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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

Appellate Case No. 2024-000674

Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, Respondent,

v.

Pennsylvania National Mutual Casualty Insurance Company; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty Insurance Guaranty Association..... Defendants,

Of which Pennsylvania National Mutual Casualty Insurance Company is the Appellant.

**RECORD ON APPEAL
VOLUME 3**

Kirby D. Shealy III (S.C. Bar No. 11556)
ADAMS AND REESE LLP
1221 Main Street, Suite 1200
Columbia, SC 29201
P: 803-254-4190
kirby.shealy@arlaw.com

David Grant Harris, II (S.C. Bar No. 101951)
Alexander Erwin Davis (S.C. Bar No. 100061)
Brady A. Yntema, admitted pro hac vice
(N.C. Bar No. 25771)
David L. Brown, admitted pro hac vice (N.C. Bar
No. 18942)
GOLDBERG SEGALLA LLP

701 Green Valley Road, Suite 310
Greensboro, NC 27408

dharris@goldbergsegalla.com

aedavis@goldbergsegalla.com

byntema@goldbergsegalla.com

dbrown@goldbergsegalla.com

*Attorneys for Appellant Pennsylvania National
Mutual Casualty Insurance Company*

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“Identify,” “identification,” or to “give the identity of” means:

- a. In the case of an individual: to state his or her name, present or last known residence, present or last known telephone numbers (including home, work, and cell numbers when known), business affiliates, business address, job description, and, if different from the latter, the last position held and, if applicable, the date the individual was last employed by you.
- b. In the case of a document, whether or not such document is deemed to be privileged, objectionable, or subject to any claims of privilege, to provide the following information:
 - i. the title or other means of identification of each such document;
 - ii. the subject matter of each such document;
 - iii. the date each such document was prepared;
 - iv. the identity of the person or persons who prepared each such document;
 - v. the identity of the person or persons receiving the document or for whom such document was prepared as well as the identity of each person receiving copies of said documents;
 - vi. the present location of any and all copies of each such document in your possession, custody, or control;
 - vii. whether you claim any privilege or other reason for non-production with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which interrogatory it relates.

- c. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:
- i. the identity of the document and a description of its contents indicating its date, title and type of document;
 - ii. when the document was most recently in your possession, custody or control and what disposition was made of it;
 - iii. the identity of any person who currently possesses the document;
 - iv. a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed, and
 - v. the identities of all persons having knowledge of the contents of each document.

INTERROGATORIES

1. Identify all insurance policies, of any type, that you issued to Covil or that otherwise include Covil as an insured. For purposes of this interrogatory, the term "identify" with respect to an insurance policy means to state (i) the policy number; (ii) the policy period; (iii) the named insured(s); (iv) the limits of liability; and (v) the name of the issuing company.
2. Identify the total amount of policy premiums you received from Covil.
3. Identify all claims submitted by, or on behalf of, Covil for coverage under any insurance policy you issued to Covil, and describe your responses thereto and the disposition of each such claim.
4. Identify any and all reserve accounts you have established for any insurance policy you ever issued to Covil or that otherwise includes Covil as an insured. For purposes of this

interrogatory, the term “identify” with respect to a reserve account means to state: (i) the policy number(s) associated with the reserve accounts (s); (ii) the account number(s) for the reserve account(s); (iii) the type of financial instrument(s) used to reserve the funds; (iv) the bank or financial institution where the account(s) was/were held; (v) the rate of interest earned on each account; (vi) the highest dollar balance reserved; and (vii) the dates each account was opened and closed.

5. Describe in detail your search for any insurance policy you issued to Covil. Your answer should state all facts related to your search, including, but not limited to, the identities of all persons you contacted during this process.
6. Identify all locations searched other than those owned or rented by you for any insurance policy you issued to Covil or that otherwise names Covil as an insured. For purposes of this interrogatory, the term “identify” with respect to a location means to state: (i) the address of the location; (ii) the owner of the location; and (iii) the nature of the location searched.
7. Describe in detail all steps taken by you to identify the terms and conditions of each of the policies you issued to Covil or that otherwise name Covil as an insured.
8. State whether you have communicated with any reinsurers of policies you issued to Covil and describe the substance of such communications and any responses thereto.
9. Identify any other insurer that issued any type of insurance coverage to Covil at any time.
10. Describe your document retention policies, oral or written, that relate to insurance policies, underwriting information related to such policies, and/or form language used in such policies you issued during the 1950–1990 time period.
11. Describe the manner by which you maintained, organized, and stored your (i) underwriting and liability claims files, (ii) copies of claims drafts or payments made under comprehensive

general liability policies; and (ii) defense counsel billing and payment records from 1950–2018.

12. Describe your efforts to locate the materials referenced in Interrogatory No. 11, above, and identify the persons involved in such efforts.
13. Describe all electronic systems you used in connection with claims handling or underwriting from 1950–2018, including a description of your policies and practices for purging or deleting information contained in those systems over this time period.
14. State whether you were a member of the Insurance Services Office (“ISO”) (or its predecessors) prior to 1986 and, if so, what time period you were a member.
15. Identify all standard language generated by the ISO (or its predecessors) that you contend you included in the comprehensive general liability policies you issued before 1986.
16. Describe your process for assigning policy numbers to comprehensive general liability policies issued before 1986.
17. Have you identified each and every insurance policy, *of any kind*, that you ever issued to Covil or that provided protection to Covil?
18. In your First Defense, you contend that the Receiver for Covil has no standing to pursue the claims made the basis of this lawsuit. Please state the factual and legal basis for this contention.
19. In your First Defense, you contend that the Receiver has failed to satisfy certain conditions precedent to the filing of this lawsuit. Please state the factual and legal basis for this contention.
20. In your Third Defense, you contend that the Receiver failed to provide you with timely notice of underlying lawsuits. Please state when you first became aware of insurance coverage litigation related to Covil’s asbestos liabilities and state what you did to investigate the asbestos claims, on a case by case basis, underlying that insurance coverage litigation.

21. Are you now aware of all the prior rulings made by the receivership Court responsible for the Covil receivership, and do you agree to abide by those rulings?
22. In your Fifth Defense, you contend Covil failed to mitigate its damages in this case. Please state the factual and legal basis for this contention.
23. In your Sixth Defense, you contend Covil's claims are barred by waiver, estoppel, and/or laches. Please state the factual and legal basis for this contention.
24. In your Seventh Defense, you contend Covil's claims are barred by the applicable statute of limitations or statute of repose. Please state the factual and legal basis for this contention.
25. Please describe your understanding of the applicability and responsiveness of your policies to asbestos cases in light of the Receiver Court's statement of the law of South Carolina related to insurance coverage in asbestos cases. In your view, what types of cases would be covered and when?
26. Identify all persons with knowledge regarding any of your responses to the Plaintiff's First Interrogatories and First Requests for Production.

Signature on following page.

/s/ Marghretta H. Shisko

John B. White, Jr. (S.C. Bar No. 5996)

Marghretta H. Shisko (S.C. Bar No. 100106)

Griffin L. Lynch (S.C. Bar No. 72518)

HARRISON WHITE, P.C.

178 W. Main Street

P.O. Box 3547 (29304)

Spartanburg, SC 29306

(864) 585-5100

jwhite@spartanlaw.com

mshisko@spartanlaw.com

glynnch@spartanlaw.com

Attorneys for the Receiver.

This 9th Day of April, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

C.A. No. 2020-CP-40-02098

v.

Pennsylvania National Mutual Casualty
Insurance Company; Sam J. Crain & Co.,
Inc.; and South Carolina Property & Casualty
Insurance Guaranty Association,

Defendant.

**Plaintiff's First Requests for Production
to Defendant Pennsylvania National
Mutual Casualty Insurance Company**

TO: Pennsylvania National Mutual Casualty Insurance Company

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, The Receiver for Covil Corporation hereby propounds and serves the following written Requests for Production upon Pennsylvania National Mutual Casualty Insurance Company, each to be answered separately, in writing and under oath, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS AND INSTRUCTIONS

"Documents" means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, including telephone conversations and meetings, bulletins, computer

printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation they shall be translated into a reasonably usable form through appropriate detection devices.

“All Documents” means every document as defined above, which is in your possession, custody or control and includes documents which are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

“Including” means including but not by way of limitation.

“Related,” “relates,” or “relating to” means constituting, comprising, evidencing, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, directly or indirectly.

“You” or “your” means the Pennsylvania National Mutual Casualty Insurance Company, any of its affiliates or subsidiaries, responding to this discovery request and any and all agents, attorneys, successors, or assigns or any person acting on behalf of such Defendant.

“Covil Corporation” or “Covil” means the Plaintiff as identified in the caption as Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas.

The terms “and” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

“Identify,” “identification,” or to “give the identity of” means:

- a. In the case of an individual: to state his or her name, present or last known residence, present or last known telephone numbers (including home, work, and cell numbers when known), business affiliates, business address, job description, and, if different from the latter, the last position held and, if applicable, the date the individual was last employed by you.
- b. In the case of a document, whether or not such document is deemed to be privileged, objectionable, or subject to any claims of privilege, to provide the following information:
 - i. the title or other means of identification of each such document;
 - ii. the subject matter of each such document;
 - iii. the date each such document was prepared;
 - iv. the identity of the person or persons who prepared each such document;
 - v. the identity of the person or persons receiving the document or for whom such document was prepared as well as the identity of each person receiving copies of said documents;
 - vi. the present location of any and all copies of each such document in your possession, custody, or control;
 - vii. whether you claim any privilege or other reason for non-production with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which interrogatory it relates.

- c. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:
- i. the identity of the document and a description of its contents indicating its date, title and type of document;
 - ii. when the document was most recently in your possession, custody or control and what disposition was made of it;
 - iii. the identity of any person who currently possesses the document;
 - iv. a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed, and
 - v. the identities of all persons having knowledge of the contents of each document.

REQUESTS FOR PRODUCTION

1. All documents in your possession from any time prior to November 2, 2018 containing the word "Covil."
2. All insurance policies, of any type, that you issued to Covil or that otherwise include Covil as an insured.
3. All documents that relate to the underwriting of any insurance policy you issued to Covil or that otherwise includes Covil as an insured.
4. All documents that relate to all claims submitted by, or on behalf of, Covil for coverage under any insurance policy you issued to Covil.

5. All documents that relate to any and all reserve accounts you have established for any insurance policy you ever issued to Covil or that otherwise includes Covil as an insured.
6. All documents that relate to any loss run for any insurance policy you ever issued to Covil or that otherwise includes Covil as an insured.
7. All documents that relate to any correspondence between you and Covil's defense counsel at any time, specifically including all invoices from, or payments made to, Covil's defense counsel.
8. All subpoenas you served in an effort to locate any insurance policy you issued to Covil or that otherwise includes Covil as an insured, as well as all correspondence and responses you received in response to these subpoenas.
9. All documents that relate to the steps taken by you to determine whether you issued any insurance policy to Covil or that otherwise includes Covil as an insured.
10. All documents that relate to the steps taken by you to identify the terms and conditions of each of the policies you issued to Covil or that otherwise name Covil as an insured.
11. All documents that relate to policies, treaties and/or arrangements obtained by you, or on your behalf, to reinsure all or a portion of the risk of any insurances policies you issued to Covil or that otherwise include Covil as an insured. This request specifically includes documents reflecting the related brokering activities and any subsequent claims you submitted.
12. All documents relating to Covil's history or business activities.
13. All documents reflecting any evidence of any insurance issued to, or protective of, Covil by any insurer at any time.
14. All documents related to your document retention policies, written or oral, from 1950 to 2018.

15. All documents that relate to the manner by which you maintained, organized, and stored your underwriting and liability claims files from 1950 to 2018.
16. All documents that relate to the manner by which you maintained, organized, and stored your copies of claims drafts or payments made under comprehensive general liability policies from 1950 to 2018.
17. All documents that relate to the manner by which you maintained, organized, and stored your defense counsel billing and payment records from 1950 to 2018.
18. All documents that relate to or describe all electronic systems you used in connection with claims handling or underwriting from 1950 to 2018, including your policies and practices for purging or deleting information contained in these systems throughout this time.
19. All documents that relate to, describe, or discuss any forms you used in your comprehensive general liability policies from 1950 to 1986.
20. All documents that relate to your process for assigning prefixes and/or policy numbers to comprehensive general liability policies issued before 1986.
21. All documents evidencing what you contend are the material terms and conditions of the insurance policies you issued to Covil.
22. All documents predating 1986 that refer or relate to your membership in or subscription to the Insurance Services Office (“ISO”) or any of its predecessors.
23. All documents predating 1986 reflecting communications between you and the ISO, or any state or regulatory or insurance commission regarding the drafting or meaning of any general liability insurance policy of provision in any general liability insurance policy.

24. All documents that refer or relate to your participation in the April 21, 1977 meeting held by the American Insurance Association to discuss insurance coverage for asbestos bodily injury lawsuits.
25. All entries from your claims registers and microfiche archives regarding your insuring relationship with Covil.
26. All documents relating to the reasons why any insurance policy you issued to Covil is now lost or destroyed.
27. All documents you were requested to identify, or relied on or referred to in responding to Plaintiff's First Interrogatories served concurrently herewith.
28. All responses that you have made to lawsuits tendered to you for defense and indemnification.
29. All documents reflecting your claims handling policies and/or protocols.
30. All documents regarding the Covil receivership.
31. All insurance policies, of any type, that you issued to Covil or that include Covil as an additional insured, including policies that identify the following entities as the named insured or as an additional insured:

Contractors	
Company	City
A&G Construction Co.	Spindale, North Carolina
AAA Insulation Company, Inc.	Fayetteville, North Carolina
Aaron Equipment Company	
Abrasive & Air Equipment Co.	
Aeronca, Inc.	Pineville, North Carolina
Air Hydraulic, Inc.	
Algey Controls Inc.	
Allen E. Vaughn	Greenville, South Carolina
AllMetal Screw Products Company	
Alvay Inc.	
Ambrose Insulation Company	Greensboro, North Carolina
AM-Cal Construction Corp.	Tarrytown, New York
A.M.M.I.	

A.M. STD	
Architectural Products of SC, Inc.	Columbia, South Carolina
Asbestos Fabricators, Inc.	Charlotte, North Carolina
Ashland Oil & Refining	Ashland, Kentucky
Astone Fabricators	Charlotte, North Carolina
Atlas Minerals & Chem. Division	
Augusta Mill Supply Co.	Augusta, Georgia
B&L Maintenance (B&L Mechanical)	Greenville, South Carolina
Ballentine & King Bldrs., Inc.	Winnsboro, North Carolina
Barber-Coleman	
BE&K Construction Company	Catawba, South Carolina
Beckman	
Becon Construction	Greenville, North Carolina
Bellamy Brothers, Inc.	Ellenwood, Georgia
Benjamin Plumbing Co.	Greenwood, South Carolina
Bestrol, Inc.	
Blake Constr. Co.	Charlotte, North Carolina
Blount Brothers Corp.	Montgomery, Alabama
Bohrer, Inc.	Centralia, Illinois
Bowen & Jones, Inc.	Charlotte, North Carolina
Bryant Electric Co.	High Point, North Carolina
Burns & Roe	Unknown
Burton Mechanical, Inc.	
C.R. Craine Mechanical	Greenville, South Carolina
Calgon	
Campbell Co.	Tyler, Texas
Cape Fear Constr. Co.	Fayetteville, North Carolina
Capital Steel Bldg. & Constr. Co.	Columbia, South Carolina
Carolina Fiber Insulation, Inc.	Ronda, North Carolina
Carolina Insulating	Unknown
Carolina Mechanical Contractors	Unknown
Carolina Mechanical Contractors, Inc.	Unknown
Carr Insulation Company	Clinton, North Carolina
Carson & Company	Savannah, Georgia
Catawba Insulation Company	Hickory, North Carolina
Cauley Construction Co.	Greenville, South Carolina
Cement Asbestos Products Company	Unknown, South Carolina
Ceramco, Inc.	
Charlotte Valve & Fitting Company	
Chemetron	
Chicago Pneumatic Tool Co.	
Childress Constr. Co.	Greenville, South Carolina
Chromalox	

Claud S. Gordon Company	
Cleveland Industrial Supply Inc.	
Columbia Supply Company	Columbia, South Carolina
Community Builders	Charleston, South Carolina
Concrete Materials, Inc.	Charlotte, North Carolina
Conrad Mechanical Contrs., Inc.	Wilmington, North Carolina
Consolidated Chimney Co.	Berkeley, Illinois
Controlotron	
Control Panels, Inc.	Greenville, South Carolina
Control Specialists, Inc.	
Coplam Machine Shop	
Cross Company	
Crouse-Hinds	
Day Mixing Division of Taylor Styles	
D&B Insulation Company, Inc.	Charlotte, North Carolina
D&D Construction Co.	Linden, Tennessee
Daniel Construction Co.	Greenville, South Carolina
Daniels' Plumbing Co.	Charlotte, North Carolina
Davis Mechanical	Unknown
Davis Mechanical, Inc.	Greenville, South Carolina
Decatur Iron & Steel Co.	Decatur, Alabama
D.G.E. Vokes	
Dillon Wood Works, Inc.	Dillon, South Carolina
Dixie Bearing Company	
Dixie Plumbing Co.	Raleigh, North Carolina
D.M.&E. Corporation	
Douglas R. Brown	Orangeburg, South Carolina
Dymac Division of Special Dynamics	
E&S Constr. Co.	Cayce, South Carolina
Eagle Insulation Company	Wadesboro, North Carolina
Ebasco Services	Unknown
Eclipse	
Edgar Smith Builders	Pickens, South Carolina
Electric Supply Co.	Charleston, South Carolina
Electronics Corporation of America	
Elliott Davis Co.	Greenville, South Carolina
Energy Control Engineering Corporation	
E.R. Mitchell Company	
Eutectic + Castolin	
F.A. Bailey	Greenville, South Carolina
Federal Electric	Edgefield, South Carolina
Fluor/Fluor Daniel	
Frank H. Earle	Greenville, South Carolina

Frank Jones Constr. Co.	Ware Shoals, South Carolina
Gamewell Mechanical	Salisbury, South Carolina
G.B. Weaver & Sons Electric Co.	Salisbury, North Carolina
G.S. Industrial Company, Inc.	
Gateway Construction Co.	Spartanburg, South Carolina
General Asbestos & Rubber Company	Unknown, South Carolina
General Electric Supply Company	
George A. Reid	Clinton, South Carolina
Gibson Insulation Co., Inc.	Durham, North Carolina
Gordy Construction Company	Columbus, Georgia
Graves Mechanical	Greenville, South Carolina
Great Lakes Dredge & Dock Co.	Baltimore, Maryland
Greenville Mechanical	Greenville, South Carolina
Guy M Beaty & Co., Inc.	Travelers Rest, South Carolina
H.B. Fuller	Minneapolis, MN
H.E. Kilby Builder	Greenville, South Carolina
H.G. Reynolds Co.	Trenton, South Carolina
Hahn Contracting Company	Birdsboro, Pennsylvania
Hall & Associates, Inc.	Memphis, Tennessee
Hames Construction & Equipment Co.	Lima, Ohio
Hannan-South Construction Inc.	Cleveland, Ohio
Harmon & Associates, Inc.	Charleston Heights, South Carolina
Harper Brothers	Seneca, South Carolina
Hayes & Lunsford Electric Co.	Ashville, North Carolina
Henderson Construction, Inc.	Chamblee, Georgia
Hewitt-Robins, Inc.	Stamford, Connecticut
Hiers Electric & Service Co.	Barnwell, South Carolina
Hill Engineering, Inc.	Houston, Texas
Hills Welding Service	Piedmont, South Carolina
Hipp, Inc.	Charleston Heights, South Carolina
Howard Construction Co.	Merritt Island, Florida
Huff Industrial Piping & Fabricating Co.	Easley, South Carolina
Huff Industrial Piping	Easley, South Carolina
Industrial & Textile Piping, Inc.	Charlotte, North Carolina
Industrial Insulation	
J.B. McCrary Company	Atlanta, Georgia
J.D. Shields Corp.	Winston-Salem, North Carolina
J.E. Sirrene	
J.G. Blackman & Associates, Inc.	
J.H. Allen, Inc.	Asheboro, North Carolina
J&L Insulation	
James R. Gibson Company	Durham, North Carolina

Jenkins Construction Co.	Conway, South Carolina
Johnakin & Johnakin Bldg. Contrs.	Bennettsville, South Carolina
Johnson Construction Co., Charleston, SC	Charleston, South Carolina
Johnson's Plumbing, Heating, & Air Conditioning Co.	Florence, South Carolina
Industrial Insulation, Inc.	
Industrial Supply	
Kirkpatrick & Associates, Inc.	Greensboro, North Carolina
K.W. Arthur & Son, Inc.	
Lac Key Industries, Inc.	
Lindly Company	
L.S. Mitchell & Son	Walterboro, South Carolina
Lake Plumbing	Unknown
Leonard H. Schockley & Associates	Atlanta, Georgia
Levon Miller Heating & AC, Inc.	Georgetown, South Carolina
Litchfield & Griffin, Inc.	Walterboro, South Carolina
M.B. Kahn Constr. Co.,	Columbia, South Carolina
Manhattan Construction Co., of Oklahoma	Muskogee, Oklahoma
Martin Mechanical Contractors, Inc.	Athens, Georgia
McCoy Ellison	
McDonough Construction Co. of La., Inc.	Atlanta, Georgia
McDonough-Maddox, Inc.	Atlanta, Georgia
McKee General Contractor	El Paso, Texas
McLean Contracting Co.	Baltimore, Maryland
McMillan Company	Florence, South Carolina
Melvin W. Faile	Rock Hill, South Carolina
Metric Constructors	Unknown
Miles Goldsmith Jr., Incn.	Savannah, Georgia
Morrison Construction Co.	Shelby, North Carolina
North Brothers Co., Inc.	
Olin Corporation	Unknown
Owen's Insulation	Arden, North Carolina
Parko Mechanical	Unknown
Peele Insulation Co., Inc.	Burlington, North Carolina
Piedmont Insulation, Inc.	Salisbury, North Carolina
Piedmont Mech. Of Spartanburg, Inc.	Spartanburg, South Carolina
Porter Trucking Co.	Savannah, Georgia
Pournaras Electric Company	Myrtle Beach, South Carolina
Presnell Insulation	
Prestige Property Co.	Pinewood, South Carolina
Preston H. Haskell Company	Jacksonville, Florida

Price Welding, Inc.	Charlotte, North Carolina
Pyramid Mechanical Contrs., Inc.	Charlotte, North Carolina
R&H Insulation Company, Inc.	High Point, North Carolina
R.J.R. Mechanical, Inc.	Spartanburg, South Carolina
R.W. Terry	Anderson, South Carolina
Reed Construction Co.	Thomasville, North Carolina
Reese Heating & Air Conditioning	Spartanburg, North Carolina
Reliable Insulation Company	Greensboro, North Carolina
Renolds Insulation	Salisbury, North Carolina
Republic Mechanical Company	Dallas, Texas
Robb Contracting Co.	Phoenix, Arizona
Robert F. Mason Company	
Robinson Construction Co.	Asheville, North Carolina
Rochester Insulation Co.	Unknown
S.C. Electric & Gas	Unknown
Sanitary Plumbing & Heating Co.	Unknown
SAN-TEC, Inc.	Spartanburg, South Carolina
Service Tool & Supply Co, Inc.	
Shields, Inc.	Winston-Salem, North Carolina
Shields-Hayes Insulation Co	Winston-Salem, North Carolina
SIFCO Industries, Inc.	Sumter, South Carolina
Southeastern Air Conditioning Co.	Savannah, Georgia
Southeastern Magnesia & Asbestos Co	Charlotte, North Carolina
Southeastern Mechanical, Inc.	Unknown
Southeastern Service Company	
Southern Building Specialties	Charlotte, North Carolina
Southern Clakboard Co.	Charlotte, North Carolina
Southern Industrial Mechanical, Inc.	Greenville, South Carolina
Southern Plumbing & Heating Co.	Greenville, South Carolina
Spartan Investment Corp.	Spartanburg, South Carolina
Spray Insulation, Inc.	Unknown, North Carolina
Standard Insulation Company of NC, Inc.	Unknown, North Carolina
Starr Davis Company Inc.	
Statesville Insulation Company	Statesville, North Carolina
Steel Erectors, Inc.	Savannah, Georgia
Steele Electric Co.	Monroe, North Carolina
Superior Electric Company	Nitro, West Virginia
Taylor Stiles	
T&W Sales Company	
T&S Fire Equipmnt Company	
TDS, Inc.	Wadmalaw Island, South Carolina
T.D.W. Services, Inc.	Conyers, Georgia

Textile Piping, Inc.	Cheraw, South Carolina
The Johnson-March Corp.	
The Kay C. Company	Savannah, Georgia
The Foxboro Company	
Thermal Insulation Corp.	Winston-Salem, North Carolina
Thermal Kinetics	Unknown
Thermo-Kinetics, Inc.	Greenville, South Carolina
Trans Electric	Myrtle Beach, South Carolina
Truman Sloan Construction Co.	Unknown
Tyco Electric Co.	Savannah, Georgia
Universal Mechanical Contractors, Inc.	Somerville, Tennessee
Universal Services, Inc.	Greenville, South Carolina
Utility Sales, Inc.	Greer, South Carolina
VIKOA Construction Corp.	Hoboken, New Jersey
W&N Construction Co.	Greenville, South Carolina
W.F. Hagan & Son	Charleston, South Carolina
W.K. Prause	Charleston, South Carolina
Waco, Inc. f/k/a Waco Insulation, Inc.	Unknown, North Carolina
Walker Plumbing Co.	Augusta, Georgia
Weeks Construction Company	Leesville, South Carolina
Weyer-Livsey	Unknown
Whaley Construction Co.	Savannah, Georgia
Williams Co.	Virginia Beach, Virginia
Worley Erection Company, S.C.	Charlotte, North Carolina
Worley, Inc.	N. Myrtle Beach, South Carolina
Yeargin Construction Co.	Unknown
York Construction Co.	Greenville, South Carolina

32. All certificates of insurance or other documents evidencing any insurance coverage that you provided to Covil, including certificates of insurance or documents that identify or concern the following entities:

Facilities	
Commercial or Industrial Facility	Location of Premises
3M Building	Minneapolis, Minnesota
3M Chemical Plant	Greenville, South Carolina
A&P Warehouse	Greenville, South Carolina
A.E. Staley	Loudon, Tennessee
Abney Plant	Belton, South Carolina

Aeroquip	Norwood, North Carolina
Aiken High School	Aiken, South Carolina
Albany Felt Co.	St. Stephens, South Carolina
Albemarle High School	Albemarle, North Carolina
Albemarle Middle School	Albemarle, North Carolina
Alcoa	Badin, North Carolina
Alcoa Aluminum Plant	Alcoa, Tennessee
Alderman Studios	High Point, North Carolina
Allied Chemical	Moncure, North Carolina
Allied Signal	Irmo, South Carolina
Allied Signal Oak-Mitsui	Camden, South Carolina
Allstate Insurance	Charlotte, North Carolina
Alston Junior High	Summerville, South Carolina
Alumax	Goose Creek, South Carolina
AME Fabrication Shop	Rock Hill, South Carolina
American Enka	Enka, North Carolina
American Enka Company	Greenville, South Carolina
American Hoescht	Greer, South Carolina
American Hoescht (Hoescht Celanese)	Spartanburg, South Carolina
American Spinning	Greenville, South Carolina
American Thread Textile Mill	Clover, South Carolina
American Tobacco	Durham, North Carolina
American Tobacco Company	Charleston, South Carolina
Amoco Chemical	Mt. Pleasant, South Carolina
Amoco Oil	Charleston, South Carolina
Anderson Elementary	Anderson, South Carolina
Anderson Mill / Abney Mill	Anderson, South Carolina
Anderson Nursing Home	Anderson, South Carolina
Appalachian State University	Boone, North Carolina
Aquadale Elementary School	Norwood, North Carolina
Arrowood Mills	Rockford, North Carolina
Arthur Farms	New Bern, North Carolina
Ashtabula Power Plant	Ashtabula, Ohio
Associated Insulation	Greenville, South Carolina
Atlanta Airport	Atlanta, Georgia
Atrium Health Cabarrus Hospital / Cabarrus Memorial Hospital	Concord, North Carolina
Atrium Health Stanly Hospital / Stanly Regional Medical Center	Albemarle, North Carolina

Atrium Health Union Hospital / Union Regional Medical Center	Monroe, North Carolina
B&W Gas Co	Royston, Georgia
Badin Elementary School	Badin, North Carolina
Badische Corporation (Dow Badische)	Anderson, North Carolina
Baker Chapel School	Greenville, South Carolina
Baptist Hospital	Columbia, South Carolina
Barbour Boatworks	New Bern, North Carolina
BASF	Charlotte, North Carolina
BASF	Rock Hill, South Carolina
Baxter Laboratories	North Cove Plant, Marion, North Carolina
Baxter Labs	North Cove, North Carolina
Beaunit Corporation	Statesville, North Carolina
Beemer Metal Works	Greenville, South Carolina
Belding Hemingway	Hendersonville, North Carolina
Belews Creek (Duke Power)	Walnut Cove, North Carolina
Belton Middle School	Belton, South Carolina
Ben Tillman School	North Charleston, South Carolina
Bennett Motor Company	Cheraw, South Carolina
BF Goodrich, Martha Plant	Thomaston, Georgia
Big Bend Power Station	Apollo Beach/Tampa, Florida
Bishop England High School	Charleston, South Carolina
Black & Decker Corporation	Fort Mill, South Carolina
Blackman-Uhler Chemical Plant	Wellford, South Carolina
Bloomburg Mills	Spartanburg, South Carolina
Bloomburg Mills	Abbeville, South Carolina
Bonette Fiber Plant	Chapel Hill, North Carolina
Boral Brick	Van Wyck, South Carolina
Borden Inc.	Greenville, South Carolina
Borden Plant	Chester, South Carolina
Bowater Paper Mill	Catawba/Rock Hill, South Carolina
Brunswick Pulp & Paper	Brunswick, Georgia
Brushy Creek Baptist Church	Greenville, South Carolina
Bryant Road Junior High School	Spartanburg, South Carolina
Bryson School	Ft. Inn, South Carolina
Bucknell College Football Stadium	Lewisburg, Pennsylvania
Burlington Industries	Dalton, Georgia
Burlington Industries	Cramerton, North Carolina
Burlington Industries	White Springs, West Virginia

Burlington Industries / Klopman Mills	Society Hill, South Carolina
Burlington Mills	Dallas, North Carolina
Burlington Mills	Marion, North Carolina
Burlington Mills	Greensboro, North Carolina
Burlington Sportswear Fabrics	Greenville, South Carolina
Bushy Creek Baptist Church	Greenville, South Carolina
C&S Bank	Greenville, South Carolina
Callaway Mills	LaGrange, Georgia
Cannon Memorial Hospital	Pickens, South Carolina
Cannon Mills	Kannapolis, North Carolina
Cape Canaveral Hospital	Cocoa Beach, Florida
Cargill Corn Milling Plant	Memphis, Tennessee
Carolina By-Products	Greensboro, North Carolina
Carolina Eastman	Lexington, South Carolina
Carolina Eastman / Zimmer Plant	Columbia, South Carolina
Carolina High School	Greenville, South Carolina
Carolina Mills	Maiden, North Carolina
Carolina Power & Light	Goldsboro, North Carolina
Carolina Power & Light (CP&L) - Robinson Nuclear Plant	Hartsville, South Carolina
Carolina Power & Light (CP&L) - Shearon Harris Nuclear Plant	New Hill/Cary, North Carolina
Carolina Power & Light Fossil Plant	Roxboro, North Carolina
Carolina Power & Light Fossil Plant	Wilmington, North Carolina
Carolina Power & Light Hydro Plant	Mt. Gilead, North Carolina
Carolina Power & Light Hydro Plant	Newport, Tennessee
Carolina Power & Light Nuclear Plant	Hartsville, North Carolina
Carolina Power & Light Nuclear Plant	New Hill, North Carolina
Carolina Power & Light Sharon Harris Station	Raleigh, North Carolina
Catawba Nuclear Station (Duke Power)	Charlotte, North Carolina
CB Metal Co.	Clinton, South Carolina
Celanese	Rock Hill, South Carolina
Celanese - Charlotte	Charlotte, North Carolina
Celanese - Florence, Kentucky	Florence, Kentucky
Celanese - Hoechst Fibers	Spartanburg, South Carolina
Celanese - Wilmington	Wilmington, North Carolina
Celanese / Hoechst Celanese / Celanese Plastics Co. - Greer	Greer, South Carolina
Celanese Fibers	Charlotte, North Carolina
Celanese Fibers	Salisbury, North Carolina

Celanese Fibers	Shelby, North Carolina
Central Elementary School	Albemarle, North Carolina
Central School	Central, South Carolina
Certainteed	Athens, Georgia
CF Sauer	Greenville, South Carolina
CF Sauer	Mauldin, South Carolina
CH Masland & Sons	Atmore, Alabama
Chambers Medical Center (incinerator/boiler)	Hampton, South Carolina
Champion Paper	Canton, North Carolina
Chapman High School	Inman, South Carolina
Charles S. Tanner Co.	Greenville, South Carolina
Charleston Naval Shipyard	Charleston, South Carolina
Chemax, Inc.	Piedmont, South Carolina
Cheraw Yarn Mills	Cheraw, South Carolina
Cherokee County Memorial Hospital	Gaffney, South Carolina
Cherokee Printing	Gaffney, South Carolina
Chesnee Telephone Company	Chesnee, South Carolina
Chesterfield County Schools	Chesterfield County, South Carolina
Chesterfield Shopping Center	Williston, South Carolina
Chicopee Manufacturing	Royston, Georgia
Chicopee Manufacturing	Gainesville, Georgia
Chicopee Mills	Walhalla, South Carolina
Clark Control	Lancaster, South Carolina
Clark Schwebel Fiberglass	Anderson, South Carolina
Clemson Health Care	Clemson, South Carolina
Clemson University	Clemson, South Carolina
Cleveland Elementary School	Spartanburg, South Carolina
Cliffside Burlington	Cliffside, North Carolina
Cliffside Power Plant	Cliffside, North Carolina
Clinton Bearing Plant	Clinton, South Carolina
Clinton Mills	Clinton, South Carolina
Collins & Aikman	Albemarle, North Carolina
Collins & Aikman	Cowpens, South Carolina
Columbia Nitrogen	Augusta, Georgia
Commercial Air	Greenville, South Carolina
Compoli and Loparo Dental Office	Charlotte, North Carolina
Concord Telephone Co	Concord, North Carolina
Cone Mills	Concord, North Carolina
Cone Mills	Florence, South Carolina

Cone Mills - Union Bleachery	Greenville, South Carolina
Continental Can Paper Mill (also known as Federal Paper Board/Augusta Mill)	Augusta, Georgia
Continental Tire Plant	Fort Mill, South Carolina
Cox Paper Mill	Augusta, Georgia
Crescent Fibers Plant	
Crosscreek Mall	Greenwood, South Carolina
Crown Fibers	
Crystal River Nuclear Power Plant	Crystal River, Florida
Cushman Mill	Williamston, South Carolina
D&B Hospital	Morgantown, West Virginia
Dade Paper Company	Jacksonville, Florida
Dan River Inc.	Simpsonville, South Carolina
Dan River Inc. - Woodside Mills	Greenville, South Carolina
Dan River Mills	Danville, Virginia
Daniel Construction Headquarters / Daniel Building	Greenville, South Carolina
Deering Milliken	Williamston, South Carolina
Deering Milliken - Enterprise Plant	Marietta, South Carolina
Deering Milliken Plant	Honea Path, South Carolina
Deering Milliken	LaGrange, Georgia
Deering Milliken, Cushman Mills	Williamston, South Carolina
Deering Milliken, Judson Mill	Greenville, South Carolina
Deering Milliken, McCormick Mills	McCormick, South Carolina
Deering Milliken	Greenville, South Carolina
Deering Milliken, Tetra Pac Plant	Spartanburg, South Carolina
Defore Mill	Clemson, South Carolina
DeGussa Chemical	Theodore, Alabama
Demetree Enterprises Building	Jacksonville, Florida
Denmark Housing Project	Denmark, South Carolina
Detyens Shipyard	Charleston, South Carolina
Diablo Canyon Nuclear Power Plant	Avila Beach, California
Digital Equipment Corp.	Greenville, South Carolina
Dixie Mill (Project Dixie)	Tacooa, Georgia
Domtar Marlboro Mill	Bennettsville, South Carolina
Domtar Pulp and Paper Mill	Port Wentworth, Georgia
Dorman High School	Spartanburg, South Carolina
DOW Badische / BASF	Anderson, South Carolina
Duff's Rest	Spartanburg, South Carolina
Duke Energy - Brunswick Nuclear Plant	Brunswick County, North Carolina

Duke Power - Allen Steam Station	Belmont, North Carolina
Duke Power - Asheville Energy Plant	Arden, North Carolina
Duke Power - Bad Creek Hydro Plant	Salem, South Carolina
Duke Power - Bear Creek Hydro Station	Tuckasegee, North Carolina
Duke Power - Belews Creek Steam Station	Belews Creek/Walnut Cove, North Carolina
Duke Power - Blewett Falls Hydro Station	Lilesville, North Carolina
Duke Power - Bridgewater Hydro Station	Glen Alpine, North Carolina
Duke Power - Bryson Hydro Station	Whittier, North Carolina
Duke Power - Buck Steam Plant	Salisbury/Spencer, North Carolina
Duke Power - Buzzards Roost Plant	Greenwood, South Carolina
Duke Power - Cape Fear Plant	Moncure, North Carolina
Duke Power - Catawba Nuclear Station	York/Newport, South Carolina
Duke Power - Cedar Cliff Hydro Station	Tuckasegee, North Carolina
Duke Power - Cedar Creek Hydro Station	Rocky Creek, South Carolina
Duke Power - Cherokee Nuclear Plant	Gaffney, South Carolina
Duke Power - Cliffside Steam Station	Cliffside/Mooresboro, North Carolina
Duke Power - Cowans Ford Hydro Plant	Huntersville/Stanley, North Carolina
Duke Power - Dan River Steam Station	Eden/Draper, North Carolina
Duke Power - Darlington Plant	Darlington County, South Carolina
Duke Power - Dearborn Hydro Station	Great Falls, South Carolina
Duke Power - Fishing Creek Hydro Station	Chester County, South Carolina
Duke Power - Franklin Hydro Station	Franklin, North Carolina
Duke Power - Gaston Shoals Hydro Station	Blacksburg, South Carolina
Duke Power - Harris Nuclear Plant	Wake County, North Carolina
Duke Power - HF Lee Plant	Wayne County, North Carolina
Duke Power - Hollidays Bridge Station	Honea Path, South Carolina
Duke Power - Keowee-Toxaway Hydroelectric Plant	Seneca, South Carolina
Duke Power - Lincoln Combustion Turbine Station	Lincoln County, North Carolina
Duke Power - Lookout Shoals Plant	Claremont, North Carolina
Duke Power - Marshall Hydro Station	Marshall, North Carolina
Duke Power - Marshall Steam Station	Sherrills Ford/Terrell/Catawba, North Carolina
Duke Power - Mayo Plant	Roxboro, North Carolina
Duke Power - McGuire Nuclear Station	Huntersville/Cowans Ford/Cornelius, North Carolina
Duke Power - Mill Creek Combustion Turbine Station	Cherokee County, South Carolina
Duke Power - Mission Hydroelectric Plant	Murphy, North Carolina

