos hazards.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

22. Please produce all documents reviewed by the witness, and any notes taken in review of such documents.

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this request on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue

in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence. Payne & Keller further objects that the request, as phrased, is misleading, argumentative and presumes facts and information that do not exist and/or are unproven and have no reasonable relation to Payne & Keller's business or product(s) allegedly at issue in this case. Payne & Keller objects on the grounds that this request is not applicable based on knowledge of the company and its prior operations when it was still in existence.

Plaintiff has yet to present, and Payne & Keller has yet to locate, any evidence connecting Plaintiff or Decedent to Payne & Keller in South Carolina or that Payne & Keller used asbestos containing products at the South Carolina worksites identified by Plaintiff. Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

23. Please produce any written procedure for document searches, or notes taken during document searches or descriptions of document searches You (the company) has done at any time for litigation involving asbestos, including but not limited to the current case (i.e. when the search occurred, where it occurred, by whom, etc.).

RESPONSE: Payne & Keller incorporates the above General Objections herein by reference. Payne & Keller objects to this deposition topic on the grounds that it is overly broad in time and scope, vague, and ambiguous. Payne & Keller objects to this request to the extent that it purports to seek information regarding time periods and products that are not at issue in this case since such information lacks relevance and is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding these objections, based on the responding party's investigation and knowledge, Payne & Keller has been dissolved and inactive since the 1980s. Many of the former Payne & Keller employees, agents, or officers are no longer living or otherwise have been unavailable to assist with the responding party's investigation of Payne & Keller's corporate history. Most details of Payne & Keller's corporate history are impossible to reconstruct or retrieve as it spans several decades involving several privately held corporate entities that no longer exist.

Despite the above objections, Payne & Keller directs Plaintiff to document bates stamped Payne & Keller 000001-001553 produced prior to this deposition.

Payne & Keller invites Plaintiff to meet and confer, before the deposition, to further discuss the scope of Payne & Keller's investigation and the witness' knowledge of same.

Discovery in this matter is ongoing and Payne & Keller reserves the right to supplement its responses if new or additional information that is discoverable and responsive to Plaintiff's request becomes available to it.

Respectfully submitted, this the 27th day of June, 2023.

BOWMAN AND BROOKE LLP

By: s/ Patrick J. Cleary
Patrick J. Cleary (SC Bar No. 80808)
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**ATTORNEYS FOR DEFENDANT
PAYNE AND KELLER COMPANY**

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Patrick J. Cleary, Esq., do hereby certify that a true and correct copy of the above and foregoing document was filed electronically, which will serve all counsel of record.

s/ Patrick J. Cleary
Patrick J. Cleary, Esq.

Dated: June 27, 2023
Columbia, South Carolina

Exhibit F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
LENORA CHILDERS, individually and as	)	
Personal Representative of the Estate of	)	C/A No. 2021-CP-40-03484
LEWIS C. CHILDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF HANNAH L. MOHRMAN

I, Hannah L. Mohrman, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California and am a partner with Bowman and Brooke LLP, attorneys of record for defendant Payne & Keller Company ("P&K Company"). I have personal knowledge of the facts stated herein. If called and sworn as a witness, I could and would competently testify to the following.

2. This Declaration is prepared in support of counsel for P&K Company's investigation of P&K Company's corporate history and work performed while and prior to the date P&K Company¹ was in operation.

3. Based upon counsel's investigation, Payne and Keller Corporation (P&K Company's parent company) was a contracting and engineering firm hired mainly in heavy construction projects such as building roads, highways, bridges and tunnels,

¹ The Texas Secretary of State records show that on December 30, 1982, Payne and Keller, Inc. merged with Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, with Payne and Keller, Inc. as the surviving entity. With this merger, Payne and Keller, Inc. changed its name to Payne & Keller Company ("P&K Company").

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.”

4. Bowman and Brooke LLP was first retained on September 29, 2021, to represent Payne & Keller in Childers v. Payne & Keller, case no. 2021CP4003484. Since then, Bowman and Brooke LLP has been retained to represent Payne & Keller in the following cases:

- a. Agner, Tommy D. v. Payne & Keller, case no. 2021-CP-40-05069, on October 13, 2021;
- b. Blair, Thomas v. Payne & Keller, case no. 2022-CP-40-00096, on January 24, 2023;
- c. Bostian, Brenda v. Payne & Keller, case no. 2021-CP-40-04877, on October 1, 2021;
- d. Davis, James Franklin v. Payne & Keller, case no. 2022-CP-40-02381, on May 10, 2022;
- e. Flynn, Jerry v. Payne & Keller, case no. 2023-CP-40-00663, on February 13, 2023;
- f. Gonce, Sandra, et al. v. Payne & Keller, case no. 2023-CP-40-02933, on June 9, 2023;
- g. Goodwin, Dorothy Jean Fox v. Payne & Keller, case no. 2020-CP-40-04613 on June 14, 2022.
- h. Graham, Willard v. Payne & Keller, case no. 2023-CP-40-02986, on June 28, 2023;
- i. Hale, Mary v. Payne & Keller, case no. 2023-CP-40-00811, on February 28, 2023;
- j. Love, James v. Payne & Keller, case no. 2021-CP-40-06190, on December 28, 2021;

- k. McLeod, Larry v. Payne & Keller, case no. 2023-CP-40-01652, on; April 18, 2023;
- l. Parr, Greer & Deborah v. Payne & Keller, case no. 2022-CP-40-01899, on April 20, 2023;
- m. Pierce, Linwood v. Payne & Keller, case no. 2022-CP-40-06194, on January 11, 2023; and
- n. Sawyer, Ray & Helen v. Payne & Keller, case no. 2023-CP-38-00132, on February 20, 2023;
- o. Thomas, Donald v. Payne & Keller, case no. 2022-CP-40-00280, on January 20, 2023; and
- p. Wood, Christopher v. Payne & Keller, case no. 2022-CP-40-01245, on January 20, 2023.

CORPORATE HISTORY

Prior to the Formation of Payne & Keller Company

5. Counsel for P&K Company obtained and reviewed Secretary of State records from various states and learned of the following:

- a. On March 13, 1961, Payne and Keller, Inc. was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit "A" is a true and correct copy of the March 13, 1961, Texas SOS Articles of Incorporation;
 - i. Starting in the mid-1960s Payne and Keller Inc. and following P&K Company's formation in 1982, Payne and Keller Inc. and P&K Company formally registered to conduct business in twelve other states: Alabama (1972), Illinois (1974), Iowa (1981), Mississippi (1972), North Carolina (1966), Oregon (1984), South Carolina (1967), Tennessee (1967), Massachusetts, Indiana,

Wyoming and Michigan¹.