Duke Power - Mountain Island Hydro Plant	Mt. Holly, North Carolina
Duke Power - Nantahala Hydro Station	Topton, North Carolina
Duke Power - Ninety-Nine Islands Hydro Station	Blacksburg, South Carolina
Duke Power - Oconee Nuclear Station	Seneca, South Carolina
Duke Power - Operation Center	Boiling Springs, North Carolina
Duke Power - Oxford Hydro Plant	Hickory, North Carolina
Duke Power - Queens Creek Hydro Station	Topton, North Carolina
Duke Power - Rhodhiss Hydro Station	Rhodhiss, North Carolina
Duke Power - Riverbend Steam Station	Mt. Holly, North Carolina
Duke Power - Robinson Nuclear Plant	Darlington County, South Carolina
Duke Power - Rockingham Station	Rockingham, North Carolina
Duke Power - Rocky Creek Hydro Station	Fairfield and Lancaster County, South Carolina
Duke Power - Roxboro Steam Plant	Semora, North Carolina
Duke Power - Smith Energy Complex	Hamlet, North Carolina
Duke Power - Sutton Steam Station	Wilmington, North Carolina
Duke Power - Thorpe Hydro Station	Dillsboro, North Carolina
Duke Power - Tillery Hydroelectric Plant	Mt. Gilead, North Carolina
Duke Power - Toddville Rd.	Charlotte, North Carolina
Duke Power - Tuckasegee Hydro Station	Tuckasegee, North Carolina
Duke Power - Tuxedo Hydroelectric Plant	Hendersonville/Flat Rock, North Carolina
Duke Power - W.S. Lee Steam Station	Belton/Pelzer, South Carolina
Duke Power - Wateree Hydro Station	Fairfield and Kershaw Counties, South Carolina
Duke Power - Waters Hydroelectric Plant	Waterville, North Carolina
Duke Power - Wayne County Plant	Goldsboro, North Carolina
Duke Power - Weatherspoon Plant	Lumberton, North Carolina
Duke Power - Wylie Hydro Station	Gaston County, North Carolina (Belmont, North Carolina)
Duke Power- Great Falls Hydro Plant	Great Falls, South Carolina
Dunean Mill (J.P. Stevens Co.)	Greenville, South Carolina
Duracell Battery Plant	Lancaster, South Carolina
E.I. Du Point - Graingers	Graingers, North Carolina
E.I. DuPont - Brevard	Brevard/Cedar Mountain, North Carolina
E.I. DuPont - Camden/Lugoff May Plant	Camden/Lugoff, South Carolina
E.I. DuPont – Cedar Mountain	Cedar Mountain, NC
E.I. DuPont - Decatur	Decatur, Alabama
E.I. DuPont - Dunbarton	Dunbarton, South Carolina

E.I. DuPont – Fayetteville	Fayetteville, North Carolina
E.I. DuPont - Florence	Florence, South Carolina
E.I. DuPont - Greenville	Greenville, South Carolina
E.I. DuPont - Kinston	Kinston, North Carolina
E.I. DuPont - Martinsville	Martinsville, Virginia
E.I. DuPont - West Columbia	West Columbia, South Carolina
E.I. DuPont - Wilmington/Cape Fear	Wilmington/Cape Fear, North Carolina
E.I. Dupont Savannah River Plant	Augusta, South Carolina
Eastern Engineering of SC, LLC	Lake City, South Carolina
Eastside High School	
Ecusta Paper	Brevard, North Carolina
Edisto Power Plant	Edisto Beach, South Carolina
Edwin I. Hatch Nuclear Plant	Baxley, Georgia
EJ Snyders Finishing Plant	Albemarle, North Carolina
Elbert County Hospital (Nursing Wing Add)	Elberton, Georgia
Emanuel AME Church	Charleston, South Carolina
Emerald Junior High	Greenwood, South Carolina
Erskine College	Due West, South Carolina
Esso Oil Storage Facility	cHarleston, SC
Ethan Allen Furniture plant	Old Fort/Black Mountain, North Carolina
Ethox Chemicals	Greenville, South Carolina
Ethyl Corporation plant	Orangeburg, South Carolina
Federal Paper Board	Kiegelwood, North Carolina
Federal Paper Company	Riegelwood, North Carolina
Fenix & Scisson	York, South Carolina
Fiber Industries, Inc.	Greenville, South Carolina
Fiber Industries/Celanese Fibers/Hoechst Celanese - Earl / Shelby	Earl/Shelby, North Carolina
Fiber Industries/Celanese Fibers/Hoechst Celanese - Florence/Darlington, South Carolina	Florence/Darlington, South Carolina
Fiber Industries/Celanese Fibers/Hoechst Celanese - Salisbury	Salisbury, North Carolina
Fibers Industries - Greenville / Simpsonville, South Carolina	Greenville/Simpsonville, South Carolina
Fieldcrest Cannon Mills	Kannapolis, North Carolina
Fingerville School	Chesnee, South Carolina
Firestone Tire	Minneapolis, Minnesota
Firestone Tire & Rubber	Albany, Georgia

Firestone Tire & Rubber	Nashville, Tennessee
Firestone Tire Plant	Cleveland, Tennessee
Firestone Tire Plant	Wilson, North Carolina
FirstHealth Montgomery Memorial Hospital	Troy, North Carolina
Fovil Manufacturing Company	Abbeville, South Carolina
Franklin Dyed Yarns	Greenville, South Carolina
Franklin Processing	
Fruehauf Semi-Trailer Fabrication Plant	Charlotte, North Carolina
Fuji Film Plant	Greenwood, South Carolina
Furman University	Greenville, South Carolina
Gaffney Hospital	Gaffney, South Carolina
Garden Theater	Charleston, South Carolina
Gaston County Dyeing Machine	Stanley, North Carolina
Gayley Knitting Mill	Marietta, South Carolina
Gayley Mills	Marietta, South Carolina
General Chemical Plant	Claymont, Delaware
General Electric building	Charlotte, North Carolina
General Electric Plant	Wilmington, North Carolina
General Electric Plant	Florence, South Carolina
General Electric Power Systems Gas Turbine Plant	Greenville, South Carolina
General Mills Building	Charleston, SC
General Motors Plant	Bowling Green, Kentucky
General Nutrition	Greenville, South Carolina
General Tire Plant	Charlotte, North Carolina
Georgia Power - Hal B. Wansley Power Plant	Carrollton, Georgia
Georgia Power - Harllee Branch Power Plant	Milledgeville/Eatonton, Georgia
Georgia Power - Vogtle Nuclear Power Plant	Waynesboro/Augusta, Georgia
Georgia-Pacific Paper Mill	Cedar Springs, Georgia
Georgia-Pacific Siding Plant	Catawba, South Carolina
Gerber Products Company	Summerville, South Carolina
Gerrish Milliken	Pendleton, South Carolina
Gerrish Milliken	Pentaltex, South Carolina
Glidden Chemical Company	Jacksonville, Florida
Gould Electric Plant Facility	Roebuck, South Carolina
Grace Bleachery	Lancaster, South Carolina
Grace Chemical Plant	Wilmington, North Carolina
Great Falls Plant	Great Falls, South Carolina
Greenville Airport	Greenville, South Carolina
Greenville County Schools	Greenville, South Carolina

Greenville General Hospital / Old General Hospital	Greenville, South Carolina
Greenville Memorial Hospital	Greenville, South Carolina
Greenville Technical College	Greenville, South Carolina
Greenwood Mills	Greenwood, South Carolina
Greenwood Mills	Columbia, South Carolina
Greenwood Mills Edisto Plant	Orangeburg, South Carolina
Greer Federal Savings & Loan Assn.	Greer, South Carolina
Grumman Aerospace	Lexington, South Carolina
Hatteras Yachts Shipyard	New Bern, North Carolina
Haut Gap Middle School	Johns Island, South Carolina
Health Care Center	Powdersville, South Carolina
Heart of Greenville Motel	Greenville, South Carolina
Hercules	Wateree, South Carolina
Hickson	Hickory Grove, South Carolina
HM King High School	Kingsville, North Carolina
Hoffman House	Charleston, South Carolina
Holiday Inn	Anderson, South Carolina
Holiday Inn	Clemson, South Carolina
Homelite Plant / Homelite Chainsaw Plant	Greer, South Carolina
Homelite Textron Plant	Greer, South Carolina
Honea Path School District	Honea Path, South Carolina
Hubbell Plant	Asheville, North Carolina
Husqvarna Outdoor Products Plant	Orangeburg, South Carolina
Hyston/American Hoechst/Hoechst Celanese	Rock Hill, South Carolina
Hyston/American Hoechst/Hoechst Celanese	Spartanburg, South Carolina
I.R.M. Insurance Building	Charlotte, North Carolina
Imperial Dade Paper Mill	Jacksonville, Florida
Imperial Sugar/Dixie Crystals Sugar Mill and Refinery	Port Wentworth, Georgia
INA Bearing	Cheraw, South Carolina
InChem	Rock Hill, South Carolina
Indian River Power Plant	Titusville, Florida
Inland Orange Paper Mill	Orange, Texas
International Paper	Hampton, South Carolina
International Paper	Mobile, Alabama
International Paper - Georgetown Mill	Georgetown, South Carolina
International Paper - Panama City Mill	Panama City, Florida
International Paper Mill / Eastover Mill	Panama City, Florida
ITE Plant	Roebuck, South Carolina

J.C. Penney	Greenville, South Carolina
J.C. Penney	North Charleston, South Carolina
J.M.Fields	West Ashley, South Carolina
J.P. Stevens	Wallace, North Carolina
J.P. Stevens	Greer, South Carolina
J.P. Stevens	South Boston, Virginia
J.P. Stevens	Stanley, North Carolina
J.P. Stevens	Dallas, North Carolina
J.P. Stevens	Chatsworth, Georgia
J.P. Stevens	Calhoun Falls, South Carolina
J.P. Stevens	Goldsboro, North Carolina
J.P. Stevens - Cherokee Mills	Forest City, North Carolina
J.P. Stevens - Delta Mills / Delta Finishing Plant	Wallace, South Carolina
J.P. Stevens - Utica Mohawk facility	Clemson, South Carolina
J.P. Stevens - Walhalla Mills	Walhalla, South Carolina
J.P. Stevens - White Horse Mills	Greenville, South Carolina
J.P. Stevens Co.	Greenville, South Carolina
J.P. Stevens Mill	Great Falls, South Carolina
J.P. Stevens textile mill	Piedmont, South Carolina
James Lee & Sons	Dahlonega, Georgia
Jefferies Hydroelectric Station	Monks Corner, South Carolina
Jeffries Carpet Dying Plant	Albemarle, North Carolina
Joanna Mills	Joanna, South Carolina
John Wesley Methodist Church	Greenville, South Carolina
J.P. Stevens	Taylors, South Carolina
J.P. Stevens - Seneca Plant	Seneca, South Carolina
J.P. Stevens - Watts Mill	Laurens, South Carolina
J.P. Stevens, Monaghan Mill	Greenville, South Carolina
J.P. Stevens, Seneca Plant	Seneca, South Carolina
J.P. Stevens, Tuxedo Plant	Tuxedo, North Carolina
Judson Mill	Greenville, South Carolina
Kal-Kan Dog Food	Columbia, South Carolina
Kendall Mill	Camden, South Carolina
Kendall Mill - Lower Plant	Peizer, South Carolina
KEX Plant	Greenville, South Carolina
Kimberly-Clark	Childersburg, Alabama
Kimberly-Clark	Salisbury, North Carolina
Kimberly-Clark Paper Mill	Beech Island, South Carolina
Kmart	Anderson, South Carolina

Krispy Kreme Doughnut Co.	Greenville, South Carolina
LaFrance Mill	Pendleton South Carolina
LaFrance Mill	LaFrance, South Carolina
Lander College	Greenwood, South Carolina
Laurens Nursing Home	Laurens, South Carolina
Lavonia Mills	Lavonia, Georgia
Leewood Carpet Plant	Clayton, Georgia
Lexington Tile	Lexington, North Carolina
Liberty Grammar School	Liberty, South Carolina
Limestone Manufacturing Textile Mill	Gaffney, South Carolina
Lorillard Tobacco (Lowe's Company)	Greensboro, North Carolina
Louis Rich Processing Plant	Newberry/Jalapa, South Carolina
Mac Fabrication Shop	Rock Hill, South Carolina
MacAlloy Steel Mill	Charleston, South Carolina
MacGregor Golf Company	Albany, Georgia
Madison County Hospital	Danville, Georgia
Madison High School	Danielsville, Georgia
Mallinckrodt Pharmaceuticals	Raleigh, North Carolina
Margaret Pardee Hospital	Hendersonville, North Carolina
Marion Yarn/Marion Manufacturing Textile Mill	Clover, South Carolina
Marquette Metal Products	Fountain Inn, South Carolina
Martinsville Nylon Plant	Martinsville, Virginia
McCormick Mills	McCormick, South Carolina
McGuire Nuclear Station	Cowans Ford, North Carolina
Mead Paper Company	Sylva, North Carolina
Melville Textile Print Works	
Memorial Mission Hospital	Asheville, North Carolina
Menthol Plant	Charleston, South Carolina
Merck & Co. - Flint River Plant	Albany, Georgia
Metal Products Corp	Greenville, South Carolina
MetLife Computer building	Greenville, South Carolina
Michelin Radial Tire	Spartanburg, South Carolina
Michelin Tire	Greenville, South Carolina
Michelin Tire	Anderson, South Carolina
Mid-State Tile	Mount Gilead, North Carolina
Miller Brewing	Eden, North Carolina
Milliken & Co, Gerrish Plant	Pendleton, South Carolina
Milliken & Co, Gerrish Plant	Pentaltax, South Carolina
Milliken & Co.	Blacksburg, South Carolina

Milliken & Co.	Spartanburg, South Carolina
Milliken & Co. - Cypress Plant / Allen Plant	Blacksburg, South Carolina
Milliken & Co. - Defore Mill	Pendleton/Clemson, South Carolina
Milliken & Co. - Gayley Mill	Marietta, South Carolina
Milliken & Co. - Judson Mill / Judson Plant	Greenville, South Carolina
Milliken & Co. - Magnolia Finishing Plant	Blacksburg, South Carolina
Milliken & Co. - New Prospect Plant	Campobello, South Carolina
Milliken Research Center	Spartanburg, South Carolina
Mills Hyatt House	Charleston, South Carolina
Mills Mill	Greenville, South Carolina
Mission Hospital	Asheville, North Carolina
Monaghan Mill	Greenville, South Carolina
Moncure Plywood Plant	Moncure, North Carolina
Monsanto	Fayetteville, North Carolina
Monsanto	Greenwood, South Carolina
Monsanto / Fabric Services Plant	Orangeburg, South Carolina
Monsanto Chemical Plant	Blacksburg, South Carolina
Montgomery Mill	Chesnee, South Carolina
Moss Landing Power Plant	Moss Landing, California
Mountain Sanatorium & Hospital	Fletcher, North Carolina
Mt. Vernon Mills	Columbia, South Carolina
N.C. Finishing Plant / Fieldcrest Cannon Plant	Spencer, North Carolina
National Cash Register Co.	Greenville, South Carolina
National Lead Company	Statesville, North Carolina
New Bern Shipyard	New Bern, North Carolina
New London Middle School	New London, North Carolina
Ninety Six Canning Company	Ninety Six, South Carolina
North Georgia Vocational School	Clarksville, Georgia
Northeast Vocational School	Columbia, South Carolina
Northwood Mall Restaurant	North Charleston, South Carolina
Norton Company	North Charleston, South Carolina
Norwood Elementary School	Norwood, North Carolina
Oakmont Nursing Center	Greenville, South Carolina
Oconee Nuclear Facility	Seneca, South Carolina
Oconee Waste Water Treatment Plt.	Walhalla, South Carolina
Owens-Corning Fiberglass Plant	Anderson, South Carolina
P.P.G.	Greenville, South Carolina
Pacolet Mills	Pacolet, South Carolina
Palmetto Brick	Myrtle Beach, South Carolina

Park Davis	Honea Path, South Carolina
Park Seed Co.	Greenwood, South Carolina
Parke Mechanical	Greenville, South Carolina
Pee Dee Pallet	Cheraw, South Carolina
Pelzer Manufacturing Company Mill	Pelzer, South Carolina
Pepsi Cola Plant	Rock Hill, South Carolina
Philip Morris Tobacco Plant	Concord/Kannapolis, North Carolina
Phillips Fibers Corp	Greenville, South Carolina
Phillips Fibers Pot Co	Startex, South Carolina
Piedmont Chemical	Greenville, South Carolina
Piedmont Clark Lift	Greenville, South Carolina
Piedmont Dye Caster	Piedmont, South Carolina
Piedmont Mechanical	Spartanburg, South Carolina
Piedmont Medical Center	Rock Hill, South Carolina
Piedmont Mills	Greenville, South Carolina
Pine Isle Hotel	Gainesville, Georgia
Plyler Paper Stock Company	Charlotte, North Carolina
Plywood Plastics	Hampton, South Carolina
Polymer Industries	Greenville, South Carolina
Polymer Southern	Easley, South Carolina
Post & Courier	Charleston, South Carolina
PPG	Lexington, North Carolina
PPG	Shelby, North Carolina
Procter & Gamble Paper Mill	Perry, Florida
Proctor & Gamble	Albany, Georgia
Project Dixie (Hwy Project)	Toccoa, Georgia
Quaker Oats	
R.J. Reynolds	Winston Salem, North Carolina
Ralston-Purina	Cornelia, Georgia
Reamer Industries	Columbia, South Carolina
Red Springs Mills	Red Springs, North Carolina
Reliance Electric	Greenville, South Carolina
Richfield Elementary School	Richfield, North Carolina
Ridgecrest Baptist Assembly Church	Ridgecrest, North Carolina
Ridgecrest Elementary School	Locust, North Carolina
Riegel Paper Mill / Riegelwood Paper Mill	Riegelwood/Leland, North Carolina
Riegel Textile Corp.	Aiken, South Carolina
Riegel Textiles	Ware Shoals, South Carolina
Riegel Textiles	Trion, Georgia

Riegel Textiles, LouisianaFrance Industries	LaFrance, South Carolina
Robert Bosch Corporation	Charleston, South Carolina
Robertson Airtech/Jackson Mill	Wellford, South Carolina
Rock Hill Printing & Finishing Co.	Rock Hill, South Carolina
Rock Hill Telephone Co	Rock Hill, South Carolina
Rocky River Milling	Wadesboro, North Carolina
Romahaus Fiber Plant	Fayetteville, North Carolina
Roosevelt Apartments	Greenville, South Carolina
Royston Housing Project	Royston, Georgia
Rubber Recycling Co.	Moncks Corner, South Carolina
Ryobi & Co.	Pickens, South Carolina
S.C. Electric & Gas (SCE&G) - A.M. Williams Steam Station	Charleston/Goose Creek, South Carolina
S.C. Electric & Gas (SCE&G) - Canadys Power Station	Walterboro, South Carolina
S.C. Electric & Gas (SCE&G) - McMeekin Plant	Columbia/Irmo, South Carolina
S.C. Electric & Gas (SCE&G) - Neal Shoals Hydro Plant	Carlisle, South Carolina
S.C. Electric & Gas (SCE&G) - Virgil C. ("V.C.") Summer Nuclear Generating Station	Jenkinsville/Parr, South Carolina
S.C. Electric & Gas (SCE&G) - Wateree Powerhouse	Columbia/Eastover, South Carolina
Saluda Mill	West Columbia, South Carolina
Sandoz Chemical	Allendale County, South Carolina
Sangamo Capacitors Div	Pickens, South Carolina
Sangamo Electric	Pickens, South Carolina
Santee Cooper	Conway, South Carolina
Santee Cooper	Georgetown, South Carolina
Santee Cooper (S.C. Public Service Authority) - Jefferies Generating Station	Moncks Corner, South Carolina
Santee Cooper (S.C. Public Service Authority) - Winyah Bay Power Plant	Georgetown, South Carolina
Savannah Valley Egg Company	Hartwell, Georgia
SCE&G Ermo Facility	Ermo, South Carolina
SCE&G Wateree Station	Eastover, South Carolina
School System of Greenville County	Greenville, South Carolina
Sears	Greenville, South Carolina
Sears	Spartanburg, South Carolina
Serrine Elementary School	Greenville, South Carolina
Shearon Harris	New Hill, North Carolina

Showa Denko Carbon	Ridgeville, South Carolina
Sibley Mill	Lavonia, Georgia
Signal Mill (also known as Callaway Mills)	LaGrange, Georgia
Singer Sewing Machine Company	Anderson, South Carolina
Skyland Steam Plant	Skyland, North Carolina
Smith Wholesale Drug Co.	Spartanburg, South Carolina
South Carolina Electric Nuclear Plant	Jenkinsville, South Carolina
South Carolina Highway Dept	Gaffney, South Carolina
South Carolina Public Service #2	Georgetown, South Carolina
South Side Baptist Church	Greenville, South Carolina
Southern Airways, Greenville-Spartanburg Airport	Greer, South Carolina
Southern Bell Wrk Ctr.	Greenville, South Carolina
Southern Bleachery	Taylors, South Carolina
Southern Filters	Greenville, South Carolina
Southern Polymer	
Southern Railroad Shops	Spartanburg, South Carolina
Southern Railroad Shops - Spencer Shops	Spencer, North Carolina
Southern Weaving	Easley, South Carolina
Southern Weaving - City View Plant	Greenville, South Carolina
Southern Worsted Mill	Greenville, South Carolina
Spartanburg Community College, South Carolina	Spartanburg, South Carolina
Spartanburg General Hospital	Spartanburg, South Carolina
Spartanburg Senior High School, South Carolina	Spartanburg, South Carolina
Spartanburg Tech	Spartanburg, South Carolina
Speedline Mfg Co	Greensboro, North Carolina
Springs Mills Plant	Chester, South Carolina
Springs Mills Plant	Fort Lawn, South Carolina
Springs Mills	Fort Mill, South Carolina
Springs Mills	Lancaster, South Carolina
Springs Mills Carpet Mill	York, South Carolina
Springs/Grace Bleachery	Lancaster, South Carolina
St Matthew Church	Greenville, South Carolina
St. Francis Hospital	Greenville, South Carolina
Sterling High School	Greenville, South Carolina
Stouffer's Chemical Plant	Greenville, South Carolina
Stouffer's Plant	Gaffney, South Carolina
Stroh's Brewery / Schlitz Brewery	Winston-Salem, North Carolina

Sunbeam Bread Bakery	Winston-Salem, North Carolina
Sylvan Chemical Plant	Inman, South Carolina
T & S Brass Co.	Travelers Rest, South Carolina
Taylors Finishing Plant	Taylors, South Carolina
Taylors Plant	Taylors, South Carolina
Tee-Pack (division of Continental Can)	Sandy Run, South Carolina
Tennessee Eastman	Kingsport, Tennessee
Tennessee Eastman	Kingsport, Tennessee
Tennessee Valley Authority	Cumberland City, Tennessee
Tennessee Valley Authority	Bull Run, Tennessee
Tennessee Valley Authority	Gallatin, Tennessee
Texas Gulf Aurora phosphate plant	Aurora, North Carolina
Textile Hall	Greenville, South Carolina
Thalimers Department Store	Charleston, South Carolina
The Citadel	Charleston, South Carolina
The Wilds Camp	Rosman, North Carolina
The Wilds Christian Camp & Conference Center	Brevard, North Carolina
Thermal Kinetics	Greenville, South Carolina
Thermo-Kinetics, Kex Plant	LaGrange, Georgia
Timken Bearing Plant	Gaffney, South Carolina
Torrington Co.	Clinton, South Carolina
Torrington Co.	Honea Path, South Carolina
Torrington Needle Manufacturer	Clifton, South Carolina
Tow Motor Plant	Cleveland, Ohio
Transcontinental Gas	Columbia, South Carolina
Travanol Laboratory, Kingstree, South Carolina	Kingstree, South Carolina
Triangle Construction Company	Greenville, South Carolina
Tri-County Tech	Pendleton, South Carolina
Trident Tech	North Charleston, South Carolina
Tyger Plant	Duncan, South Carolina
U.S. Army Fort Bragg	Fort Bragg, North Carolina
U.S. Army Fort Gordon	Fort Gordon, Georgia
U.S. Army Fort Jackson	Fort Jackson, South Carolina
U.S. Army Fort Meade	Fort Meade, Maryland
Union Bleachery	Greenville, South Carolina
Union Camp	Savannah, Georgia
Union Carbide	Greenville, South Carolina
Union Paper Mill	Rock Hill, South Carolina

United Merchant Partners	Asheville, North Carolina
United Merchants & Manufacturers	Statesville, North Carolina
University of North Carolina	Chapel Hill, North Carolina
University of South Carolina, Reg Campus	Spartanburg, South Carolina
Utica Baptist Church	Seneca, South Carolina
V.C. Summer Nuclear	Parr, South Carolina
VA Hospital	Fayetteville, North Carolina
Valdosta Containerboard Mill	Clyattville, Georgia
Viking Distillers	Albany, Georgia
Wachovia Center	Charlotte, North Carolina
Wade Hampton Shopping Center	Greenville, South Carolina
Walhalla Library	Walhalla, South Carolina
Warner Robins Air Force Base	Houston County, Georgia
Watts Mills	Laurens, South Carolina
West Stanly High School	Oakboro, North Carolina
West Stanly Middle School	Locust, North Carolina
Westinghouse	King, North Carolina
Westinghouse	Columbia, South Carolina
Westinghouse Plant	Hampton, South Carolina
Westinghouse Turbine Plant	Charlotte, North Carolina
Westrick Paper Company/Paper Mill	Jacksonville, Florida
Westvaco	Hannahan, South Carolina
Westvaco Paper Mill	North Charleston, South Carolina
Wetterau Foods	Charleston, South Carolina
Weyerhaeuser	Elkin, North Carolina
Weyerhaeuser	New Bern, North Carolina
Weyerhaeuser	Plymouth, North Carolina
Weyerhaeuser	Jacksonville, Florida
Weyerhaeuser	Vanceboro, North Carolina
Weyerhaeuser	Weyco, North Carolina
White Horse Plant	Greenville, South Carolina
White Springs Hospital	Lancaster, South Carolina
Whitten Village	Clinton, South Carolina
Wilds Camp	Rosman, North Carolina
William Carter	Barnesville, Georgia
Williamson Power Plant	Goose Creek, South Carolina
Wilson Arts	Fletcher, North Carolina
Wilson Treatment Plant	Greenwood, South Carolina
Winyah Generating Station	Georgetown, South Carolina

Woodside Mill	Fountain Inn, South Carolina
Woodside Mill	Greenville, South Carolina
Woodside Mills - Beauty Plant	Liberty, South Carolina
Woolworth Department Store	Anderson, South Carolina
WR Grace	Duncan, South Carolina
York Technical College	Rock Hill, South Carolina
Zimmer/Carolina Eastman	Columbia, South Carolina

33. All documents that relate to the steps taken by you to locate information and documents responsive to these requests.

/s/ Marghretta H. Shisko

John B. White, Jr. (S.C. Bar No. 5996)

Marghretta H. Shisko (S.C. Bar No. 100106)

Griffin L. Lynch (S.C. Bar No. 72518)

HARRISON WHITE, P.C.

178 W. Main Street

P.O. Box 3547 (29304)

Spartanburg, SC 29306

(864) 585-5100

jwhite@spartanlaw.com

mshisko@spartanlaw.com

glynch@spartanlaw.com

Attorneys for the Receiver.

This 9th Day of April, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

C.A. No. 2020-CP-40-02098

v.

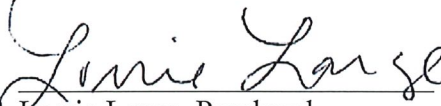
Pennsylvania National Mutual Casualty
Insurance Company; Sam J. Crain & Co.,
Inc.; and South Carolina Property & Casualty
Insurance Guaranty Association,

Defendant.

Certificate of Service

I, Lorrie Large, paralegal to the law offices of Harrison White, PC, certify that a true copy of Plaintiff's First Interrogatories and First Requests for Production to Defendant Pennsylvania National Mutual Casualty Insurance Company have been served on the following, this 9th day of April, 2021, by emailing a copy to each attorney at the address listed below:

David Grant Harris, II
dharris@goldbergsegalla.com


Lorrie Large, Paralegal

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through
its duly appointed Receiver
Peter D. Protopapas,

C.A. No.: 2020-CP-40-02098

Plaintiff,

**DEFENDANT PENN NATIONAL'S
RESPONSE IN OPPOSITION TO
PLAINTIFF'S THIRD MOTION TO
COMPEL**

v.

Pennsylvania National Mutual
Casualty Insurance Co.; Sam J. Crain &
Co., Inc.; and South Carolina Property
and Casualty Insurance Guaranty Association,

Defendants.

NOW COMES Pennsylvania National Mutual Casualty Insurance Company ("Penn National") and hereby respectfully requests this Court to deny the Receiver's Motion and Supplemental Motion to Compel.

FACTUAL SUMMARY

The Complaint in this case makes it clear that the subject of this lawsuit (as it pertains to Penn National) centers on coverage provided to Covil Corporation ("Covil") under a Comprehensive General Liability Policy (no. 515 50 28 53) with policy periods of March 31, 1986 to March 31, 1987 and March 31, 1987 to March 31, 1988 ("CGL Policy").¹ Penn National has never denied the existence of this CGL Policy. The Receiver began tendering Covil related asbestos cases to Penn National in February 2020. Penn National has since contributed to the defense of all asbestos lawsuits filed against Covil that have been tendered to

¹ See Complaint, ¶ 8.

Penn National. Penn National has further attended the mediations conducted in these lawsuits, and it has also participated and collaborated in countless pre-mediation and pre-trial conferences with Covil's Receiver, Covil's asbestos defense counsel, and other participating insurers with respect to strategy, valuation, and insurer contribution to settlements based upon the applicable insurance coverage and the known evidence in each underlying Covil asbestos case.

The CGL Policy that is the subject of this lawsuit was located by Penn National and promptly provided to Covil approximately 4 years ago, when Penn National was provided with policy numbers for the CGL Policy to Penn National. Even though Penn National has been participating as an insurer under Covil's CGL Policy, Penn National has been brought before this Court time and again on discovery issues and disputes generated by the Receiver simply because Penn National has not been able to uncover additional liability policies protective of Covil beyond the CGL Policy.

It is undisputed that the underlying asbestos claims against Covil arise out of Covil's alleged operations from 1954 through 1991 (as alleged by the Receiver in this case).² Policy related documents pertaining to this time period were archived by Penn National on microfiche, which can only be searched by policy number.

The fact that Penn National needs a policy number to locate policy documents from the period of time that Covil was in operation (1954 through 1991), has been confirmed by Penn National on numerous occasions by way of discovery responses, deposition testimony of Penn National employees, and affidavits submitted to this Court detailing the manner in which Penn National's historical paper and microfiche policy records can be searched.³ Furthermore,

² See Complaint, ¶ 7.

³ True and accurate copies of the Affidavits of Brent Reifsnyder, the Affidavit of Boyd Wright, the transcript of the depositions of Brent Reifsnyder dated August 3, 2021, and the transcript of

as detailed below, this fact has also now been confirmed by a review of Penn National's paper and microfiche policy records conducted by Ellis & Winters.⁴ However, the Receiver has repeatedly questioned and taken issue with Penn National's explanation that it needs a policy number or some information that could lead Penn National to a policy number that would allow Penn National to sufficiently search its archived policy related documents. Indeed, beyond the policy number for Covil's CGL Policy, the Receiver has not provided Penn National with any information for any potential insurance policy, most significantly any policy numbers, that might provide liability coverage to Covil, including for the hundreds of contractors and facilities for which the Receiver has simply identified by name.⁵

The Receiver has repeatedly taken the position that it cannot provide policy numbers to Penn National for any Covil related insurance policy beyond the CGL Policy that is at issue in this case. In fact, as to the hundreds of contractors and facilities for which the Receiver has demanded that Penn National search for insurance policies, the Receiver has even refused to provide any information as to Covil's potential relationship with the contractors and facilities, including the time periods of such relationship.

This certainly leaves one to conclude that the Receiver has simply pulled the names of hundreds of contractors and facilities out of thin air to make Penn National blindly look through

the deposition of Boyd Wright dated August 26, 2021, are attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibits 1, 2, 3, and 4.**

⁴ A true and accurate copy of the Report of Ellis & Winters dated March 22, 2022, is attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibit 5.**

⁵ A true and accurate copy of Covil's First Set of Interrogatories and Requests for Production to Penn National is attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibit 14.**

hundreds of thousands of records without a shred of evidence that any of these contractors or facilities could have possibly been insured by Penn National or even had any connection to Covil that would suggest that Covil could be insured by a policy issued to these contractors or facilities. Notwithstanding the apparent fishing expedition requested by the Receiver, as detailed in prior discovery responses, affidavits, and deposition testimony, Penn National performed the necessary due diligence in researching its records for the hundreds of contractors and facilities identified by the Receiver.⁶ No policy related documents were found indicating that Penn National had insured any of the contractors or facilities.

All of Penn National's searches have been based on the Receiver's representation that it does not have any Covil related policy numbers beyond the policy related documents actually found and produced by Penn National in this case. Even after Penn National's searches and repeated confirmation that Penn National's paper and microfiche records are stored by policy number only, the Receiver continued to challenge Penn National's search for Covil related policies, which culminated in an Order by this Court directing Ellis & Winters, LLP ("Ellis & Winters") to perform a review of Penn National's insurance repository and report to the Court with suggestions as to how to meet "Covil's needs to identify responsive coverage while not wasting Penn National's resources."⁷

⁶ True and accurate copies of Penn National's Supplemental Answers to Covil's Interrogatories and Penn National's Supplemental Responses to Covil's Request for Production are attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibits 6** and **7**. See also **Exhibit 3** (transcript of the deposition of Brent Reifsnyder dated August 3, 2021) and **Exhibit 4** (transcript of the deposition of Boyd Wright dated August 26, 2021).

⁷ See the Court's Order dated November 5, 2021.

Ellis & Winters' investigation was facilitated by Penn National over the course of several months, and involved interviews of Penn National employees, the review of Penn National internal spreadsheets concerning Penn National's retention of its paper and microfiche policy related documents, and two visits to Penn National's headquarters to sample and review hundreds boxes of paper and microfiche policy related documents.⁸ Ellis & Winters was clear in its report that any relevant Covil related policy documents would be contained in the archived microfiche records only because such records span the relevant time period before Covil ceased operations in 1991. *Id.*

Early in Ellis & Winters' investigation of Penn National's policy related documents, the Receiver raised a concern that Penn National was destroying relevant Covil policy related documents, which culminated in a Motion for Protective Order filed by the Receiver. The Receiver argued that Penn National should have stopped destroying Covil policy related documents as early as 2018, when a subpoena was issued not by the Receiver, but by the plaintiff in a different case, which subpoena provided the policy numbers for the Covil CGL Policy which was promptly produced by Penn National in response to that subpoena (which response was also provided to Covil at that time).

In response to that concern, Penn National confirmed that no documents related to policies that were scheduled to be purged and destroyed in 2018 through 2022 would have encompassed Covil related policies because any policies scheduled to be purged during that time period would have post-dated any Covil related policy based on (1) the fact Covil ceased operations in 1991 and (2) Penn National's document retention policy was to retain non-workers compensation policies for 25 years from the date of cancellation or non-renewal of any such policy. As a result, any

⁸ See **Exhibit 5**, Report of Ellis & Winters dated March 22, 2022.

policy related documents purged and destroyed in 2018 would have been documents related to policies issued after 1993, after Covil was no longer in operation. Furthermore, Penn National's commercial line policies dated prior to 1992—when Covil was still in operation—were contained on microfiche, which were not part of the annual purge process in place at Penn National in 2018 and beyond. Accordingly, no Covil policy documents were purged or destroyed from 2018 through 2022.

To further address the Receiver's concerns, Penn National confirmed that (1) it had not destroyed any policy related paper or microfiche documents that were scheduled to be purged and destroyed in 2021, and (2) Penn National (on December 17, 2021) had issued a litigation hold notice to its Director – Administrative Services who is responsible for Penn National's paper and microfiche policy related documents, putting a hold on the purge of "any and all paper policy or policy related documents and microfiche stored by [Penn National], and computer data that may relate to any such documents or microfiche", and also a hold on that individual's user files and e-mails.⁹

The Receiver's Motion for Protective Order was addressed by this Court at a hearing on January 11, 2022. On February 11, 2022, the Court entered a proposed Order submitted by the Receiver granting the Motion for Protective Order and directing "Penn National to preserve all historic insurance policies and policy-related information and to immediately suspend all auto-delete and other routine destruction policies for historic insurance policies and policy related

⁹ A true and accurate copy of the letter to counsel for Covil dated December 28, 2021, with the Litigation Hold is attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibit 8**. See also **Exhibit 1**, Affidavit of Reifsnnyder dated December 22, 2021.

information, including e-mail containing copies of historic insurance policies,” which was to remain in place until otherwise ordered by the Court.

After the Court’s Order, Ellis & Winters continued its investigation by visiting Penn National’s headquarters to conduct a second and final review and sampling of Penn National’s microfiche.¹⁰ During this final review, Ellis & Winters found three additional sets of Covil related policy documents consisting of one inland marine policy, one boiler machinery policy, and one auto policy – all spanning 1984 to 1986.¹¹ Significantly, to locate these additional sets of Covil related policy documents, Ellis & Winters had to use policy numbers. Ironically, and most notably, at least two of the policy numbers used by Ellis & Winters were obtained from a database of documents used in Covil related asbestos cases to which the Receiver itself was privy and had access to. The Receiver had not brought such policy numbers to the attention of Penn National prior to this time. While this certainly cuts against prior representations that the Receiver could not provide any Penn National policy numbers, it also begs the question as to how many more policy numbers the Receiver may be privy to that have not been disclosed to Penn National while it was being brought to task for not being able to locate further liability coverage beyond the CGL Policy at issue in this case.¹²

During the time that Penn National was facilitating Ellis & Winters’ investigation of Penn National’s microfiche, the Receiver served additional lengthy and overly broad sets of interrogatories, document requests, and requests for admission. Penn National initially responded

¹⁰ See **Exhibit 13**, Penn National Supplemental Document Production (PNI-1162 - PNI-1611).

¹¹ See **Exhibit 5**, Report of Ellis & Winters dated March 22, 2022.

¹² The policy number for the boiler machinery policy was referenced in documents relating to a commercial lines boiler and machinery policy in effect from 3/31/88 to 3/31/89, which Penn National had previously found and produced to the Receiver in this case. See **Exhibit 7**, Penn National’s Supplemental Responses to Covil’s Request for Production, Bates No. PNI-0191.

to each of the discovery requests served by the Receiver by answering and producing what it could at the time, and preserved Penn National's objections and its right to supplement its responses.¹³ Penn National supplemented its responses and provided documents that consisted of (1) a detailed internal Penn National spreadsheet that shows non-workers compensation insurance policies that are or have been stored at some point in paper or microfiche form and their corresponding cancellation/non-renew dates from 1982 through 2020 and their subject destruction date, (2) Penn National's document retention policies, and (3) Penn National's legal hold policy.¹⁴ All of these documents were produced after the Receiver entered into a confidentiality agreement, and all of the documents are responsive to the Receiver's core concern as to Penn National's document retention policies and what archived policies were subject to be destroyed and when. By way of interrogatory responses, Penn National also confirmed in detail why the Covil CGL Policy was found in 2018 – outside of Penn National's 25-year document retention policy, which was a question the Court had at the hearing on the Receiver's Motion for Protective Order.¹⁵

¹³ True and accurate copies of Penn National's Responses to Covil's Second Set of Interrogatories, Third Request for Production, and First Request for Admissions are attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibits 9, 10, and 11**.

¹⁴ A true and accurate copy of Penn National's Supplemental Responses to Covil's Third Request for Production is attached to the Notice of Filing of Documents in Support of Defendant Penn National's Response in Opposition to Plaintiff's Third Motion to Compel, filed contemporaneously herewith, as **Exhibits 12**.

¹⁵ In summary, as set forth in Penn National's discovery responses, the Covil CGL Policy was not purged or destroyed because it was not outside of Penn National's document retention policy in 2010, when Penn National implemented its current purging process for policy documents outside of its document retention policy. Additionally, the Covil CGL Policy predated 1992, and therefore, was stored on microfiche and there is no electronic interface between the microfiche and Penn National's current computer systems used to generate purge lists under Penn National's current purge process. As a result, the Covil CGL Policy did not appear on any purge list generated under Penn National's new purge process. Furthermore, Penn National determined that it was cost prohibitive to physically examine and purge each and every of 253,000 microfiche policy related documents, which would fall outside of the purge lists generated under its new purge

ARGUMENT

The Receiver has now brought yet another Motion to Compel asserting Penn National's responses to the Receiver's most recent set of discovery requests are deficient. Based on the Receiver's Motion to Compel, the Receiver is now apparently concerned that Penn National has not produced internal communications, including e-mails, concerning policy related documents that have been destroyed and the identity of all individuals involved in such destruction, including communications with Iron Mountain and individuals having such communications with Iron Mountain. Penn National has indeed objected to such requests as they are certainly overly broad and unduly burdensome with respect to what is currently at issue in this case.

The Receiver's current concern and issue is with respect to whether any Covil related policies were destroyed in 2018 or after, and that such policies are not currently subject to destruction. Penn National has repeatedly confirmed by way of prior affidavits, interrogatory responses, and document production that Penn National's document retention policy for non-workers compensation policies is 25 years from the date of cancellation/non-renewal. Any policy subject to destruction in 2018 or beyond would have post-dated 1991 – the year Covil ceased operations from which any asbestos lawsuit against Covil could arise. However, to address any concern that a Covil related policy may have been destroyed in 2018 or thereafter, Penn National has produced the Penn National internal spreadsheet of the historical Covil policies from 1982 through 2020 with their cancellation/non-renew dates and corresponding dates of destruction.

As for individuals that have knowledge with respect to the destruction of Penn National's archived paper and microfiche policy related documents (which are the relevant documents in

process, and so the Covil CGL Policy was not purged or destroyed prior to 2018. See **Exhibit 9**, Penn National's Responses to Covil's Second Set of Interrogatories, No. 1.

this case), Brent Reifsnyder is Penn National's custodian of such records and has provided testimony and affidavits detailing the manner that such documents are subject to destruction and the litigation hold policies that govern such policy related documents. Mr. Reifsnyder has a working knowledge of such documents going back to approximately 1997. He is also the person with the most knowledge as to Penn National's relationship with Iron Mountain and as to any communications with any representative at that facility that may have occurred with Penn National during the relevant time frame.

The Receiver's request for "all" communications, including e-mails, concerning the destruction of policy related documents is not reasonable in light of all of the information and documents that have been provided regarding Penn National's storage and retention of its archived documents. Indeed, since November 2021, the focus of discovery in this case has been to facilitate Ellis & Winters' investigation of Penn National's insurance repository, which has now concluded. However, the Receiver continues to generate discovery disputes where none should exist. As the South Carolina Supreme Court has recognized:

While discovery serves as an important tool in the truth-seeking function of our legal system, we are concerned that 'discovery practice' has become a cottage industry and the merits of a claim are being relegated to a secondary status.

Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't. of Health and Envtl. Control, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010). The Receiver's continued push for ever increasing discovery orders of this Court and sanctions against Penn National should now be denied so that this case can proceed with a focus on only relevant matters rather than ancillary issues and requests for documents that are unnecessary, overly broad, and unduly burdensome.

CONCLUSION

Based on the foregoing, Penn National respectfully requests that the Court deny the Receiver's Motion to Compel, including any request for sanctions against Penn National.

Respectfully submitted, this the 7th day of April, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: dharris@goldbergsegalla.com

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: byntema@goldbergsegalla.com

Alexander E. Davis

S.C. Bar # 100061

Email: aedavis@goldbergsegalla.com

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

Attorneys for Defendant Penn National

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT
CASE NUMBER: 2020-CP-40-02098

Covil Corporation, by and through its
duly appointed receiver Peter D.
Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual
Casualty Insurance Company;
Sam J. Crain & Co., Inc.; and South
Carolina Property & Casualty
Insurance Guaranty Association,

Defendants.

SUPPLEMENTAL NOTICE OF FILING

Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) hereby files those portions of Exhibit 12 to its Response in Opposition to Plaintiff’s Motion and Supplemental Motion to Compel for which Chief Justice Toal ordered Penn National to remove the confidential designation and produce to Covil Corporation (“Covil”) within five business days of her Order on Discovery Motions dated May 5, 2022 (the “Order”). By removing the confidential designation and filing and producing these portions of Exhibit 12, Penn National does not waive any of its rights to seek reconsideration of the Order or any appellate rights with respect to the Order. Rather, Penn National expressly reserves its rights to seek reconsideration of the Order as well as pursuit of its appellate rights with respect to the Order.

This the 12th day of May, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: dharris@goldbergsegalla.com

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: byntema@goldbergsegalla.com

Alexander E. Davis

S.C. Bar # 100061

Email: aedavis@goldbergsegalla.com

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

Attorneys for Defendant Penn National

EXHIBIT 12

PART 1 OF 3

**(Portions of Exhibit 12 Filed Under Seal
with Confidentiality Designation
Removed Pursuant to the Court's
Order Dated May 5, 2022)***

*Penn National reserves all rights to seek reconsideration of the Court's Order dated May 5, 2022, as well as all rights to pursue its appellate rights with respect to the Court's Order.

2022.05.12 Supplemental Notice of Filing pp. 4-20

Duplicative of Penn National Trial Exhibit 50

See R. pp. 12489-12505

2022.05.12 Supplemental Notice of Filing pp. 21-583

Duplicative of Penn National Trial Exhibit 19

See R. pp. 6480-7040

2022.05.12 Supplemental Notice of Filing pp. 584-586

Duplicative of Penn National Trial Exhibit 20

See R. pp. 7041-7043

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
Appointed Receiver Peter D. Protopapas,

C.A. No. 2020-CP-40-02098

Plaintiff,

v.

**DEFENDANT PENN NATIONAL'S
MOTION FOR RECONSIDERATION**

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc., and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

COMES NOW Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through counsel, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and moves the Court to reconsider its Order entered on May 5, 2022 ("Order"), addressing the following: (1) Ellis & Winters' report concerning its review of Penn National's historic insurance policy-related documents ("Ellis & Winters' Report"); (2) the Receiver's February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; (3) the Receiver's March 17, 2022, Motion to Challenge Confidentiality of Certain Documents and Penn National's April 7, 2022 Motion to Seal; and (4) Penn National's December 22, 2021 Motion to Quash.¹ Penn National seeks reconsideration of the Order as follows:

¹ Penn National files this motion to bring the Court's attention to genuine concerns and objections Penn National has with respect to particular findings and rulings adopted and entered by the Court in its Order. The Order entered by the Court was submitted by the Receiver, and was not a joint submission with Penn National. Penn National is simply exercising its right to pursue this Court's reconsideration of its Order under S.C. Rule 59(e). By pursuing such motion, Penn National does not waive any prior arguments asserted as to (1) Ellis & Winters' Report, (2) in support of Penn National's Motions, or (3) in opposition to the Receiver's Motions.

(1) The Court Should Reconsider and Reverse the Order that Penn National Must Now Electronically Image its Microfiche for the Receiver's Use.

The Order currently orders Penn National to incur the complete burden and total expense of imaging its microfiche cards by a vendor selected by Ellis & Winters for the creation of a searchable database that Receiver and his counsel will have access to on a rolling basis. The Order is based on an incorrect finding that Penn National has been evasive in its discovery responses and has failed to fully comply with its discovery obligations in light of prior Court orders.

The Order essentially paints Penn National as being in line with other Covil insurers that the Court has previously found were “minimally responsive as possible” to certain discovery requests as to Covil’s potential insurance coverage for underlying asbestos claims in an effort “to avoid discovery” of such policies. [Order pp. 2-4] However, contrary to the conduct of the other insurers referenced by the Order, Penn National has been forthcoming as to its policies for Covil that may provide coverage for asbestos claims, and it has been fully transparent as to the manner in which it has stored and retained its archived policy-related documents. Such is also the case with respect to hundreds of other non-Covil entities for which the Receiver has requested Penn National to search its archived policy-related records for potential insurance coverage.

This is evidenced by (1) Penn National’s responses to Receiver’s interrogatories and document requests in this case, (2) Penn National’s responses to Receiver’s subpoenas issued to Penn National for hundreds of non-Covil entities, (3) the testimony of Penn National’s representatives in multiple depositions regarding topics related to Penn National’s search for policy-related records pertaining to the manner in which Penn National stores and retains its archived policy-related documents, (4) the affidavits of Penn National representatives that set forth the manner in which Penn National searches its policy-related materials, (5) the testimony

of multiple Penn National representatives setting forth the manner in which Penn National has searched for potential policies relating to Covil or other non-Covil entities based on the limited to no supporting information provided by the Receiver, and (6) the affidavits and deposition testimony of Penn National representatives regarding the manner in which Penn National stores and retains its archived policy-related documents – all of which are part of the record in this case.

Penn National has not been evasive in its participation in discovery, or its compliance with prior Court orders. This is demonstrated by Penn National’s cooperation and participation in Ellis & Winters’ search of Penn National’s insurance repository. As shown by Penn National’s multiple interim reports to the Court detailing its cooperation with Ellis & Winters, and as detailed by Ellis & Winters’ itemized invoice², which shows the lengthy work and cooperation between Penn National and Ellis & Winters, there should be no doubt that Penn National has conducted itself in a manner that is in compliance with its discovery obligations and prior orders of this Court.

However, the Order references a concern as to the fact that the Ellis & Winters’ Report identifies three additional policies that were not previously produced by Penn National, which consisted of an inland marine policy, one boiler machinery policy, and one auto policy – none of which are policies that would be responsive to asbestos liability claims. These policies were identified by Ellis & Winters by way of a “cross-reference to previously known Covil policy numbers.” [Ellis & Winters Report p. 3] (emphasis added).

This begs the question – who had previous knowledge of the policy numbers for the three additional policies? There is no evidence that Penn National had actual knowledge of these policies but failed to provide them to the Receiver. The only other parties that could have had previous knowledge of the policy numbers for these three additional Covil policies would have

² Ellis & Winters’ itemized invoice is attached here as Exhibit 1.

been the Receiver itself or Covil's asbestos defense counsel – Ellis & Winters. Given that the Receiver has long known that Penn National can only search its microfiche records by policy number, the Receiver or his counsel could have easily requested these three additional policies if they thought they were important at any time by simply providing such policy numbers to Penn National, which was certainly not done prior to Ellis & Winters' search of Penn National's microfiche.

The Receiver has indeed never provided Penn National with any policy numbers to assist it in a search for policy-related documents for Covil or any other non-Covil entity.³ The Order currently holds that “the Receiver need only provide the insurance company with the name of the defunct company for which it is seeking to marshal insurance assets” and that “this Court flatly rejects any assertion that an insurance company may refuse to search its repositories of insurance documents unless and until it is provided with a specific policy number.” [Order p. 5] (emphasis added).

The record in this case actually shows that Penn National has not refused to search its insurance repository “unless and until it is provided with a specific policy number.” Penn National has been forthcoming in deposition testimony and by way of affidavits that it can search (and has searched) for policy numbers by entering the name of an entity in Penn National's electronic system to see if there is indeed an electronic record of the company, which may reveal a policy number that would then allow Penn National to search for the company's policy-related documents on microfiche. [See *e.g.* June 3, 2021 Affidavit of Boyd Wright] This is the system Penn National

³ The only policy numbers provided to Penn National relating to Covil or any Receivership case were provided by a subpoena served on Penn National by Plaintiffs' counsel in the *Finch* case in 2018, as referenced in the Order, and Penn National was able to search its archived records and produced a copy of the requested policy documents at that time. [Order p. 3]

has had in place for well over a decade. Indeed, this is the search Penn National has repeatedly conducted with respect to Covil related policy documents and for the hundreds of other non-Covil related entities that the Receiver has submitted to Penn National by way of multiple subpoenas.

The Order does not acknowledge any of Penn National's well-established efforts to comply with its discovery obligations or with the Court's prior orders. Rather, the Order simply finds that Penn National has not complied with "this Court's prior orders" because Penn National did not (1) perform a "complete manual search of its historic insurance policies contained on microfiche", or (2) process "the microfiche cards so that the information could be searched electronically". [Order p. 6] Such a finding is not supported by the record in this case.

The Court's "prior orders" in fact did not require Penn National to undergo the unreasonable and arduous task of manually searching or electronically imaging its microfiche records to search for documents that may relate to the hundreds of entities requested by the Receiver. Such a discovery order would certainly have been unduly burdensome and entirely unreasonable as it would have interpreted the South Carolina rules of discovery to mandate that Penn National must overhaul the manner in which it has historically maintained and stored its archived microfiche files for well over a decade at an exorbitant cost, which would have certainly presented an entirely unreasonable and undue burden to Penn National – especially given the fact that the Receiver has provided absolutely no evidence that any of the hundreds of entities for which he is requesting a search have any relationship to (1) Covil or (2) any other Receivership entity. Such an order under the South Carolina rules of discovery would have certainly been unreasonable and created an undue burden on Penn National.

This is indeed shown by the fact that Penn National has previously confirmed that its microfiche records contain in excess of 200,000 separate policies with each policy containing

many pages of policy-related documents, and that a manual search of such microfiche would overwhelm and be well beyond the capacity of Penn National's staff. [Reifsnyder July 23, 2021 Affid. p. 3-4]. Furthermore, Ellis & Winters in its report to the Court estimates that the cost to process the microfiche records so that it can be electronically searched would be in the range of \$240,000 to \$960,000. [Ellis & Winters Report p. 5]

While the record shows that Penn National has indeed complied with the Court's "prior orders", the current Order adopts findings to the contrary. It adopts findings that Penn National has been "defiant" by failing to hire a vendor, process "the information on its microfiche cards and conduct[] a review." [Order p. 8] To that end, the current Order requires Penn National to incur the entire cost of hiring a vendor selected by Ellis & Winters to image Penn National's microfiche to an electronic database that the Receiver and his counsel will have unfettered access to review on a rolling basis. The Order erroneously equates Penn National's conduct with the other prior Covil insurers that have apparently been previously held in contempt or otherwise sanctioned for their lack of participation in discovery of their policy-related documents. It is based on the fact that Penn National has historically stored its archived policy-related microfiche by policy number, and it wrongfully takes Penn National to task and penalizes it simply because it implemented a system of storing its microfiche policy-related documents by policy number well over a decade ago. For the foregoing reasons, Penn National respectfully requests that this Court reconsider and reverse the Order by holding that Penn National should not be required to undergo the unduly burdensome and exorbitant cost of electronically imaging its microfiche for the Receiver's unfettered use.

2) The Order Should Be Reconsidered and Reversed As It Gives the Receiver and His Counsel Unfettered Access to the Electronically Imaged Microfiche.

Not only does the Order require Penn National to incur the entire cost of electronically imaging its microfiche, but it also orders that the Receiver “must have full and unfettered access to every page of insurance policy and policy-related documents that Ellis & Winters and its selected vendor make available in the database [of electronically imaged microfiche].” [Order p. 10] This is obviously meant to penalize Penn National as the Order provides that the Receiver will have unlimited access to the database “[b]ecause of Penn National’s intransigence”. *Id.*

However, what the current Order disregards is the extremely confidential nature of what Penn National will be forced to make available to the Receiver and his counsel for their unfettered use. The microfiche is made up of underwriting documents that contain confidential information of hundreds of thousands of Penn National insureds that are not related to Covil or any Receivership entity in any way. Such underwriting documents are not simply policies, but they contain policy-related materials that consist of very sensitive information concerning an insured’s financials and sensitive risk assessments of Penn National’s insureds. Such documents are not only proprietary to Penn National, but they are highly personal to Penn National’s insureds. To simply give the Receiver and his counsel unfettered access to volumes of such confidential documents would be unprecedented as to Penn National and a reckless disregard of the rights of Penn National’s insureds who certainly expect such information to be held in confidence by Penn National only.

The Receiver has not articulated any reason as to why he or his counsel would need unfettered access to the underwriting files of each and every insured whose documents are saved on the microfiche that are subject to electronic imaging by way of the Order. Indeed, an overwhelming majority of the microfiche that will be subject to imaging will be unrelated to

Covil or any of the Receivership entities. Yet the current Order will allow the Receiver unfettered access to all such documents – whether they are related to any Receivership entity or not. There is no rational basis for such unfettered access. The Receiver has the names of the entities for which he wants a search conducted of the microfiche. If, for whatever reason, Penn National cannot be trusted to conduct such a search, the vendor selected to electronically image the microfiche should certainly be able to search the microfiche for each of the entities the Receiver wants searched and provide the Receiver with any documents that are generated from such search. The current Order ignores other options that would respect the highly sensitive nature of the documents contained on the microfiche, and simply adopts the Receiver’s request for unfettered access to all of the documents without any rational reason why – other than to penalize Penn National for some sort of inexplicable perceived “intransigence.”

While there is a confidential component to the Order that provides that all documents and information obtained from the microfiche must be kept confidential by the Receiver and his “outside counsel”, such confidentiality provision does not remedy the fact that an overwhelming amount of highly sensitive non-Receivership entity information will be subject to an unfettered disclosure to parties outside of Penn National and the unsuspecting insureds who have no relationship to any of the Receivership litigation. For the foregoing reasons, Penn National respectfully requests the Court reconsider and reverse the Order allowing the Receiver and his counsel unfettered access to any database that is generated by the electronic imaging of Penn National’s microfiche. At a minimum, such confidential access should be limited to the vendor selected to electronically image the microfiche and the Receiver can be allowed to submit names of the entities to the vendor for which he needs an electronic search conducted, and any documents generated from such search can be provided to the Receiver and Penn National.

3) The Order Should Be Reconsidered and Reversed Inasmuch As It Obligates Penn National to Incur the Entire Cost of Electronically Imaging the Microfiche.

The Receiver has served multiple subpoenas on Penn National listing hundreds of entity names for which the Receiver demands Penn National search its records to determine if it provided insurance for any of the entities. The Receiver has refused to provide any information or other documents that provide any indication that any of the hundreds of entities listed by the Receiver have any connection to Covil or any other Receivership entity. It is obvious that the Receiver is blindly serving subpoenas listing hundreds of names without any rational belief as to whether Penn National ever insured any of the entities.

Penn National has conducted electronic searches of the hundreds of entity names provided by the Receiver, and such searches have not generated any substantive results. The current Order will now make Penn National incur the entire cost of imaging its microfiche to allow the Receiver and his counsel unfettered access to conduct their own electronic search of the microfiche documents. [Order pp. 9-12] The Order does not address the likelihood that the Receiver's search will generate no substantive results of further coverage for Covil or coverage for any of the hundreds of non-Covil entities included in the multiple subpoenas issued by the Receiver. The Order essentially mandates that Penn National must incur the entire cost of the Receiver's blind shot at finding coverage for random entities. At a minimum, the Court should reconsider and reverse its Order to, at a minimum, require the Receiver to hold in trust the amount that it will cost Penn National to electronically image the microfiche, and require the Receiver to reimburse Penn National such cost, including Ellis & Winters' fees, when no substantive results are generated from an electronic search of Penn National's microfiche.

4) The Order Should be Reconsidered and Reversed Inasmuch As It Requires Penn National to Immediately Produce Policy Prefix Code Keys, All Information Disclosed to Ellis & Winters for the Identification of the Three Additional Covil Policies, and All Underwriting Documents for All Receivership Entities.

The Order currently requires Penn National to (1) produce policy prefix code keys, (2) all information disclosed to Ellis & Winters for the identification of the three additional Covil policies found during Ellis & Winters' review of the microfiche, and (3) all underwriting documents for all Receivership entities. Such a requirement is unnecessary and it should be reconsidered and reversed by the Court.

First, the only policy prefix code key was referenced by Brent Reifsnyder, Penn National's records custodian of the microfiche, and it was provided to Ellis & Winters in confidence during their initial search of Penn National's hardcopy and microfiche files. Based on Ellis & Winters' report, the "code key" was of little significance to their search. [Ellis & Winters Report pp. 1-2]. Rather, Ellis & Winters' multiple conversations with Penn National regarding the historical use of policy prefixes provided Ellis & Winters with a detailed manner of how such prefixes are designated. *Id.* at 2. As shown at the Court's recent hearing, based on Ellis & Winters' discussions with Penn National, Brian Flatley of Ellis & Winters has acquired a detailed understanding of Penn National's policy prefixes and how they are designated. Indeed, the Order provides that Ellis & Winters "should continue to make itself available to assist the Receiver search the records for the information that is needed to provide Covil with knowledge about its assets, including information concerning Penn National's policy prefixes and the identification of prefixes with policy lines of business identified in Ellis & Winters' report." [Ellis & Winters' Report p. 10]. The Receiver certainly has access to Ellis & Winters' detailed knowledge of Penn National's policy prefixes, and production of the inconsequential "code key" is unnecessary.

Second, with respect to the requirement that Penn National produce all information disclosed to Ellis & Winters for the identification of the three additional Covil policies, Penn National did not disclose any such information to Ellis & Winters. Rather, Ellis & Winters already had the policy numbers for the three additional Covil policies based upon documents gathered by Ellis & Winters as defense counsel for Covil in related asbestos litigation, which policy numbers were readily available to the Receiver as well. As such, this requirement is unnecessary.

Lastly, the requirement that Penn National must produce all underwriting documents for all Receivership entities is also unnecessary. Such relevant documents, if any exist, would be contained in Penn National's microfiche, which are the subject of the Order.

5) The Order Should be Reconsidered and Reversed Inasmuch As It Requires Penn National to be Subjected to a Third Rule 30(b)(6) Deposition Without Good Cause.

The Order allows the Receiver to conduct a third Rule 30(b)(6) deposition of Penn National. Such an Order should be reconsidered and reversed as there is no good cause for Penn National to be subjected to yet another Rule 30(b)(6) deposition. As explained by Penn National's briefing in support of its Motion to Quash, the discovery sought is cumulative and duplicative, as Penn National has, through discovery responses, affidavits, and prior briefing to the Court, made clear its policies and procedures for document retention. The burden and expense of a third deposition is certainly outweighed by the need for the cumulative, duplicative evidence sought by the Receiver. Therefore, the Court should reconsider and reverse the Order allowing a third Rule 30(b)(6) deposition of Penn National, and enter an Order granting Penn National's Motion to Quash.

6) The Order Should be Reconsidered and Reversed Inasmuch As It Directs the Receiver to Transmit The Order To The South Carolina Department of Insurance.

The Order directs the Receiver to transmit a copy of the Order to the South Carolina Department of Insurance. Such an order appears to be in line with previous sanction/contempt type orders that were entered against Covil's prior insurers. However, as discussed above, such penal type measures against Penn National in this case are without support, and were never raised during the hearing on the motions addressed by the Order. As such, Penn National respectfully requests the Court to reconsider and reverse the Order to remove this requirement.

CONCLUSION

Penn National respectfully requests that the Court reconsider and reverse its May 5, 2022 Order consistent with that requested by Penn National in the foregoing Motion for Reconsideration.

This the 16th day of May, 2022.

GOLDBERG SEGALLA LLP

/s/David G. Harris II

David G. Harris II

S.C. State Bar No. 101951

Brady A. Yntema (*admitted pro hac vice*)

N.C. State Bar No. 25771

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Telephone: 336.419.4900

dharris@goldbergsegalla.com

byntema@goldbergsegalla.com

*Attorneys for Defendant Pennsylvania National
Mutual Casualty Insurance Company*

EXHIBIT 1 TO DEFENDANT PENN NATIONAL'S MOTION FOR RECONSIDERATION



MAILING ADDRESS
Post Office Box 33550
Raleigh, North Carolina 27636
TEL 919.865.7000
www.elliswinters.com
Federal Tax I.D. No.: 56-2208313

Penn National Document Review

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RE: Penn National Document Review

For Professional Services Rendered Through April 30, 2022

SERVICES

Date	Person	Description of Services	Hours
11/01/2021	ABW	Conference with B. Yntema regarding overview of instructions from CJ Toal at recent hearing.	0.40
11/01/2021	ABW	Begin analysis of materials submitted in underlying discovery dispute in order to assess feasibility of goals stated by the Court and next steps.	1.90
11/01/2021	ABW	Investigate cases where additional information may be available outside of asbestos liability matters to assess scope of sampling needed and most likely to lead to information requested by Judge Toal.	1.90
11/02/2021	ABW	Prepare for initial conference of interested parties and counsel regarding order for signature by Judge Toal and background needed for scope of review.	1.70
11/02/2021	LCP	Review proposed order regarding document review and strategize regarding implementation.	0.30
11/02/2021	KMB	Overview and analysis of upcoming strategy on court-ordered review of insurance records.	0.20
11/02/2021	SAS	Preliminarily evaluate plan for conducting sampling review of Penn National insurance documents as requested by the Court.	0.60
11/02/2021	BMF	Review and assess Order granting Covil's Motion to Compel and consider potential review project.	0.20
11/03/2021	ABW	Work with counsel for Receiver and Penn National to negotiate terms of proposed order and next steps.	2.00
11/03/2021	LCP	Strategize regarding document review language of Order and best way to accomplish sampling of key documents.	0.40
11/03/2021	LCP	Review new version of proposed Order regarding document review and direction by Ellis & Winters.	0.20



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SERVICES

Date	Person	Description of Services	Hours
11/03/2021	KMB	Read and analyze three-page court order to Penn National authorizing review of insurance records.	0.20
11/03/2021	BMF	Prepare for conference call with counsel regarding draft Order and potential review project.	0.50
11/03/2021	BMF	Review Penn National insurance documents in Covil production and related pleadings for the motion to compel to assist with developing potential review plan for the Court.	1.80
11/03/2021	BMF	Participate in conference call with counsel from all parties regarding draft Order and scope of Ellis.	0.70
11/03/2021	CLB	Discussion and analysis of proposed order and language directing action of Ellis & Winters and evaluate upcoming scope of work and future attention of paralegal team.	0.30
11/03/2021	SHK	Analyze pleadings filed in underlying litigation to determine status of motions to compel and arguments.	1.20
11/04/2021	ABW	Continue analysis of materials submitted in underlying discovery dispute in order to prepare for initial conference with counsel of record about next steps.	1.50
11/04/2021	SFL	Confer with Ms. Brathwaite regarding strategy for document review.	0.20
11/05/2021	KMB	Read and analyze first six pages of Penn National memo in opposition to motion to compel, taking notes on specific questions related to organization of records and additional materials sought from record.	0.70
11/05/2021	SHK	Analyze document review order to ensure order entered matches draft order circulated amongst counsel.	0.30
11/07/2021	LCP	Review final Order directing document review under our supervision.	0.10
11/07/2021	KMB	Read and assess final six pages of Penn National Memo in Opposition to Motion to Compel. Covil's six -page motion to compel dated August 20, 2021.	1.40
11/07/2021	KMB	Read and take notes on Covil's five-page Supplemental Motion to Compel, specifically brainstorming related questions for outline of questions to Penn National.	0.40
11/07/2021	KMB	Read and evaluate four exhibits to Covil's Motion to Compel dated August 20, 2021, along with four exhibits corresponding to Covil's supplemental motion to compel, the four exhibits to Covil's third supplemental motion to compel, and the six exhibits corresponding to Penn National's Memo in Opposition to Motion to Compel. Continue outlining details understood about Penn National's organization of records and related system of searching. to assist with drafting outline of related questions.	2.70

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SERVICES

Date	Person	Description of Services	Hours
11/08/2021	KMB	Draft list of additional records needed to assess Penn National process for record retention, storage, and retrieval of records, draft preliminary outline of questions for Penn National records custodian, including related strategy to pursue actions directed by court.	1.70
11/08/2021	KMB	Create seven-page first draft of outline of questions for Penn National records custodian.	1.90
11/08/2021	KMB	Analyze 107 Penn National insurance records to assist with drafting outline of questions for Penn National records custodian. As part of this task, revise and edit seven-page outline draft accordingly.	1.10
11/08/2021	BMF	Develop questions to ask Penn National representatives and continue to review related pleadings for the motion to compel to assist with developing potential review plan for the Court.	1.50
11/09/2021	ABW	Correspondence to counsel for Penn National regarding list of materials referenced in filings needed for review in order to take first steps at prioritizing review ordered by Judge Toal.	0.50
11/09/2021	KMB	Analysis on notes of record with respect to missing affidavit of Reifsnyder dated July 23, to assist with court order on evaluation of Penn National files.	0.10
11/09/2021	SAS	Strategize regarding ideas for assessing Penn National's process for searching for responsive documents and ideas for additional search processes.	0.60
11/09/2021	CLB	Evaluate status of order entered by the court and guidance from attorneys regarding scope of future work related time frames.	0.20
11/12/2021	ABW	Exchange correspondence with B. Yntema regarding status of materials requested for review and records custodian interview.	0.30
11/14/2021	KMB	Read and summarize first 42 pages of Boyd Wright deposition in Finch case, as provided by Goldberg attorneys in follow-up to EW requests for record materials.	1.50
11/15/2021	BMF	Review full August 26, 2021 Boyd Wright deposition as background to Penn National document review project ordered by the Court (56 pages). Review full August 3, 2021 Brent Reifsnyder deposition as background to Penn National document review project ordered by the Court (70 pages). Review January 25, 2021 hearing transcript re Motion to Compel as background to Penn National document review project ordered by the Court (34 pages). Review full January 7, 2021 Boyd Wright deposition as background to Penn National document review project ordered by the Court (69 pages).	3.00
11/16/2021	LCP	Obtain update on document review.	0.10
11/16/2021	KMB	Read and summarize second half (approximately 30 pages) of Boyd Wright deposition (January 7, 2021), taking note in particular of testimony regarding searches conducted by region.	1.70
11/16/2021	KMB	Edit/revise five page summary of Boyd Wright deposition dated Jan. 7, 2021 and summarize key take-aways.	0.80

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SERVICES

Date	Person	Description of Services	Hours
11/16/2021	KMB	Analysis/strategy on ways to identify subcategories of Penn National records for potential searches and/or sampling.	0.70
11/16/2021	BMF	Research potential scanning vendors for hard copy paper and microfilm. Consider and outline potential project work flows and decision points.	1.30
11/17/2021	ABW	Contribute to concepts and specific information needed from Mr. Reifsnyder in advance of initial conference with same.	2.40
11/17/2021	KMB	Strategy and analysis, summarizing information extracted from record and as provided by counsel for Penn National, and identify additional evidence necessary to obtain from interview of Penn National's record custodian Brent Reifsnyder.	1.30
11/17/2021	BMF	Consider and outline potential project work flows and decision points and develop related inquiries for Penn National. Search Covil documents for Penn National related records and review for policy numbers and supporting information. Continue to research potential scanning vendors for hard copy paper and microfilm.	2.70
11/18/2021	ABW	Continue work in preparation for initial conversation with M. Reifsnyder to promote efficiency in light of his anticipated unavailability during next two weeks.	1.40
11/18/2021	KMB	Read prepare summary of key arguments within 60 pages of Finch Hearing Transcript dated January 25, 2021. Evaluate in particular for arguments of the parties regarding Penn National's ability to search and retrieve records as well as Justice Toal's perspective of reasonable search for legacy insurance policies.	1.00
11/18/2021	KMB	Planning and preparation with Mr. Flately for call with Penn National document custodian, specific to details of questions to learn about document retention, storage, and purging and to outline goals as articulated by judge.	0.70
11/18/2021	KMB	Planning and preparation with Ms. Brathwaite for conversation with Penn National document custodian regarding goals of investigation and questioning regarding document/policy retention, as requested by SC court.	0.30
11/18/2021	KMB	Draft preliminary and supplementary analysis regarding messaging as to goals, purpose, and intention of phone call with Penn National documents custodian.	0.30
11/18/2021	BMF	Continue to consider and outline potential project work flows and decision points and develop related inquiries for Penn National.	0.70
11/19/2021	ABW	Participate in call with counsel of record and Mr. Reifsnyder regarding information provided during two years of pending litigation and follow up information needed after initial meeting.	1.50
11/19/2021	KMB	Analysis of Order by Chief Justice Toal, and conduct analysis of further aspects of record to articulate goals and introductory comments in preparation for call with Penn National document custodian.	2.70



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SERVICES

Date	Person	Description of Services	Hours
11/19/2021	KMB	Read and taken notes on final 50 pages of transcript of January 2021 hearing in Finch, summarizing key testimony and taking notes in preparation for interview of Penn National document custodian.	2.10
11/19/2021	KMB	Evaluate 54 pages of Reifsnyder deposition to edit/revise questions for related discovery information call scheduled.	1.00
11/19/2021	KMB	Add specific additional questions to outline of questions for document custodian of Penn National.	1.00
11/19/2021	KMB	Make final revisions to outline of questions in preparation for conference call with Penn National document custodian B. Reifsnyder.	0.20
11/19/2021	KMB	Communication and planning regarding key elements to address in call with Penn National document custodian.	0.30
11/19/2021	KMB	Participate in call/interview of Brent Reifsnyder of Penn National to supplement current information available on the record regarding structure of Penn National policy storage.	1.20
11/19/2021	BMF	Prepare for conference call with Mr. Reifsnyder and Penn National regarding policy filing practices and development of plan to prepare review per the Court's Order. Participate in conference call with Mr. Reifsnyder and Penn National regarding policy filing practices and development of plan to prepare review per the Court's Order. Draft follow-up communication to Penn National to memorialize specific requests for documentation and information subsequent to conference call.	2.80
11/22/2021	ABW	Continue follow up after initial call with Mr. Reifsnyder and requested documents and interviews in order to select materials for sampling.	1.00
11/24/2021	ABW	Exchange correspondence with B. Yntema regarding follow up materials and information necessary for sampling of records ordered by Chief Justice Toal.	0.20
11/24/2021	KMB	Update/assessment of additional information sought from Penn National regarding additional insureds, as well as organization, numbers, and logistics on policies.	0.20
11/30/2021	ABW	Exchanges with counsel regarding status of requested information to help limit scope of review and prevent court order to scan all microfiche for review.	0.50
11/30/2021	ABW	Successive conferences with counsel of record to prioritize previously communicated follow up requests and negotiate next steps in order to meet reporting deadline set by the court.	1.50
11/30/2021	KMB	Analysis and communications on progress of obtaining information from Penn National regarding storage and retention, in particular recent request to obtain information from IT department, in preparation for status update for court scheduled December 7.	0.40
11/30/2021	BMF	Consider follow-up communications with Brady Yntema and Brad Ness and communicate with potential microfiche scanning vendors.	0.70

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SERVICES

Date	Person	Description of Services	Hours
12/01/2021	ABW	Continue narrowing and prioritizing of focus for sampling pursuant Judge Toal's order for Penn National.	1.00
12/01/2021	ABW	Explore potential alternative sources for information and underlying data for retention schedule and storage based on prior conversations with Brent Reifsnyder and experience working with IT departments over records custodians.	0.90
12/02/2021	ABW	Confirm with B. Yntema the dates of availability of witnesses and planned on-site analysis starting December 8, 2021.	0.20
12/02/2021	KMB	Planning and preparation for in-person visit to Penn National Harrisburg office, in particular strategize process and requests for boxes of hard-copy files.	0.30
12/03/2021	ABW	Follow up with B. Yntema with itemized priorities ahead of site visit.	0.50
12/03/2021	ABW	Continue work to restructure priorities as information has evolved for strategic sampling ordered by the Court and prepare update to all counsel regarding same.	2.80
12/03/2021	KMB	Evaluate internal and external communications to begin draft of chart assessing communications between key counsel regarding preparation for document review of Penn National files per instruction by the court. To assist with preparation for report requested by court by December 7.	3.80
12/06/2021	KMB	Complete draft of internal chart of communications between key counsel regarding preparation for document review of Penn National files per instruction by the court.	0.80
12/07/2021	ABW	Multiple conferences and exchanges with counsel to learn status of different requests made since entry of order and anticipated report to the Court regarding the same.	2.30
12/07/2021	KMB	Review/analyze progress in Penn National communications and exchanges, including draft of proposed report to the court.	0.50
12/09/2021	ABW	Evaluate and discuss protective order to assess scope, access to key information, and parameters for sharing with the court.	1.00
12/09/2021	KMB	Assess chart provided by counsel for Penn National specifically related to storage, retention and purging of hard copy files.	0.20
12/10/2021	ABW	Contribute to first wave of requests from inventory provided by Iron Mountain of more than 5,000 boxes of historical records.	4.30
12/10/2021	CJS	Read proposed protective order for Penn National production process and conference with Ms. Brathwaite regarding comments on same.	0.50
12/10/2021	KMB	Read and analyze proposed confidentiality agreement for upcoming document review of Penn National records.	0.20
12/10/2021	KMB	Evaluate inventory list of Iron Mountain records, brainstorming methodology for sampling boxes in accordance with document review process instructed by court.	1.00

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SERVICES

Date	Person	Description of Services	Hours
12/10/2021	KMB	Planning and preparation for review/sampling of Iron Mountain boxes stored by Iron Mountain, here specifically strategizing underlying methodology for intelligent selection of boxes to assess during in-person visit to Penn National.	0.50
12/10/2021	KMB	Utilize inventory of Penn National boxes stored within Iron Mountain facility to identify specific boxes to pull and sample during in-person visit, according pre-determined methodology for identification according to dates and descriptions of boxes.	0.80
12/13/2021	ABW	Follow up with B. Yntema regarding first set of 208 boxes for analysis from Iron Mountain.	0.20
12/13/2021	ABW	Status correspondence to Receiver's counsel.	0.20
12/13/2021	KMB	Analysis regarding types of boxes and numbers of boxes requested from Penn National's Iron Mountain storage to assist with document sampling.	0.20
12/14/2021	ABW	Work with Penn's counsel to coordinate on-site review of boxes identified from Iron Mountain and basis for identification of same for initial sampling.	2.30
12/14/2021	KMB	Meeting with Brady Yntema regarding boxes sought for retrieval from Penn National and regarding potential sampling of records at Harrisburg office.	0.90
12/14/2021	KMB	Draft overview of positioning as needs for sampling of specific boxes within Iron Mountain storage and conduct related analysis.	0.40
12/14/2021	BMF	Call with Brady Yntema to discuss request of boxes from Iron Mountain archive and coordinating visit to Penn National.	0.80
12/17/2021	ABW	Plan and prepare for beginning of onsite review by contacting counsel for Covil's Receiver and Penn National and coordinating efforts to resolve issues of confidentiality and fees.	2.50
12/17/2021	KMB	Read/analyze proposed communication regarding remaining challenges/tasks prior to in-person visit and sampling of boxes/microfiche.	0.10
12/17/2021	KMB	Coordination of logistics for travel to Harrisburg December 20-21.	0.30
12/20/2021	ABW	Travel from Raleigh, NC to Harrisburg, PA to initiate on-site analysis of selected records and identify others for review. (Flight travel only).	6.00
12/20/2021	ABW	Begin analysis of historical records of Penn National in consultation with records custodian.	3.00
12/20/2021	KMB	Travel from Raleigh Durham to Harrisburg, Pennsylvania sampling of hard-copy documents.	6.90
12/20/2021	KMB	Sampling and analysis of Iron Mountain boxes pulled, assessing relevance of thousands of pages of items dated 1980 and earlier.	3.20
12/20/2021	BMF	Travel to Harrisburg, PA to Raleigh, NC for on-site visit Penn National office.	5.60

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SERVICES

Date	Person	Description of Services	Hours
12/20/2021	BMF	Begin initial review and assessment of hard copy paper archive boxes in Penn National office pursuant to project ordered by Justice Toal.	2.70
12/21/2021	ABW	Continue analysis of historical records of Penn National in consultation with records custodian.	8.00
12/21/2021	ABW	Return travel from Harrisburg, PA to Raleigh, NC following first round of review pursuant court order.	6.00
12/21/2021	KMB	Conduct document review of Iron Mountain boxes pulled, here assessing relevance of thousands of pages of items related to commercial lines business from prior Penn National Greensboro offices and other related files.	6.90
12/21/2021	KMB	Travel from Harrisburg, PA (Penn National Headquarters to Raleigh Durham, NC.	7.50
12/21/2021	KMB	Evaluation and related communication with custodian Brent Reifsneider regarding organization of Penn National Penn National microfiche files.	0.50
12/21/2021	BMF	Travel from Harrisburg, PA to Raleigh, NC returning from on-site visit Penn National offices.	6.20
12/21/2021	BMF	Continue initial review and assessment of hard copy paper archive boxes in Penn National office pursuant to project ordered by Justice Toal.	8.20
12/28/2021	ABW	Prioritize next follow up requests and timing of same in advance of next reporting deadline and continuation of physical review.	0.50
12/28/2021	KMB	Analysis of tasks/next stops following in-person visit to Penn National Headquarters and in preparation for update to court.	0.50
12/28/2021	BMF	Review status of Penn National review project and consider additional requests from Brady Yntema.	0.30
12/29/2021	BMF	Review and update tracking logs of hard copy boxes reviewed at Penn national offices pursuant to Justice Toal's Order.	0.80
01/07/2022	ABW	Conference with counsel for Penn National to follow up on requests from December analysis of sample records from physical files and updated report to Judge Toal.	0.90
01/07/2022	KMB	Draft list of key findings/take-aways from sampling of hard copy documents and related investigation at Penn National headquarters in December 2021.	0.80
01/07/2022	KMB	Evaluation of draft second interim to court and propose language changes describing Ellis & Winters visit to Harrisburg and remaining tasks/plans.	0.60
01/18/2022	KMB	Summary and analysis on status of Penn National review and plans for future communications with parties concerned.	0.40
01/18/2022	BMF	Consider status of document review project ordered by Court and follow-up questions for Penn National.	0.30