1. Attached hereto as Exhibit “B” is a true and correct copy of the printout of the Alabama SOS website showing P&K Company was qualified as a foreign corporation by the Alabama Secretary of State on October 17, 1972. This certificate was withdrawn on October 31, 1986.
2. Attached hereto as Exhibit “C” is a true and correct copy of the printout of the Illinois SOS website showing P&K Company became qualified to conduct business in Illinois on August 14, 1974, which was withdrawn on January 6, 1987;
 - a. Also attached hereto as Exhibit “C” are a true and correct copy of P&K Company’s 1984 and 1985 Annual Report filed with the Illinois SOS;
 - b. Also attached hereto as Exhibit “C” is a true and correct copy of the 1991 Affidavit of Compliance showing P&K Company is a dissolved Texas corporation, filed with the Illinois SOS;
3. Attached hereto as Exhibit “D” is a true and correct copy of a printout from the Iowa SOS website showing P&K Company became qualified to conduct business in Iowa on August 24, 1981;
4. Attached hereto as Exhibit “E” is a true and correct copy of the Mississippi SOS records showing P&K Company became qualified to conduct business in Mississippi on

¹ Counsel for P&K Company searched these dates based upon counsel’s initial findings regarding P&K Company’s corporate history and work performed while and prior to the date P&K Company¹ was in operation.

May 17, 1972, which was subsequently withdrawn on April 27, 1987;

5. Attached hereto as Exhibit “F” is a true and correct copy of the North Carolina SOS records filing which shows Payne & Keller, Inc. became qualified to conduct business in North Carolina on May 18, 1966;
 - a. Also attached hereto as Exhibit “F” is a true and correct copy of the March 14, 1983, Articles of Amendment filed with the North Carolina SOS records showing Payne & Keller, Inc. changed its name to P&K Company;
6. Attached hereto as Exhibit “G” is a true and correct copy of a printout of the Oregon SOS website and SOS records showing P&K Company became qualified to conduct business in Oregon on October 15, 1984; and,
7. Attached hereto as Exhibit “H” is a true and correct copy of the South Carolina SOS records showing P&K Company became qualified to conduct business in South Carolina on July 17, 1967, and dissolved on November 7, 1986;
8. Attached hereto as Exhibit “I” are true and correct copy of a printout of the Tennessee SOS website and SOS records showing P&K Company became qualified to conduct business in Tennessee on September 26, 1967, which was subsequently withdrawn on October 31, 1986;
9. Attached hereto as Exhibit “J” is a true and correct copy of the May 4, 1984, Massachusetts Foreign Corporation Certificate approving P&K Company’s Foreign

Corporation Certificate, which was subsequently withdrawn on September 9, 1987;

10. Attached hereto as Exhibit "K" is a true and correct copy of the Indiana SOS records showing P&K Company's Revocation of Certificate of Authority was filed on July 31, 1989;

11. Attached hereto as Exhibit "L" is a true and correct copy of the Michigan SOS website showing P&K Company was qualified as a foreign corporation by the Michigan Secretary of State on November 18, 1980. This qualification was withdrawn on October 4, 1982; and,

12. Attached hereto as Exhibit "M" is a true and correct copy of the Wyoming SOS website showing P&K Company was qualified as a foreign corporation by the Wyoming Secretary of State on January 11, 1982. This certificate became inactive on November 10, 1986;

13. Counsel for P&K Company's search of Maine's SOS records for P&K Company related records resulted in zero results.

b. On August 31, 1962, J.G. McCullough Construction Co. was incorporated by J.G. McCullough, Joe Payne and Paul Keller. Attached hereto as Exhibit "N" is a true and correct copy of the August 31, 1962, Articles of Incorporation filed with the Texas SOS;

i. On April 2, 1953, M&W Equipment Company, Inc. was incorporated by J.G. McCullough, A.E. Whitney and Geneva L. Whitney. Attached hereto as Exhibit "O" is a true and correct copy of the April 2, 1953, Articles of Incorporation filed with the Texas SOS.

- c. On December 11, 1962, SKRLA, Inc. was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit “P” is a true and correct copy of the December 11, 1962, Articles of Incorporation filed with the Texas SOS;
- d. On August 10, 1970, Mike Gay, Incorporated was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit “Q” is a true and correct copy of the August 10, 1970, Articles of Incorporation filed with the Texas SOS; and,
- e. On May 21, 1971, Mike Gay, Incorporated changed its name to Joe Payne, Incorporated. Attached hereto as Exhibit “R” is a true and correct copy of the May 21, 1971, Articles of Amendment filed with the Texas SOS.

6. Counsel for P&K Company obtained and reviewed the 1976 book Houston History of a Giant by Jim Hutton and Jim Henderson and learned the following:

- a. In 1967, Payne and Keller, Inc. was sold to an unknown purchaser. Attached hereto as Exhibit “S” is a true and correct copy of the relevant portions of Houston History of a Giant; and,
- b. In 1971, Joe Payne, Incorporated repurchased Payne and Keller, Inc. – Id.

7. Counsel for P&K Company obtained and reviewed records from the Louisiana Secretary of State (“Louisiana SOS”) and learned of the following:

- a. On May 27, 1971, Bayou Maintenance & Constructors, Inc. was formed as a Louisiana Corporation that was organized under the laws of Louisiana by M.H. Gay, Archie R. Estess and Lynda L. Wilson. Attached hereto as Exhibit “T” is a true and correct copy of the May 27, 1971, Articles of Incorporation filed with the Louisiana SOS;
 - i. On June 23, 1971, Joe T. Payne, Harold L. Gilbert, Herschel M. Martin, Jr., and Jan L. Jones were added as directors to Bayou

Maintenance & Constructors, Inc. Attached hereto as Exhibit “U” is a true and correct copy of the June 23, 1971, Amendment to Charter of Bayou Maintenance & Constructors, Inc. filed with the Louisiana SOS.