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SERVICES

Date	Person	Description of Services	Hours
01/24/2022	KMB	Read and evaluate approximately 38 pages of recently filed motions in Penn National litigation, in preparation for meeting of the parties (in furtherance of court ordered document review) with Ellis & Winters to take place January 25, 2022.	0.60
01/24/2022	KMB	Evaluate prior communications and December 2021 order to draft summary of Ellis & Winters' tasks accomplished to-date in furtherance of order by Chief Justice Toal and remaining tasks to accomplish prior to suggesting specific document review collection/review options.	1.50
01/24/2022	BMF	Review draft summary of project prepared for update to Penn National and Receiver and provide feedback regarding the same.	0.40
01/25/2022	ABW	Participate in meet and confer about next steps with all counsel of record.	0.50
01/25/2022	ABW	Work on follow up requests delineated by counsel of record during weekly status call.	0.90
01/25/2022	KMB	Revise draft overview of remaining items to seek from Penn National before presenting options to the court on collection and review of documents.	0.30
01/25/2022	KMB	Participate in Zoom meeting with counsel for Penn National and counsel for Receivership regarding remaining requests of Penn National before presenting options for collection and document review to court.	0.50
01/25/2022	KMB	Summary and analysis of follow-up tasks to today's Zoom meeting with counsel for Penn National counsel for Receivership.	0.30
01/25/2022	BMF	Participate in conference call with Penn National and representatives of Receiver to provide update on status of review project and discuss outstanding issues.	0.80
01/26/2022	KMB	Draft communication to send to Penn National counsel and counsel for Receiver, summarizing progress to-date in responding to charge of the court and remaining requests to Penn National.	1.30
01/26/2022	KMB	Communications and analysis regarding additional notes to inform via email to counsel to Penn National and counsel for receiver, including general price estimates for collection and imaging of microfiche.	0.40
01/26/2022	KMB	Update notes via email to counsel to Penn National and counsel for receiver, including general price estimates for collection and imaging of microfiche.	0.40
01/26/2022	BMF	Review draft follow-up communication to Penn National and Receiver and provide feedback regarding the same.	0.40
01/27/2022	ABW	Finalize correspondence to counsel of record with overview of work done to date toward preparing a recommendation for the court and requests outstanding.	0.90
01/27/2022	KMB	Analysis and revision to draft communication to counsel for Penn National and counsel for Receiver, summarizing estimated proposal to court on collection and imaging of policies.	0.20



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SERVICES

Date	Person	Description of Services	Hours
01/27/2022	BMF	Review final draft follow-up communication to Penn National and Receiver and provide feedback regarding the same.	0.20
02/07/2022	ABW	Analyze report to court from counsel for Penn National and exchange correspondence with counsel of record after service of same.	0.40
02/07/2022	BMF	Review draft Interim Report prepared by Mr. Yntema and communicate with Penn National and Receiver's counsel regarding the same.	0.20
02/08/2022	KMB	Evaluation of written communication from Penn National's Brady Yntema regarding proposed meetings with Penn National representatives in IT and Underwriting departments and upcoming conference call with counsel for Receiver.	0.10
02/09/2022	ABW	Prepare for status conference with counsel of record by evaluating prior reports and final options to present to Chief Justice Toal.	0.90
02/09/2022	KMB	Analysis and drafting of specific language to present to counsel for receiver and counsel for Penn National regarding imaging, storage, and document review options available to present to the court.	1.00
02/10/2022	ABW	Confer with counsel of record regarding next steps in response to court order.	0.50
02/10/2022	KMB	Participate in Zoom meeting with counsel from receiver and Penn National to outline next steps before reporting to Chief Justice Toal.	0.50
02/10/2022	BMF	Participate in conference call with Penn National and representatives of Receiver to provide update on status of review project and discuss outstanding issues.	0.70
02/15/2022	ABW	Contribute to interview with B. Wright to discuss intersection between underwriting and information technology in handling claims on older policies that predate electronic record-keeping.	1.50
02/15/2022	KMB	Participate in call with Brady Yntema, David Harris, Boyd Wright to address remaining questions regarding prefixes on policy information and other methods for culling universe of information for upcoming document review.	1.40
02/15/2022	KMB	Update and follow-up analysis to call with Boyd Wright from Penn National, identifying next steps before drafting report to court regarding progress in identifying documents for review.	0.30
02/15/2022	BMF	Conference call with Penn National to review underwriting policy data and ask questions to Boyd Wright regarding policy numbers.	1.50
02/18/2022	KMB	Evaluate notes from interview of Brent Reifsnyder from Penn National regarding organization of underwriting documents within microfiche and hard copy, as well as notes from interview of Boyd Wright. Utilize this information to draft brief acknowledgment of recent tasks accomplished to counsel for receiver, receiver, and counsel for Penn National.	0.70



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SERVICES

Date	Person	Description of Services	Hours
02/18/2022	KMB	Preliminary strategy and organization for update to court by Ellis Winters as requested by Chief Justice Toal.	0.30
02/23/2022	KMB	[Penn National] Evaluate specific aspects of the record to assist with drafting report to Chief Justice Toal regarding options for imaging and review of documents, including notes from January 2021 hearing, notes from deposition of Boyd Wright, affidavits of Brent Reifsnyder dated July 9 and July 23, 2021, November 2021 Order from the Court, and interim reports from counsel Brady Yntema.	1.20
02/23/2022	KMB	Analysis with Mr. Flatley regarding anticipated imaging options to present to the Court, to assist with drafting of report to Chief Justice Toal.	0.30
02/23/2022	KMB	Draft one page draft report to Chief Justice Toal to present options for imaging, pursuant to November 2021 order.	1.00
02/25/2022	ABW	Prepare for next interview of Information Technology personnel requested in November 2021 by analyzing notes from prior conversations.	0.90
02/25/2022	ABW	Attend anticipated interview of IT personnel through corporate representative B. Wright in order to assess sampling of microfiche.	1.00
02/25/2022	KMB	Analysis of filings in Finch and Covil v. Penn National case, including arguments on motion to compel and communications on requests for production of document.	0.50
02/25/2022	KMB	Zoom meeting with Penn National representative Boyd Wright, Ellis & Winters team, and Brad Yntema regarding data provided on microfiche policy documents with expiration/destruction dates.	1.50
02/25/2022	BMF	Participate in Zoom meeting with Penn National to review microfiche inventory data with Mr. Wright and Mr. Yntema. Further review and assess microfiche inventory spreadsheet to identify potential universe of records for scanning.	2.10
02/28/2022	KMB	Evaluation and analysis regarding Excel files provided by Penn National related to microfiche policy records, to assist with plans for document review and related report to update Chief Justice Toal.	0.30
02/28/2022	BMF	Further review and assess microfiche inventory spreadsheet to identify potential universe of records for scanning.	1.00
03/01/2022	ABW	Prepare for next informational session with Penn National representatives to follow up on inventory previews provided and whether they correspond with physical organization of microfiche.	1.00
03/01/2022	KMB	Planning and analysis regarding report to Chief Justice Toal and related information to obtain from Penn National regarding policy documents.	0.40
03/01/2022	KMB	Summarize status of inquiry in to Penn National storage of records since status meeting on February, 10, formulating first draft of communication for group in advance of March 2 call with Penn National and report to Chief Justice Toal.	1.10



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SERVICES

Date	Person	Description of Services	Hours
03/01/2022	KMB	Analyze record and utilize as needed to continue drafting update requested by Chief Justice Toal regarding options for imaging and document review of Penn National microfiche records.	3.10
03/01/2022	BMF	Assess status of development of recommendation to Court for review project and additional requests for information from Penn National. Review executed contract and coordinate with vendor to begin project next steps. Begin developing document review plan and team.	0.90
03/02/2022	ABW	Participate in informational interview with Penn National representatives to ask follow up questions regarding limited inventory information provided and what is actually available to scan and review.	1.00
03/02/2022	ABW	Work on follow up from informational interview with Penn National representatives regarding limited inventory information provided and what is actually available to scan and review.	1.00
03/02/2022	KMB	Participate in zoom communication, including related follow-up analysis, with counsel Brady Yntema and representatives of Penn National to further discussion options to present to the court for imaging and document review.	1.00
03/02/2022	KMB	Consult the record filings from the Covil v. Penn National matter to continue drafting and revising update to Chief Justice Toal as requested in her order of November 5, 2021.	2.80
03/02/2022	BMF	Participate in Zoom meeting with Penn National to review microfiche inventory data with Mr. Wright and Mr. Yntema. Further review and assess microfiche inventory spreadsheet to identify potential universe of records for scanning.	1.10
03/04/2022	ABW	Contribute to report requested by Chief Justice Toal, including follow up with counsel for Penn National regarding outstanding items and timeline for completion.	2.50
03/04/2022	KMB	Assess communication from counsel from Penn National and changed to draft letter to Chief Justice Toal.	0.20
03/04/2022	KMB	Evaluate most recent documents within the record and prior filings on the record to identify specific mention by counsel as to time period of policies relevant to Covil business, to assist with drafting report to Chief Justice Toal.	1.30
03/04/2022	BMF	Communicate with Mr. Yntema and consider status of search for specified policy numbers in Penn National microfiche archive.	0.30
03/06/2022	KMB	Assess communications dated December through March 3, updating draft of chronology of communications between the parties as to progress on determining universe of records to recommend for imaging to Chief Justice Toal.	3.60
03/06/2022	KMB	Reorganize draft version of reporting updating Chief Justice Toal on progress determining options for imaging policy documents, including review of the record on key points.	3.00
03/07/2022	ABW	Contribute to report ordered by Chief Justice Toal to include most recent developments and avenues for review.	1.00

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SERVICES

Date	Person	Description of Services	Hours
03/07/2022	ABW	Conference with B. Yntema regarding reporting requirements, next visit to Penn National, and policies identified for responsive time frame on microfiche.	0.50
03/07/2022	KMB	Assess recent changes for letter update to Chief Justice Toal, suggesting one additional revision.	0.20
03/07/2022	KMB	Revise letter to Chief Justice Toal, following recommendations.	2.20
03/07/2022	KMB	Evaluate citations to the record, confirming accuracy, within draft report to Chief Justice Toal.	0.50
03/07/2022	BMF	Review and edit draft letter report to Chief Justice Toal and review additional policy numbers for search in psychical microfiche cards.	1.80
03/16/2022	BMF	Travel from Raleigh, NC to Harrisburg, PA to participate in manual review of Penn National microfiche policy records.	6.50
03/16/2022	BMF	Review and assess Penn National physical microfiche records and manually search for policy numbers from spreadsheet identified as canceled or non-renewed policies between 1981-1992.	3.00
03/16/2022	BR	Travel to Penn National in Harrisburg, PA from Ellis & Winters in Raleigh, NC.	6.50
03/16/2022	BR	Review and assess Penn National physical microfiche records and manually search for policy numbers from spreadsheet identified as canceled or non-renewed policies between 1981-1992, including manual printing of Covil policy files from microfiche to paper.	3.00
03/17/2022	KMB	Analysis of prior notes related to prefixes and related Excel document of commercial microfiche policy to identify meaning of specific prefixes, to assist ongoing sampling of microfiche records at Penn National headquarters.	0.30
03/17/2022	KMB	Communication/analysis with Brian Flatley regarding findings from sampling of microfiche documents, in preparation for notification within report to Chief Justice Toal.	0.30
03/17/2022	BMF	Travel from Harrisburg, PA to Raleigh, NC after participating in manual review of Penn National microfiche policy records.	7.00
03/17/2022	BMF	Continue to review and assess Penn National physical microfiche records and manually search for policy numbers from spreadsheet identified as canceled or non-renewed policies between 1981-1992 as well as policy numbers identified as Covil-related.	7.70
03/17/2022	BR	Review and assess Penn National physical microfiche records and manually search for policy numbers from spreadsheet identified as canceled or non-renewed policies between 1981-1992, including manual printing of Covil policy files from microfiche to paper.	8.00
03/17/2022	BR	Travel to Ellis & Winters in Raleigh, NC from Penn National in Harrisburg, PA.	7.00
03/18/2022	ABW	Contribute to next version of report to Chief Justice Toal to include additional information learned in this week's physical review of microfiche.	1.00



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SERVICES

Date	Person	Description of Services	Hours
03/18/2022	KMB	Evaluate status of draft report to Chief Justice Toal, taking notes and questions and factual information to add, following team visit to sample microfiche policies.	0.30
03/18/2022	KMB	Strategy/preparation with Brian Flatley regarding key revisions for draft report to Chief Justice Toal, including new understanding and strategy with regard to potential organization and imaging of select range of microfiche cards.	0.90
03/18/2022	KMB	Revise draft report to Chief Justice Toal, updating to account for recent developments from sampling/searching of microfiche records on March 16-17 and revise options for imaging/review.	1.60
03/18/2022	BMF	Consider information learned during on-site visit to Penn National to review microfiche files and update plan for recommendations to Court including initial review of updated draft report to Justice Toal.	1.40
03/21/2022	ABW	Contribute to final report to Chief Justice Toal in order to provide most recent information and basis of recommendations.	1.00
03/21/2022	CJS	Read and edit draft report to Justice Toal regarding status of Penn National document review, and exchange emails regarding comments and edits.	1.80
03/21/2022	KMB	Update draft report to Chief Justice Toal.	0.50
03/21/2022	KMB	Planning/overview of remaining work for court-ordered review including additional language on report to Chief Justice Toal.	0.40
03/21/2022	KMB	Make additional revisions to draft of report to Chief Justice Toal Judge Toal report.	0.70
03/21/2022	KMB	Assess comments/proposed changes by Curtis Shipman to draft report to Chief Justice Toal and draft overview of current status of report and related comments.	1.00
03/21/2022	KMB	Make a second round of edits providing factual information requested from edits by Curtis Shipley in report to Chief Justice Toal.	1.90
03/21/2022	BMF	Review draft letter to Justice Toal and provide additional edits and comments to draft.	1.80
03/22/2022	ABW	Finalize observations and options to the Court in report of Ellis & Winters following sampling of materials made available for review by Penn National and for consistency with work over the last four months.	3.50
03/22/2022	KMB	Make final revisions/edits to report to Chief Justice Toal in preparation for filing, revising details on options and eliminating comments.	2.80
03/22/2022	KMB	Preparation and additional final analysis on language for report to Chief Justice Toal prior filing with the Court, here specifically regarding re-organization on order of presentation of facts as previously presented.	1.60
03/22/2022	BMF	Continue to consider and review draft letter to Justice Toal and provide additional edits and comments to draft.	1.90

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SERVICES

Date	Person	Description of Services	Hours	
03/24/2022	LTJ	Analyze and review pleadings docket and update file for completeness.	0.50	
03/31/2022	CJS	Read Receiver's reply in support of motion to compel filed against Penn National, and related exhibits.	0.10	
03/31/2022	LCP	Review Receiver's motion to compel citing our report.	0.10	
04/06/2022	ABW	Conference with B. Yntema regarding follow up questions on policies.	0.20	
04/06/2022	ABW	Receive and respond to follow up questions from Penn National regarding additional policies produced.	0.80	
04/08/2022	ABW	Prepare for court-ordered appearance to address interim report on review.	1.00	
04/10/2022	KMB	Assist with assessment and evaluation of litigation record and factual evidence obtained in follow up to November 2021 order of the court, in preparation for hearing set for April 11, 2022.	0.40	
04/10/2022	BMF	Review materials and prepare for attendance at court-ordered hearing regarding status of investigation into storage, management, and review of Penn National policy documents pursuant November 2021 order.	2.30	
04/11/2022	ABW	Attend hearing ordered by Chief Justice Toal in order to provide report to the court.	2.20	
04/11/2022	ABW	One half of return travel from Columbia, SC to Raleigh, NC following hearing ordered by Chief Justice Toal on the status of the review she ordered in November 2021.	1.90	
04/11/2022	BMF	Attend court-ordered hearing regarding status of investigation into storage, management, and review of Penn National policy documents pursuant November 2021 order.	4.70	
04/11/2022	BMF	Travel to and from Columbia, SC to attend court-ordered hearing regarding status of investigation into storage, management, and review of Penn National policy documents pursuant November 2021 order.	6.50	
04/19/2022	BMF	Review and assess draft proposed Order to the Court on Discovery Motions.	0.40	
04/20/2022	LTJ	Analyze docket for recent activity and preserve Order related to sealing documents.	0.10	
04/21/2022	LTJ	Analyze docket for recent activity for impact on Covil.	0.10	
04/22/2022	LTJ	Analyze docket for recent activity for impact on Covil.	0.10	
04/26/2022	LTJ	Analyze docket for recent activity for impact on Covil.	0.10	
Total Professional Services			327.00	\$68,136.50



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TIMEKEEPER SUMMARY

Person			Hours	Rate	Amount
ABW	Ashley K. Brathwaite	Partner	60.40	\$265.00	\$16,006.00
ABW	Ashley K. Brathwaite	Partner	27.00	\$285.00	\$7,695.00
LCP	Leslie C. Packer	Partner	1.10	\$265.00	\$291.50
LCP	Leslie C. Packer	Partner	0.10	\$285.00	\$28.50
CJS	Curtis J. Shipley	Partner	1.90	\$285.00	\$541.50
CJS	Curtis J. Shipley	Partner	0.50	\$265.00	\$132.50
KMB	Katherine M. Bandy	Associate	63.40	\$200.00	\$12,680.00
KMB	Katherine M. Bandy	Associate	48.40	\$225.00	\$10,890.00
SFL	Scottie F. Lee	Associate	0.20	\$200.00	\$40.00
SAS	Steven A. Scoggan	Associate	1.20	\$200.00	\$240.00
CLB	Crystal L. Boyd	Paralegal	0.50	\$115.00	\$57.50
BMF	Brian M. Flatley	Paralegal	40.50	\$115.00	\$4,657.50
BMF	Brian M. Flatley	Paralegal	54.90	\$210.00	\$11,529.00
LTJ	Linda T. Jones	Paralegal	0.90	\$125.00	\$112.50
SHK	Sarah H. Kaufman	Paralegal	1.50	\$115.00	\$172.50
BR	Brandon Reiniger	Paralegal	24.50	\$125.00	\$3,062.50

DISBURSEMENTS

Date	Description of Disbursements	Amount
12/22/2021	Ashley K. Brathwaite- Travel- Hotel/Lodging	\$200.46
12/22/2021	Ashley K. Brathwaite- Meals- Downtown Deli & Catering 12/21/2021	\$19.91
12/22/2021	Ashley K. Brathwaite- Travel- RDU Airport short-term parking ticket 12/20-12/21/2021	\$44.00
12/22/2021	Ashley K. Brathwaite- Travel- Roundtrip Delta flight to Harrisburg, PA from RDU.	\$718.40
12/23/2021	Brian M. Flatley- Travel- Air travel to and From Harrisburg PA for visit to Penn National Office for document review pursuant to Justice Toal's Order.	\$474.92
12/23/2021	Brian M. Flatley- Travel- Parking at RDU for air travel to and from Harrisburg PA	\$30.00
12/23/2021	Brian M. Flatley- Travel- Hotel/Lodging in Harrisburg PA	\$202.94
12/23/2021	Brian M. Flatley- Travel- Uber rides to and from Harrisburg airport and Hilton hotel.	\$57.08
12/23/2021	Brian M. Flatley- Meals- Lunch on 12/21 while performing document review at Penn National office.	\$6.89

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DISBURSEMENTS

Date	Description of Disbursements	Amount
12/30/2021	Katherine M. Bandy- Travel- Hotel/Lodging	\$235.13
12/30/2021	Katherine M. Bandy- Travel- Round trip flight to Harrisburg, PA from Raleigh, NC	\$668.90
12/30/2021	Katherine M. Bandy- Travel- RDU airport parking 12/20-12/21	\$30.00
03/18/2022	Brian M. Flatley- Meals- Meals	\$124.22
03/18/2022	Brian M. Flatley- Travel- Parking	\$40.00
03/18/2022	Brian M. Flatley- Travel- Hotel/Lodging	\$259.74
03/18/2022	Brian M. Flatley- Mileage- Mileage (769 @ \$0.585)	\$449.87
04/14/2022	Brian M. Flatley- Mileage- Travel to/from Columbia, SC to attend court-ordered hearing related to Penn National (462 @ \$0.585)	\$270.27
Total Disbursements		\$3,832.73
Total Services		\$68,136.50
Total Disbursements		\$3,832.73
CURRENT INVOICE TOTAL		\$71,969.23
TOTAL BALANCE NOW DUE		\$71,969.23



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HARRISBURG, PA 17101
United States of America
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BRATHWAITE, ASHLEY

817 WAYNE DR

RALEIGH NC 27608
UNITED STATES OF AMERICA

Room No: 1219/K1DRQ
Arrival Date: 12/20/2021 11:50:00 AM
Departure Date: 12/21/2021 1:22:00 PM
Adult/Child: 1/0
Cashier ID: LAUREN
Room Rate: 146.00
AL:
HH # 713680875 GOLD
VAT #
Folio No/Che 1468870 A

Confirmation Number: 3207740305

HILTON HARRISBURG 12/21/2021 1:21:00 PM

DATE	REF NO	DESCRIPTION	CHARGES
12/20/2021	6902479	*AD LIB CRAFT KITCHEN & BAR	\$19.50
12/20/2021	6902712	GUEST ROOM	\$146.00
12/20/2021	6902712	HOTEL OCCUPANCY ROOM TAX	\$8.76
12/20/2021	6902712	ROOM LOCAL TAX	\$7.30
12/21/2021	6902909	*AD LIB CRAFT KITCHEN & BAR	\$18.90
12/21/2021	6902977	AX *1017	(\$200.46)
BALANCE			\$0.00

EXPENSE REPORT SUMMARY

	12/20/2021	12/21/2021	STAY TOTAL
ROOM AND TAX	\$162.06	\$0.00	\$162.06
FOOD AND BEVERAGE	\$19.50	\$18.90	\$38.40
DAILY TOTAL	\$181.56	\$18.90	\$200.46

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CREDIT CARD DETAIL

APPR CODE	142432	MERCHANT ID	000426759
CARD NUMBER	AX *1017	EXP DATE	10/24
TRANSACTION ID	6902977	TRANS TYPE	Sale



Downtown Deli & Catering

225 Market St
Harrisburg, PA 17101
(717) 213-9881
<http://downtowndeli.catering>

Dec 21, 2021
12:43 PM
Register1

PURCHASE

Ticket: Ashley
Authorization 111234
Receipt h55M

VISA CREDIT
AID A0 00 00 00 03 10 10

TO GO

Turkey Wrap	\$7.50
Wheat Wrap	\$7.50
Colorado Sandwich	\$3.78
Bottled Drink x 2	
Large Water	
Subtotal	\$18.78
Sales Tax 6%	\$1.13
Total	\$19.91
Visa 8259 (Contactless)	\$19.9
Visa Cardholder	

Order Online and Skip the Line
<http://downtowndeli.catering>

1050 Car. Drive
RDU Airport NC 27623
919-840-7587

PG 1 POF 1 12/21/21 23:06
Receipt 021885

Short-term parking tkt
2 - No. 005660
12/20/21 05:50
12/21/21 23:06
Period 1d17h17

\$44.00

Sub Total \$44.00
Ust. \$0.00

Total \$44.00

Payment Received
RID A000000003
PIX 1010
CARD Thank You for Choosing *****8259
AUTHORIZATION 221260
PURCHASE APPROVED USD44.00

42307C36 - 1/1



Raleigh-Durham International Airport | RDU.com



Downtown Deli & Catering

225 Market St
Harrisburg, PA 17101
(717) 213-9881
<http://downtowndeli.catering>

Dec 21, 2021
12:43 PM
Register1

PURCHASE

Ticket: Ashley
Authorization 111234
Receipt h55M

VISA CREDIT
AID A0 00 00 00 03 10 10

TO GO

Turkey Wrap	\$7.50
Wheat Wrap	\$7.50
Colorado Sandwich	\$3.78
Bottled Drink x 2	
Large Water	
Subtotal	\$18.78
Sales Tax 6%	\$1.13
Total	\$19.91
Visa 8259 (Contactless)	\$19.9
Visa Cardholder	

Order Online and Skip the Line
<http://downtowndeli.catering>

1050 Car. Drive
RDU Airport NC 27623
919-840-7587

PG 1 POF 1 12/21/21 23:06
Receipt 021885

Short-term parking tkt
2 - No. 005660
12/20/21 05:50
12/21/21 23:06
Period 1d17h17

\$44.00

Sub Total \$44.00
Ust. \$0.00

Total \$44.00

Payment Received
RID A000000003
PIX 1010
CARD Thank You for Choosing *****8259
AUTHORIZATION 221260
PURCHASE APPROVED USD44.00

42307C36 - 1/1



Raleigh-Durham International Airport | RDU.com

Najawa Huntley

From: Ashley Brathwaite <akbrathwaite@gmail.com>
Sent: Wednesday, December 22, 2021 3:13 PM
To: Najawa Huntley
Subject: Fwd: Your Flight Receipt - ASHLEY KAMPHAUS BRATHWAITE 20DEC21

This is an EXTERNAL email that originated outside of Ellis & Winters. If you were not expecting this message, DO NOT click links or open attachments until you verify them.

----- Forwarded message -----

From: Delta Air Lines <DeltaAirLines@t.delta.com>
Date: Fri, Dec 17, 2021 at 5:25 PM
Subject: Your Flight Receipt - ASHLEY KAMPHAUS BRATHWAITE 20DEC21
To: <akbrathwaite@gmail.com>



You're all set. If your plans change, be sure to make changes or cancel via [MyTrips](#) on [delta.com](#) before your flight departs to maintain the value of your ticket.

YOUR PRE-TRIP CHECKLIST FOR EASIER TRAVEL:

DOWNLOAD THE FLY DELTA APP – With real-time push notifications sent to your mobile device, you'll never miss an update. With the Fly Delta app, you can easily track your checked bags, check your flight status under the "[My Trips](#)" tab, access your digital boarding pass, message Delta and more. [Download](#)

[Now >](#)

VISIT OUR HELP CENTER PAGE – get all your travel questions answered with information on self-service tools, baggage, SkyMiles, and more. [Find Help >](#)

Have a great trip, and thank you for choosing Delta.

Mon, 20DEC	DEPART	ARRIVE
DELTA 2291 Main Cabin (B)	RALEIGH-DURHAM, NC 7:00am	ATLANTA 8:43am
DELTA 5407* Main Cabin (B)	ATLANTA 9:23am	HARRISBURG, PA 11:08am

Tue, 21DEC	DEPART	ARRIVE
DELTA 4869* Main Cabin (Q)	HARRISBURG, PA 6:15pm	DETROIT 7:59pm
DELTA 2657 Main Cabin (Q)	DETROIT 9:12pm	RALEIGH-DURHAM, NC 10:58pm

*Flight 5407 Operated by ENDEAVOR AIR DBA DELTA CONNECTION

*Flight 4869 Operated by ENDEAVOR AIR DBA DELTA CONNECTION

MANAGE MY TRIP>

CHECK DELTA DISCOVER MAP FOR YOUR DESTINATION'S ENTRY REQUIREMENTS

Many destinations have issued travel requirements that may affect your trip. We strongly encourage you to review the [Delta Discover Map](#) for the latest on your destination's test, vaccine and quarantine requirements. You may check your eligibility to change or cancel your flight [here](#).

MASKS REQUIRED IN THE AIRPORT & ON BOARD

It's Delta's policy and federal law that all employees and customers wear masks during boarding and deplaning, while in the airport and during public transit. Customers requiring exemptions for not wearing face masks due to a disability should be prepared to complete a clearance to fly process prior to departure at the airport. Thank you for your compliance. [Learn More >](#)

Passenger Info

Name: ASHLEY KAMPHAUS BRATHWAITE

SkyMiles #2343771826

Silver

FLIGHT	SEAT
DELTA 2291	Select Seat
DELTA 5407	20B
DELTA 4869	10C
DELTA 2657	Select Seat

Visit delta.com or use the [Fly Delta app](#) to view, select or change your seat. If you purchased a Delta Comfort+™ seat or a Trip Extra, please visit [My Trips](#) to access a receipt of your purchase.

Flight Receipt

Ticket #: **0062489862347**

Place of Issue:

Issue Date: 17DEC21

Expiration Date: 31DEC22

METHOD OF PAYMENT	
AX*****1017	\$718.40 USD

CHARGES

Air Transportation Charges	
Base Fare	\$625.11 USD
Taxes, Fees and Charges	
United States - September 11th Security Fee(Passenger Civil Aviation Security Service Fee) (AY)	\$11.20 USD
United States - Transportation Tax (US)	\$46.89 USD
United States - Passenger Facility Charge (XF)	\$18.00 USD
United States - Flight Segment Tax (ZP)	\$17.20 USD
TICKET AMOUNT	\$718.40 USD

NONREF/CHANGES PERMITTED

This ticket is non-refundable unless the original ticket was issued at a fully refundable fare. Some fares may not allow changes. If allowed, any change to your itinerary may require payment of a change fee and increased fare, and cancellation of your itinerary may require payment of a cancellation charge. Failure to appear for any flight without notice to Delta will result in cancellation of your remaining reservation.

Note: When using certain vouchers to purchase tickets, remaining credits may not be refunded. Additional charges and/or credits may apply.

Fare Details: RDU DL X/ATL DL HAR396.28BR00A0MQ DL X/DTT DL RDU228.83QR00A0MQ USD625.11END ZP RDUATLMDTDTW XF RDU4.5ATL4.5MDT4.5DTW4.5

Checked Bag Allowance

The fees below are based on your original ticket purchase. **If you qualify for free or discounted checked baggage**, this will be taken into account when you check in.

Mon 20 Dec 2021		RDU-MDT
CARRY ON	FIRST	SECOND

FREE	FREE (70LBS/32KG) WAS: \$30.00 ^{USD}	\$40.00 ^{USD} (50LBS/23KG)

Visit delta.com for details on [baggage embargoes](#) that may apply to your itinerary.

Tue 21 Dec 2021

MDT-RDU

CARRY ON	FIRST	SECOND
FREE	FREE (70LBS/32KG) WAS: \$30.00 ^{USD}	\$40.00 ^{USD} (50LBS/23KG)

Visit delta.com for details on [baggage embargoes](#) that may apply to your itinerary.

Transportation of Hazardous Materials

Federal law forbids the carriage of hazardous materials aboard aircraft in your luggage or on your person. A violation can result in civil penalties. Examples include: Paints, aerosols, lighter fluid, fireworks, torch lighters, tear gases and compressed gas cartridges.

There are special exceptions for small quantities (up to 70 ounces total). For further information visit delta.com [Restricted Items](#) Section.

MANAGE MY TRIP>

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BOOK A VACATION PACKAGE >

RESERVE A CAR + HOTEL >

EARN AND USE MILES >



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Fly green. Partner with us to protect the environment and support communities. Visit delta.com/co2 to learn more about offsetting your carbon footprint.

Terms & Conditions

This ticket is non-refundable unless the original ticket was issued at a fully refundable fare. Some fares may not allow changes. If allowed, any change to your itinerary may require payment of a change fee and increased fare. Failure to appear for any flight without notice to Delta will result in cancellation of your remaining reservation.

Note: When using certain vouchers to purchase tickets, remaining credits may not be refunded. Additional charges and/or credits may apply.

†All SkyMiles® program rules apply. To review the rules, see Membership Guide & Program Rules. Taxes and fees for Award Travel are the responsibility of the passenger and must be paid at the time the ticket is booked. Award Travel seats are limited and may not be available on all flights or in all markets. Offers void where prohibited by law. Other restrictions may apply.

Checked Bag Allowance

*On Delta® operated flights, you may carry on one bag and a small personal item at no charge.

Delta One®/First/Business Class weight allowance reverts to 50 lbs for all checked bags beyond regular free allowance.

At the time of check in with Delta, SkyMiles Medallion members, SkyTeam Elite & Elite Plus and active US Military personnel are eligible for fee waivers and other benefits. For more details, visit delta.com/baggage. Basic Cardmembers with a Gold, Platinum, or Reserve Delta SkyMiles Credit Card from American Express are eligible for the first bag fee waiver. More details on the program can be found at delta.com/firstbagfree

A standard checked bag with Delta may be up to 50 lbs and 62 linear inch



ACCOUNT ID: 1001
Flatley nam Card ID

CARDHOLDER
BRIAN FLATLEY

DATE	DESCRIPTION	AMOUNT
Dec 17 \$4,906.90	AMERICAN AIRLINES 533 AMON CARTER BLVD FORT WORTH TX 76105 800 435 7300 View transaction details AMERICAN AIRLINES 4580433730 TX We added on your Dec 21, 2021 statement to AMERICAN AIRLINES 4580433730 TX CARD BRIAN FLATLEY MEMBER 11118204103 POINTS SPANISH 2,286 FROM BANK OF AMERICA ON 12/23/21 HALL COUNTY - 1000 - 10000000 CHARLOTTE - 4444444444444444 HARRISBURG INTERNS - 7444444444444444 PHILADELPHIA INTERNS - 7444444444444444 PHILADELPHIA INTERNS - 7444444444444444 FLATLEYBANK ADDITIONAL CHARGE 2021 210 0000 POSSIBLE 1 (0000)	\$4,906.90

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ACCOUNT ENDING - 51001
Platinum Card®

CARD MEMBER
BRIAN FLATLEY

DATE	DESCRIPTION		AMOUNT
Dec 17	AMERICAN AIRLINES	AMERICAN AIRLINES 45800-433-7300 TX	\$12.02
5X Points	4333 AMON CARTER BLVD	Will appear on your Dec 24, 2021 statement as AMERICAN AIRLINES 45800-433-7300 TX	
	FORT WORTH	CARD	
	TX	BRIAN FLATLEY	
	76155		
	(800) 433-7300	MEMBERSHIP REWARDS POINTS	
	https://www.aa.com/homePage.do	5X Airfare 90	
		additional collection	
		Flight on December 17	
		PASSENGER	TICKET NUMBER
		FLATLEY/BRIAN	0010644133003
		ADDITIONAL INFORMATION	
		20211218 AA.COM	
		ADDITIONAL COLLECTION	

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12/22/21 PURCHASE AUTHORIZED ON 12/21 RDVAA PUBLIC PARKI
MORRISVILLE NC S581356100904755 CARD 3961

0.00
ELECTRONICALLY FILED - 2022 May 16 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

Details

Merchant Address: MORRISVILLE, NC, 27560

Transaction Method: Card Swiped

Category: Parking/Tolls

[Dispute this transaction](#) | [Manage disputes](#)



HILTON HARRISBURG
ONE NORTH SECOND STREET
HARRISBURG, PA 17101
United States of America
TELEPHONE 717-233-6000 • FAX (717) 233-6271
Reservations
www.hilton.com or 1 800 HILTONS

FLATLEY, BRIAN

1043 DUNSFORD PL

CARY NC 27511
UNITED STATES OF AMERICA

Room No: 1228/K1
Arrival Date: 12/20/2021 1:37:00 PM
Departure Date: 12/21/2021 1:33:00 PM
Adult/Child: 1/0
Cashier ID: PGALLMANN
Room Rate: 156.00
AL:
HH # 578731883 SILVER
VAT #
Folio No/Che 1468871 A

Confirmation Number: 3208638862

HILTON HARRISBURG 12/21/2021 1:33:00 PM

DATE	REF NO	DESCRIPTION	CHARGES
12/20/2021	6902514	*ROOM SERVICE	\$23.60
12/20/2021	6902717	GUEST ROOM	\$156.00
12/20/2021	6902717	HOTEL OCCUPANCY ROOM TAX	\$9.36
12/20/2021	6902717	ROOM LOCAL TAX	\$7.80
12/21/2021	6902908	*AD LIB CRAFT KITCHEN & BAR	\$6.18
12/21/2021	6902995	AX *1001	(\$202.94)
BALANCE			\$0.00

EXPENSE REPORT SUMMARY

	12/20/2021	12/21/2021	STAY TOTAL
ROOM AND TAX	\$173.16	\$0.00	\$173.16
FOOD AND BEVERAGE	\$23.60	\$6.18	\$29.78
DAILY TOTAL	\$196.76	\$6.18	\$202.94

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Thank you for choosing Hilton. You'll get more when you book directly with us - more destinations, more points, and more value. Book your next stay at hilton.com.

CREDIT CARD DETAIL

APPR CODE	119633	MERCHANT ID	000426759
CARD NUMBER	AX *1001	EXP DATE	12/26
TRANSACTION ID	6902995	TRANS TYPE	Sale

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ACCOUNT ID: 1001
First Name: Cate J.D.

CREDIT CARD
BRIAN PLATLEY

DATA		DESCRIPTION		AMOUNT
Dec 21	HILTON	HILTON HARRISBURG HARRISBURG PA		
	1 NORTH SECOND STREET	Will appear on your Dec 31, 2021 statement as HILTON HARRISBURG HARRISBURG PA.		
	HARRISBURG	Card		
	PA	ISSUANCE LABEL		
	17101-601	RT VENDOR		
	77 773336200	You'll be able to see how much interest on this card has been charged within 5 days of the charge posting to your account. Please check back later.		
	https://www.hilton.com/hiltoncard/mtg-services/mtgcard.html			
		THANK YOU FOR YOUR LOYALTY		
		12/23/21		12/23/21
		December 21, 2021		December 21, 2021
		ADDITIONAL INFORMATION		
		0545047 21-2134810		
		LUJG N2		

ELECTRONICALLY FILED - 2022 May 16 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

Brian Flatley

From: Uber Receipts <noreply@uber.com>
Sent: Monday, December 20, 2021 1:35 PM
To: Brian Flatley
Subject: Your Monday afternoon trip with Uber

This is an EXTERNAL email that originated outside of Ellis & Winters. If you were not expecting this message, DO NOT click links or open attachments until you verify them.

Uber

Total **\$28.72**
December 20, 2021

Total **\$28.72**

Trip fare	\$17.08

Subtotal	\$17.08

Booking Fee ?	\$3.96

MDT Airport Surcharge ?	\$2.90

Tips	\$4.78

Payments

	Google Pay 12/20/21 1:35 PM	\$23.94
	Google Pay 12/20/21 1:35 PM	\$4.78

A temporary hold of \$23.94 was placed on your payment method Google Pay. This is not a charge and will be removed. It should disappear from your bank statement shortly. [Learn More](#)

[Download PDF](#)

You rode with Abdul

4.98 ★ Rating



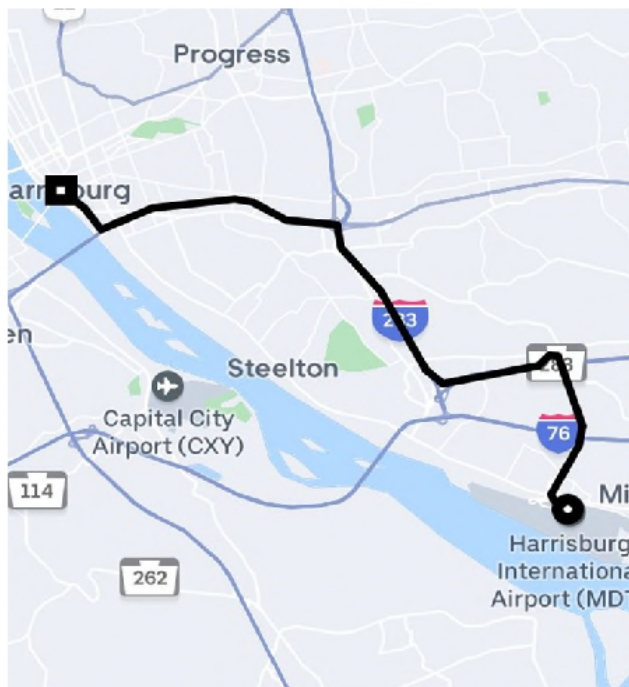
Has passed a multi-step safety screen

When you ride with Uber, your trips are insured in case of a covered accident.

[Learn more >](#)

510 Airport Dr, Middletown,
PA 17057, US

1 N 2nd St, Harrisburg, PA
17101, USA



My trips >

Uber Technologies
1515 3rd Street
San Francisco, CA 94158

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Brian Flatley

From: Uber Receipts <noreply@uber.com>
Sent: Tuesday, December 21, 2021 4:43 PM
To: Brian Flatley
Subject: Your Tuesday afternoon trip with Uber

This is an EXTERNAL email that originated outside of Ellis & Winters. If you were not expecting this message, DO NOT click links or open attachments until you verify them.

Uber

Total **\$28.36**
December 21, 2021

Total **\$28.36**

Trip fare	\$19.35

Subtotal	\$19.35

Wait Time ?	\$0.14

Booking Fee ?	\$4.15

Tips	\$4.72

Payments

	Google Pay 12/21/21 4:38 PM	\$23.64
	Google Pay 12/21/21 4:42 PM	\$4.72

A temporary hold of \$23.50 was placed on your payment method Google Pay. This is not a charge and will be removed. It should disappear from your bank statement shortly. [Learn More](#)

[Download PDF](#)

You rode with JOHN

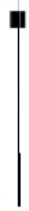
5.00 ★ Rating



Has passed a multi-step safety screen

When you ride with Uber, your trips are insured in case of a covered accident.

[Learn more >](#)



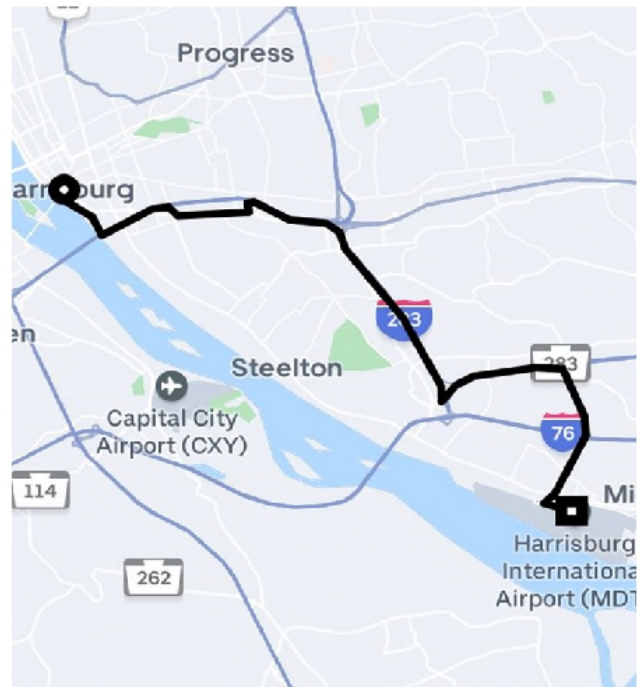
4:09 PM

3 N 2nd St, Harrisburg, PA
17101, US



4:38 PM

1 Terminal Dr, Middletown,
PA 17057, US



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[Contact support>](#)

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Uber Technologies
1515 3rd Street
San Francisco, CA 94158

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Brian Flatley <bflatley23@gmail.com>

Receipt from Downtown Deli & Catering

Downtown Deli & Catering via Square <rscelstb@messaging.squareup.com>
Reply To: Downtown Deli & Catering via Square <CAESPrkAGFYx21mcmtpbnH4azvmdzU1c2Btonk4ZXRzoG1ma2ZvcmRkazV2Z2Mzy3ZicjU0Y3FjdjgnaWFFo2c1Z6-pYj5YUY3C6RRCwDyDTmQ7e4kMPb2ZlYDhCd5VqmpPEEw=@reply2.squareup.com>
To: bflatley23@gmail.com

Tue, Dec 21, 2021 at 12:43 PM

Square automatically sends receipts to the email address you used at any Square seller. [Learn more](#)



Let Downtown Deli & Catering know how your experience was.



\$6.89

Sub Combo Drink	\$1.50
Miniball Sub (Half White Sub)	\$5.00
Purchase Subtotal	\$6.50
Sales Tax 0% (6%)	\$0.39
Total	\$6.89

Downtown Deli & Catering
717-213-9881



Visa 3881 (Chia) Dec 21 2021 at 12:43 PM
VISA #86VW
BRIAN F. ATLEY Auth code: 003109

AID: A0000000983840
No CVV

Order Online and Skip the Line
<http://downtowndeli.catering>



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1455 Market Street, Suite 800
San Francisco, CA 94103

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HILTON HARRISBURG
ONE NORTH SECOND STREET
HARRISBURG, PA 17101
United States of America
TELEPHONE 717-233-6000 • FAX (717) 233-6271
Reservations
www.hilton.com or 1 800 HILTONS

Bandy, Katherine

111 CAPTAINS COURT

DURHAM NC 27712
UNITED STATES OF AMERICA

Room No: 505/K1
Arrival Date: 12/20/2021 1:39:00 PM
Departure Date: 12/21/2021 7:36:00 AM
Adult/Child: 1/0
Cashier ID: LAUREN
Room Rate: 169.00
AL:
HH # 1469985426 BLUE
VAT #
Folio No/Che 1468873 A

Confirmation Number: 3207257505

HILTON HARRISBURG 12/21/2021 7:35:00 AM

DATE	REF NO	DESCRIPTION	CHARGES
12/20/2021	6902512	*ROOM SERVICE	\$43.54
12/20/2021	6902788	GUEST ROOM	\$169.00
12/20/2021	6902788	HOTEL OCCUPANCY ROOM TAX	\$10.14
12/20/2021	6902788	ROOM LOCAL TAX	\$8.45
12/21/2021	6902912	*AD LIB CRAFT KITCHEN & BAR	\$4.00
12/21/2021	6902915	MC *4412	(\$235.13)
BALANCE			\$0.00

EXPENSE REPORT SUMMARY

	12/20/2021	12/21/2021	STAY TOTAL
ROOM AND TAX	\$187.59	\$0.00	\$187.59
FOOD AND BEVERAGE	\$43.54	\$4.00	\$47.54
DAILY TOTAL	\$231.13	\$4.00	\$235.13

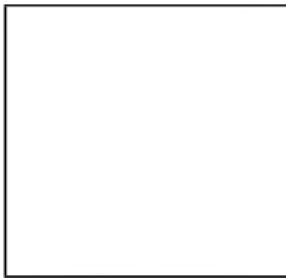
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CREDIT CARD DETAIL

APPR CODE	36045Z	MERCHANT ID	0000426759
CARD NUMBER	MC *4412	EXP DATE	06/24
TRANSACTION ID	6902915	TRANS TYPE	Sale

ELECTRONICALLY FILED - 2022 May 16 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098



Thank you, Katherine! Your flights are booked.

Itinerary # 72216034870467

[View your trip](#)

[Download to your phone](#)



Travel update

Check COVID-19 restrictions.
[Find out more](#)



Traveler details

KATHERINE BANDY (Adult)



[View all ticketing details](#)



Raleigh (RDU) to Harrisburg (MDT)

American Airlines 1906 9:04am • Raleigh, NC, United States (RDU-Raleigh - Durham Intl.) to Charlotte, NC, United States (CLT-Charlotte-Douglas Intl.)

Terminal 2

Airline confirmation: VMRMGB (American Airlines)

Economy / Coach (M)

Mon, Dec 20, 9:04am - 10:18am

1h 14m flight duration

☐ Layover: 1h 11m

American Airlines 4613 11:29am • Charlotte, NC, United States (CLT-Charlotte-Douglas Intl.) to Harrisburg, PA, United States (MDT-Harrisburg Intl.)

Economy / Coach (M)
Mon, Dec 20, 11:29am - 1:08pm
1h 39m flight duration

Harrisburg (MDT) to Raleigh (RDU)

American Airlines 6154 6:22pm • Harrisburg, PA, United States (MDT-Harrisburg Intl.) to Philadelphia, PA, United States (PHL-Philadelphia Intl.)

Airline confirmation: VMRMGB (American Airlines)
Economy / Coach (L)
Tue, Dec 21, 6:22pm - 7:08pm
46m flight duration

☐ Layover: 52m

American Airlines 2644 8:00pm • Philadelphia, PA, United States (PHL-Philadelphia Intl.) to Raleigh, NC, United States (RDU-Raleigh - Durham Intl.)

Economy / Coach (L)
Tue, Dec 21, 8:00pm - 9:34pm
1h 34m flight duration

[Manage your itinerary](#)

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Price summary

Roundtrip flight

1 traveler	\$541.40
Taxes & fees	\$85.51
Seat 13F	\$23.97
Seat 06C	\$18.02

Total	\$668.90

The total price includes all mandatory taxes and fees.

Unless and otherwise specified, rates are quoted in US dollars.

[View receipt](#)

You still have time to protect your trip.

[Protect my trip](#)

Important information

Flight information

Remember to bring your itinerary and government-issued photo ID for airport check-in and security.

E-ticket: This email can be used as an E-ticket.

Contact the airline to confirm:

- Specific seat assignments
- Special meals
- Frequent flyer point awards
- Special assistance requests

If the airline charges such fees in accordance with its own policies, the cost will be passed on to you.

Additional fees

Additional fees for your flight to Harrisburg: The airline may charge [additional fees \(Opens in a new window.\)](#) for checked baggage or other optional services.

1050 Cary Drive
RDU Airport NC 27623
919-840-7587

PG 1 POF 9 12/21/21 22:17
Receipt 021822

Short-term parking tkt

PC - No. 005564

12/20/21 07:33

12/21/21 22:17

Period 1d14h45'

\$30.00

Sub Total

\$30.00

Ust.

\$0.00

Total

\$30.00

Payment Received

CARD

*****4412

AUTHORIZATION

28147Z

PURCHASE

USD30.00

APPROVED

BURGER KING 13265
427 North Church Street
Thurmont, MD 21788
301-271-1041

ORDER 39

TAKE OUT

1 CMLG 8PC NUGGETS 7.99

- 1 *NUGGETS EPC
- 1 sweet & sour
- 1 *MD FRY
- 1 *BOTTLE WATER

1 CMLG 8PC NUGGETS 7.99

- 1 *NUGGETS EPC
- 1 sweet & sour
- 1 *LG FRY
- 1 *LG COKE

SUBTOTAL 14.58
6.00% TAX 0.88

TOTAL 15.46
CREDIT CARD 15.46
CHANGE 0.00

Free* Whopper® for your thoughts
Complete the online survey at
mybkexperience.com

*Purchase of S/M/L soft drink and any size
fries required. See terms at bk.com/terms.

Transaction ID: 26333-39101-56212-020503

TOTAL CHARGE 15.46

AMEX

AcctNum: *****1001

Auth: 888263

Type: CREDIT

CTroute: 66983

Merchant Id: 456162256998

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CUSTOMER COPY

McGRATH'S

IRISH PUB

McGrath's Pub
202 Locust St
Harrisburg, Pa 17101
717-232-9914

Brn
Brandon
Dinner 3/16

Order# 706422
Station# POS1
Eat In Order
Call Name: T2
Bar Tab: #95
Server: Chris F
Date: 3/16/22, 6:37 PM

Transaction Type: Pre Auth
Entry Method: Chip Read
Mode: Issuer
AID: A000000025010901
TVR: 0600008000
IAD: 0659010360A000
TSI: F800
ARC: 00
Paid With: AMERICAN EXPRESS XXXX1001
Total: \$66.70

Tip: \$ 15.00
Total: \$ 81.78

APPROVED
(890639)

I agree to pay the above total amount
according to card issuer agreement

FIVE GUYS

916 W Atlantic St.
Emporia, VA 23847
Phone (434) 348-3483

3/17/2022 8:31:40 PM
Order Id: AABVBKPGQACDE
17 - FIVE GUYS
Employee: Leonard A

17

1 Bacon Cheeseburger \$10.99
Bacon \$0.00
Ketchup \$0.00
1 Hamburger \$9.00
A.1.(R) Steak Sauce \$0.00

Sub Total \$19.99

Sales Tax \$2.56
Order Total \$22.55

American Express \$22.55
TIP AMOUNT \$4.51
AUTHORIZED AMOUNT \$27.06

Card#: *****1001
Authorization: 828409

Brn
Dinner
--> Order Closed <--

Don't throw away your receipt!!!

Help Five Guys and you could win!

Log online to www.fiveguys.com/survey

and fill out a brief survey!

to help people still win a

Park Harrisburg
223 Walnut St
Harrisburg, PA 17101
717-254-2274

Receipt 9181/0611/611 03/17/22 15:15:28

010100 Pay parking ticket \$ 40.00
03/16/22 13:53 - 03/17/22 15:15
Length of stay: 1 Days, 01:22
02994327081011272075500130??

Total Amount \$ 40.00

Credit Amex \$ 40.00

.....
American Express

FLATLEY/BRIAN M 0
Customer No. XXXX XXXXXX X1001
Amount = \$ 40.00
All Taxes included

** Thank you **



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FLATLEY, BRIAN

1043 DUNSFORD PL

CARY NC 27511
UNITED STATES OF AMERICA

Room No: 626/K1
Arrival Date: 3/16/2022 1:34:00 PM
Departure Date: 3/17/2022 12:32:00 PM
Adult/Child: 1/0
Cashier ID: YSCOTT
Room Rate: 234.00
AL:
HH # 578731883 SILVER
VAT #
Folio No/Che 1484084 A

Confirmation Number: 3237748889

HILTON HARRISBURG 3/17/2022 12:32:00 PM

DATE	REF NO	DESCRIPTION	CHARGES
3/16/2022	6965672	GUEST ROOM	\$234.00
3/16/2022	6965672	HOTEL OCCUPANCY ROOM TAX	\$14.04
3/16/2022	6965672	ROOM LOCAL TAX	\$11.70
3/17/2022	6965872	AX *1001	(\$259.74)
BALANCE			\$0.00

EXPENSE REPORT SUMMARY

	3/16/2022	STAY TOTAL
ROOM AND TAX	\$259.74	\$259.74
DAILY TOTAL	\$259.74	\$259.74

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CREDIT CARD DETAIL

APPR CODE	120244	MERCHANT ID	000426759
CARD NUMBER	AX *1001	EXP DATE	12/26
TRANSACTION ID	6965872	TRANS TYPE	Sale

ELECTRONICALLY FILED - 2022 May 16 5:36 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**THE RECEIVER FOR COVIL
CORPORATION'S OPPOSITION TO
PENN NATIONAL'S MOTION FOR
RECONSIDERATION OF THE
COURT'S MAY 5, 2022 ORDER ON
DISCOVERY MOTIONS**

Defendant Penn National moves this Court to reconsider its May 5, 2022 Order on Discovery Motions, including Ellis & Winters LLP's March 22, 2022 report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court's November 5, 2021 Discovery Order; the Receiver's February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; the Receiver's March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents; Penn National's December 22, 2021 Motions to Quash; and Penn National's April 7, 2022 Motion to Seal. For the reasons stated below, this Court should deny the Motion.

LEGAL STANDARD

In *Petit v. Krohn*, No. 2017-CP-24-01343, 2020 WL 12894729 (S.C.Com.Pl. May 20, 2020) (denying motion to reconsider), the court explains the motion for reconsideration standard:

A motion under Rule 59(e) has long been viewed as a "motion for reconsideration." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A motion to reconsider pursuant to Rule 59(e), SCRCp, is appropriate in two basic situations. First, "[a] party may wish to file such a motion when she believes the court has

misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Id.* at 24, 602 S.E.2d at 780. Second, “[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* The decision to grant relief under Rule 59 rests within the sound discretion of the trial judge and will not be disturbed on appeal unless the “findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Brinkley v. S.C. Dep’t of Corr.*, 386 S.C. 182, 184, 687 S.E.2d 54, 56 (Ct. App. 2009).

Petit, 2020 WL 12894729, at *1.

ARGUMENT

I. The Court’s Order that Penn National Must Electronically Image the Insurance Policies and Policy-Related Documents is Correct.

Penn National’s motion for reconsideration lacks merit and simply continues its campaign of delay.¹ Ellis & Winters discovered three Covil insurance policies in Penn National’s archives that Penn National failed to produce to Covil. (*See* Ellis & Winters’ March 22, 2022 Report). In response to that revelation, Penn National refused to take any responsibility. Rather, Penn National claims that “[t]here is no evidence that Penn National had actual knowledge of these policies but failed to provide them to the Receiver.” (Mot. at 3). This argument encapsulates this problem in a nutshell. Penn National now clings to the absurd position that it does not have “actual knowledge” of its own insurance policies maintained in its own archives. And it will not have “actual knowledge” of any such policies unless and until the Receiver provides a specific policy number. There is simply no rational basis in fact or law for an insurance company to take such a position in discovery.

The Receiver is entitled to discover the insurance policies in Penn National’s archives that provide protection to Covil. The Court’s Order requiring the electronic imaging of Penn National’s

¹ Notably, although Penn National complains about this order, Penn National also declined to submit any proposed order to this Court when it had the opportunity to do so.

policy-related documents for electronic searching is a rational and targeted response to Penn National's repeated defiance of this Court's orders in maintaining its position that it will only search for policies in its archives when provided a policy number.²

Penn National also complains that "the current Order requires Penn National to incur the entire cost of hiring a vendor selected by Ellis & Winters to image Penn National's microfiche to an electronic database that the Receiver and his counsel will have unfettered access to review on a rolling basis." (Mot. at 6, 9). This information is clearly discoverable. Penn National is the party solely responsible for the manner in which it has stored its archived policy-related microfiche, and it has not been candid with the Receiver about the existence of these materials. Therefore, Penn National should be solely responsible for the cost of electronically imaging its own policy-related documents to search for responsive documents in discovery.

II. The Court's Order That the Receiver and His Counsel Will Have Access to the Electronically Imaged Microfiche Is Correct.

Penn National's assertion that the Court's Order providing the Receiver and his counsel with access to the electronically imaged microfiche is "meant to penalize Penn National" is inaccurate. The Receiver is charged with marshalling the insurance assets of Covil, in part, to provide insurance proceeds to defend, and potentially resolve, asbestos claims. Therefore, time is of the essence. The Order merely acknowledges that Penn National has had years to conduct these

² Penn National also asks this Court to reverse its Order, arguing that it has not been "evasive in its discovery responses" and it has not "failed to fully comply with its discovery obligations." (Mot. at 2). The Court should summarily reject these self-serving arguments from Penn National for the same reasons it has repeatedly rejected them in the past. Penn National has taken no responsibility for its discovery failures in this case and the needless delays such obstructions have imposed on the Court, its staff, and the Receiver's ability to marshal the insurance assets of Covil Corporation.

discovery searches on its own and has failed (or refused) to do so. Allowing the Receiver to access the database directly will simply expedite the process. It in no way punishes Penn National.

Penn National also argues that the Receiver should not have access to the material given the confidential nature of the documents in the archive. Specifically, Penn National claims that the database contains “very sensitive information concerning an insured’s financials and sensitive risk assessments of Penn National’s insureds.” (Mot. at 7). However, this concern has no merit. The Receiver represents defunct companies that will gain no conceivable business advantage from reviewing historic financial information or risk assessments. Moreover, the Receiver and his outside counsel have already been ordered to keep such information strictly confidential.

III. The Court’s Order Requiring Immediate Production Of Certain Documents, Including Policy Prefix Code Keys, Is Correct.

Penn National’s assertion that it should not be required to produce certain documents, including policy prefix code keys and underwriting documents, because they are “unnecessary” is baseless. (Mot. at 10-11).

First, Penn National claims incorrectly that the Receiver does not need Penn National to produce the policy prefix code keys because the Receiver “has access to Ellis & Winters’ detailed knowledge of Penn National’s policy prefixes.” (Mot. at 10). The fact that the Receiver may obtain certain second-hand information from Ellis & Winters is no substitute for reviewing the primary source documents themselves. Second, with respect to production of documents used to identify the three additional Covil policies, Penn National claims for the first time that it “did not disclose any such information to Ellis & Winters.” If Penn National’s representation is correct, then Penn National can provide that information to the Court and the Receiver will be able to question Penn National’s corporate representative accordingly. However, it is no justification for reversing the Court’s order. Similarly, Penn National claims that it should not be required to produce all

underwriting documents for all Receivership entities because such documents are contained in the microfiche cards. Again, to the extent that Penn National represents that it has conducted a search for such documents and all such documents are contained on microfiche, then it can make that representation in response to the Court's Order.

IV. The Court's Order Denying Penn National's Motion to Quash The Receiver's Ability To Taken An Amended Rule 30(b)(6) Deposition Is Correct.

The Receiver is not seeking "cumulative and duplicative" discovery through a Rule 30(b)(6) deposition, as Penn National claims. (Mot. 11). Penn National did not produce a significant amount of its written discovery responses and documents until after the deposition notice was originally served. Accordingly, for the reasons outlined in Covil's opposition briefing, the Court's order denying the motion to quash is correct.

V. The Court's Order Directing the Receiver to Transmit The Order To The South Carolina Department of Insurance Is Correct, and the Receiver Already Transmitted the Order as Directed by this Court.

Penn National mischaracterizes this Court's direction to the Receiver to transmit a copy of the Order to the South Carolina Department of Insurance as a "sanction" or "contempt" Order, but provides no rationale for that characterization. Regardless, the Receiver already transmitted the Order to the Department of Insurance as directed by this Court.

CONCLUSION

The Receiver respectfully requests that the Court deny Penn National's motion for reconsideration.

[Signature Block to Follow]

Respectfully submitted,

/s/ Jescelyn T. Spitz

Jescelyn T. Spitz (SC Bar No. 101880

Rikard & Protopapas, LLC

2110 N. Beltline Blvd.

Columbia, SC 29204

803.978.6111

jspitz@rplegalgroup.com

May 18, 2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**NOTICE OF FILING OF DOCUMENTS
IN SUPPORT OF DEFENDANT
PENN NATIONAL'S MOTION FOR
RECONSIDERATION**

NOW COMES Pennsylvania National Mutual Casualty Insurance Company
("Penn National") and hereby submits this Notice of Filing of Documents in Support of
Defendant Penn National's Motion for Reconsideration with the following documents:

Exhibit	Document Title
1	Ellis & Winters LLP Detailed Invoice (redacted version electronically-filed with the Court, with un-redacted version submitted to the Court for review and to be filed under seal pending an Order on Penn National's Motion to Seal)

[Signature page to follow]

Respectfully submitted, this the 19th day of May, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: dharris@goldbergsegalla.com

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: byntema@goldbergsegalla.com

Alexander E. Davis

S.C. Bar # 100061

Email: aedavis@goldbergsegalla.com

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

Attorneys for Defendant Penn National

REDACTED EXHIBIT 1 TO DEFENDANT PENN NATIONAL'S
MOTION FOR RECONSIDERATION



MAILING ADDRESS
Post Office Box 33550
Raleigh, North Carolina 27636
TEL 919.865.7000
www.elliswinters.com
Federal Tax I.D. No.: 56-2208313

Penn National Document Review

May 05, 2022
Client: 013508
Matter: 000001
Invoice #: 104876
Resp. Atty: ABW
Page: 1

RE: Penn National Document Review

For Professional Services Rendered Through April 30, 2022

SERVICES

Date	Person	Description of Services	Hours
11/01/2021	ABW	[REDACTED]	0.40
11/01/2021	ABW	[REDACTED]	1.90
11/01/2021	ABW	[REDACTED]	1.90
11/02/2021	ABW	[REDACTED]	1.70
11/02/2021	LCP	[REDACTED]	0.30
11/02/2021	KMB	[REDACTED]	0.20
11/02/2021	SAS	[REDACTED]	0.60
11/02/2021	BMF	[REDACTED]	0.20
11/03/2021	ABW	[REDACTED]	2.00
11/03/2021	LCP	[REDACTED]	0.40
11/03/2021	LCP	[REDACTED]	0.20



May 05, 2022
Client: 013508
Matter: 000001
Invoice #: 104876
Resp. Atty: ABW
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ELECTRONICALLY FILED - 2022 May 19 5:08 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

SERVICES

Date	Person	Description of Services	Hours
11/03/2021	KMB	[REDACTED]	0.20
11/03/2021	BMF	[REDACTED]	0.50
11/03/2021	BMF	[REDACTED]	1.80
11/03/2021	BMF	[REDACTED]	0.70
11/03/2021	CLB	[REDACTED]	0.30
11/03/2021	SHK	[REDACTED]	1.20
11/04/2021	ABW	[REDACTED]	1.50
11/04/2021	SFL	[REDACTED]	0.20
11/05/2021	KMB	[REDACTED]	0.70
11/05/2021	SHK	[REDACTED]	0.30
11/07/2021	LCP	[REDACTED]	0.10
11/07/2021	KMB	[REDACTED]	1.40
11/07/2021	KMB	[REDACTED]	0.40
11/07/2021	KMB	[REDACTED]	2.70



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ELECTRONICALLY FILED - 2022 May 19 5:08 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

SERVICES

Date	Person	Description of Services	Hours
11/08/2021	KMB	[REDACTED]	1.70
11/08/2021	KMB	[REDACTED]	1.90
11/08/2021	KMB	[REDACTED]	1.10
11/08/2021	BMF	[REDACTED]	1.50
11/09/2021	ABW	[REDACTED]	0.50
11/09/2021	KMB	[REDACTED]	0.10
11/09/2021	SAS	[REDACTED]	0.60
11/09/2021	CLB	[REDACTED]	0.20
11/12/2021	ABW	[REDACTED]	0.30
11/14/2021	KMB	[REDACTED]	1.50
11/15/2021	BMF	[REDACTED]	3.00
11/16/2021	LCP	[REDACTED]	0.10
11/16/2021	KMB	[REDACTED]	1.70
11/16/2021	KMB	[REDACTED]	0.80



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SERVICES

Date	Person	Description of Services	Hours
11/16/2021	KMB	[REDACTED]	0.70
11/16/2021	BMF	[REDACTED]	1.30
11/17/2021	ABW	[REDACTED]	2.40
11/17/2021	KMB	[REDACTED]	1.30
11/17/2021	BMF	[REDACTED]	2.70
11/18/2021	ABW	[REDACTED]	1.40
11/18/2021	KMB	[REDACTED]	1.00
11/18/2021	KMB	[REDACTED]	0.70
11/18/2021	KMB	[REDACTED]	0.30
11/18/2021	KMB	[REDACTED]	0.30
11/18/2021	BMF	[REDACTED]	0.70
11/19/2021	ABW	[REDACTED]	1.50
11/19/2021	KMB	[REDACTED]	2.70



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SERVICES

Date	Person	Description of Services	Hours
11/19/2021	KMB	[REDACTED]	2.10
11/19/2021	KMB	[REDACTED]	1.00
11/19/2021	KMB	[REDACTED]	1.00
11/19/2021	KMB	[REDACTED]	0.20
11/19/2021	KMB	[REDACTED]	0.30
11/19/2021	KMB	[REDACTED]	1.20
11/19/2021	BMF	[REDACTED]	2.80
11/22/2021	ABW	[REDACTED]	1.00
11/24/2021	ABW	[REDACTED]	0.20
11/24/2021	KMB	[REDACTED]	0.20
11/30/2021	ABW	[REDACTED]	0.50
11/30/2021	ABW	[REDACTED]	1.50
11/30/2021	KMB	[REDACTED]	0.40
11/30/2021	BMF	[REDACTED]	0.70



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SERVICES

Date	Person	Description of Services	Hours
12/01/2021	ABW	[REDACTED]	1.00
12/01/2021	ABW	[REDACTED]	0.90
12/02/2021	ABW	[REDACTED]	0.20
12/02/2021	KMB	[REDACTED]	0.30
12/03/2021	ABW	[REDACTED]	0.50
12/03/2021	ABW	[REDACTED]	2.80
12/03/2021	KMB	[REDACTED]	3.80
12/06/2021	KMB	[REDACTED]	0.80
12/07/2021	ABW	[REDACTED]	2.30
12/07/2021	KMB	[REDACTED]	0.50
12/09/2021	ABW	[REDACTED]	1.00
12/09/2021	KMB	[REDACTED]	0.20
12/10/2021	ABW	[REDACTED]	4.30
12/10/2021	CJS	[REDACTED]	0.50
12/10/2021	KMB	[REDACTED]	0.20
12/10/2021	KMB	[REDACTED]	1.00



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SERVICES

Date	Person	Description of Services	Hours
12/10/2021	KMB	[REDACTED]	0.50
12/10/2021	KMB	[REDACTED]	0.80
12/13/2021	ABW	[REDACTED]	0.20
12/13/2021	ABW	[REDACTED]	0.20
12/13/2021	KMB	[REDACTED]	0.20
12/14/2021	ABW	[REDACTED]	2.30
12/14/2021	KMB	[REDACTED]	0.90
12/14/2021	KMB	[REDACTED]	0.40
12/14/2021	BMF	[REDACTED]	0.80
12/17/2021	ABW	[REDACTED]	2.50
12/17/2021	KMB	[REDACTED]	0.10
12/17/2021	KMB	[REDACTED]	0.30
12/20/2021	ABW	[REDACTED]	6.00
12/20/2021	ABW	[REDACTED]	3.00
12/20/2021	KMB	[REDACTED]	6.90
12/20/2021	KMB	[REDACTED]	3.20
12/20/2021	BMF	[REDACTED]	5.60



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SERVICES

Date	Person	Description of Services	Hours
12/20/2021	BMF	[REDACTED]	2.70
12/21/2021	ABW	[REDACTED]	8.00
12/21/2021	ABW	[REDACTED]	6.00
12/21/2021	KMB	[REDACTED]	6.90
12/21/2021	KMB	[REDACTED]	7.50
12/21/2021	KMB	[REDACTED]	0.50
12/21/2021	BMF	[REDACTED]	6.20
12/21/2021	BMF	[REDACTED]	8.20
12/28/2021	ABW	[REDACTED]	0.50
12/28/2021	KMB	[REDACTED]	0.50
12/28/2021	BMF	[REDACTED]	0.30
12/29/2021	BMF	[REDACTED]	0.80
01/07/2022	ABW	[REDACTED]	0.90
01/07/2022	KMB	[REDACTED]	0.80
01/07/2022	KMB	[REDACTED]	0.60
01/18/2022	KMB	[REDACTED]	0.40
01/18/2022	BMF	[REDACTED]	0.30



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SERVICES

Date	Person	Description of Services	Hours
01/24/2022	KMB	[REDACTED]	0.60
01/24/2022	KMB	[REDACTED]	1.50
01/24/2022	BMF	[REDACTED]	0.40
01/25/2022	ABW	[REDACTED]	0.50
01/25/2022	ABW	[REDACTED]	0.90
01/25/2022	KMB	[REDACTED]	0.30
01/25/2022	KMB	[REDACTED]	0.50
01/25/2022	KMB	[REDACTED]	0.30
01/25/2022	BMF	[REDACTED]	0.80
01/26/2022	KMB	[REDACTED]	1.30
01/26/2022	KMB	[REDACTED]	0.40
01/26/2022	KMB	[REDACTED]	0.40
01/26/2022	BMF	[REDACTED]	0.40
01/27/2022	ABW	[REDACTED]	0.90
01/27/2022	KMB	[REDACTED]	0.20



May 05, 2022
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SERVICES

Date	Person	Description of Services	Hours
01/27/2022	BMF	[REDACTED]	0.20
02/07/2022	ABW	[REDACTED]	0.40
02/07/2022	BMF	[REDACTED]	0.20
02/08/2022	KMB	[REDACTED]	0.10
02/09/2022	ABW	[REDACTED]	0.90
02/09/2022	KMB	[REDACTED]	1.00
02/10/2022	ABW	[REDACTED]	0.50
02/10/2022	KMB	[REDACTED]	0.50
02/10/2022	BMF	[REDACTED]	0.70
02/15/2022	ABW	[REDACTED]	1.50
02/15/2022	KMB	[REDACTED]	1.40
02/15/2022	KMB	[REDACTED]	0.30
02/15/2022	BMF	[REDACTED]	1.50
02/18/2022	KMB	[REDACTED]	0.70



May 05, 2022
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ELECTRONICALLY FILED - 2022 May 19 5:08 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

SERVICES

Date	Person	Description of Services	Hours
02/18/2022	KMB	[REDACTED]	0.30
02/23/2022	KMB	[REDACTED]	1.20
02/23/2022	KMB	[REDACTED]	0.30
02/23/2022	KMB	[REDACTED]	1.00
02/25/2022	ABW	[REDACTED]	0.90
02/25/2022	ABW	[REDACTED]	1.00
02/25/2022	KMB	[REDACTED]	0.50
02/25/2022	KMB	[REDACTED]	1.50
02/25/2022	BMF	[REDACTED]	2.10
02/28/2022	KMB	[REDACTED]	0.30
02/28/2022	BMF	[REDACTED]	1.00
03/01/2022	ABW	[REDACTED]	1.00
03/01/2022	KMB	[REDACTED]	0.40
03/01/2022	KMB	[REDACTED]	1.10



May 05, 2022
Client: 013508
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ELECTRONICALLY FILED - 2022 May 19 5:08 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

SERVICES

Date	Person	Description of Services	Hours
03/01/2022	KMB	[REDACTED]	3.10
03/01/2022	BMF	[REDACTED]	0.90
03/02/2022	ABW	[REDACTED]	1.00
03/02/2022	ABW	[REDACTED]	1.00
03/02/2022	KMB	[REDACTED]	1.00
03/02/2022	KMB	[REDACTED]	2.80
03/02/2022	BMF	[REDACTED]	1.10
03/04/2022	ABW	[REDACTED]	2.50
03/04/2022	KMB	[REDACTED]	0.20
03/04/2022	KMB	[REDACTED]	1.30
03/04/2022	BMF	[REDACTED]	0.30
03/06/2022	KMB	[REDACTED]	3.60
03/06/2022	KMB	[REDACTED]	3.00
03/07/2022	ABW	[REDACTED]	1.00



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SERVICES

Date	Person	Description of Services	Hours
03/07/2022	ABW	[REDACTED]	0.50
03/07/2022	KMB	[REDACTED]	0.20
03/07/2022	KMB	[REDACTED]	2.20
03/07/2022	KMB	[REDACTED]	0.50
03/07/2022	BMF	[REDACTED]	1.80
03/16/2022	BMF	[REDACTED]	6.50
03/16/2022	BMF	[REDACTED]	3.00
03/16/2022	BR	[REDACTED]	6.50
03/16/2022	BR	[REDACTED]	3.00
03/17/2022	KMB	[REDACTED]	0.30
03/17/2022	KMB	[REDACTED]	0.30
03/17/2022	BMF	[REDACTED]	7.00
03/17/2022	BMF	[REDACTED]	7.70
03/17/2022	BR	[REDACTED]	8.00
03/17/2022	BR	[REDACTED]	7.00
03/18/2022	ABW	[REDACTED]	1.00



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SERVICES

Date	Person	Description of Services	Hours
03/18/2022	KMB	[REDACTED]	0.30
03/18/2022	KMB	[REDACTED]	0.90
03/18/2022	KMB	[REDACTED]	1.60
03/18/2022	BMF	[REDACTED]	1.40
03/21/2022	ABW	[REDACTED]	1.00
03/21/2022	CJS	[REDACTED]	1.80
03/21/2022	KMB	[REDACTED]	0.50
03/21/2022	KMB	[REDACTED]	0.40
03/21/2022	KMB	[REDACTED]	0.70
03/21/2022	KMB	[REDACTED]	1.00
03/21/2022	KMB	[REDACTED]	1.90
03/21/2022	BMF	[REDACTED]	1.80
03/22/2022	ABW	[REDACTED]	3.50
03/22/2022	KMB	[REDACTED]	2.80
03/22/2022	KMB	[REDACTED]	1.60
03/22/2022	BMF	[REDACTED]	1.90



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SERVICES

Date	Person	Description of Services	Hours
03/24/2022	LTJ	[REDACTED]	0.50
03/31/2022	CJS	[REDACTED]	0.10
03/31/2022	LCP	[REDACTED]	0.10
04/06/2022	ABW	[REDACTED]	0.20
04/06/2022	ABW	[REDACTED]	0.80
04/08/2022	ABW	[REDACTED]	1.00
04/10/2022	KMB	[REDACTED]	0.40
04/10/2022	BMF	[REDACTED]	2.30
04/11/2022	ABW	[REDACTED]	2.20
04/11/2022	ABW	[REDACTED]	1.90
04/11/2022	BMF	[REDACTED]	4.70
04/11/2022	BMF	[REDACTED]	6.50
04/19/2022	BMF	[REDACTED]	0.40
04/20/2022	LTJ	[REDACTED]	0.10
04/21/2022	LTJ	[REDACTED]	0.10
04/22/2022	LTJ	[REDACTED]	0.10
04/26/2022	LTJ	[REDACTED]	0.10
Total Professional Services			327.00



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TIMEKEEPER SUMMARY

Person			Hours	Rate	Amount
ABW	Ashley K. Brathwaite	Partner	60.40		
ABW	Ashley K. Brathwaite	Partner	27.00		
LCP	Leslie C. Packer	Partner	1.10		
LCP	Leslie C. Packer	Partner	0.10		
CJS	Curtis J. Shipley	Partner	1.90		
CJS	Curtis J. Shipley	Partner	0.50		
KMB	Katherine M. Bandy	Associate	63.40		
KMB	Katherine M. Bandy	Associate	48.40		
SFL	Scottie F. Lee	Associate	0.20		
SAS	Steven A. Scoggan	Associate	1.20		
CLB	Crystal L. Boyd	Paralegal	0.50		
BMF	Brian M. Flatley	Paralegal	40.50		
BMF	Brian M. Flatley	Paralegal	54.90		
LTJ	Linda T. Jones	Paralegal	0.90		
SHK	Sarah H. Kaufman	Paralegal	1.50		
BR	Brandon Reiniger	Paralegal	24.50		

DISBURSEMENTS

Date	Description of Disbursements	Amount
12/22/2021	Ashley K. Brathwaite- Travel- Hotel/Lodging	\$200.46
12/22/2021	Ashley K. Brathwaite- Meals- Downtown Deli & Catering 12/21/2021	\$19.91
12/22/2021	Ashley K. Brathwaite- Travel- RDU Airport short-term parking ticket 12/20-12/21/2021	\$44.00
12/22/2021	Ashley K. Brathwaite- Travel- Roundtrip Delta flight to Harrisburg, PA from RDU.	\$718.40
12/23/2021	Brian M. Flatley- Travel- Air travel to and From Harrisburg PA for visit to Penn National Office for document review pursuant to Justice Toal's Order.	\$474.92
12/23/2021	Brian M. Flatley- Travel- Parking at RDU for air travel to and from Harrisburg PA	\$30.00
12/23/2021	Brian M. Flatley- Travel- Hotel/Lodging in Harrisburg PA	\$202.94
12/23/2021	Brian M. Flatley- Travel- Uber rides to and from Harrisburg airport and Hilton hotel.	\$57.08
12/23/2021	Brian M. Flatley- Meals- Lunch on 12/21 while performing document review at Penn National office.	\$6.89



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DISBURSEMENTS

Date	Description of Disbursements	Amount
12/30/2021	Katherine M. Bandy- Travel- Hotel/Lodging	\$235.13
12/30/2021	Katherine M. Bandy- Travel- Round trip flight to Harrisburg, PA from Raleigh, NC	\$668.90
12/30/2021	Katherine M. Bandy- Travel- RDU airport parking 12/20-12/21	\$30.00
03/18/2022	Brian M. Flatley- Meals- Meals	\$124.22
03/18/2022	Brian M. Flatley- Travel- Parking	\$40.00
03/18/2022	Brian M. Flatley- Travel- Hotel/Lodging	\$259.74
03/18/2022	Brian M. Flatley- Mileage- Mileage (769 @ \$0.585)	\$449.87
04/14/2022	Brian M. Flatley- Mileage- Travel to/from Columbia, SC to attend court-ordered hearing related to Penn National (462 @ \$0.585)	\$270.27
Total Disbursements		\$3,832.73
Total Services		\$68,136.50
Total Disbursements		\$3,832.73
CURRENT INVOICE TOTAL		\$71,969.23
TOTAL BALANCE NOW DUE		\$71,969.23



May 31, 2022

Via Email and First Class Mail

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Covil Corp. v. Pennsylvania National Mutual Casualty Ins. Co.
Richland County, SC – Case No. 2020-CP-40-02098

Dear Ms. Kitchings:

I am enclosing Pennsylvania National's Notice of Appeal regarding the above-referenced matter. I am also enclosing our firm check in the amount of \$250.00.