- b. On March 22, 1972, Bayou Maintenance & Constructors, Inc. changed its name to Payne & Keller of Louisiana, Inc. Attached hereto as Exhibit “V” is a true and correct copy of the March 22, 1972, Amendment to Charter of Bayou Maintenance & Constructors, Inc. filed with the Louisiana SOS;
 - i. Texas SOS records show Payne & Keller of Louisiana submitted an Application for Certificate of Authority on January 14, 1975, filed a Statement of Change of Registered Office on July 9, 1982, and an Application for Certificate of Withdrawal on August 17, 1982. Attached hereto as Exhibits “QQQ” are a true and correct copies of the Texas SOS Records for Payne & Keller of Louisiana.
 - ii. Also attached hereto as Exhibit “RRR” are Payne & Keller of Louisiana’s Texas Franchise Tax Record obtained from the Texas Comptroller’s Office for the time period of January 14, 1975, to August 17, 1982.
- c. On May 2, 1977, Payne & Keller Gulf Coast, Inc. was formed as a Louisiana Corporation that was organized under the laws of Louisiana. Attached hereto as Exhibits “W” are true and correct copy of the May 2, 1977, Articles of Incorporation and July 1, 1977, Amendment to the Articles of Incorporation filed with the Louisiana SOS;
 - i. Based on P&K Company’s research, these Louisiana companies were businesses for construction and maintenance of industrial and commercial facilities.

8. Texas SOS records show Payne & Keller Gulf Coast, Inc. submitted an Application for Certificate of Authority on December 5, 1977. Attached hereto as Exhibits "OOO" is a true and correct copy of the December 5, 1977, Application for Certificate of Authority from the Texas SOS.

a. Also attached hereto as Exhibit "PPP" are Payne & Keller Gulf Coast, Inc.'s Texas Franchise Tax Record obtained from the Texas Comptroller's Office for the time period of December 5, 1977, to December 30, 1982.

9. Mississippi SOS records show Payne & Keller Gulf Coast, Inc. registered to conduct business in Mississippi on March 10, 1983, following its merger with Payne and Keller, Inc. Attached hereto as Exhibit "X" is a true and correct copy of the Mississippi SOS records showing Payne & Keller Gulf Coast, Inc. became qualified to conduct business in Mississippi on March 10, 1983.

10. Wyoming SOS records show Payne & Keller Gulf Coast, Inc. applied for incorporation in Wyoming on January 9, 1981. Attached hereto as Exhibit "EEE" is a true and correct copy of the Wyoming SOS records for Payne & Keller Gulf Coast, Inc.

11. Mississippi SOS records show Payne & Keller Gulf Coast, Inc. applied for Certificate of Authority in Mississippi on May 27, 1971. Attached hereto as Exhibit "FFF" is a true and correct copy of the Mississippi SOS records for Payne & Keller Gulf Coast, Inc.

12. Counsel for P&K Company located and interviewed William Yates, former President of SKRLA, Inc. Mr. Yates was employed by SKRLA, Inc. from 1973 to 1977. When SKRLA, Inc. was sold to Daniel International in July 1977, Mr. Yates temporarily worked for Payne & Keller Corporation until September 1977 when Daniel International was sold to Fluor and subsequently sold to Joe Payne, Incorporated. Mr. Yates remained a SKRLA, Inc. employee until May 1989.

13. On October 31, 1980, Joe Payne, Incorporated changed its name to Payne & Keller Corporation. Attached hereto as Exhibit "Y" is a true and correct copy of

the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated.

14. Counsel for P&K Company interviewed Joe Payne's former pilot and Payne & Keller employee, Roland Irby, and learned that P&K Company was sold to Dumez by 1980. William Yates, former President of SKRLA, Inc. and former employee of Payne & Keller Corporation also confirmed P&K Company was sold to a US subsidiary of a French Company, Dumez S.A. in 1979 or 1980.

- a. Counsel for P&K Company has to date through official filings been unable to confirm but believe this sale occurred before June 12, 1980, as Gilbert Thierry of Dumez is shown as a Director of Payne & Keller, Inc. in the Tennessee SOS records. See Exhibit "I"
- b. This is further confirmed by the fact that Dumez employee, Bernard Gautier, is listed as the Secretary in the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated. Id.
- c. And, by the July 6, 1981, Forbes article obtained by Counsel for P&K Company, which shows the "Dumez Group" owned 100% of P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibits "Z" is a true and correct copy of the July 6, 1981, article.
- d. This is also confirmed by the April 1, 1982, Special Endorsement No. 33 which adds Dumez U.S.A. as an additional insured to the April 1, 1982, through April 1, 1983, Aetna Casualty and Surety Company Comprehensive Liability Policy. Attached hereto as Exhibit "AA" is a true and correct copy of the April 1, 1982, Special Endorsement No. 33 naming Dumez U.S.A. as an additional insured.
- e. Additionally, per the October 7, 1986, Purchase Agreement, at the time of this agreement, all Payne & Keller Corporation and P&K Company subsidiaries were wholly owned by DUMEZ USA Corporation. See

para. 2.2 below.

15. All of the issued and outstanding stock of Dumez USA is owned by Dumez, S.A., a French societe anonyme; all of the issued and outstanding stock of Payne & Keller Corporation is owned by Dumez USA; and all of the issued and outstanding stock of Payne & Keller Company and of Bayou-Maintenance Inc. is owned by Payne & Keller Corporation. In each of the respective owners of such shares as set forth in the prior sentence are the only person entitled to vote the shares of the corporations whose shares they hold, and no holder of such shares has granted nay right to vote any of such shares to any other person. Each of Sellers and Shareholders agrees to vote all of such shares in favor of the transactions completed by this Agreement.

Attached hereto as Exhibit "BB" is a true and correct copy of the October 7, 1986, Purchase Agreement.

16. Counsel for P&K Company also investigated the following companies as they appeared in the documents reviewed in their investigation of P&K Company but do not know their relationship or association with P&K Company:

- a. Cardinal Engineering Company incorporated in Louisiana on January 29, 1974, and applied for certificate of authority in Texas from April 18, 1979 to October 27, 1986. Attached hereto as Exhibit "GGG" and "HHH" are true and correct copy of Texas and Louisiana SOS records for Cardinal Engineering Company.
- b. Cardinal Service Company incorporated in Louisiana on March 18, 1976, and applied for certificate of authority in Texas from April 16, 1979, to April 11, 1986. Attached hereto as Exhibit "III" is a true and correct copy of Texas SOS records for Cardinal Service Company.
- c. Cardinal Insulation incorporated in Texas on January 19, 1983, and dissolved in April 11, 1986. Attached hereto as Exhibit "JJJ" is a true and correct copy of Texas SOS records for Cardinal Insulation.
- d. Richardson Electrical and Instrumentation Company, Inc. incorporated in Texas on October 6, 1967, and applied for certificate of authority in Louisiana on February 12, 1973. Attached hereto as Exhibit "KKK"

and “LLL” are true and correct copy of Texas and Louisiana SOS records for Cardinal Engineering Company.