Thank you for your help.

Sincerely yours,

Jane Carter

Jane Carter, NCCP
Paralegal to David G. Harris II

enclosures

- c: The Honorable Jeanette W. McBride (*with enclosures via Electronic Filing*)
Jescelyn Tillman Spitz (*with enclosures via Email & First Class Mail*)
G. Murrell Smith, Jr. (*with enclosures via Email & First Class Mail*)
Jonathan M. Robinson (*with enclosures via Email & First Class Mail*)
Brad Nes (*with enclosures via Email & First Class Mail*)

Please send mail to our scanning center at: PO Box 727, Buffalo NY 14201

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

Covil Corporation, by and
through its duly appointed
Receiver, Peter D. Protopapas,

Respondent,

v.

Pennsylvania National Mutual
Casualty Insurance Company,

Appellant.

NOTICE OF APPEAL

Pennsylvania National Mutual Casualty Insurance Company appeals the following Orders of the Honorable Jean H. Toal filed on May 5, 2022 and May 26, 2022. Appellant received written notice of entry of the Order filed on May 5, 2022, in this action on or after May 5, 2022, and received written notice of entry of the Order filed on May 26, 2022, in this action on or after May 26, 2022.¹

May 31, 2022.

/s/ David G. Harris II

David G. Harris II (S.C. State Bar No. 101951)

dharris@goldbergsegalla.com

¹ The Order entered on May 5, 2022, indicates that it applies in this case as well as any other matters in which Peter Protopapas is appointed the Receiver, and specifically identifies Case Numbers 2020-CP-40-04475, 2021-CP-40-03484, 2021-CP-40-01821, 2020-CP-40-05526, 2020-CP-40-01364, and 2020-CP-40-01952.

David L. Brown (N.C. State Bar No. 18942)
dbrown@goldbergsegalla.com
Brady A. Yntema (N.C. State Bar No. 25771)
byntema@goldbergsegalla.com

GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950
*Attorney for Appellant Pennsylvania
National Mutual Casualty Insurance Co.*

Other Counsel of Record:

Jescelyn Tillman Spitz
jspitz@rplegalgroup.com
RIKARD & PROTOPAPAS, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Telephone: (803) 978-6111

G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
Jonathan M. Robinson
jon@smithrobinsonlaw.com
SMITH ROBINSON HOLLER
DUBOSE AND MORGAN, LLC
2725 Devine Street
Columbia, South Carolina 29205
Telephone: (803) 254-5445

W. Brad Nes
brad.nes@morganlewis.com
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Telephone: (202) 793-5779

Attorneys for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

ORDER ON DISCOVERY MOTIONS

This matter is before the Court on various discovery disputes between the Receivership for Covil Corporation (“Covil”) and Pennsylvania National Mutual Casualty Insurance Company (“Penn National”). There are numerous matters before the Court at this time, including Ellis & Winters LLP’s March 22, 2022 letter report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court’s November 5, 2021 Discovery Order;¹ the Receiver’s February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; the Receiver’s March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents; Penn National’s December 22, 2021 Motions to Quash; and Penn National’s April 7, 2022 Motion to Seal.²

¹ The Court also considered the prior letter reports filed by Penn National in response to the Court’s November 5, 2021 Discovery Order.

² Also before the Court is the Receiver’s motion to compel Penn National in the non-Covil Receiverships. Specifically, the Receiver seeks insurance policies and policy-related documents from Penn National for 14 other entities for which Mr. Protopapas is currently the receiver. In response to the Receiver’s Subpoenas *Duces Tecum*, Penn National produced boiler plate objections and zero documents. *See* March 1, 2022 Motion to Compel filed against Penn National on behalf of the Receiver for Flame Refractories, Inc. and United Construction Co. of Rome, Inc., General Boiler Casing Company, Inc., Payne & Keller Company, Piedmont Insulation, Inc. and Reynolds Insulation, Pipe & Boiler Insulation, Inc. and Carolina Industrial Insulating Co., Presnell Insulation, Co., Standard Insulation Company of N.C.

BACKGROUND

Peter D. Protopapas was appointed by this Court in 2018 as the Receiver for Covil, a defunct South Carolina corporate entity. Covil engaged in the business of installing, removing and sometimes selling insulation made with asbestos materials in the State of South Carolina and in other places in the Southeast for many years between the 1960s and the 1990s. Covil has been sued in many asbestos lawsuits, and this Court was appointed to manage the asbestos docket at the direction of the Chief Justice of the Supreme Court of South Carolina. This Court therefore charged the Receiver with marshalling Covil's assets, including all occurrence-based liability insurance policies, that may respond to the asbestos suits pending against Covil.

Prior to the Receiver's appointment, this Court had a regular situation occur in which Covil Corporation would not respond to requests for information, necessitating orders compelling compliance with discover obligations. Ultimately, after granting numerous motions to compel with no response, this Court struck Covil's pleadings in an underlying asbestos case as a sanction for its failure to respond to discovery.

This Court learned subsequently that, after letting its charter lapse from the State of South Carolina, Covil had been effectively managed by the attorneys for certain insurance companies that covered Covil.³ The strategic litigation approach adopted on Covil's behalf by other insurers was to not participate in discovery. Rather, it was to accept the pleadings on Covil's behalf and then engage in a course of conduct of waiting until the last moment and then settling the cases at a nuisance value. The other insurers appeared to want to be as minimally responsive as possible

Inc., Davis Mechanical Contractors, Inc., Great Barrier Insulation Co., HEFCO, Inc., J. & L. Insulation, Inc., and J.R. Deans Company, Inc., in Case Numbers 2020-CP-40-04475, 2021-CP-40-03484, 2020-CP-40-01821, 2020-CP-40-05526, 2021-CP-40-01364, and 2020-CP-40-01952. Penn National takes the position that it cannot reasonably search its historic policies contained on microfiche cards unless the Receiver provides a specific policy number.

³ Penn National was not providing a defense in the underlying asbestos cases for Covil at that time.

to avoid discovery of the occurrence-based general liability policies covering Covil. When this Court learned of certain Covil insurers' conduct, it appointed a receiver to manage Covil's assets. And the only assets Covil had at that time, and has to this day, are the coverage provided by the "legacy" occurrence-based general liability insurance policies covering Covil that were issued during the time it was an active asbestos insulation company.⁴

Covil, under the guidance of the Receiver, has identified numerous insurance policies issued by several different insurance companies covering its defense and indemnity obligations for the asbestos suits. A court-approved Qualified Settlement Fund ("QSF") has been created and funded by the proceeds of settlements with at least six insurers. Those insurance companies went through a long process of disclosure and negotiation, resulting in approval by the Court of settlement proposals that initially funded the QSF.

Penn National is now the company with which the Receiver is seeking information and documents related to the "legacy" occurrence-based liability policies it issued covering Covil as a primary or additional insured. Penn National first came to this Court's attention in connection with the *Finch* case, which was an asbestos case tried in federal court in North Carolina resulting in a \$32.7 million judgment against Covil. Specifically, certain general liability insurance policies issued by Penn National that covered Covil were located by Penn National in response to an asbestos claimant subpoena in the *Finch* case that provided specific policy numbers for certain policies issued by Penn National to Covil. After his appointment, the Receiver subsequently requested insurance policy information from Penn National as well.

⁴ In PCS Nitrogen, Inc. v. Continental Casualty Company, et al., the SC Supreme Court adopted "the post-loss exception and [held] insurer consent is not required for an assignment of liability insurance coverage rights made after a loss." No. 28093, 2022 WL 1101704, at *4 (S.C. April 13, 2022).

Throughout the Covil litigation, Penn National has taken the position that it is unable to access any possible historic occurrence-based liability coverage, from its Iron Mountain, Inc. storage facility⁵ or any other storage facility, for Covil or any other policyholder it may have insured in the past unless it is provided with a policy number. It was then developed that Penn National has stored a significant amount of historic policy-related material on microfiche cards. But, again, Penn National has repeatedly taken the position that given that its historic policy related documents are stored on microfiche by policy number, and due to the fact that the material is so voluminous, it cannot search its historic policy related documents on microfiche unless it is given a policy number.

Covil diligently pursued discovery of all insurance policies issued by Penn National that cover Covil, in any way, through written requests for information as well as multiple depositions. This Court has now gone through several hearings with Penn National and the Receiver on motions to compel relating to the ability to locate policies in Penn National's historic repositories to discover whether any of them relate to Covil or to other receiverships that have been established in this state, of which Mr. Protopapas is the Receiver. No material has been forthcoming from Penn National's historic or "legacy" microfiche archives unless it was provided with a policy number. That is still where the Court finds itself today.

It is axiomatic that insurers, such as Penn National, have a duty to cooperate with the Receiver in the search for historic liability policies by complying with their discovery obligations. Failure to do so increases expenses and wastes this Court's time. This Court fully expects that an insurance company served with discovery requests from a receiver in this state, seeking the

⁵ Iron Mountain Inc. is a national document management firm which provides storage and information management services, including information management, digital transformation, secure storage, secure destruction, data centers, cloud services, and art storage and logistics. It is highly likely this firm could provide services that would digitize and make searchable all policies and documents that Penn National stores with it.

identification and production of insurance policies issued to the company as a named insured or which otherwise includes the company as a supplemental or additional insured, will search its entire repository of insurance policies and policy-related information for documents identifying the defunct company at issue. The Receiver need only provide the insurance company with the name of the defunct company for which it is seeking to marshal insurance assets. For the avoidance of doubt, this Court flatly rejects any assertion that an insurance company may refuse to search its repositories of insurance policies for responsive documents unless and until it is provided with a specific policy number.

Penn National has totally and completely failed to meet this most basic discovery obligation here. Penn National's discovery conduct has created considerable burdens for Covil and this Court. The Receiver has diligently sought discovery of Covil insurance policies and related documentation from Penn National for several years. However, Penn National refused to review its own microfiche and paper policy related historical documents unless it was provided with a policy number for the specific policy requested. Covil was therefore forced to file numerous motions to compel. This Court conducted multiple hearings on Penn National's discovery intransigence and issued multiple discovery orders compelling Penn National to meaningfully participate in discovery. A brief summary follows:

- At the January 25, 2021 discovery hearing, the Court ordered the Receiver for Covil to develop a specific inquiry and issue a new subpoena, if necessary, providing a list of job sites and owners to Penn National and ordered Penn National to conduct the searches and to respond with its findings promptly.
- On April 22, 2021, Covil filed a second motion to compel when Penn National refused to comply with its discovery obligations. Following a hearing, the Court granted the motion, finding that "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver." July 1, 2021 Order at 6. The Court ordered Penn National to "thoroughly search its paper records using the list

of contractors and facilities provided by the Receiver in connection with [Covil's] February 8, 2021, subpoena to Penn National." *Id.*

- On August 20, 2021 and September 8, 2021, Covil filed additional motions to compel in which Covil informed the Court that, among other things, Penn National, despite the Court's previous orders, continued to take the position that it could only search its historic policies contained on microfiche cards by policy number. On October 28, 2021, the Court held a motions hearing, and on November 5, 2021, the Court granted Covil's motions to compel, ordering that Covil's defense counsel in underlying asbestos cases, Ellis & Winters LLP, use its professional judgment to develop and implement an effective scope of document review to identify any additional Penn National policies that may provide coverage for Covil as either a primary or additional insured and make "suggestions for meeting Covil's needs to identify responsive coverage" while "not wasting Penn National's resources".
- Most recently, in light of Penn National's failure to issue a litigation hold to prevent the routine or automatic destruction of documents related to the Covil litigation, on February 11, 2022 the Court granted Covil's motion for a protective order, prohibiting Penn National from destroying its historic-policy related documents until the Court holds otherwise.

Despite this Court's prior orders, as of November 5, 2021, Penn National had not performed a complete manual search of its historic insurance policies contained on microfiche cards. Nor had it processed the microfiche cards so that the information could be searched electronically. It had not even sought estimates to do such work from vendors with experience imaging microfiche. This information is critical and discoverable not only in this coverage action, but also in the numerous underlying asbestos lawsuits in which Covil is a defendant. Covil has been sued in asbestos liability cases in South Carolina state courts and federal courts, and Covil needs its insurance policies to respond to routine discovery.⁶

⁶ See Rule 26(b)(2), SCRCP ("A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfying the judgment."); Rule 33(b)(4), SCRCP standard interrogatory (4) ("Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage provided in each policy); *see also* Fed. R. Civ. P. 26(a)(1)(A)(iv) ("a party must . . . provide to the other parties . . . for inspection and copying . . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment").

Ellis & Winters LLP was appointed by Covil's insurers to defend Covil in the underlying asbestos cases. Ellis & Winters' defense costs have been funded by Covil's insurers, including Penn National. This Court therefore ordered Penn National to open its repository of insurance policies and to facilitate a review performed by Covil's insurer-appointed defense counsel, Ellis & Winters. The Court directed the firm to perform this review using its own sound professional judgment and to report back to the Court with suggestions for meeting Covil's needs to identify responsive coverage while not wasting Penn National's resources. This Court entrusted Ellis & Winters with responsibility for this search because the insurance information is important and discoverable in its work as Covil's underlying asbestos defense counsel.

Approximately 120 days later, Ellis & Winters filed its March 22, 2022 report with this Court ("the Report"). After years of assurances from Penn National that it could not locate historic policies without a policy number, the Report provided an array of options for imaging and review of Penn National's policies, even in the absence of a policy number. As is relevant here, the "third option" involves imaging commercial line policy microfiche cards, eliminating certain cards solely by policy prefix. Specifically, Ellis & Winters selects a subset of commercial line microfiche cards to image by eliminating cards bearing prefixes that correspond to certain non-commercial liability policy types. The Report also explained that, after one day of in-person searching within microfiche cards at Penn National's headquarters, Ellis & Winters located three newly discovered policies covering Covil that Penn National had not produced to Covil, which all spanned the relevant timeframe of 1984 to 1986 and consisted of one inland marine policy, one boiler machinery policy, and one auto policy. Penn National's failure to independently identify and produce these additional insurance policies to Covil, which were requested years ago, is cause for great concern not only here but also in other Receivership litigation involving Penn National.

This Court has now lost all confidence in Penn National's willingness and ability to independently participate in discovery. The Court finds that Penn National's conduct with respect to its searches for historic Covil insurance policies (as well as non-Covil Receivership policies) amounts to a total and complete refusal to comply with its discovery obligations. It could well have done exactly what Ellis & Winters has proposed here. Penn National could have selected a vendor, processed the information on its microfiche cards, and conducted a review. It did not. Instead, Penn National took the defiant stance that it could not search for historic policies on its microfiche cards without being provided a policy number. That position turns out not to be so. This Court is left with no choice but to allow the Receiver to examine the records.

RULINGS AND ORDERS

1. Ellis & Winters' Report and Recommendations

A. Imaging and Review of Penn National's Microfiche Cards

After careful consideration, the Court is persuaded that the third option recommended by Ellis & Winters in its March 22 report will meet Covil's needs to identify responsive coverage while conserving Penn National's resources.

The Court finds that Ellis & Winters has effectively narrowed the universe of potentially responsive documents down to a set of microfiche cards containing historic insurance policies and policy-related information issued prior to 1992 and maintained by Penn National. The Court finds that Ellis & Winters' third option provides a reasonable and intentional process for further reducing that universe by policy number prefix to identify types of policies that are not relevant and can be excluded from scanning.

The Court therefore adopts the “third option” recommended by Ellis & Winters and DIRECTS Ellis & Winters to use its professional judgment⁷ to develop a methodology to select a subset of commercial line microfiche cards to image by eliminating certain cards bearing prefixes that correspond to certain non-commercial liability policy types.⁸ The methodology will be shared with both the Receiver and Penn National. However, Ellis & Winters is not required to receive the approval of either the Receiver or Penn National in developing its methodology.

The Court also DIRECTS Ellis & Winters to use its professional judgment to solicit bids from two or more vendors with experience imaging microfiche, to select an appropriate vendor (the “selected vendor”), to award the bid, and to supervise the selected vendor’s imaging of the microfiche cards into a format that is in a searchable database. Ellis & Winters will advise the Court and the parties as to the identity of the selected vendor and the terms of the selection.

Once the universe of records to image is determined by Ellis & Winters, images are scanned by the selected vendor, and information is available in a searchable database, the Court DIRECTS Ellis & Winters to provide Penn National and the Receiver with full access, on a rolling basis, to the database to conduct document reviews in order to search for responsive information for the Covil Receivership as well as the other Receiverships for which Peter D. Protopapas has been appointed Receiver.

To be clear, Ellis & Winters is not charged with reviewing the policies in the final database for responsiveness to the Receiver’s discovery requests. Ellis & Winters and its selected vendor are the vehicles to get the policies into a database where the information can be reviewed for responsiveness by the Receiver and his outside counsel. The Receiver and his outside counsel

⁷ Both the Receiver for Covil and Penn National have expressed confidence in the professional judgment of Ellis & Winters. *See* November 5, 2021 Discovery Order at 2.

⁸ The non-commercial liability policy types include business owner, fidelity bond, surety bond, and personal umbrella policies.

therefore must have full and unfettered access to every page of every insurance policy and policy-related document that Ellis & Winters and its selected vendor make available in the database. This will necessarily include reviewing records of other insureds' policies.

The Receiver will be entitled to review the policy records uploaded to the database to identify potentially responsive documents. The Receiver will be entitled to examine each and every policy to understand whether it is a policy that in any way, shape, or form covers Covil's asbestos responsibilities and liabilities. Because of Penn National's intransigence, the Court will not limit the Receiver's access to any of the information in the microfiche database. Ellis & Winters, however, should continue to make itself available to assist the Receiver search the records for the information that is needed to provide Covil with knowledge about its assets, including information concerning Penn National's policy prefixes and the identification of prefixes with policy lines of business identified in Ellis & Winters' report.

This Court DIRECTS Ellis & Winters to initiate and facilitate the above-referenced process immediately and to report back to the Court, on an interim basis, regarding progress made and any impediments to its progress. Time is of the essence.

Penn National is ORDERED to make all of its microfiche cards immediately available for review and imaging by Ellis & Winters and its selected vendor.

Penn National is also ORDERED to produce immediately to Covil all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report.⁹

⁹ Ellis & Winters explained to the Court at the April 11, 2022 hearing that it learned during its inquiry that Penn National policy numbers are constructed typically to have a numeric or an alpha prefix that indicates the type of policy. The Receiver is entitled to all information Penn National provided to Ellis & Winters regarding its policy prefixes. *See, e.g.*, Ellis & Winters' Report at 2.

Penn National is further ORDERED to produce immediately to Covil all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022. *See* Report at 3. This Court is deeply troubled that Penn National had access to these policy numbers in its underwriting files but did not disclose the existence of this information to the Court or bother to produce the three policies to Covil for several years.

Finally, Penn National is ORDERED to produce immediately all underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver.

B. Ellis & Winters Fees – Work to Date

Ellis & Winters reported at the April 11, 2022 hearing that all of its invoices for work to date, totaling approximately \$67,000, have been submitted to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP for payment but that those invoices have not been paid.

The Court finds that the fees and costs incurred by Ellis & Winters to date are reasonable for the tasks that were performed.

The Court hereby ORDERS Penn National to pay all outstanding invoices submitted by Ellis & Winters to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP in connection with this Court's November 5, 2021 Order within ten business days from the date of this Order.

C. Ellis & Winters and Selected Vendor Fees – Work Going Forward

This Court DIRECTS Ellis & Winters to set up a system of periodic billing to Penn National through Penn National's outside counsel at Goldberg Segalla for its work and its selected vendor's work in accordance with this Order.

This Court ORDERS that Penn National will pay all reasonable fees and costs invoiced by Ellis & Winters and its selected vendor for the work undertaken in accordance with this Order within thirty calendar days of receipt of the invoice.

This Court finds that the reasonable fees and costs that will be paid by Penn National are proportional to the needs of this case as well as the numerous other Receiverships for which this Court has appointed Mr. Protopapas. The Court is also in agreement with Ellis & Winters' well-reasoned evaluation at the April 11 hearing that its "third option" proposal constitutes "fairly typical discovery" in the context of the microfiche cards that are stored at Penn National.

This Court DIRECTS Ellis & Winters to advise the Receiver and the Court, on a periodic basis, of the expenses incurred for the work performed in accordance with this Order.

D. Confidentiality

This Court ORDERS Ellis & Winters and its selected vendor to keep confidential all insurance policies and policy-related documents processed from the microfiche cards and uploaded to the database.

This Court ORDERS the Receiver and his outside counsel to keep confidential all insurance policy or policy-related documents processed from the microfiche cards and uploaded to the database, and information obtained from those documents, that provide coverage to Covil or any other entities under Receiverships for which Mr. Protopapas is the court-appointed Receiver, except to the extent that such policies or information need to be disclosed in connection with mediation or any other court-supervised activity, including litigation.

This Court further ORDERS the Receiver to keep confidential all non-Covil and non-Receivership policies and policy related documents processed from the microfiche cards and uploaded to the database.

2. **Covil's Motion to Challenge Confidentiality and Penn National's Motion to Seal**

Covil moves to lift the confidential designation on the Document Retention Policies and Litigation Hold Procedure that Penn National produced to the Receiver on March 9, 2022 as "confidential material." This Court GRANTS the motion.

Penn National has not demonstrated that the documents contain propriety or commercially sensitive information worthy of protection under South Carolina law. The Court is also persuaded that Penn National has waived its argument that its document retention policies are confidential given that it made its retention document publicly available in other coverage litigation.¹⁰ Penn National's arguments to the contrary are unpersuasive and border on being specious.

Penn National is therefore ORDERED to remove the confidential designation from its Document Retention Policies and Litigation Hold Procedures and to produce all of them to Covil within five business days.

Penn National also filed a Motion to Seal Exhibit 12 to its opposition to Covil's Motion and Supplemental Motion to Compel. Covil has no objection to the motion. The motion is GRANTED, and Exhibit 12, which is a spreadsheet that purportedly shows information regarding non-workers compensation insurance policies issued by Penn National, is SEALED.

3. **Penn National's Motion to Quash Deposition(s) and Covil's Motions to Compel**

¹⁰ See, e.g., *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Tate Andale, Inc.*, No. 1:17-cv-00670 (D. Md.), ECF No. 50-32.

During the January 11, 2022 motions hearing, this Court noted that it would hold Penn National's motion to quash Covil's Rule 30(b)(6) deposition in abeyance until the Receiver has had an opportunity to develop the record more thoroughly through written discovery.

On January 18, the Receiver served requests for admission, requests for production, and interrogatories on Penn National. On February 17, Penn National produced its written responses to the Receiver's discovery requests and, on March 9, it produced certain documents.

Covil argues that Penn National failed to produce all responsive documents and failed to disclose all relevant information in response to its discovery requests. Covil also argues that Penn National, in certain instances, provided evasive answers. Covil therefore moved for an order compelling Penn National to provide revised and complete discovery responses.

This Court DENIES Penn National's motion to quash and DIRECTS Covil to serve a Rule 30(b)(6) deposition notice on Penn National for a deposition to take place as soon as practicable based on the date of this Order. With respect to at least one of the topics at the Rule 30(b)(6) deposition, this Court further ORDERS Penn National to provide a corporate representative to testify as to why Penn National uses the terminal digit filing system to store its historic occurrence-based liability policies.¹¹

Finally, the Court will HOLD IN ABEYANCE Covil's Motion to Compel and Supplemental Motion to Compel until the Receiver has had an opportunity to conduct the Rule 30(b)(6) deposition. If, after the deposition, the parties still cannot resolve any outstanding disputes, then they are ordered to report back to this Court to identify any remaining issues.

¹¹ This Court learned from Ellis & Winters during the April 11 hearing that Penn National used a terminal digit system to file its historic insurance policies and policy-related documents. That is, Penn National used approximately eight- or nine-digit policy numbers and filed the policies not by the numbers on the left side but by the numbers on the right side. Ellis & Winters' IT professional, Brian Flatley, could not speak to why a corporate entity, such as Penn National, would utilize such a system. However, this Court observes that such a system appears to make it much harder to find historic insurance policies when requested by their insureds.

CONCLUSION

This Court has serious concerns that Penn National's systemic failure to search for and produce insurance policy information to its insured in this case, unless it is given a specific policy number, may impact other South Carolina consumers who no longer have access to their policy numbers as well. The Court therefore DIRECTS the Receiver to transmit a copy of this order to the South Carolina Department of Insurance, Office of Consumer Services, for its review and information, at the following address: P.O. Box 100105, Columbia, South Carolina 29202-3105.

This Order applies in this case as well as in any other matters in which Mr. Protopapas is appointed the Receiver.

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



Richland Common Pleas

Case Caption: Covil Corporation By And Through Its Receiver , plaintiff, et al vs
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al
Case Number: 2020CP4002098
Type: Order/Other

So Ordered

Jean H. Toal

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL DISTRICT
CASE NUMBER: 2020-CP-40-02098

Covil Corporation, by and through its
duly appointed receiver Peter D.
Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual
Casualty Insurance Company; Sam J.
Crain & Co., Inc.; and South Carolina
Property & Casualty Insurance
Guaranty Association,

Defendants.

ORDER

Penn National moves this Court to reconsider its May 5, 2022 Order on Discovery Motions, which addressed: (1) Ellis & Winters LLP's March 22, 2022 report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court's November 5, 2021 Discovery Order; (2) the Receiver's February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; (3) the Receiver's March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents and Penn National's April 7, 2022 Motion to Seal; and (4) Penn National's December 22, 2021 Motions to Quash.

Upon consideration of Penn National's Motion for Reconsideration, the Receiver's Opposition to Penn National's Motion for Reconsideration, and for good cause shown, it is **HEREBY ORDERED** that Penn National's Motion for Reconsideration is **DENIED**. By separate

Order Penn National's 2022 Motion to Seal Exhibit 1 has been granted with consent of the Receiver.

This matter is an ongoing discovery issue, revolving around Penn National's refusal to produce insurance policies, and thus is not immediately appealable. Accordingly, a Motion for Reconsideration is inappropriately raised. The South Carolina Supreme Court has held, "an order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005)(See, *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974); *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985)). Pursuant to S.C. Code § 14-3-330(1), intermediate orders that involve the merits of the case may be immediately appealed and pursuant to S.C. Code § 14-3-330(2), interlocutory orders affecting a substantial right may be immediately appealed. An order which involves the merits, "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Id.* (Citing, *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780)). An order affecting a substantial right must "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* (Citing, *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4). Orders involving discovery disputes such as this do not qualify as appealable Orders.

Additionally, Penn National's Motion for Reconsideration does not recite an accurate reflection of this Court's Order or the activity of the parties in this protracted discovery dispute. The Receiver's reply, filed May 18, 2022, in opposition to Penn National's Motion for Reconsideration is a completely accurate recital of the law and facts of this discovery dispute and of the Orders of this Court including the May 5, 2022 Order on discovery motions. This Order must be immediately obeyed.

It is **SO ORDERED**.

[Electronic Signature on Following Page]

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ELECTRONICALLY FILED - 2022 May 26 3:57 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098



Richland Common Pleas

Case Caption: Covil Corporation By And Through Its Receiver , plaintiff, et al vs
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al
Case Number: 2020CP4002098
Type: Order/Other

So Ordered

Jean H. Toal

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

Covil Corporation, by and
through its duly appointed
Receiver, Peter D. Protopapas,

Respondent,

v.

Pennsylvania National Mutual
Casualty Insurance Company,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Covil Corporation, by and through its duly appointed Receiver, Peter D. Protopapas, by depositing a copy of it in the U.S. Mail, postage prepaid, on May 31, 2022, addressed to their attorneys of record:

Jescelyn Tillman Spitz
RIKARD & PROTOPAPAS, LLC
1329 Blanding Street
Columbia, South Carolina 29201
Telephone: (803) 978-6111

G. Murrell Smith, Jr.
Jonathan M. Robinson
SMITH ROBINSON HOLLER
DUBOSE AND MORGAN, LLC
2725 Devine Street
Columbia, South Carolina 29205
Telephone: (803) 254-5445

W. Brad Nes
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

Pursuant to The Supreme Court of South Carolina dated 2020-03-20 (g)(3), service using AIS E-mail address, a copy was also sent to the following:

jspitz@rplegalgroup.com
brad.nes@morganlewis.com

murrell@smithrobinsonlaw.com
jon@smithrobinsonlaw.com

May 31, 2022.

/s/ David G. Harris II
David G. Harris II (S.C. State Bar No. 101951)
dharris@goldbergsegalla.com
David L. Brown (N.C. State Bar No. 18942)
dbrown@goldbergsegalla.com
Brady A. Yntema (N.C. State Bar No. 25771)
byntema@goldbergsegalla.com
GOLDBERG SEGALLA LLP
701 Green Valley Road, Suite 310
Greensboro, North Carolina 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950
*Attorney for Appellant Pennsylvania National
Mutual Casualty Insurance Co.*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

C.A. No. 2020-CP-40-02098

Plaintiff,

**Report on Receivership Covil
Corporation**

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

I. BACKGROUND COVIL CORPORATION

From the time of its original formation in or about 1954, Covil Corporation (“Covil”) was engaged in the installation and removal of insulation in various industrial facilities across South Carolina and the Southeast. At certain times, insulation materials contained asbestos and Covil’s operations are alleged to have resulted in bodily injury. In 1991, Covil’s business failed and it ceased operations. Thereafter, in 1993, the State of South Carolina rescinded Covil’s corporate charter for failing to file the appropriate documentation with the Secretary of State. Covil was continually named as a defendant in civil litigation.

II. RECEIVER APPOINTMENT

In the fall of 2018, Covil defaulted on two mesothelioma asbestos cases pending in South Carolina. On November 2, 2018, the Court appointed (the “Order”) me to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law.

Among other things, the Order provides me “with the power and authority to fully administer all assets of Covil (“Covil”). This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil’s insurance carriers.” **See Exhibits A & B**, 11/2/2018 Order of Appointment 3/4/2019 Order Clarifying Appointment.

III. ACTIONS IDENTIFYING ASSETS

At the beginning of the Receivership, I, as Receiver, identified two areas of potentially responsive assets: (1) insurance policies and (2) professional liability claims. I engaged in extensive litigation pursuing these assets. **See Exhibit C**, list of lawsuits involving collection and determination of Receivership assets.

IV. STATUS OF COVIL’S ASSETS

Covil purchased insurance from Sentry Casualty Company (“Sentry”), United States Fidelity and Guarantee Co. (“USF&G”), Ranger Insurance Company now known as TIG Insurance Company (“TIG”), Hartford Accident and Indemnity Company (“Hartford”), Zurich American Insurance Company (“Zurich”) and Pennsylvania Mutual Insurance Company (“Penn”). **See Exhibit D**, Coverage Chart. The Receivership has settled litigation with the following carriers and established a Qualified Settlement Fund (QSF):

1. Sentry: See **Exhibit E**, Sentry Settlement Summary.
2. TIG: See **Exhibit F**, TIG Settlement Summary.
3. Hartford: See **Exhibit G**, Hartford Settlement Summary.
4. Zurich/Enstar: See **Exhibit H**, Enstar Settlement Summary.

The Receivership also settled coverage claims arising out of *Finch vs. Sentry*, et al, 2019-CP-40-03003 with:

1. Zurich: See **Exhibit I**, Zurich Finch Settlement Summary.
2. USF&G: See **Exhibit J**, USFG Finch Settlement Summary.

Furthermore, I as Receiver resolved two professional liability claims approved by the Court summarized at **Exhibits K and L**.

The Covil Receivership has not reached *complete* resolution with USF&G or Penn. The Receiver is currently engaged in litigation with Penn as follows:

1. Covil Corporation vs. Pennsylvania National Mutual Casualty Insurance Co, Richland County, SC, 2020-CP-40-02098

This matter is currently the issue of two (2) appeals requesting review of a May 5, 2022 Order. A Motion to Dismiss the Appeal as interlocutory is pending:

Appeal 2022-000785
Pet for Writ

Appeal 2022-000761
Penn National has appealed orders of 5/5/2022 and 5/26/2022 from the underlying action

2. Covil Corporation vs. Pennsylvania National Mutual Casualty Insurance Co., Richland County, SC, 2020-CP-40-01226

This matter is on appeal. The Court of Appeals affirmed the Trial Court, denied rehearing and Petition for Certiorari is pending:

Appeal 2022-000366

Appeal 2020-001239

V. COVIL'S LIABILITIES

Covil's liabilities are (1) personal injury claims, (2) litigation defense costs, and (3) administrative expenses.

As it pertains to personal injury claims, attached as **Exhibit M**, is a list of Covil claims including all claims pending at the time of my appointment as Receiver and all claims received after my appointment with their status.

As it pertains to defense costs, Covil's remaining insurers (Penn and USF&G) are defending the claims brought against Covil and have retained Ellis & Winters, LLP firm for the defense with Nelson Mullins Riley & Scarborough, LLP also assisting as needed. As it pertains to administrative costs, I have hired an accounting firm and an independent claims handler to assist me in my duties. Attached as **Exhibit N(1)** (accounting costs) and **N(2)** (claims handling costs) are the costs associated with these professionals.

I have not charged for any administration services provided by me as Receiver or my law firm.

VI. FINANCIAL CONDITION OF THE QSF

Attached as **Exhibit O(1)** is a Financial Condition Summary of accounts and their purpose and as **Exhibit O(2)**, a compilation of year end summaries and portfolio reports supporting the Financial Condition Summary which reflect the financial condition of the QSF as of 12/31/21. Profit and Loss statements and accompanying balance sheets are

attached at **Exhibit P** and the 2020 Audit of the Covil QSF is attached hereto as **Exhibit Q**. The 2021 Audit is underway.

July 19, 2022

Respectfully submitted,

/s/ Peter D. Protopapas

Peter D. Protopapas

S.C. Bar No. 68304

Rikard & Protopapas, LLC

2110 N Beltline Blvd

Columbia, South Carolina 29204

Post Office Box 5640 (29250)

PH: (803) 978-6111

FAX: (803) 978-6112

EMAIL: pdp@rplegalgroup.com

Peter D. Protopapas, Receiver of Covil Corporation

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

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

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

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

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

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2018.

JEAN TOAL, CHIEF JUSTICE (Ret.)



Richland Common Pleas

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

IT IS SO ORDERED.

s/ Jean H. Toal #2758

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

**DENVER D. TAYLOR and
JANICE R. TAYLOR,**

Plaintiffs,

v.

**AIR & LIQUID SYSTEMS
CORPORATION, et al.,**

Defendants.

Civil Action No: 2018-CP-40-04940

**ORDER GRANTING THE RECEIVER
FOR COVIL CORPORATION'S
MOTION TO CLARIFY THE
RECEIVER ORDER**

This matter comes before the Court by way of the Receiver for Covil Corporation's Motion to Clarify the Order Appointing a Receiver for Covil Corporation ("Covil"). The hearing on the Receiver's Motion took place on February 21, 2019. The Receiver's Motion is hereby GRANTED.

Peter D. Protopapas ("the Receiver") was appointed Receiver for Covil by this Court on November 2, 2018. This Order clarifies the appointment of the Receiver for Covil. Although the Receiver was appointed in the matter of *Denver D. Taylor v. Janice Taylor v. Air & Liquid Systems Corporation, et al.*, C/A No. 2018-CP-40-04940, the Receiver's appointment is not limited to the *Taylor* case. Rather, as stated in the initial Order Appointing a Receiver for Covil, Mr. Protopapas was appointed pursuant to S.C. Code § 15-65-10 with the power and authority to fully administer all assets of Covil, inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil as well as any claims related to the actions or failure to act of Covil's insurance carriers. This Court has jurisdiction over all asbestos related cases in South Carolina. Therefore, the Receiver is appointed in all asbestos related cases and for all asbestos related matters.

In addition to the rights and powers of the Receiver set forth in the Order Appointing the Receiver, the Receiver is hereby vested with all rights of Covil as the client in any attorney-client relationship between Covil and any attorney or counselor hired or retained by Covil or hired and retained to represent Covil by Covil's insurers. The Receiver's rights include, but are not limited to, access to all documents, business records, reports and correspondence contained in any prior, present or future attorney file related to representation of Covil.

Specifically, the Receiver is entitled to review and obtain the entire file contents related to representation of Covil in the possession of Wall Templeton Attorneys and Gallivan, White & Boyd, PA., including but not limited to all Covil business records, reports, correspondence, litigation materials, transcripts, fee agreements, insurance policies, information related to prior and pending claims, and written and electronic correspondence to Covil's insurers. The Receiver has the right to take possession of all Covil documents and correspondence and to protect or assert attorney-client privilege and work product doctrine on behalf of Covil. The Court is aware that retained counsel's duty of good faith, fair dealing, and confidentiality is a duty not to Covil's insurers, but to Covil itself, and that confidentiality may be waived by Mr. Protopapas as the Receiver. By sharing information with the Receiver, the attorneys representing Covil are not waiving the attorney-client privilege or violating any obligations to any of Covil's insurers.

IT IS SO ORDERED

SIGNED this ____ day of _____, 2019

Chief Justice Jean Toal (Ret), Supreme Court
Acting Circuit Court Judge



Richland Common Pleas

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

IT IS SO ORDERED.

s/ Jean H. Toal #2758

EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

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EXHIBIT G

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EXHIBIT H

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EXHIBIT K

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EXHIBIT L

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EXHIBIT N1

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EXHIBIT 01

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EXHIBIT 02

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EXHIBIT P

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EXHIBIT Q

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**Report on Receivership Covil
Corporation**

I. BACKGROUND COVIL CORPORATION

From the time of its original formation in or about 1954, Covil Corporation (“Covil”) was engaged in the installation and removal of insulation in various industrial facilities across South Carolina and the Southeast. At certain times, insulation materials contained asbestos and Covil’s operations are alleged to have resulted in bodily injury. In 1991, Covil’s business failed and it ceased operations. Thereafter, in 1993, the State of South Carolina rescinded Covil’s corporate charter for failing to file the appropriate documentation with the Secretary of State. Covil was continually named as a defendant in civil litigation.

II. RECEIVER APPOINTMENT

In the fall of 2018, Covil defaulted on two mesothelioma asbestos cases pending in South Carolina. On November 2, 2018, the Court appointed (the “Order”) me to serve as a Receiver for Covil Corporation to manage its affairs according to South Carolina law.

Among other things, the Order provides me “with the power and authority to fully administer all assets of Covil (“Covil”). This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of Covil’s insurance carriers.” **See Exhibits A & B**, 11/2/2018 Order of Appointment 3/4/2019 Order Clarifying Appointment.

III. ACTIONS IDENTIFYING ASSETS

At the beginning of the Receivership, I, as Receiver, identified two areas of potentially responsive assets: (1) insurance policies and (2) professional liability claims. I engaged in extensive litigation pursuing these assets. **See Exhibit C**, list of lawsuits involving collection and determination of Receivership assets.

IV. STATUS OF COVIL’S ASSETS

Covil purchased insurance from Sentry Casualty Company (“Sentry”), United States Fidelity and Guarantee Co. (“USF&G”), Ranger Insurance Company now known as TIG Insurance Company (“TIG”), Hartford Accident and Indemnity Company (“Hartford”), Zurich American Insurance Company (“Zurich”) and Pennsylvania Mutual Insurance Company (“Penn”). **See Exhibit D**, Coverage Chart. The Receivership has settled litigation with the following carriers and established a Qualified Settlement Fund (QSF):

1. Sentry: See **Exhibit E**, Sentry Settlement Summary.
2. TIG: See **Exhibit F**, TIG Settlement Summary.
3. Hartford: See **Exhibit G**, Hartford Settlement Summary.
4. Zurich/Enstar: See **Exhibit H**, Enstar Settlement Summary.

The Receivership also settled coverage claims arising out of *Finch vs. Sentry*, et al, 2019-CP-40-03003 with:

1. Zurich: See **Exhibit I**, Zurich Finch Settlement Summary.
2. USF&G: See **Exhibit J**, USFG Finch Settlement Summary.

Furthermore, I as Receiver resolved two professional liability claims approved by the Court summarized at **Exhibits K and L**.