Formation of Payne & Keller Company

17. The Texas Secretary of State records show that on December 30, 1982, Payne and Keller, Inc. merged with Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, with Payne and Keller, Inc. as the surviving entity. With this merger, Payne and Keller, Inc. changed its name to **Payne & Keller Company** (“P&K Company”) attached hereto as Exhibit “CC” is a true and correct copy of the December 30, 1982, Agreement and Plan of Merger filed with the Texas SOS.

- a. Each of the merging corporations became wholly owned subsidiaries of Payne & Keller Corporation. See Article IV of the Texas Secretary of State Articles of Incorporation. Id.
- b. Additionally, Philippe Petitfrere of Dumez is listed as the secretary. Id.

18. Counsel for P&K Company requested P&K Company's C-Corporation tax returns from the State of South Carolina Department of Revenue for the time period of 1967 to 1986 and learned the records are no longer available due to the Department's retention policy. Attached hereto as Exhibit “DDD” are the State of South Carolina Department of Revenue's responses to P&K Company's request.

October 7, 1986 Purchase Agreement

19. Under the October 7, 1986, Purchase Agreement, P&K Company entered into an asset sale between Dumez and Jacobs. Attached hereto is a true and correct copy of the October 7, 1986, Purchase Agreement between Payne & Keller Company and Dumez. Attached hereto as Exhibit “BB” is a true and correct copy of the October 7, 1986, Purchase Agreement.

20. According to this agreement, P&K Company sold its listed assets and a book of customer contracts, 33 in total, to an entity of Jacobs Engineering Group, Inc. named “P & E, Inc.” a California company. Under the agreement, Jacobs would take over the 38 contracts at jobsites in Alabama, Arkansas, Illinois, Iowa, Louisiana and

Texas and assign them to various Jacobs companies. All records, designs, drawings and other things related to the 38 contracts were to be turned over to P & E, Inc. as part of the agreement. Moving forward, Jacobs would assume company liabilities from October 7, 1986, and P&K Company would assume liabilities before October 7, 1986. Id.

21. Further, Bayou-Maintenance, Inc. was a listed seller in the purchase agreement with Jacobs and sold 5 company contracts, all in Louisiana. Id.

22. Additionally, per the October 7, 1986, Purchase Agreement, at the time of this agreement, all Payne & Keller Corporation and P&K Company subsidiaries were wholly owned by DUMEZ USA Corporation. See section 2.2 of the Purchase Agreement. See Exhibit "BB."

23. As stated above, P&K Company was sold to Dumez prior to October 31, 1980, when Joe Payne, Incorporated changed its name to Payne & Keller Corporation, as confirmed by Joe Payne's former pilot, Roland Irby and William Yates, former President of SKRLA, Inc.

a. This is further confirmed by a July 6, 1981, Forbes article, which shows the Dumez Group owned 100% P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibits "Z" is a true and correct copy of the July 6, 1981, Forbes article.

24. The October 7, 1986, Purchase Agreement shows the following law firms received copies of "all notices, requests, demands, waivers and other communication" under the Agreement: 1) Sullivan, King & Sabom; and 2) Barton, Klugman & Oetting.

a. Counsel for P&K Company investigated both law firms and learned Sullivan, King & Sabom is no longer in business. Counsel contacted attorney Melinda Winn, former employee of Sullivan, King & Sabom and the Notary Public identified in the October 23, 1986, Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS, to inquire if she has additional

knowledge of P&K Company's corporate history without success. Attached hereto as Exhibit "DD" is a true and correct copy of the October 23, 1986 Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS.

- b. Barton, Klugman & Oetting is an active law firm and Managing Partner, Tod V. Beebe, has been an employee since 1981. We inquired into Mr. Beebe's knowledge of the 1986 asset sale between Dumez and Jacobs and his knowledge of Dumez's acquisition of Payne & Keller Corporation and P&K Company subsidiaries before the 1986 asset sale. Unfortunately, Mr. Beebe could not locate any files to assist with Counsel for P&K Company's inquiry. Exhibit "EE" is a true and correct copy of the privileged February 2022 email exchange between Hannah Mohrman, Counsel for P&K Company, and Mr. Beebe. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

25. Most of the officers and employees of P&K Company are now retired or deceased. Counsel for P&K Company located and spoke to Mr. Payne's widow, Mrs. Dorothy Payne in January 2022. Mrs. Payne married Mr. Payne in 1966. While she was not involved in the day-to-day operations of her husband's companies, she believes Mr. Payne's companies provided workers at various construction sites when employees were on strike. Counsel for P&K Company asked Mrs. Payne to search for any records that may be helpful in counsel's investigation of P&K Company's corporate history and work performed while P&K Company was in operation. Mrs. Payne located a booklet titled "Payne & Keller General Contractors" attached hereto as Exhibit "FF" which explains the organization, capabilities and references for "Payne & Keller General Contractors."

- a. Mrs. Payne was familiar with the sale of Payne & Keller Corporation to Dumez and based on her memory, both Dumez and Jacobs were

interested in purchasing the company, but all shares of Payne & Keller Corporation were sold to Dumez because they made a higher offer. Dumez ran the company at a loss for a few years and later sold all of their interest in Payne & Keller Corporation to Jacobs. This follows the language in the October 7, 1986, Purchase Agreement and our interviews of Mr. Irby and Mr. Yates.

- b. Counsel for P&K Company has been unable to obtain a copy of the agreement memorializing the original sale of Payne & Keller Corporation to Dumez.

Frentex

26. On October 20, 1986, Payne & Keller Corporation (P&K Company's parent company) changed its name to Frentex Enterprises Corporation. Attached hereto as Exhibit "GG" is a true and correct copy of the October 23, 1986, Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS.