The Covil Receivership has not reached *complete* resolution with USF&G or Penn. The Receiver is currently engaged in litigation with Penn as follows:

1. Covil Corporation vs. Pennsylvania National Mutual Casualty Insurance Co, Richland County, SC, 2020-CP-40-02098

This matter is currently the issue of two (2) appeals requesting review of a May 5, 2022 Order. A Motion to Dismiss the Appeal as interlocutory is pending:

Appeal 2022-000785
Pet for Writ

Appeal 2022-000761
Penn National has appealed orders of 5/5/2022 and 5/26/2022 from the underlying action

2. Covil Corporation vs. Pennsylvania National Mutual Casualty Insurance Co., Richland County, SC, 2020-CP-40-01226

This matter is on appeal. The Court of Appeals affirmed the Trial Court, denied rehearing and Petition for Certiorari is pending:

Appeal 2022-000366

Appeal 2020-001239

V. COVIL'S LIABILITIES

Covil's liabilities are (1) personal injury claims, (2) litigation defense costs, and (3) administrative expenses.

As it pertains to personal injury claims, attached as **Exhibit M**, is a list of Covil claims including all claims pending at the time of my appointment as Receiver and all claims received after my appointment with their status.

As it pertains to defense costs, Covil's remaining insurers (Penn and USF&G) are defending the claims brought against Covil and have retained Ellis & Winters, LLP firm for the defense with Nelson Mullins Riley & Scarborough, LLP also assisting as needed. As it pertains to administrative costs, I have hired an accounting firm and an independent claims handler to assist me in my duties. Attached as **Exhibit N(1)** (accounting costs) and **N(2)** (claims handling costs) are the costs associated with these professionals.

I have not charged for any administration services provided by me as Receiver or my law firm.

VI. FINANCIAL CONDITION OF THE QSF

Attached as **Exhibit O(1)** is a Financial Condition Summary of accounts and their purpose and as **Exhibit O(2)**, a compilation of year end summaries and portfolio reports supporting the Financial Condition Summary which reflect the financial condition of the QSF as of 12/31/21. Profit and Loss statements and accompanying balance sheets are

attached at **Exhibit P** and the 2020 Audit of the Covil QSF is attached hereto as **Exhibit Q**. The 2021 Audit is underway.

July 19, 2022

Respectfully submitted,

/s/ Peter D. Protopapas

Peter D. Protopapas

S.C. Bar No. 68304

Rikard & Protopapas, LLC

2110 N Beltline Blvd

Columbia, South Carolina 29204

Post Office Box 5640 (29250)

PH: (803) 978-6111

FAX: (803) 978-6112

EMAIL: pdp@rplegalgroup.com

Peter D. Protopapas, Receiver of Covil Corporation

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

Case Number: 2020-CP-40-02098

Vs.

**RECEIVER FOR COVIL
CORPORATION
STATUS REPORT**

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

In response to this Court's scheduling of a status conference on September 8, 2022, the Receiver for Covil provides this status report of the case containing the following information: (1) procedural history of the case, (2) status of discovery, and (3) request for trial and anticipated length of trial.

I. PROCEDURAL HISTORY

The procedural history of this case is extensive and the below provides a chronology of relevant events:

4.27.2020 This matter began with the initial summons and complaint brought by the Receiver for Covil against Pennsylvania National Mutual Casualty Insurance Co., Sam Crain & Co. Inc, and South Carolina Property and Casualty Insurance Guaranty Association on April 27, 2020.

The Receiver brought causes of action against:

- a. Pennsylvania National Mutual Casualty Insurance Co. (“Penn National”) for Declaratory Judgment seeking a declaration that the Receiver is entitled to compensation (First Cause of Action), the Penn National policies and related documents in Penn National’s possession are the property of the Receivership (Second Cause of Action, and declaration of the rights and responsibilities of Penn National under the policies issued to Covil Corporation (Third Cause of Action).
- b. Sam Crain & Co for Failure to procure insurance (Fourth Cause of Action and for Breach of Contract (Fifth Cause of Action).
- c. The South Carolina South Carolina Property and Casualty Insurance Guaranty Association for a declaration as to their responsibilities for the Mission Insurance Company (“Mission”) umbrella policy where Mission is now out of business (Sixth Cause of Action).

5.22.2020	Penn National removed this matter to federal court.
6.1.2020	Penn National filed an Answer to Complaint.
6.16.2020	Covil moved the Federal Court to remand the matter to State Court.
3.30.2021	The Federal Court issued its Order remanding the case to State Court.
3.31.2021	Penn filed an answer to the complaint and sought a jury trial for “all issues so triable”.
4.9.2021	Discovery is initiated by Covil.
11.5.2021	The Court issues an Order addressing several discovery disputes.
2.11.2021	The Court issues an Order addressing additional discovery disputes.

- 5.5.2022 The Court issues an Order addressing further discovery disputes.
- 5.16.2022 Penn National moves the Court for Reconsideration of its 5.5.2022 Discovery Order, which Covil opposes.
- 5.26.2022 The Court issues its Order denying the Motion to Reconsider.

COURT OF APPEALS CHRONOLOGY

- 5.31.2022 Penn National files its Notice of Appeal of Orders dated 5.5.2022 and 5.26.2022.
- 6.6.2022 Covil moves the Court of Appeals to dismiss the appeal as interlocutory.
- 8.9.2022 Court of Appeal grants Covil's Motion to dismiss appeal as interlocutory.
- 8.24.2022 Penn National files its Petition for Rehearing En Blanc which is now **pending**.

SUPREME COURT CHRONOLOGY

- 6.16.2022 Penn National files Petition for Writ of Certiorari (Appellate case number 2022-000785).
- 8.22.2022 The Supreme Court issues its Order Denying Penn National's Petition for Writ of Certiorari.

II. STATUS OF DISCOVERY

On August 24, 2022, following the Supreme Court of South Carolina's denial of Penn National's petition for a writ of certiorari (Appellate Case Number 2022-000785), the Court of Appeals' dismissal of Penn National's separate, parallel appeal on the same issue (Appellate Case Number 2022-000761), and this Court's denial of Penn National's motion for reconsideration (Case Number 2020-CP-40-02098), counsel for the Receiver sent a letter to counsel for Penn National requesting that Penn National "immediately obey" the Court's May 5, 2022 Discovery Order, as instructed by the Court. To date, Penn National has not responded.

A. Outstanding Depositions

Immediate compliance with the Court's Discovery Order includes, but is not limited to, sitting for the depositions noticed by the Receiver on May 13th and May 31st respectively (i.e., Penn National's 30(b)(6) deposition and the deposition of Scott Maier). The Receiver has asked for deposition dates, but has not received a response.

B. Outstanding Documents

In addition, the Receiver has not received Penn National's responses to Covil's Fourth Set of Requests for Production, which was served on May 13th. The Receiver asked that Penn National provide all responsive documents by September 1, 2022, but has not received a response.

Finally, the Court's May 5, 2022 Discovery Order directed Penn National to "produce immediately" to Covil the following documents:

- "all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report";
- "all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022"; and
- "underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver."¹

Again, the Receiver asked Penn National to confirm that these documents would be produced by September 1, 2022, but has not received a response.

Upon completion of the above outstanding discovery, the Receiver will be ready for trial.

¹ See Court's May 5, 2022 Order at 10-11.

III. REQUEST FOR DATES FOR PRE-TRIAL CONFERENCE AND TRIAL

The Receiver respectfully requests that the Court set dates for:

- (1) pre-trial conference in November 2022; and
- (2) combined evidentiary hearing and non-jury trial in December 2022.

The Receiver requests an evidentiary hearing regarding Penn National's spoliation of evidence in order for the Court to make factual findings regarding the scope of the harm to Covil and to fashion appropriate remedies to address that harm. The Receiver also asks for a non-jury trial on Covil's declaratory relief against Penn National concerning Penn National's obligations to Covil under Policy Nos. 515 50 28 53 7 and 515 50 28 53 8.

The Receiver further requests that the Court combine the evidentiary hearing regarding spoliation with the trial on declaratory judgment issues into a single trial that lasts no more than three days. The Receiver also requests that the Parties be allowed to submit proposed findings of fact and conclusions of law in advance of trial. The Receiver anticipates calling three expert witnesses live at trial (with no more than 1 hour direct examination, 1 hour cross examination, and 15 minutes for redirect) and entering the testimony of three fact witnesses via deposition testimony. The Receiver also anticipates offering between 25 to 30 exhibits at trial.

Respectfully submitted,

s/Jescelyn T. Spitz
Jescelyn T. Spitz SC BAR 101880
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
jspitz@rplegalgroup.com

Attorney for the Receiver

This 6th Day of September, 2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
Appointed Receiver Peter D. Protopapas,

Plaintiff,

Vs.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

Case Number: 2020-CP-40-02098

**RECEIVER FOR COVIL
CORPORATION'S MOTION
TO COMPEL DISCOVERY**

Penn National has been reprimanded repeatedly by this Court for its discovery violations. Now, faced with responding to the Receiver's Fourth Set of Requests for Production served on May 13, Penn National chooses to bury its head in the sand and refuses to respond. Specifically, unwilling to recognize or acknowledge that the Receiver served this discovery, Penn National:

- Refused to produce documents responsive to the Receiver's Fourth Request for Production seeking documents related to Penn National's failures to implement its Document Retention and Litigation Hold Policies (in fact, Penn National hasn't even produced objections and responses);
- Refused to supplement its production in response to Request for Production Number 4, which seeks Penn National's claims files related to fourteen asbestos claims that will be at issue in the December 12 trial; and
- Refused to respond to any of the numerous written attempts by the Receiver's counsel to meet and confer on this issue.

Accordingly, Covil requests a hearing on this motion at this Court's November 14 pretrial conference and an order requiring Penn National to produce all responsive documents by December 1.

BACKGROUND AND PROCEDURAL HISTORY

Penn National has refused to meaningfully participate in discovery from the outset of this matter, causing Covil to previously file a motion to compel in January 2021, to file supplemental motions to compel on April 22, 2021, August 20, 2021, September 8, 2021, and October 5, 2021, and to file a further motion to compel on February 24, 2022.

In its July 1, 2021 Order granting Covil's motions, this Court stated that "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver."¹ On November 5, 2021, this Court reiterated that it "has ordered Penn National to meaningfully participate in discovery on multiple occasions."² In its May 5, 2022 Order, this Court found that "Penn National has totally and completely failed to meet" its basic discovery obligations and that its "discovery conduct has created considerable burdens for Covil and this Court."³

Despite repeated unequivocal directives from this Court to fully participate in discovery, Penn National continues to refuse to respond to basic discovery requests, produce responsive documents, or respond to the Receiver's counsel's numerous follow up emails and letters on these topics. Given Penn National's mockery of this Court's orders, Covil is now forced to submit its *seventh* motion to compel filing in 15 months.

¹ Exhibit 1, July 1, 2021 Order on Motions to Compel at 5, C.A. No. 2019-CP-40-03003.

² Exhibit 2, November 5, 2021 Order at 1, C.A. No. 2020-CP-40-02098.

³ Exhibit 3, May 5, 2022 Order on Discovery Motions at 5, C.A. No. 2020-CP-40-02098.

Covil served the Receiver's Fourth Set of Requests for Production on May 13, 2022.⁴

Covil sought the following information related to Penn National's document retention policy and litigation hold related to Covil's spoliation allegation:

1. All documents related to the "random" reviews conducted by Penn National from 2010 to the present, as required by Step 7 of its "Steps for evaluating whether to retain or destroy documents (electronic, paper or other)," in accordance with the Records Retention Policy.
2. All documents related to the "scheduled" reviews conducted by Penn National from 2010 to the present, as required by Step 7 of its "Steps for evaluating whether to retain or destroy documents (electronic, paper or other)," in accordance with the Records Retention Policy.
3. Any and all acknowledgment forms provided to Penn National employees as part of the Covil Litigation or any prior lawsuit involving Covil Corporation in accordance with Penn National's Litigation Hold policy. This Request specifically includes the blank form or forms provided to Penn National employees for execution.
4. Any and all acknowledgment forms or other confirmations in which a Penn National employee—including, but not limited to, Brent Reifsnyder and Boyd Wright—stated he or she "received, understands, and agrees to comply with the Litigation Hold" issued in the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1159 at ¶ 3.
5. Any and all "brief summar[ies] of the location of information that would be covered by the Litigation Hold" provided by any Penn National employee in relation to the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1160 at ¶ 5.
6. Any and all Documents and communications relating to any "custodial interview with a member of the Legal Department" conducted in relation to the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1160 at ¶ 8.
7. A copy of the "Standards of Conduct Policy, HR-0002" and any drafts of the same. *See* PNI-1160.
8. A copy of "LE-0004 Record Retention Policy" and any drafts of the same. *See* PNI-1159.
9. A true and correct copy of "LE-0010 Legal Review Guidelines" and any drafts of the same. *See* PNI-1159.
10. Any and all Documents and communications relating to "periodic self-audits" generated in accordance with Penn National's Records Retention Policy since January 1, 2010. *See* PNI-1122.
11. Any and all Documents and communications relating to Internal Audits' "operational audit reviews" generated in accordance with Penn National's Records Retention Policy since January 1, 2010. *See* PNI-1122.
12. The "spreadsheet of hard-copy inventory stored at Iron Mountain on December 8, 2021" Penn National provided to Ellis & Winters as referenced in Ellis & Winters' March 22, 2022 letter to the Court. *See* p. 2.
13. All Documents within the "sample boxes" that "were selected from a review of historical descriptions within the hard-copy inventory spreadsheet provided on December 8, 2021" as referenced in Ellis & Winters' March 22, 2022 letter to the Court, p. 2.

⁴ Exhibit 4, Fourth Requests for Production.

14. The “organization of microfiche policies,” including the “microfiche cards believed to contain archived commercial line policy documents” Penn National provided to Ellis & Winters and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
15. The “risk-tracking data sheet policy claims” Penn National provided to Ellis & Winters on February 15, 2022 and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
16. The “inventory data” Penn National provided to Ellis & Winters on February 25, 2022 “specific to microfiche records connecting policy numbers to cancel/non-renew dates” and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
17. The “two additional data sheets” Penn National provided to Ellis & Winters, which Ellis & Winters “utilized for purposes of narrowing the universe of documents,” and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, pp. 2-3.⁵

Penn National has never served any objections and responses to the Receiver’s Fourth Request for Production and has never produced any documents responsive to the above requests.

On August 24,⁶ counsel for the Receiver sent a letter to counsel for Penn National requesting, among other things, that Penn National produce documents responsive to the Receiver’s Fourth Set of Document Requests.⁷ Penn National never responded to this request.

On September 22, following this Court’s status conference on September 8 in which the Court set a December 12 trial date for this matter, counsel for the Receiver again asked when the

⁵ Covil also sought Penn National’s responses to the directives issued by this Court in its November 5, 2021 and May 5, 2022 Orders and documents and communications between Penn National and Ellis & Winters LLP related to this Court’s directives. *See* Exhibit 4, Request Nos. 18 and 19. Because the May 5, 2022 Order remains on appeal, Covil does not move to compel responses to Requests Nos. 18 and 19 at this time, however, Penn National should have at minimum responded to the Requests to assert its position that it need not respond to Nos. 18 and 19 because of the pending appeal.

⁶ The Receiver’s counsel sent his August 24 letter immediately following the Supreme Court of South Carolina’s denial of Penn National’s petition for a writ of certiorari (Appellate Case Number 2022-000785), the Court of Appeals’ dismissal of Penn National’s separate, parallel appeal on the same issue (Appellate Case Number 2022-000761), and this Court’s denial of Penn National’s motion for reconsideration (Case Number 2020-CP-40-02098).

⁷ Exhibit 5, B. Nes’ August 24 Letter to B. Yntema.

outstanding document production would be forthcoming from Penn National.⁸ Again, Penn National never responded to this Request.

On October 6, the Receiver's counsel followed up again to ask Penn National's counsel when Covil could expect to receive Penn National's outstanding discovery responses and document production.⁹ Penn National did not respond.

Then, on October 12, the Receiver's counsel sent an email to Penn National's counsel to request that Penn National supplement its responses to Request for Production Number 4 to produce Penn National's claims files for fourteen specific settled asbestos cases in which Penn National contributed to the settlement.¹⁰ Penn National did not respond.

Finally, on October 27, the Receiver's counsel wrote counsel for Penn National outlining Penn National's continued refusal to respond to numerous communications or participate in basic discovery.¹¹ The letter again requested responses to the Receiver's Fourth Set of Requests for Production, an accompanying production of responsive documents, and production of the fourteen claims files. Although the Receiver's counsel made clear this motion was forthcoming, Penn National's counsel did not respond.

ARGUMENT

Penn National has willfully and consistently refused to comply with basic discovery requests like the Fourth Requests for Production since 2018. In doing so, Penn National has ignored this Court's orders, endlessly and unsuccessfully appealed the orders, and refused to

⁸ Exhibit 6, B. Nes' September 22, 2022 Email to B. Yntema. Covil's First Set of Requests for Production—served over 17 months ago—seeks “[a]ll Documents that relate to all claims submitted by, or on behalf of, Covil for coverage under any insurance policy You issued to Covil.” This Request includes claims files relating to asbestos claims against Covil. *See* Exhibit 7, Penn National's Responses to First Set of Requests for Production.

⁹ *See* Exhibit 6.

¹⁰ Exhibit 8, B. Nes' October 12, 2022 Email to B. Yntema.

¹¹ Exhibit 9, B. Nes' October 27, 2022 Letter to B. Yntema.

respond to the Receiver's counsel's numerous attempts to secure discovery responses and key documents. Given Penn National's refusal to engage in any of the above-referenced meet and confer efforts, it appears that Penn National is now completely unwilling to participate in good faith in the discovery process ahead of the December trial. To the Receiver's knowledge, Penn National has not taken any steps to respond to the Receiver's Fourth Set of Requests for Production or supplement its production with the complete set of claims files, necessitating this Motion. The information sought through the Requests for Production is critical to Covil's ability to fairly present its case at trial and Penn National has no legitimate reason to ignore the requests.

CONCLUSION

For these reasons, Covil respectfully requests that this Court order Penn National to respond to the Receiver's Fourth Set of Requests for Production (Nos. 1-17), produce all documents responsive to same, and supplement its production to Request No. 4 of the Receiver's First Set of Requests for Production by December 1, 2022.

Respectfully submitted,

/s/Shannon Peake
Shannon Peake SC Bar 102723
Smith Robinson
2530 Devine Street
Columbia, SC 29205
803.254.5445
shannonp@smithrobinlaw.com

Attorney for the Receiver

This 4th day of November, 2022

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Ann Finch, Individually and as Executor of
the Estate of Franklin Finch; and Peter D.
Protopapas as Court-Appointed Receiver
for Covil Corporation,

C.A. No. 2019-CP-40-03003

Plaintiffs,

v.

United States Fidelity & Guaranty
Company,

Defendant.

**ORDER ON THE RECEIVER FOR COVIL
CORPORATION'S MOTION TO COMPEL AND
SUPPLEMENTAL MOTION TO COMPEL
AGAINST PENNSYLVANIA NATIONAL
MUTUAL CASUALTY INSURANCE COMPANY**

This discovery dispute is before the Court on the January 15, 2021, Motion to Compel and the April 22, 2021, Supplemental Motion to Compel filed by the Receiver for Covil Corporation against Pennsylvania National Mutual Casualty Insurance Company ("Penn National"). Penn National filed Responses in Opposition on January 26, 2021, and June 21, 2021. The Court originally conducted a fully remote hearing using video conferencing technology on the Receiver's first Motion to Compel on January 25, 2021, and it issued certain directives to the Receiver and Penn National. Thereafter, the Receiver filed the Supplemental Motion to Compel, and the Court conducted a hearing in person, on June 25, 2021. After detailed review and consideration of the motions, the responses in opposition, the exhibits and evidence submitted, and the arguments of counsel, the Court makes the following rulings.

BACKGROUND

This Court appointed Peter D. Protopapas as the Receiver for Covil Corporation on November 2, 2018, and it tasked the Receiver with "the right and obligation to administer any insurance assets of Covil Corporation as well as any claims related to the actions or failure to act of

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Covil's insurance carriers.” Order Appointing a Receiver for Covil Corporation, *Taylor v. Air & Liquid Sys. Corp.*, C.A. No. 2018-CP-40-04940 (S.C. Comm. Pl. Nov. 2, 2018). Covil is a now-defunct entity that conducted business in South Carolina until it was administratively dissolved in the early 1990s. Because it was an insulation contractor, Covil has been named as a defendant in many personal injury and wrongful death cases that have been filed in state court in South Carolina alleging liability based on asbestos exposure. However, Covil does not have a robust system of corporate records, and the Receiver has been required to spend considerable time and effort searching for Covil's assets, which primarily consist of insurance policies. In this case, the Receiver has filed declaratory judgment claims related to policies issued to Covil, and the Receiver has attempted to obtain information and documents from Penn National via subpoena and deposition testimony regarding any insurance policies Penn National issued that provide coverage to Covil. The Receiver has been attempting to obtain these materials from Penn National in this and other proceedings involving Covil since at least February of 2020.

On December 17, 2020, the Receiver served an amended notice of deposition on Penn National pursuant to Rule 30(b)(6), SCRCPP, the topics of which related to Penn National's efforts to search for insurance policies protective of Covil. The deposition took place on January 7, 2021, after which the Receiver filed his January 15 Motion to Compel, wherein he asked this Court to order (among other things) “Penn National to perform a complete search of its records relating to insurance policies covering Covil, including but not limited to insurance policies covering Covil as an ‘additional insured.’” (Jan. 15 Mot. ¶ 13.) In response to the Receiver's motion, Penn National argued that unless it had “the name of the entity or the entity's policy number that listed Covil as an insured,” it could not search its records for policies protecting Covil as an additional insured without expending significant time and expense. (Jan. 26 Resp. in Opp'n 7–8.)

At the January 25, 2021, hearing on the Receiver's motion, the Court heard and considered arguments from the Receiver about why such a search is necessary and from Penn National about the claimed difficulties inherent in such a search. Attempting to strike a middle ground that reduced the burden on Penn National, the Court instructed the Receiver's counsel to, within fifteen days of the hearing, provide a list of potential jobsites, owners, and contractors to Penn National to facilitate Penn National's search of its records. (*See* Jan. 25 Hr'g Tr. 138–42.) This Court also directed Penn National to respond with its search results within fifteen days after receiving this information from the Receiver. (*Id.* at 141.) The Court also suggested that the Receiver serve a new subpoena on Penn National to effectuate the Court's instructions, and the Court held the Receiver's motion in abeyance pending the parties' compliance with its instructions. (*Id.* at 142–44.)

The Receiver complied with this Court's instructions, issuing and serving a new subpoena on Penn National on February 8, 2021, which sought production of the following information:

1. All insurance policies, of any type, that [Penn National] issued to Covil Corporation or that include Covil Corporation as an additional insured, including policies that identify the following entities as the named insured or as an additional insured: [List of potential contractors];
2. All certificates of insurance or other documents evidencing any insurance coverage that [Penn National] provided to Covil Corporation, including certificates of insurance or documents that identify or concern the following entities: [List of potential job sites]; and
3. All documents that relate to the steps taken by [Penn National] to locate information and documents responsive to these requests.

Following a series of correspondence, a meet and confer, and the Receiver's agreement to extend Penn National's deadline to respond, Penn National served its supplemental responses and objections to the Receiver's subpoena on March 9, 2021. Penn National's subpoena response consisted largely of objections, and Penn National claimed that its search in response to the subpoena only

yielded two comprehensive general liability policies, which Penn National previously provided in 2018.

Unsatisfied with Penn National's incomplete responses and improper objections, the Receiver filed a supplemental motion to compel on April 22, 2021. Then, nearly two months after that supplemental motion to compel was filed—and nearly three years after Penn National was put on notice that Covil was its insured and had been named as a defendant in asbestos litigation—Penn National produced copies of never-before-disclosed insurance policies it issued to Covil.

On June 15, 2021, the Receiver filed The Receiver's Notice of Filing of Late-Produced Policies, which included copies of other property, auto, inland marine, and workers' compensation policies that Penn National issued to Covil (the "newly produced policies"). Those policies were not produced in Penn National's response to the Receiver's subpoena, even though Penn National's responses to Request Nos. 1 and 2 expressly stated:

Penn National has performed the necessary due diligence in researching [these] request[s], despite the immense amount of time needed to complete this task, and having exercised reasonable diligence in searching its files, Penn National has not located any documents responsive to this request, with the exception of comprehensive general liability policies issued to Covil for the periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988, bearing policy number 515 50 28 53, which have previously been produced to the Plaintiffs.

(Receiver's Supp. Mot. to Compel, Ex. E, at 5, 6.) The newly produced policies were likewise not identified in Penn National's response to Request No. 3. (*See id.* at 7–8.) Instead, those policies were produced as part of Penn National's supplemental discovery responses on June 11, 2021, in a separate case involving Covil and Penn National.

On June 21, 2021, just four days before the scheduled hearing on these issues, Penn National filed a response in opposition to the Receiver's supplemental motion to compel, which included the June 3 affidavit of Boyd Wright, a Senior Home Office Claim Examiner for Penn National. (June 21 Resp. in Opp'n, Ex. 13.)

CONCLUSIONS AND FINDINGS

This Court concludes that the Receiver has complied with its instructions by providing Penn National with a list of contractors, owners, and jobsites that could help Penn National narrow its search for documents. The Court is unconvinced that Penn National has used the information provided by the Receiver to fully search its records, particularly given the fact that Penn National claimed in its March 9, 2021 subpoena responses to have “performed the necessary due diligence” and “exercised reasonable diligence in searching its files,” yet Penn National did not identify or produce the newly produced policies until June 11, 2021, in its supplemental discovery responses in a separate case. The Receiver’s efforts to locate Penn National policies providing coverage to Covil has been a matter of protracted litigation for quite some time, and the Court is troubled that Penn National asserted it conducted a reasonable, thorough search in response to the Receiver’s subpoena in this matter but, three months later, uncovered and produced additional policies protective of Covil.

Moreover, although Penn National asserts it has “exercised reasonable diligence in searching its files,” Penn National’s response to the Receiver’s subpoena did not provide a sufficiently detailed description of its search efforts and the Receiver is not simply required to take Penn National at its word. The affidavit submitted by Penn National does not cure the deficiencies in Penn National’s subpoena responses, since Mr. Wright provides very little detail about how Penn National’s records are maintained other than asserting that paper documents “are stored by policy number only.” (June 21 Resp. in Opp’n, Ex. 13 ¶ 10.) It also appears that Penn National did not conduct a thorough, complete search of its paper records for coverage protective of Covil, only physically pulling two policies from its archives. (*See id.* ¶¶ 17–18.) Although Mr. Wright asserts in his affidavit that he spent more than 60 hours conducting Penn National’s search, it is unclear

how much time he spent on each aspect of the search, and he apparently spent a significant amount of time running an electronic search for facilities despite the fact that Penn National's electronic system does not list, store, or save information about jobsites or facilities. (*See id.* ¶ 14.)

This Court finds that Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver, and the Court is not satisfied that Penn National has fully complied with its instructions at the January 25 hearing. Additionally, the Court is not satisfied that Penn National is only able to search its paper records by policy number. In any event, without more detailed information from Penn National, the Receiver and this Court are unable to evaluate Penn National's efforts to search for coverage.

RELIEF ORDERED

THEREFORE, the Court ORDERS that Penn National must provide the Receiver with a detailed description of how Penn National maintains its paper records. Penn National's description should include, but not be limited to, physical locations where Penn National's paper records are kept, the identities of the person(s) responsible for those records, the years and locations of the records maintained, the categories of policies maintained, and the manner in which those records are stored and organized. Penn National shall provide this detailed description to the Receiver within two weeks of the June 25 hearing, making the description due on or before **July 9, 2021**.

Additionally, the Court further ORDERS that within two weeks of the above deadline, Penn National must thoroughly search its paper records using the list of contractors and facilities provided by the Receiver in connection with its February 8, 2021, subpoena to Penn National. Penn National's deadline to complete this search and provide any results to the Receiver is **July 23, 2021**.

IT IS SO ORDERED.

Judge's Electronic Signature Page Follows

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Richland Common Pleas

Case Caption: Ann Finch , plaintiff, et al vs Sentry Casualty Company , defendant,
et al
Case Number: 2019CP4003003
Type: Order/Compel

So Ordered

Jean H. Toal

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**DISCOVERY ORDER GRANTING
COVIL CORPORATION'S MOTIONS
TO COMPEL PENN NATIONAL**

This matter is before the Court on numerous motions filed by the Receiver for Covil whereby the Receiver seeks to determine the extent to which Penn National wrote additional insurance protective of Covil.

Covil has sought discovery of its insurance policies and related documentation from Penn National since 2018. The requested discovery includes documents naming Covil not only as a primary insured, but also as an additional insured. *See, e.g.*, Ex. 1, July 1, 2021 Order on Motions to Compel at 2, C.A. No. 2019-CP-40-03003.

This Court has ordered Penn National to meaningfully participate in discovery on multiple occasions. Penn National claims that it cannot search its documents unless Covil provides the policy numbers where Covil was designated as an additional insured. Despite this Court's orders, Penn National has yet to perform a manual search or to scan the documents so they can be searched electronically. Covil has thus been litigating this issue since January, as summarized here:

1. After the January 7, 2021 deposition of Penn National's corporate representative, Covil moved to compel Penn National to perform a complete search.

2. At the January 2021 hearing, the Court ordered Covil to provide lists of relevant job sites, owners, and agents to Penn National for further searches, and it ordered Penn National to promptly respond with its findings.
3. Covil filed a Supplemental Motion to Compel on April 22, 2021. The Court granted Covil's motion, finding that "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver." The Court ordered Penn National to "thoroughly search its paper records using the list of contractors and facilities provided by the Receiver in connection with [Covil's] February 8, 2021, subpoena to Penn National."
4. Covil filed another motion on August 20, 2021 that is currently pending before the Court.
5. Covil filed another motion on September 8, 2021, also currently pending before the Court. It informs the Court that, among other things, Penn National's Boyd Wright, who was responsible for coordinating Penn National's electronic search, reiterated the manner in which Penn National would only conduct its search by policy number because "[y]ou'd have to have a policy number" to search electronically for an "additional insured," such as Covil, as well. See Wright Dep. at 23:22–24. Without a policy number, Mr. Wright admitted, Penn National would "have to look in the policy documents to see if there was any supplemental insureds." *Id.* at 23:22–24:1. To date, Penn National has not conducted this type of search.

Penn National is ORDERED to open its repository of insurance policies and to facilitate a review supervised and performed by Covil's insurer-appointed defense counsel, Ellis & Winters LLP. Both the Receiver for Covil and Penn National have expressed confidence in the professional judgment of Ellis & Winters, and as such the Court hereby DIRECTS Ellis & Winters to perform this document review, the scope of which is to be informed by Ellis & Winters' own sound professional judgment, and to report back to the Court as to progress made (as well as suggestions for meeting Covil's needs to identify responsive coverage) while not wasting Penn National's resources.

This information is critical and discoverable in the case that Ellis & Winters has been assigned by Covil's insurers to defend. Specifically, Covil has been sued in numerous asbestos liability cases in federal courts and South Carolina state courts, and Covil needs its policies to

respond to routine discovery. *See* Fed. R. Civ. P. 26(a)(1)(A)(iv) (“a party must . . . provide to the other parties . . . for inspection and copying . . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment”); Rule 26(b)(2), SCRCP (“A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.”); Rule 33(b)(4), SCRCP standard interrogatory (4) (“Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.”).

For these reasons, the Court ORDERS Penn National to facilitate this review immediately, at the direction of, and to be performed by, Ellis & Winters, and to report back to the Court, on an interim basis, regarding progress made and any relevant suggestions on December 7, 2021. With the exception of matters pending before this Court, the Court issues this order as a protective order to allow these attorneys’ schedules to remain available between now and December 7 to focus on this important project.

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Richland Common Pleas

Case Caption: Covil Corporation By And Through Its Receiver , plaintiff, et al vs
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al
Case Number: 2020CP4002098
Type: Order/Compel

So Ordered

Jean H. Toal

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

ORDER ON DISCOVERY MOTIONS

This matter is before the Court on various discovery disputes between the Receivership for Covil Corporation (“Covil”) and Pennsylvania National Mutual Casualty Insurance Company (“Penn National”). There are numerous matters before the Court at this time, including Ellis & Winters LLP’s March 22, 2022 letter report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court’s November 5, 2021 Discovery Order;¹ the Receiver’s February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; the Receiver’s March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents; Penn National’s December 22, 2021 Motions to Quash; and Penn National’s April 7, 2022 Motion to Seal.²

¹ The Court also considered the prior letter reports filed by Penn National in response to the Court’s November 5, 2021 Discovery Order.

² Also before the Court is the Receiver’s motion to compel Penn National in the non-Covil Receiverships. Specifically, the Receiver seeks insurance policies and policy-related documents from Penn National for 14 other entities for which Mr. Protopapas is currently the receiver. In response to the Receiver’s Subpoenas *Duces Tecum*, Penn National produced boiler plate objections and zero documents. See March 1, 2022 Motion to Compel filed against Penn National on behalf of the Receiver for Flame Refractories, Inc. and United Construction Co. of Rome, Inc., General Boiler Casing Company, Inc., Payne & Keller Company, Piedmont Insulation, Inc. and Reynolds Insulation, Pipe & Boiler Insulation, Inc. and Carolina Industrial Insulating Co., Presnell Insulation, Co., Standard Insulation Company of N.C.

BACKGROUND

Peter D. Protopapas was appointed by this Court in 2018 as the Receiver for Covil, a defunct South Carolina corporate entity. Covil engaged in the business of installing, removing and sometimes selling insulation made with asbestos materials in the State of South Carolina and in other places in the Southeast for many years between the 1960s and the 1990s. Covil has been sued in many asbestos lawsuits, and this Court was appointed to manage the asbestos docket at the direction of the Chief Justice of the Supreme Court of South Carolina. This Court therefore charged the Receiver with marshalling Covil's assets, including all occurrence-based liability insurance policies, that may respond to the asbestos suits pending against Covil.

Prior to the Receiver's appointment, this Court had a regular situation occur in which Covil Corporation would not respond to requests for information, necessitating orders compelling compliance with discover obligations. Ultimately, after granting numerous motions to compel with no response, this Court struck Covil's pleadings in an underlying asbestos case as a sanction for its failure to respond to discovery.

This Court learned subsequently that, after letting its charter lapse from the State of South Carolina, Covil had been effectively managed by the attorneys for certain insurance companies that covered Covil.³ The strategic litigation approach adopted on Covil's behalf by other insurers was to not participate in discovery. Rather, it was to accept the pleadings on Covil's behalf and then engage in a course of conduct of waiting until the last moment and then settling the cases at a nuisance value. The other insurers appeared to want to be as minimally responsive as possible

Inc., Davis Mechanical Contractors, Inc., Great Barrier Insulation Co., HEFCO, Inc., J. & L. Insulation, Inc., and J.R. Deans Company, Inc., in Case Numbers 2020-CP-40-04475, 2021-CP-40-03484, 2020-CP-40-01821, 2020-CP-40-05526, 2021-CP-40-01364, and 2020-CP-40-01952. Penn National takes the position that it cannot reasonably search its historic policies contained on microfiche cards unless the Receiver provides a specific policy number.

³ Penn National was not providing a defense in the underlying asbestos cases for Covil at that time.

to avoid discovery of the occurrence-based general liability policies covering Covil. When this Court learned of certain Covil insurers' conduct, it appointed a receiver to manage Covil's assets. And the only assets Covil had at that time, and has to this day, are the coverage provided by the "legacy" occurrence-based general liability insurance policies covering Covil that were issued during the time it was an active asbestos insulation company.⁴

Covil, under the guidance of the Receiver, has identified numerous insurance policies issued by several different insurance companies covering its defense and indemnity obligations for the asbestos suits. A court-approved Qualified Settlement Fund ("QSF") has been created and funded by the proceeds of settlements with at least six insurers. Those insurance companies went through a long process of disclosure and negotiation, resulting in approval by the Court of settlement proposals that initially funded the QSF.

Penn National is now the company with which the Receiver is seeking information and documents related to the "legacy" occurrence-based liability policies it issued covering Covil as a primary or additional insured. Penn National first came to this Court's attention in connection with the *Finch* case, which was an asbestos case tried in federal court in North Carolina resulting in a \$32.7 million judgment against Covil. Specifically, certain general liability insurance policies issued by Penn National that covered Covil were located by Penn National in response to an asbestos claimant subpoena in the *Finch* case that provided specific policy numbers for certain policies issued by Penn National to Covil. After his appointment, the Receiver subsequently requested insurance policy information from Penn National as well.

⁴ In *PCS Nitrogen, Inc. v. Continental Casualty Company, et al.*, the SC Supreme Court adopted "the post-loss exception and [held] insurer consent is not required for an assignment of liability insurance coverage rights made after a loss." No. 28093, 2022 WL 1101704, at *4 (S.C. April 13, 2022).

Throughout the Covil litigation, Penn National has taken the position that it is unable to access any possible historic occurrence-based liability coverage, from its Iron Mountain, Inc. storage facility⁵ or any other storage facility, for Covil or any other policyholder it may have insured in the past unless it is provided with a policy number. It was then developed that Penn National has stored a significant amount of historic policy-related material on microfiche cards. But, again, Penn National has repeatedly taken the position that given that its historic policy related documents are stored on microfiche by policy number, and due to the fact that the material is so voluminous, it cannot search its historic policy related documents on microfiche unless it is given a policy number.

Covil diligently pursued discovery of all insurance policies issued by Penn National that cover Covil, in any way, through written requests for information as well as multiple depositions. This Court has now gone through several hearings with Penn National and the Receiver on motions to compel relating to the ability to locate policies in Penn National's historic repositories to discover whether any of them relate to Covil or to other receiverships that have been established in this state, of which Mr. Protopapas is the Receiver. No material has been forthcoming from Penn National's historic or "legacy" microfiche archives unless it was provided with a policy number. That is still where the Court finds itself today.

It is axiomatic that insurers, such as Penn National, have a duty to cooperate with the Receiver in the search for historic liability policies by complying with their discovery obligations. Failure to do so increases expenses and wastes this Court's time. This Court fully expects that an insurance company served with discovery requests from a receiver in this state, seeking the

⁵ Iron Mountain Inc. is a national document management firm which provides storage and information management services, including information management, digital transformation, secure storage, secure destruction, data centers, cloud services, and art storage and logistics. It is highly likely this firm could provide services that would digitize and make searchable all policies and documents that Penn National stores with it.

identification and production of insurance policies issued to the company as a named insured or which otherwise includes the company as a supplemental or additional insured, will search its entire repository of insurance policies and policy-related information for documents identifying the defunct company at issue. The Receiver need only provide the insurance company with the name of the defunct company for which it is seeking to marshal insurance assets. For the avoidance of doubt, this Court flatly rejects any assertion that an insurance company may refuse to search its repositories of insurance policies for responsive documents unless and until it is provided with a specific policy number.

Penn National has totally and completely failed to meet this most basic discovery obligation here. Penn National's discovery conduct has created considerable burdens for Covil and this Court. The Receiver has diligently sought discovery of Covil insurance policies and related documentation from Penn National for several years. However, Penn National refused to review its own microfiche and paper policy related historical documents unless it was provided with a policy number for the specific policy requested. Covil was therefore forced to file numerous motions to compel. This Court conducted multiple hearings on Penn National's discovery intransigence and issued multiple discovery orders compelling Penn National to meaningfully participate in discovery. A brief summary follows:

- At the January 25, 2021 discovery hearing, the Court ordered the Receiver for Covil to develop a specific inquiry and issue a new subpoena, if necessary, providing a list of job sites and owners to Penn National and ordered Penn National to conduct the searches and to respond with its findings promptly.
- On April 22, 2021, Covil filed a second motion to compel when Penn National refused to comply with its discovery obligations. Following a hearing, the Court granted the motion, finding that "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver." July 1, 2021 Order at 6. The Court ordered Penn National to "thoroughly search its paper records using the list

of contractors and facilities provided by the Receiver in connection with [Covil's] February 8, 2021, subpoena to Penn National." *Id.*

- On August 20, 2021 and September 8, 2021, Covil filed additional motions to compel in which Covil informed the Court that, among other things, Penn National, despite the Court's previous orders, continued to take the position that it could only search its historic policies contained on microfiche cards by policy number. On October 28, 2021, the Court held a motions hearing, and on November 5, 2021, the Court granted Covil's motions to compel, ordering that Covil's defense counsel in underlying asbestos cases, Ellis & Winters LLP, use its professional judgment to develop and implement an effective scope of document review to identify any additional Penn National policies that may provide coverage for Covil as either a primary or additional insured and make "suggestions for meeting Covil's needs to identify responsive coverage" while "not wasting Penn National's resources".
- Most recently, in light of Penn National's failure to issue a litigation hold to prevent the routine or automatic destruction of documents related to the Covil litigation, on February 11, 2022 the Court granted Covil's motion for a protective order, prohibiting Penn National from destroying its historic-policy related documents until the Court holds otherwise.