- a. Also attached hereto as Exhibit "MMM" are Frentex Enterprises Corporation's Texas Franchise Tax Record obtained from the Texas Comptroller's Office for the time period of August 11, 1970, to May 12, 1989.

27. On October 24, 1986, Payne & Keller Company changed its name to Frentex Enterprises Company of Texas. Attached hereto as Exhibit "HH" is a true and correct copy of the October 24, 1986, Articles of Amendment to the Articles of Incorporation of Frentex Enterprise Company filed with the Texas SOS.

28. On December 3, 1986, Frentex Enterprises Company of Texas dissolved and liquidated all assets. Attached hereto as Exhibit "II" is a true and correct copy of the December 3, 1986, Articles of Dissolution filed with the Texas SOS.

- a. Also attached hereto as Exhibit "NNN" are Frentex Enterprises Company's Texas Franchise Tax Record obtained from the Texas

Comptroller's Office for the time period of March 13, 1961, to December 3, 1986.

29. On May 12, 1989, Frentex Enterprises Corporation merged with SKRLA Inc. with SKRLA, Inc. as the surviving company. Attached hereto as Exhibit "JJ" is a true and correct copy of the May 12, 1989, Articles of Merger of Frentex Enterprises Corporation and SKRLA, Inc. filed with the Texas SOS.

Dumez USA

30. Dumez Group is a French industrial company with origins dating to 1880 which offers a range of services in national and regional development of local industries and public services, particularly in urban planning and in the protection of the environment, to local communities, industrial companies, and individuals.
<https://www.encyclopedia.com/books/politics-and-business-magazines/lyonnaise-des-eaux-dumez>

31. Counsel for P&K Company obtained the Texas SOS records for Dumez-SGR, Inc. which shows the company was incorporated in Texas on July 29, 1977, and dissolved on April 2, 1984. Attached hereto as Exhibit "KK" is a true and correct copy of the Dumez-SGR Texas SOS Records obtained on January 19, 2022.

a. Dumez and Dumez U.S.A. are listed as shareholders in the Dumez-SGR, Inc.'s February 17, 1984, Articles of Incorporation. Id.

32. Counsel for P&K Company obtained and reviewed the French book 150 Years of Civil Engineering by Dominique Barjot, Jacques Dureuil (https://books.google.com/books?id=PS8EPPQhbU0C&pg=RA4-PP4&lpg=RA4-PP4&dq=dumez+in+texas+1980&source=bl&ots=u04U_ldoWn&sig=ACfU3U3hIVxgeLTHx5mUhh8rCCN38GABg&hl=en&sa=X&ved=2ahUKEwiR-YjSr_b1AhWvl4kEHXmSADgQ6AF6BAGgEAM#v=onepage&q=dumez%20in%20texas%201980&f=false) and learned Dumez established itself in the U.S. as early as 1980, when it acquired a Houston company in Texas.

33. Further, Counsel for P&K Company obtained and reviewed a July 6, 1981 Forbes article, which shows the Dumez Group owned 100% P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibit "Z" is a true and correct copy of the July 6, 1981, Forbes article.

34. Additionally, William Yates, former President of SKRLA, Inc. and former employee of Payne & Keller Corporation confirmed P&K Company was sold to Dumez in 1979 or 1980 before it was sold to Jacobs in 1986. Mr. Yates confirmed working with Bernard Gautier Philippe H. Petitfrere and Gilbert Thierry of Dumez during this period.

35. Bernard Gautier:

- a. Bernard Gautier is listed as the Secretary in the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated. Attached hereto as Exhibit "LL" is a true and correct copy of the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated.
- b. Bernard Gautier is listed as an Officer of Bayou Maintenance Inc. in the October 27, 1986, Louisiana SOS Affidavit to Dissolve Corporation. Attached hereto as Exhibit "MM" is a true and correct copy of the Louisiana SOS filings for Bayou Maintenance Inc., including the October 27, 1986, Affidavit to Dissolve Corporation.
- c. Bernard Gautier is listed as Secretary, Vice President in the June 1981 Annual Report of Payne and Keller of Louisiana, Inc. filed with the Louisiana Secretary of State. Attached hereto as Exhibit "NN" is a true and correct copy of the June 1981 Annual Report of Payne and Keller of Louisiana, Inc.
- d. Bernard Gautier is listed as President in the J.G. McCullough Construction Co.'s April 11, 1986, Articles of Dissolution. Attached hereto as Exhibit "OO" is a true and correct copy of the J.G. McCullough Construction Co.'s April 11, 1986, Articles of Dissolution

filed with the Texas SOS.

- e. Bernard Gautier is listed as President in the M&W Equipment Company, Inc.'s April 11, 1986, Articles of Dissolution. Attached hereto as Exhibit "PP" is a true and correct copy of the M&W Equipment Company, Inc.'s April 11, 1986, Articles of Dissolution filed with the Texas SOS.

36. Philippe H. Petitfrere:

- a. Philippe H. Petitfrere is listed as the Senior vice President and Secretary of P&K Company in the December 30, 1982, Merger Agreement between Payne and Keller, Inc., Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, which formed **Payne & Keller Company**. Attached hereto as Exhibit "CC" is a true and correct copy of the December 30, 1982, Agreement and Plan of Merger filed with the Texas SOS.
- b. He is listed as the "new registered agent" in the July 9, 1982, Statement of Change of Registered Agent filed by J.G. McCullough Construction Co. Attached hereto as Exhibit "QQ" is a true and correct copy of the July 9, 1982, Statement of Change of Registered Agent filed with the Texas SOS;
- c. He is listed as the "new registered agent" in the July 9, 1982, Statement of Change of Registered Agent filed by M&W Equipment Company, Inc. Attached hereto as Exhibit "RR" is a true and correct copy of the July 9, 1982, Statement of Change of Registered Agent filed with the Texas SOS;
- d. There were several attempts to contact Mr. Petitfrere and Mr. Gautier in furtherance of P&K Company counsel's due diligence. First, counsel for P&K Company attempted to contact Mr. Maurice Letulle of M. Letulle, C. Letulle-Joly, G. Deloison, who notarized Dumez's signature

to the October 7, 1986 Purchase Agreement. See Exhibit BB, part 3, pages 23-25. Counsel also attempted to contact Mr. Petitfrere and Mr. Gautier telephonically on May 26, 2022, and again on June 17, 2022. Further, P&K Company counsel sent e-mail's on June 15, 2022, to Mr. Petitfrere and on June 17, 2022, to Mr. Letulle attempting to establish a time to speak about Dumez, P&K, and any knowledge they have about the entities. Exhibit "SS" are true and correct copies of the privileged June 15, 2022, and June 17, 2022, e-mails from P&K Company's counsel to Mr. Letulle and Mr. Petitfrere. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

37. Gilbert Thierry was a Dumez, S.A. management employee in 1980 and a Director of Payne & Keller Corporation since June 1980.

- a. Gilbert Thierry is listed as a Director of Dumez-SGR Incorporated in the February 17, 1984, Articles of Dissolution filed with the Texas SOS. See Exhibit "KK"
- b. Gilbert Thierry is also shown as a Director of Payne & Keller, Inc. in the Tennessee SOS records. See Exhibit "I"
- c. Gilbert Thierry is shown as a Director of Payne & Keller, Inc. in the Wyoming SOS records, with his address listed as 345 Ave. Georges Clemenceau, 92022 Nanterre Cedex, Paris, France. See Exhibit "EEE"
- d. Gilbert Thierry is also shown as a Director of Payne & Keller, Inc. in the May 4, 1984, Massachusetts Foreign Corporation Certificate approving P&K Company's Foreign Corporation Certificate, which also shows his address as 345 Ave. Georges Clemenceau, 92022 Nanterre Cedex, Paris, France. See Exhibit "J"

38. P&K Company counsel's investigation led counsel to believe both Mr.

Gautier and Mr. Petitfrere are in France. Accordingly, counsel hired a private investigator in France to help locate both individuals to inquire into their knowledge of the sale of Payne & Keller Corporation to Dumez and Dumez's subsequent sale of Payne & Keller Corporation to Jacobs as outlined in the October 7, 1986, Purchase Agreement. Unfortunately, the French private investigator's initial findings revealed Mr. Gautier may be deceased and they could not locate Mr. Petitfrere. Attached hereto as Exhibit "TT" is a true and correct copy of the May 30, 2022, Report prepared by LowCostDetectives.

39. P&K Company counsel's investigated various counties in the States of North and South Carolina. Counsel called nearly 100 counties in the State of North Carolina in an effort to locate Payne & Keller worksites and any of their related entities. Also, counsel called nearly 46 counties in the State of South Carolina in an effort to locate Payne & Keller worksites and any of their related entities. For instance, in North Carolina, counsel called county building inspectors, zoning commissions, commercial construction permit, and county financial departments related to commercial construction. All inquiries from both states yielded the same information. It was explained to counsel that there were no records for Payne & Keller or any related entities dating back more than seven years, at the most, from the current date. In furtherance of P&K Company counsel's due diligence, counsel e-mailed the State Archives for North Carolina to inquire about possible Payne & Keller worksites between 1970-1990. The State Archives primarily focus on government contracts, and they did not possess any records on Payne & Keller Company. Exhibit "YY" is a true and correct copy of the February 14-15, 2022, privileged e-mail exchange between P&K Company's counsel and North Carolina's archives. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

SCOPE OF WORK

40. Based upon counsel's investigation, Payne and Keller Corporation (P&K Company's parent company) 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.

- a. According to the booklet titled "Payne & Keller General Contractors" obtained from Mrs. Payne, Payne & Keller General Contractors worked on the following: 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 of 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, waste water collection). See page 16 the booklet titled "Payne & Keller General Contractors" attached hereto as Exhibit "FF."

41. Below is the division of scope of work amongst SKRLA, Payne & Keller Corporation and M&W Equipment Company, Inc. based on P&K Company's research, including conversations with Mr. Yates:

- a. Payne & Keller Corporation performed work in the petroleum, chemical and wood pulp and paper industries;
- b. SKRLA was involved in site work, concrete, excavation, paving, concrete underground work, small bridge work for municipalities; and,
- c. M&W Equipment Company, Inc. assisted with the procurement and transportation associated with the equipment for concrete, excavation and steel work.

WORKSITES

P&K Corporation

42. Counsel for P&K Company reviewed the following pleadings and discovery from other litigation (i.e., Bostonian, Agner) to confirm Payne & Keller worksites:

- a. Lenora Childers, individually and as Personal Representative of the Estate of Lewis C. Childers v. Davis Mechanical Contractors Inc. (Case No. 2021CP4003484) (Richland County Court of Common Pleas)
- b. Oscar I. Driver vs. Union Carbide Corporation, et al, No. 2011-4923 Division "B" Section 15 (Orleans Parish District Court). Attached hereto as Exhibit "UU" is a true and correct copy of the June 8, 2012, Motion for Summary Judgment.
- c. Oscar Driver III v. Union Carbide Corporation (Case No. 2011-04923) (Orleans Parish District Court)
- d. Carlton Ray Huggins and Suzette Huggins v. Air & Liquid Systems Corporation, et al. Case No. 2019 L 000318 (Third Circuit Madison County, Illinois). Attached hereto as Exhibit "VV" is a true and correct copy of the June 10, 2019, deposition of Carlton Huggins;
- e. Coleman et al v. H.C. Price Co. et al (Case No. 2:11-cv-02937) (E.D.La.);
- f. Bobby Davis, et al vs. Owens-Corning, et al, (Case No. No. 153-174322-98) (Tarrant County, Texas - 153rd Judicial District). Attached hereto as Exhibit "WW" is a true and correct copy of the November 10, 2000, deposition of Jerald Baker;
- g. Wayne Bourgeois vs. Huntington Ingalls, Inc., et al., Ex Parte Petition for Order to Perpetuate Testimony Pursuant to LA. C.C.P. Art. 1430.1, (Case No. 2016-9604 c/w 2017-2187) (Orleans Parish District Court). Attached hereto as Exhibit "XX" is a true and correct copy of the

November 30, 2016, deposition of Wayne Bourgeois. Attached hereto as Exhibit "XX" is a true and correct copy of the June 21, 2017, Plaintiffs' Answers to Interrogatories and Responses to Request for Production of Documents.

- h. Payne & Keller's Company, Inc.'s Motion for Summary Judgment; Wayne Bourgeois vs. Huntington Ingalls, Inc., et al. No. 2016-9604 c/w 2017-2187 (Civil District Court for the Parish of Orleans State of Louisiana) Division "E" Section: 16.
- i. Bobby Davis, et al vs. Owens-Corning, et al, (Tarrant County, Texas) 153rd Judicial District - No. 153-174322-98.
- j. Chevron Oronite Company LLC v. Jacobs Field Services North America Inc. (Case No. 2:18-cv-02279) (E.D.La.)

Exhibit "ZZ" is a privileged Chart, prepared by counsel, of Payne & Keller worksites confirmed thus far by Counsel for P&K Company along with the source of the information. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

- 43. Counsel for P&K Company also reviewed the following sources to confirm Payne & Keller worksites:
 - a. Booklet titled "Payne & Keller General Contractors" obtained from Mrs. Payne
 - b. October 7, 1986, Payne & Keller Purchase Agreement; Schedule A to Purchase Agreement List of Assigned Contracts
 - c. Search of Occupational Safety and Health Administration ("OSHA") records. Attached hereto as Exhibit "AAA" is a true and correct copy of the list of OSHA violations and citations identified in counsel's investigation of P&K Company. No OSHA citations were issues for the Texas parent, Payne and Keller, Inc. Counsel located the following two OSHA citations related to asbestos standards for the Payne and Keller

subsidiary, Payne & Keller of Louisiana, Inc.

- i. Counsel for P&K Company requested all documents related to OSHA Inspection number 16133209 for Payne & Keller in Baton Rouge, LA dated August 28, 1980, and 16123200 dated April 19, 1979 for Payne & Keller Louisiana in Geismer, LA, as these were the only asbestos related violation. Attached hereto as Exhibit “AAA” is a true and correct copy of the FOIA Request.
- ii. On December 8, 2022, OSHA advised there have no records related to violations 16123200 & 16133209. Attached hereto as Exhibit “AAA” is a true and correct copy of OSHA’s December 8, 2022, response.
- d. Insurance records received in response to FOIA requests. See Exhibit “BBB” for a comprehensive accounting of all insurance records requested and received in response to FOIA requests
- e. Archived newspaper and magazine articles
- f. Records from the Tennessee Division of Business Services Department of State
- g. Records from Washington’s Secretary of State Records
- h. P&K Company counsel analyzed approximately 402,159 Duke Energy Documents. Counsel scanned the documents for any nexus between Duke Energy and Payne & Keller and any related subsidiaries in an effort to exhaust all outstanding resources that could yield any connection to the subject entities and have yet to identify any documents related to Payne & Keller.

44. Counsel for P&K Company also searched for records related to P&K Company from the following construction trades, association newsletters and the United States Environmental Protection Agency and were told they have no records related to Payne & Keller and therefore counsel were unsuccessful in obtaining meaningful

information in counsel's investigation of P&K Company's worksites:

- a. American Hygiene Foundation (AIHA)
 - b. Industrial Hygiene Foundation
 - c. National Safety Council
 - d. ACGIH
 - e. American Society of Mechanical Engineers (ASME)
 - f. American Public Health Association
 - g. American Medical Association
 - h. NIOSH (part of the CDC)
 - i. Chemical Manufacturer's Association
45. The following trade organizations were unable to be located, or have since closed down with no current contact information found:
- a. Asbestos Information Society (now the American Institute of Architects)
 - b. Industrial Medical Association
 - c. American Industrial Hygiene Association
 - d. Asbestos Textile Institute
 - e. American Occupational Medicine Association

46. Counsel for P&K Company received insurance records through a FOIA request. The documents identified insurance carriers National Union Fire Company of Pittsburgh, PA, and AETNA Casualty and Surety Company – The Standard Fire Insurance Company along with coverage policies issued to Payne & Keller Corporation. The documents were thoroughly analyzed for any information relating to the P&K Company and any potential unidentified worksites. However, there is not enough corroborating data points and connectors, outside of merely naming a potential plant or location, to confirm the physical presence of P&K Company. Attached hereto as Exhibit “BBB” is a true and correct copy of the FOIA request reviewed.

47. Exhibit “CCC” is a true and correct copy of the privileged list of witnesses Counsel for P&K Company investigated and contacted as a part of the investigation into

P&K Company's corporate history and worksite. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7th day of July, 2023 at Torrance, California.

A handwritten signature in black ink, appearing to read 'H. Mohrman', written over a horizontal line.

Hannah L. Mohrman

CERTIFICATE OF SERVICE

I hereby certify that this 7th day of July, 2023, a copy of the foregoing **DECLARATION OF HANNAH L. MOHRMAN** was filed electronically, which will serve all counsel of record.

A handwritten signature in black ink, appearing to read 'Hannah L. Mohrman', written over a horizontal line.

Hannah L. Mohrman

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,

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

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., Payne & Keller Company, and
PBI QSF, LLC, 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
American General Insurance Company, and
Maryland Casualty Company), et al.,

Third-Party Defendants.

**ZURICH AMERICAN INSURANCE COMPANY'S MOTION FOR
RECONSIDERATION OF THE ORDER REVOKING THE DISSOLUTION OF PAYNE
& KELLER AND JOINDER IN THE SEPARATE MOTIONS FOR
RECONSIDERATION SUBMITTED BY CERTAIN INSURERS AND TRAVELERS**

Pursuant to Rules 59(e) and 60, SCRCP, Defendant Zurich American Insurance Company (“Zurich”) moves for an order vacating the Court’s October 5, 2023, Order (“Order”), or in the alternative, altering or amended the Order. Briefly stated, the Order and Plaintiff’s motion that led to the Order suffer from the following manifest errors that either were not addressed in the Motion and Order or that were addressed incorrectly as a matter of law:

1. Pursuant to Rule 205, SCACR, this Court lacks jurisdiction because the issues raised in the Order are currently before the South Carolina Court of Appeals.
2. The Court lacks the power to order reinstatement of a dissolved Texas Corporation.
3. At Plaintiff’s invitation, the Court entered Plaintiff’s proposed order despite previously ordering that discovery on these issues would take place and despite stating on the record that the hearing on Plaintiff’s Motion was not closed.
4. Plaintiff did not plead fraud, and Plaintiff lacks standing to seek the revocation of Payne & Keller’s dissolution.
5. This Court is not a proper court to consider Plaintiff’s motion because discovery has not revealed any work performed by Payne & Keller in South Carolina.
6. The Texas Constitution prohibits retroactive application of the fraudulent dissolution statute.
7. The factual and legal conclusions submitted by Plaintiff in the Motion and in the proposed form of order, which ultimately were adopted and memorialized in the Order, are based on misstatements of the underlying facts and law.

Rather than burden this Court with duplicative briefing, Zurich incorporates and joins in the arguments on these discrete points as set forth in the motions to reconsider filed by Certain Insurers and Travelers Casualty and Surety Company on October 16, 2023.

s/ Kevin K. Bell

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*Counsel for Zurich American
Insurance Company*

October 16, 2023

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Date: Friday, October 20, 2023 11:04:34 AM
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Good morning,

Chief Justice Toal has scheduled a hearing on the Motion to Vacate or in the Alternative Motion to Reconsider the Court's October 5, 2023 Order filed by Certain Insurers and Travelers' Joinder. She would like to discuss whether she should consider reopening the matter, have an additional hearing at another date or now, and to discuss how to move forward regarding these latest filings.

Best,

Eva Diaz

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Good morning,

Chief Justice Toal has scheduled a hearing on the Motion to Vacate or in the Alternative Motion to Reconsider the Court's October 5, 2023 Order filed by Certain Insurers and Travelers' Joinder. She would like to discuss whether she should consider reopening the matter, have an additional hearing at another date or now, and to discuss how to move forward regarding these latest filings. The hearing has been added to the agenda for **October 25, 2023 at 9:30 AM.**

Best,

Eva Diaz

Judicial Law Clerk
South Carolina Court Administration
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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,

Plaintiff,

Case No. 2021-CP-40-03484

v.

Davis Mechanical Contractors, Inc., et al.,

Defendants.

HEARING NOTICE

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.

A hearing regarding Certain Insurers' Motion to Vacate or in the Alternative Motion to Reconsider the Court's October 5, 2023 Order and Travelers Casualty and Surety Company's Joinder in Certain Insurers' Motion, has been set in the above-captioned case. The in-person hearing will take place at 9:30 AM on October 25, 2023, at the Richland County Judicial Center in Courtroom 3B.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

So Ordered

Jean H. Toal

Electronically signed on 2023-10-20 14:31:30 page 3 of 3

From:
To:

[Peter Protopapas](#)

[Diaz, Eva](#); [Pamela Jones](#); [Carroll, Todd](#); [Jon Robinson](#); [Toal, Jean](#); [Dot Faulkenberry](#); [Poswal, Chukwuzitelu](#); [Theile McVey](#); [aaustin@nexsenpruet.com](#); [acraig@windelsmarx.com](#); [AGeddes@maynardnexsen.com](#); [Ainsley.Tillman@FordWallace.com](#); [aegary@grsm.com](#); [amelling@burr.com](#); [angela.strickland@bowmanandbrooke.com](#); [Addie Ries](#); [arolain@ruggierilaw.com](#); [asbestos@elliswinters.com](#); [aserrat@smithlaw.com](#); [ashley.brathwaite@elliswinters.com](#); [Ashley.lord@bowmanandbrooke.com](#); [ashuler@burr.com](#); [aspradlin@mgsattorneys.com](#); [ASRogers@FWHlaw.com](#); [atwilley@foxrothschild.com](#); [AWaring@nexsenpruet.com](#); [awilkinson@grsm.com](#); [Bahnson-GRSM@grsm.com](#); [bbihun@grsm.com](#); [Brian Duffy](#); [bensmoot@piercesloan.com](#); [bjowers@maynardnexsen.com](#); [BLaffitte@robinsongray.com](#); [bmagram@mgsattorneys.com](#); [bnes@morganlewis.com](#); [BPrice@dmclaw.com](#); [Edwards, Brady](#); 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Dear Chief Justice Toal and Ms. Diaz

Due to the number of motions scheduled on October 25th in the Cape matter, I would request scheduling Payne & Keller's motions for a different day. I also plan on filing an update on Payne & Keller with the Court by the close of business on Monday.

Thank you for your consideration of this request.

Best regards,

Peter D. Protopapas

From:
To:

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Cc: [Toal, Jean](#)
Subject: RE: Childers v. Payne & Keller v. U.S. Risk, LLC, et al 2021CP4003484
Date: Friday, October 20, 2023 4:17:32 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

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All, given the full agenda for next week, Chief Justice Toal has approved the request to reschedule the hearing on these motions at a later date. I will file a notice of cancellation of the hearing today.

Thanks,
Eva

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,

Plaintiff,

Case No. 2021-CP-40-03484

v.

Davis Mechanical Contractors, Inc., et al.,

Defendants.

**NOTICE OF CANCELLATION
OF HEARING**

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.

The previously scheduled hearing regarding Certain Insurers' Motion to Vacate or in the Alternative Motion to Reconsider the Court's October 5, 2023 Order and Travelers Casualty and Surety Company's Joinder in Certain Insurers' Motion, has been **CANCELLED** in the above-captioned case. The hearing will be set at another date at the Court's direction.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

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

So Ordered

Jean H. Toal

Electronically signed on 2023-10-20 16:24:22 page 3 of 3

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,

**RECEIVER FOR PAYNE & KELLER
COMPANY'S NOTICE OF FILING**

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 provides notice to the Court of the following:

Pursuant to this Court's previous rulings and instructions, the Receiver has obtained the following document from the Office of the Secretary of State of Texas. *See* October 12, 2023 Certificate of Revocation of Dissolution (a true and correct copy of which is attached hereto as Exhibit A).

Respectfully submitted,

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

This 23rd day of October, 2023.



Office of the Secretary of State

CERTIFICATE OF REVOCATION OF DISSOLUTION OF

FRENTEX ENTERPRISES COMPANY OF TEXAS
17288200

The undersigned, as Secretary of State of Texas, hereby certifies that Court-Ordered Revocation of Dissolution for the above named entity has been received and entered into the records of this office.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Revocation of Dissolution.

Dated: 10/12/2023

Effective: 10/12/2023



A handwritten signature of Jane Nelson in black ink.

Jane Nelson
Secretary of State

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Travelers's Emergency Motion to Clarify and Enforce Rule 205 and
Accompanying Appendices I-III

Parties Served:

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Counsel for Respondent Payne & Keller Corp., through its Receiver Peter D. Protopapas

October 20, 2023

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellants' Emergency Motion to Clarify and Enforce Rule 205 and
Accompanying Appendices I-III

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October 23, 2023