Despite this Court's prior orders, as of November 5, 2021, Penn National had not performed a complete manual search of its historic insurance policies contained on microfiche cards. Nor had it processed the microfiche cards so that the information could be searched electronically. It had not even sought estimates to do such work from vendors with experience imaging microfiche. This information is critical and discoverable not only in this coverage action, but also in the numerous underlying asbestos lawsuits in which Covil is a defendant. Covil has been sued in asbestos liability cases in South Carolina state courts and federal courts, and Covil needs its insurance policies to respond to routine discovery.⁶

⁶ See Rule 26(b)(2), SCRCP ("A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfying the judgment."); Rule 33(b)(4), SCRCP standard interrogatory (4) ("Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage provided in each policy); see also Fed. R. Civ. P. 26(a)(1)(A)(iv) ("a party must . . . provide to the other parties . . . for inspection and copying . . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment").

Ellis & Winters LLP was appointed by Covil's insurers to defend Covil in the underlying asbestos cases. Ellis & Winters' defense costs have been funded by Covil's insurers, including Penn National. This Court therefore ordered Penn National to open its repository of insurance policies and to facilitate a review performed by Covil's insurer-appointed defense counsel, Ellis & Winters. The Court directed the firm to perform this review using its own sound professional judgment and to report back to the Court with suggestions for meeting Covil's needs to identify responsive coverage while not wasting Penn National's resources. This Court entrusted Ellis & Winters with responsibility for this search because the insurance information is important and discoverable in its work as Covil's underlying asbestos defense counsel.

Approximately 120 days later, Ellis & Winters filed its March 22, 2022 report with this Court ("the Report"). After years of assurances from Penn National that it could not locate historic policies without a policy number, the Report provided an array of options for imaging and review of Penn National's policies, even in the absence of a policy number. As is relevant here, the "third option" involves imaging commercial line policy microfiche cards, eliminating certain cards solely by policy prefix. Specifically, Ellis & Winters selects a subset of commercial line microfiche cards to image by eliminating cards bearing prefixes that correspond to certain non-commercial liability policy types. The Report also explained that, after one day of in-person searching within microfiche cards at Penn National's headquarters, Ellis & Winters located three newly discovered policies covering Covil that Penn National had not produced to Covil, which all spanned the relevant timeframe of 1984 to 1986 and consisted of one inland marine policy, one boiler machinery policy, and one auto policy. Penn National's failure to independently identify and produce these additional insurance policies to Covil, which were requested years ago, is cause for great concern not only here but also in other Receivership litigation involving Penn National.

This Court has now lost all confidence in Penn National's willingness and ability to independently participate in discovery. The Court finds that Penn National's conduct with respect to its searches for historic Covil insurance policies (as well as non-Covil Receivership policies) amounts to a total and complete refusal to comply with its discovery obligations. It could well have done exactly what Ellis & Winters has proposed here. Penn National could have selected a vendor, processed the information on its microfiche cards, and conducted a review. It did not. Instead, Penn National took the defiant stance that it could not search for historic policies on its microfiche cards without being provided a policy number. That position turns out not to be so. This Court is left with no choice but to allow the Receiver to examine the records.

RULINGS AND ORDERS

1. Ellis & Winters' Report and Recommendations

A. Imaging and Review of Penn National's Microfiche Cards

After careful consideration, the Court is persuaded that the third option recommended by Ellis & Winters in its March 22 report will meet Covil's needs to identify responsive coverage while conserving Penn National's resources.

The Court finds that Ellis & Winters has effectively narrowed the universe of potentially responsive documents down to a set of microfiche cards containing historic insurance policies and policy-related information issued prior to 1992 and maintained by Penn National. The Court finds that Ellis & Winters' third option provides a reasonable and intentional process for further reducing that universe by policy number prefix to identify types of policies that are not relevant and can be excluded from scanning.

The Court therefore adopts the “third option” recommended by Ellis & Winters and DIRECTS Ellis & Winters to use its professional judgment⁷ to develop a methodology to select a subset of commercial line microfiche cards to image by eliminating certain cards bearing prefixes that correspond to certain non-commercial liability policy types.⁸ The methodology will be shared with both the Receiver and Penn National. However, Ellis & Winters is not required to receive the approval of either the Receiver or Penn National in developing its methodology.

The Court also DIRECTS Ellis & Winters to use its professional judgment to solicit bids from two or more vendors with experience imaging microfiche, to select an appropriate vendor (the “selected vendor”), to award the bid, and to supervise the selected vendor’s imaging of the microfiche cards into a format that is in a searchable database. Ellis & Winters will advise the Court and the parties as to the identity of the selected vendor and the terms of the selection.

Once the universe of records to image is determined by Ellis & Winters, images are scanned by the selected vendor, and information is available in a searchable database, the Court DIRECTS Ellis & Winters to provide Penn National and the Receiver with full access, on a rolling basis, to the database to conduct document reviews in order to search for responsive information for the Covil Receivership as well as the other Receiverships for which Peter D. Protopapas has been appointed Receiver.

To be clear, Ellis & Winters is not charged with reviewing the policies in the final database for responsiveness to the Receiver’s discovery requests. Ellis & Winters and its selected vendor are the vehicles to get the policies into a database where the information can be reviewed for responsiveness by the Receiver and his outside counsel. The Receiver and his outside counsel

⁷ Both the Receiver for Covil and Penn National have expressed confidence in the professional judgment of Ellis & Winters. See November 5, 2021 Discovery Order at 2.

⁸ The non-commercial liability policy types include business owner, fidelity bond, surety bond, and personal umbrella policies.

therefore must have full and unfettered access to every page of every insurance policy and policy-related document that Ellis & Winters and its selected vendor make available in the database. This will necessarily include reviewing records of other insureds' policies.

The Receiver will be entitled to review the policy records uploaded to the database to identify potentially responsive documents. The Receiver will be entitled to examine each and every policy to understand whether it is a policy that in any way, shape, or form covers Covil's asbestos responsibilities and liabilities. Because of Penn National's intransigence, the Court will not limit the Receiver's access to any of the information in the microfiche database. Ellis & Winters, however, should continue to make itself available to assist the Receiver search the records for the information that is needed to provide Covil with knowledge about its assets, including information concerning Penn National's policy prefixes and the identification of prefixes with policy lines of business identified in Ellis & Winters' report.

This Court DIRECTS Ellis & Winters to initiate and facilitate the above-referenced process immediately and to report back to the Court, on an interim basis, regarding progress made and any impediments to its progress. Time is of the essence.

Penn National is ORDERED to make all of its microfiche cards immediately available for review and imaging by Ellis & Winters and its selected vendor.

Penn National is also ORDERED to produce immediately to Covil all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report.⁹

⁹ Ellis & Winters explained to the Court at the April 11, 2022 hearing that it learned during its inquiry that Penn National policy numbers are constructed typically to have a numeric or an alpha prefix that indicates the type of policy. The Receiver is entitled to all information Penn National provided to Ellis & Winters regarding its policy prefixes. *See, e.g.*, Ellis & Winters' Report at 2.

Penn National is further ORDERED to produce immediately to Covil all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022. See Report at 3. This Court is deeply troubled that Penn National had access to these policy numbers in its underwriting files but did not disclose the existence of this information to the Court or bother to produce the three policies to Covil for several years.

Finally, Penn National is ORDERED to produce immediately all underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver.

B. Ellis & Winters Fees – Work to Date

Ellis & Winters reported at the April 11, 2022 hearing that all of its invoices for work to date, totaling approximately \$67,000, have been submitted to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP for payment but that those invoices have not been paid.

The Court finds that the fees and costs incurred by Ellis & Winters to date are reasonable for the tasks that were performed.

The Court hereby ORDERS Penn National to pay all outstanding invoices submitted by Ellis & Winters to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP in connection with this Court's November 5, 2021 Order within ten business days from the date of this Order.

C. Ellis & Winters and Selected Vendor Fees – Work Going Forward

This Court DIRECTS Ellis & Winters to set up a system of periodic billing to Penn National through Penn National's outside counsel at Goldberg Segalla for its work and its selected vendor's work in accordance with this Order.

This Court ORDERS that Penn National will pay all reasonable fees and costs invoiced by Ellis & Winters and its selected vendor for the work undertaken in accordance with this Order within thirty calendar days of receipt of the invoice.

This Court finds that the reasonable fees and costs that will be paid by Penn National are proportional to the needs of this case as well as the numerous other Receiverships for which this Court has appointed Mr. Protopapas. The Court is also in agreement with Ellis & Winters' well-reasoned evaluation at the April 11 hearing that its "third option" proposal constitutes "fairly typical discovery" in the context of the microfiche cards that are stored at Penn National.

This Court DIRECTS Ellis & Winters to advise the Receiver and the Court, on a periodic basis, of the expenses incurred for the work performed in accordance with this Order.

D. Confidentiality

This Court ORDERS Ellis & Winters and its selected vendor to keep confidential all insurance policies and policy-related documents processed from the microfiche cards and uploaded to the database.

This Court ORDERS the Receiver and his outside counsel to keep confidential all insurance policy or policy-related documents processed from the microfiche cards and uploaded to the database, and information obtained from those documents, that provide coverage to Covil or any other entities under Receiverships for which Mr. Protopapas is the court-appointed Receiver, except to the extent that such policies or information need to be disclosed in connection with mediation or any other court-supervised activity, including litigation.

This Court further ORDERS the Receiver to keep confidential all non-Covil and non-Receivership policies and policy related documents processed from the microfiche cards and uploaded to the database.

2. Covil's Motion to Challenge Confidentiality and Penn National's Motion to Seal

Covil moves to lift the confidential designation on the Document Retention Policies and Litigation Hold Procedure that Penn National produced to the Receiver on March 9, 2022 as “confidential material.” This Court GRANTS the motion.

Penn National has not demonstrated that the documents contain propriety or commercially sensitive information worthy of protection under South Carolina law. The Court is also persuaded that Penn National has waived its argument that its document retention policies are confidential given that it made its retention document publicly available in other coverage litigation.¹⁰ Penn National's arguments to the contrary are unpersuasive and border on being specious.

Penn National is therefore ORDERED to remove the confidential designation from its Document Retention Policies and Litigation Hold Procedures and to produce all of them to Covil within five business days.

Penn National also filed a Motion to Seal Exhibit 12 to its opposition to Covil's Motion and Supplemental Motion to Compel. Covil has no objection to the motion. The motion is GRANTED, and Exhibit 12, which is a spreadsheet that purportedly shows information regarding non-workers compensation insurance policies issued by Penn National, is SEALED.

3. Penn National's Motion to Quash Deposition(s) and Covil's Motions to Compel

¹⁰ See, e.g., *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Tate Andale, Inc.*, No. 1:17-cv-00670 (D. Md.), ECF No. 50-32.

During the January 11, 2022 motions hearing, this Court noted that it would hold Penn National's motion to quash Covil's Rule 30(b)(6) deposition in abeyance until the Receiver has had an opportunity to develop the record more thoroughly through written discovery.

On January 18, the Receiver served requests for admission, requests for production, and interrogatories on Penn National. On February 17, Penn National produced its written responses to the Receiver's discovery requests and, on March 9, it produced certain documents.

Covil argues that Penn National failed to produce all responsive documents and failed to disclose all relevant information in response to its discovery requests. Covil also argues that Penn National, in certain instances, provided evasive answers. Covil therefore moved for an order compelling Penn National to provide revised and complete discovery responses.

This Court DENIES Penn National's motion to quash and DIRECTS Covil to serve a Rule 30(b)(6) deposition notice on Penn National for a deposition to take place as soon as practicable based on the date of this Order. With respect to at least one of the topics at the Rule 30(b)(6) deposition, this Court further ORDERS Penn National to provide a corporate representative to testify as to why Penn National uses the terminal digit filing system to store its historic occurrence-based liability policies.¹¹

Finally, the Court will HOLD IN ABEYANCE Covil's Motion to Compel and Supplemental Motion to Compel until the Receiver has had an opportunity to conduct the Rule 30(b)(6) deposition. If, after the deposition, the parties still cannot resolve any outstanding disputes, then they are ordered to report back to this Court to identify any remaining issues.

¹¹ This Court learned from Ellis & Winters during the April 11 hearing that Penn National used a terminal digit system to file its historic insurance policies and policy-related documents. That is, Penn National used approximately eight- or nine-digit policy numbers and filed the policies not by the numbers on the left side but by the numbers on the right side. Ellis & Winters' IT professional, Brian Flatley, could not speak to why a corporate entity, such as Penn National, would utilize such a system. However, this Court observes that such a system appears to make it much harder to find historic insurance policies when requested by their insureds.

CONCLUSION

This Court has serious concerns that Penn National's systemic failure to search for and produce insurance policy information to its insured in this case, unless it is given a specific policy number, may impact other South Carolina consumers who no longer have access to their policy numbers as well. The Court therefore DIRECTS the Receiver to transmit a copy of this order to the South Carolina Department of Insurance, Office of Consumer Services, for its review and information, at the following address: P.O. Box 100105, Columbia, South Carolina 29202-3105.

This Order applies in this case as well as in any other matters in which Mr. Protopapas is appointed the Receiver.

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Richland Common Pleas

Case Caption: Covil Corporation By And Through Its Receiver , plaintiff, et al vs
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al
Case Number: 2020CP4002098
Type: Order/Other

So Ordered

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EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly
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Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**THE RECEIVER FOR COVIL
CORPORATION'S FOURTH SET OF
REQUESTS FOR PRODUCTION TO
PENN NATIONAL**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, The Receiver for Covil Corporation hereby serves the following written Requests for Production **PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY ("Penn National")**, each to be answered separately, in writing, within thirty (30) days from the date of the service hereof and served upon the undersigned.

DEFINITIONS AND INSTRUCTIONS

"Documents" means all email correspondence and all written or printed matter of any kind, including all the originals and all non-identical copies, different from the originals by reason of any notation made on such copies or otherwise including, but not limited to, any correspondence, memoranda, notes, diaries, statistics, letters, telegrams, telexes, teletypes, telefax, telecopies, minutes, agendas, contracts, reports, studies, surveys, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of

any sort of conversations, including telephone conversations and meetings, bulletins, computer printouts and records, mobile telephone and cell phone bills and statements, invoices, worksheets, accountant notes, work papers and all drafts, alterations, modifications, changes and amendments of any kind and, in addition thereto, any graphic or manual records, or representations of any kind including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tape, records, and motion pictures, and electronic or mechanical records or representations of any kind, including without limitation, tapes, cassettes, discs, and recordings or the hard copies thereof or other data compilations, whether preserved by magnetic transcription on hard drives, disks, etc. or otherwise. If such documents consist of other data compilation they shall be translated into a reasonably usable form through appropriate detection devices.

“All Documents” means every document as defined above, which is in your possession, custody or control and includes documents which are not in your possession, custody, or control, which are known to you and which can be located or discovered by reasonably diligent efforts.

“Including” means including but not by way of limitation.

“Related”, “relates”, or “relating to” means constituting, comprising, evidencing, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to, directly or indirectly.

“You” or “your” means the **PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY**, any of its affiliates or subsidiaries, responding to this discovery request and any and all agents, attorneys, successors, or assigns or any person acting on behalf of such Defendant.

“Covil Corporation” means the Plaintiff as identified in the caption as Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas.

The terms “and” and “or” shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

“Identify”, “identification”, or to “give the identity of” means:

- a. In the case of an individual to state his or her name, present or last known residence, present or last known telephone numbers (including home, work, and cell numbers when known), business affiliates, business address, job description, and, if different from the latter, the last position held and, if applicable, the date the individual was last employed by you.
- b. In the case of a document, whether or not such document is deemed to be privileged, objectionable, or subject to any claims of privilege, to provide the following information:
 - i. the title or other means of identification of each such document;
 - ii. the subject matter of each such document;
 - iii. the date each such document was prepared;
 - iv. the identity of the person or persons who prepared each such document;
 - v. the identity of the person or persons receiving the document or for whom such document was prepared as well as the identity of each person receiving copies of said documents;
 - vi. the present location of any and all copies of each such document in your possession, custody, or control;
 - vii. whether you claim any privilege or other reason for non-production with respect to each such document or copies thereof, and, if so, the factual and legal basis for the alleged privilege or non-production. In lieu of the foregoing, a copy of each such document may be supplied but said copy must indicate to which request it relates.
- b. If any requested document existed at one time and was in your possession, custody, or control, but has been lost, discarded or destroyed, or removed from your possession, custody or control, indicate for each such document:
 - i. the identity of the document and a description of its contents indicating its date, title and type of document;
 - ii. when the document was most recently in your possession, custody or control and what disposition was made of it;

- iii. the identity of any person which currently possesses the document;
- iv. a statement indicating whether the document was transferred or destroyed. State the person who transferred or destroyed the document and the person who authorized its transfer or destruction or who knows of its transfer or destruction. State the reason why the document was transferred or destroyed; and
- v. the identities of all persons having knowledge of the contents of each document.

“Covil Litigation” means individually or collectively the *Covil Corporation v. Penn National* matters ending in 1226 and 2098 as well as the subpoenas served on Penn National in the *Hopper, Pavlish*, and *Finch* matters related to Covil Corporation.

FOURTH REQUESTS FOR PRODUCTION

1. All documents related to the “random” reviews conducted by Penn National from 2010 to the present, as required by Step 7 of its “Steps for evaluating whether to retain or destroy documents (electronic, paper or other),” in accordance with the Records Retention Policy.
2. All documents related to the “scheduled” reviews conducted by Penn National from 2010 to the present, as required by Step 7 of its “Steps for evaluating whether to retain or destroy documents (electronic, paper or other),” in accordance with the Records Retention Policy.
3. Any and all acknowledgment forms provided to Penn National employees as part of the Covil Litigation or any prior lawsuit involving Covil Corporation in accordance with Penn National’s Litigation Hold policy. This Request specifically includes the blank form or forms provided to Penn National employees for execution.
4. Any and all acknowledgment forms or other confirmations in which a Penn National employee—including, but not limited to, Brent Reifsnyder and Boyd Wright—stated he or she “received, understands, and agrees to comply with the Litigation Hold” issued in the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1159 at ¶ 3.
5. Any and all “brief summar[ies] of the location of information that would be covered by the Litigation Hold” provided by any Penn National employee in relation to the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1160 at ¶ 5.
6. Any and all Documents and communications relating to any “custodial interview with a member of the Legal Department” conducted in relation to the Covil Litigation or any prior lawsuit involving Covil Corporation. *See* PNI-1160 at ¶ 8.

7. A copy of the “Standards of Conduct Policy, HR-0002” and any drafts of the same. *See* PNI-1160.
8. A copy of “LE-0004 Record Retention Policy” and any drafts of the same. *See* PNI-1159.
9. A true and correct copy of “LE-0010 Legal Review Guidelines” and any drafts of the same. *See* PNI-1159.
10. Any and all Documents and communications relating to “periodic self-audits” generated in accordance with Penn National’s Records Retention Policy since January 1, 2010. *See* PNI-1122.
11. Any and all Documents and communications relating to Internal Audits’ “operational audit reviews” generated in accordance with Penn National’s Records Retention Policy since January 1, 2010. *See* PNI-1122.
12. The “spreadsheet of hard-copy inventory stored at Iron Mountain on December 8, 2021” Penn National provided to Ellis & Winters as referenced in Ellis & Winters’ March 22, 2022 letter to the Court. *See* p. 2.
13. All Documents within the “sample boxes” that “were selected from a review of historical descriptions within the hard-copy inventory spreadsheet provided on December 8, 2021” as referenced in Ellis & Winters’ March 22, 2022 letter to the Court. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
14. The “organization of microfiche policies,” including the “microfiche cards believed to contain archived commercial line policy documents” Penn National provided to Ellis & Winters and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
15. The “risk-tracking data sheet policy claims” Penn National provided to Ellis & Winters on February 15, 2022 and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.
16. The “inventory data” Penn National provided to Ellis & Winters on February 25, 2022 “specific to microfiche records connecting policy numbers to cancel/non-renew dates” and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, p. 2.

17. The “two additional data sheets” Penn National provided to Ellis & Winters, which Ellis & Winters “utilized for purposes of narrowing the universe of documents,” and any and all Documents and communications relating to same. *See* Ellis & Winters’ March 22, 2022 letter to the Court, pp. 2-3.
18. All documents and communications related to YOUR response to the directives issued by Chief Justice (ret.) Jean Hoefer Toal in the November 5, 2021 and May 5, 2022 Orders.
19. All documents and communications transmitted between YOU and Ellis & Winters LLP related to the directives issued by Chief Justice (ret.) Jean Hoefer Toal in the November 5, 2021 and May 5, 2022 Orders, including but not limited to the documents and communications referred to and/or relied upon by Penn National in its interim letter reports and/or by Ellis & Winters in its letter report to the Court.

/s/ Jescelyn T. Spitz

Jescelyn T. Spitz
Rikard & Protopapas, LLC
2110 N Beltline Blvd.
Columbia, SC 29204
Phone: (803) 978-6111
jspitz@rplegalgroup.com

Counsel for the Receiver for Covil Corporation

This 13th day of May , 2022.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

C.A. No. 2020-CP-40-02098

Plaintiff,

CERTIFICATE OF SERVICE

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

I, Lindsay H. Valek, paralegal to Rikard & Protopapas, LLC, certify that I have served the foregoing **RECEIVER FOR COVIL CORPORATION'S FOURTH REQUESTS FOR PRODUCTION TO PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY** upon the following counsel of record at the following addresses via email:

Davis Harris dharris@goldbergsegalla.com
Brady Yntema byntema@goldbergsegalla.com
Alexander Davis aedavis@goldbergsegalla.com

s/ Lindsay H. Valek

This 13th day of May, 2022.

EXHIBIT 5

Morgan Lewis

W. Brad Nes

Partner
+1.202.739.5779
brad.nes@morganlewis.com

August 24, 2022

Brady A. Yntema, Esq.
David G. Harris, Esq.
Goldberg Segalla LLP
701 Green Valley Road
Suite 310
Greensboro, NC 27408

Re: Covil v. Penn Nat'l - Case No: 2020-CP-40-02098: Outstanding Discovery

Gentlemen:

The Supreme Court of South Carolina has denied Penn National's petition for a writ of certiorari (Appellate Case Number 2022-000785), the Court of Appeals has dismissed Penn National's separate appeal as interlocutory (Appellate Case Number 2022-000761), and Chief Justice (Ret.) Jean Toal has denied Penn National's motion for reconsideration (Case Number 2020-CP-40-02098). It is now clear that Penn National must "immediately obey" the Court's May 5, 2022 Discovery Order.

Immediate compliance with the Court's Discovery Order includes, but is not limited to, sitting for the depositions noticed by the Receiver on May 13th and May 31st respectively (i.e., Penn National's 30(b)(6) deposition and the deposition of Scott Maier). Please provide dates that your witnesses are available to be deposed in Columbia, South Carolina by the end of this week.

In addition, we have not received Penn National's response to Covil's Fourth Set of Request for Production, which was served on May 13th. Please confirm that you will provide all responsive documents by September 1, 2022.

Finally, as you know, the Court's May 5, 2022 Discovery Order directs Penn National to "produce immediately" to Covil the following documents:

- "all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report";
- "all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022"; and

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, DC 20004
United States

T +1.202.739.3000
F +1.202.739.3001

August 24, 2022
Page 2

- "underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver."¹

Please confirm that the above-referenced documents will be produced by September 1, 2022.

* * *

If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Brad Nes", with a stylized flourish extending to the right.

W. Brad Nes

Attorneys for the Receiver for Covil Corporation

¹ See Court's May 5, 2022 Order at 10-11.

EXHIBIT 6

From: Nes, W. Brad
Sent: Thursday, October 6, 2022 12:54 PM
To: 'Yntema, Brady A.' <byntema@goldbergsegalla.com>; 'Harris, David G.' <dharris@goldbergsegalla.com>
Cc: 'jon@smithrobinsonlaw.com' <jon@smithrobinsonlaw.com>; 'Peter Protopapas' <pdp@rplegalgroup.com>; 'Lindsay Valek' <Lindsay@rplegalgroup.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>
Subject: RE: Covil v. Penn National

Brady Y. and David,

Since we have not heard from you regarding deposition dates, we've gone ahead and re-noticed the depositions of Penn National's Rule 30(b)(6) corporate representative for October 17-18 and Scott Maier for October 24 in Columbia, South Carolina. See attached.

As requested, we have been working on securing deposition dates for our fact and expert witnesses. We can offer November 8 and 10 for Dan Regard and Sharla Frost, respectively. And we can offer November 14 for Peter Protopapas. We are working on a date for Charles Miller and will report back as soon as possible.

Finally, please let us know when we can expect to receive the outstanding discovery addressed in my August 24th letter.

Thank you.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

brad.nes@morganlewis.com | www.morganlewis.com

Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Nes, W. Brad
Sent: Thursday, September 22, 2022 5:02 PM

To: 'Yntema, Brady A.' <byntema@goldbergsegalla.com>; Peter Protopapas <pdp@rplegalgroup.com>; jon@smithrobinsonlaw.com

Cc: Edwards, Brady <brady.edwards@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>; Carter, Jane <jcarter@goldbergsegalla.com>; 'Lindsay Valek' <Lindsay@rplegalgroup.com>

Subject: RE: Covil v. Penn National

Brady Y.,

Thank you for your email. We agree that the Parties need to start setting deposition dates. To that end, we have two outstanding deposition notices currently – the attached Rule 30(b)(6) deposition notice and the deposition notice for Scott Maier. We need to secure dates for those depositions as soon as possible.

Likewise, please let us know when we can expect the outstanding discovery addressed in the attached August 24th letter.

We would be happy to have a conference call early next week to discuss discovery scheduling and mediation logistics. Just let us know your availability.

Many thanks.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

brad.nes@morganlewis.com | www.morganlewis.com

Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Yntema, Brady A. <byntema@goldbergsegalla.com>

Sent: Wednesday, September 21, 2022 10:21 AM

To: Nes, W. Brad <brad.nes@morganlewis.com>; Peter Protopapas <pdp@rplegalgroup.com>; jon@smithrobinsonlaw.com

Cc: Edwards, Brady <brady.edwards@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>; Carter, Jane <jcarter@goldbergsegalla.com>

Subject: Covil v. Penn National

[EXTERNAL EMAIL]

Good Morning.

With the scheduling order now entered by the Court, we should begin confirming deposition dates for fact and expert witnesses -- preferably October and early November dates. We will need to depose fact witnesses Brian Flatley and Peter Protopapas, and the Receiver's experts, Dan Regard, Sharla Frost, and Charles Miller.

With the Receiver's expert disclosures served last week, we will be providing Penn National's expert disclosures in the next several days. With respect to fact witnesses, I assume you will want to take the deposition of Scott Maier. If so, I will confirm his availability for a deposition.

We have been discussing potential mediators. While we would be in agreement with David Geronemus, we would also like to consider potential South Carolina mediators as an in-person mediation would likely be more productive. Peter and Jon may have some recommendations that we would be happy to consider, and I'll try to circulate some names by the end of this week.

I am happy to schedule a conference call for early next week so that we can keep things moving leading up to October.

Thanks, and please do not hesitate to contact me to discuss this matter.

Brady

Brady A. Yntema, Esq. | Partner

701 Green Valley Road | Suite 310 | Greensboro, NC 27408
DIRECT 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946
byntema@goldbergsegalla.com | Biography
goldbergsegalla.com



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EXHIBIT 7

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case Number: 2020-CP-40-02098

Covil Corporation, by and through its)
duly appointed receiver Peter D. Protopapas,)
)
Plaintiff,)
)
v.)
)
Pennsylvania National Mutual Casualty)
Insurance Company; Sam J. Crain & Co.,)
Inc.; and South Carolina Property &)
Casualty Insurance Guaranty Association,)
)
Defendant.)
)

**Penn National's Responses to the
Receiver of Covil Corporation's Request
for Production**

Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National")
by its undersigned counsel, responds as follows to the First Set of Requests for Production
("Requests") propounded by the Receiver of Covil ("Receiver")

GENERAL OBJECTIONS

1. Penn National objects to each Request to the extent it would require the provision of information or documents that are protected by the attorney client privilege, work product doctrine, or any other privilege recognized under applicable law. To the extent that any information or documents properly the subject of any privilege are inadvertently provided, such provision is not to be construed as a waiver of such privilege.

2. In providing responses to each Request, Penn National does not waive any objections it may have to the use, or introduction into evidence, at any stage of this or any other proceeding, of any information or documents provided in response to each Request. To the extent Penn National responds to each Request, Penn National does not concede that any of

the information or documents sought or provided are relevant or material to this action, and Penn National expressly reserves and does not in any way waive or intend to waive: (a) objections as to relevancy, materiality, and/or admissibility; (b) its right to object on any ground to the use of any of the responses herein, including at trial of this action or any other action; (c) objections as to vagueness or ambiguity; and (d) its right to object on any ground to any further requests for admission or other discovery requests involving or related to each Request.

3. Penn National does not waive objections to the truth or accuracy of any term, phrase, or characterization in each Request, and other than what is expressly admitted in response to each Request, nothing herein shall be construed as an admission by Penn National of any legal or factual contention contained in any individual Request.

4. Penn National objects to each Request to the extent it is vague, ambiguous, overly broad, unduly burdensome, or seeks documents not relevant to the parties' claims or defenses or to the subject matter of this action.

5. Penn National objects to each Request the extent it seeks documents other than that which may be obtained through a reasonably diligent search or investigation. In responding to each Request, Penn National has made a reasonable and diligent inquiry and reasonable diligent search of information and materials within its possession, custody, or control.

6. Penn National objects to each Request to the extent it purports to require the provision of documents that are not in Penn National's possession, custody, or control.

7. Penn National objects to each Request to the extent it requires the provision of documents in a manner or form that is infeasible, unduly burdensome, vexatious, or oppressive.

8. Penn National objects to each Request to the extent it is unreasonably cumulative or duplicative of any other Request.

9. Penn National objects to each Request to the extent it is vague, ambiguous, and overly broad because it fails to specify an applicable time period or to the extent it purports to seek documents from a time period not relevant to this action.

10. Penn National objects to each Request to the extent it seeks provision of trade secrets, confidential, proprietary, or competitively or financially sensitive business, personal, customer or client information or documents relating to Penn National. Penn National will provide such documents only pursuant to a stipulation and protective order entered in this case.

11. Penn National objects to each Request to the extent it calls for the provision of documents not reasonably accessible. Such requests are overbroad, and the burden and expense of complying with such requests is excessive and unjustified and is excessive and unjustified and is not reasonably calculated to lead to the discovery of admissible evidence.

12. Penn National objects to each Request to the extent it seeks documents related to policyholders other than Covil Corporation.

13. Penn National objects to each Request to the extent it seeks documents that are not related to the claims or agreements at issue in this litigation.

14. Penn National objects to each Request to the extent it seeks to improperly shift the burden to Penn National to review documents that the Receiver asked that Penn National produce in this lawsuit.

OBJECTIONS TO DEFINITIONS

1. Penn National objects to the Receiver's definitions to the extent they exceed, conflict with, or violate the requirements of the South Rules of Civil Procedure and any other applicable rules.

2. Penn National objects to the definition of "YOU" and "YOUR" on the ground that it is overly broad, unduly burdensome, oppressive, and seeks documents or information that are

not relevant to any issue in this action nor proportional to the needs of this case. The Receiver's definition of "YOU" and "YOUR" purports to require Penn National to respond to these Requests on behalf of business entities "related" to Penn National, notwithstanding that such entities have no past or present involvement in or relationship to the facts, issues or matters potentially relevant to any claims or defenses in this lawsuit.

GENERAL RESPONSE TO REQUESTS

The Responses and Objections included herein are based solely on information and documents that are presently known and available to Penn National. Penn National has conducted a diligent search for information and documents responsive to these Requests to the extent such information and documents exist and are in the possession, custody, or control of Penn National. Penn National reserves the right to modify, amend, or supplement its responses if additional information or documents become available. By producing or referring the Receiver to documents, Penn National does not concede the admissibility or relevance of any document produced or that the document is original, true, complete, or authentic. Penn National reserves the right to challenge the competency, relevancy, materiality, and admissibility of, or object on any ground to, the use of any information set forth herein or documents produced in any subsequent proceeding or at trial. Penn National further reserves its right to rely on any facts, documents or other evidence that may develop or come to Penn National's attention at a later date.

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS in YOUR possession from any time prior to November 2, 2018 containing the word "Covil."

RESPONSE: Penn National objects to the use of the defined term "YOUR" in this Request because it requires a response on behalf of business entities other than Penn National.

Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to this Request on the ground it fails to specify the requested documents with the “reasonable particularity” required by Rule 34(b) of the South Carolina Rules of Civil Procedure. Penn National also objects on the ground that the request is overly broad and unduly burdensome in that it would be difficult, if not impossible, to identify each and every document that may contain the word “Covil” that may exist in Penn National’s paper or other electronic files. Penn National will respond to specific, particularized requests for documents or categories of documents, but Penn National objects to omnibus and catch-all requests such as this. Penn National also objects to this request on the ground it seeks documents protected from disclosure by the attorney-client communications privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections.

Subject to and without waiving the foregoing objections, prior to November 2, 2018, Penn National responded to the subpoena issued by Plaintiffs’ counsel in the *Finch* asbestos case and provided all policies found by Penn National pursuant to the information provided and further provided such information to Covil’s underlying defense counsel. Such documents have been previously provided by Penn National to the Receiver and they are as readily available to the Receiver as they are to Penn National. Penn National continues to review its files with respect to any such non-protected documents that pre-date November 2, 2018, and it reserves the right to supplement this response.

REQUEST FOR PRODUCTION NO. 2:

All insurance policies, of any type, that YOU issued to Covil or which otherwise include Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to the undefined term “insurance policies” in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. In addition, Penn National object to this Request on the basis that it is disproportionate to the needs of the case considering, among other things, the importance of the issues at stake, the importance of the discovery in resolving the issues, and whether the burden or expence of the proposed discovery outweighs its likely benefit. For example, Penn National does not maintain its records in a way that would provide a reasonable method of searching for policies under which Covil is named as an additional insured or qualifies as an additional insured. Thus, Penn National has no method of identifying all documents that are responsive to this Request.

Subject to and without waiving the foregoing objections, Penn National’s search has yielded the following liability policies: Pennsylvania National Mutual Casualty Insurance Company issued a Comprehensive General Liability Insurance Policy, policy number 515 50 28 53, to Covil for the periods of March 31, 1986 to March 31, 1987 and March 31, 1987 to March 31, 1988 (“CGL Policies”). All portions of the CGL Policies issued by Pennsylvania National Mutual Casualty Insurance Company to Covil retained by Pennsylvania National Mutual Casualty Insurance Company and found as a result of Penn National’s search, to date, are produced as part of this Request.

REQUEST FOR PRODUCTION NO. 3:

All DOCUMENTS that relate to the underwriting of any insurance policy that you issued to Covil or which otherwise includes Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to the undefined term “insurance policy” in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action.

Subject to and without waiving the foregoing objections, Penn National is continuing its search for underwriting related documents and reserved the right to supplement this response by producing relevant, responsive, and non-protected documents to the extent they exist and are in Penn National’s possession, custody, or control, but such production, if any, only occur after a protective order is entered in this action.

REQUEST FOR PRODUCTION NO. 4:

All DOCUMENTS that relate to all claims submitted by, or on behalf of, Covil for coverage under any insurance policy issued YOU issued to Covil.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to the undefined term “insurance policy” in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. Penn National also objects to this Request

to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections.

Subject to and without waiving the foregoing objections, the Receiver has tendered each and every Covil related claim to Penn National and no other Covil related claims were submitted to Penn National prior to the appointment of the Receiver. As such, the requested information or documents are as readily available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 5:

All DOCUMENTS that relate to any and all reserve accounts YOU have established for any insurance policy that YOU ever issued to Covil or which otherwise includes Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to this Request on the ground that it seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National further objects to this Request to the extent it seeks confidential, proprietary business information or documents relating to Penn National.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS that relate to any loss run for any insurance policy that YOU ever issued to Covil or which otherwise includes Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to the undefined term “insurance policy” in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability

policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. Penn National also objects to this Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections.

Subject to and without waiving the foregoing objections, Penn National will produce relevant, responsive, and non-protected documents to the extent they exist and are in Penn National's possession, custody, or control, but such production, if any, will only occur after a stipulation and protective order is entered in this action.

REQUEST FOR PRODUCTION NO. 7:

All DOCUMENTS that relate to any correspondence between YOU and Covil's defense counsel at any time, specifically including all invoices from, or payments made to, Covil's defense counsel.

RESPONSE: Penn National objects to the use of the defined term "YOU" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to this Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections. Penn National further objects to this Request on the ground that is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, the Receiver has tendered each and every Covil related claim to Penn National and no other Covil related claims were submitted to Penn National prior to the appointment of the Receiver. As such, the Receiver has been involved in and kept informed of the defense of Covil on all Covil related claims tendered to Penn National.

To the extent necessary, Penn National will produce relevant, responsive, and non-protected documents to the extent they exist and are in Penn National's possession, custody, or control, but such production, if any, will only occur after a stipulation and protective order is entered in this action.

REQUEST FOR PRODUCTION NO. 8:

All subpoenas YOU served in an effort to locate any insurance policy YOU issued to Covil or which otherwise includes Covil as an insured, as well as all correspondence and responses that YOU received in response to these subpoenas.

RESPONSE: None. To the extent Penn National issues any such subpoenas, Penn National will provide each such subpoena to the Receiver.

REQUEST FOR PRODUCTION NO. 9:

All DOCUMENTS that relate to the steps taken by YOU to determine whether YOU issued any insurance policy to Covil or which otherwise includes Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term "YOU" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to the undefined term "insurance policy" in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. Penn National further objects to this Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, or any other applicable privileges and protections.

Subject to and without waiving the foregoing objections, Penn National has provided what "steps" it has taken to date to determine whether any liability policies were issued to Covil in

Penn National's responses to the Receiver's First Set of Interrogatories, and Penn National refers to and incorporates its objections and response to the Receiver's Interrogatory 5.

REQUEST FOR PRODUCTION NO. 10:

All DOCUMENTS that relate to the steps taken by YOU to identify the terms and conditions of each of the policies YOU issued to Covil or which otherwise name Covil as an insured.

RESPONSE: Penn National objects to the use of the defined term "YOU" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to the undefined term "insurance policy" in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. Penn National further objects to this Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections.

Subject to and without waiving the foregoing objections, Penn National, in its responses to the Receiver's First Set of Interrogatories, has provided the "steps" that have been taken to date to determine the "terms and conditions" of the CGL policies that were issued to Covil by Pennsylvania National Mutual Casualty Insurance Company. Investigation and research of the "terms and conditions" of the CGL Policies is continuing, and Penn National specifically reserves the right to supplement this Response. Penn National refers the Receiver to Penn National's response to the Receiver's Interrogatory No. 7.

REQUEST FOR PRODUCTION NO. 11:

All DOCUMENTS that relate to policies, treaties and/or arrangements obtained by YOU, or on YOUR behalf, to reinsure all or a portion of the risk of any insurances policies that YOU issued to

Covil or which otherwise include Covil as an insured. This request specifically includes documents reflecting the related brokering activities and any subsequent claims YOU submitted.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to this Request because it seeks information and documents that are neither relevant to any issue in this action nor proportional to the needs of the case. Documents concerning reinsurance and communications with reinsurers are not relevant to any issue in this action. In addition, the work product doctrine also protects against the discoverability of reinsurance information. Rule 26(b)(3) of the South Carolina Rules of Civil Procedure expressly provides that “a party may obtain discovery of documents and tangible things ... prepared in anticipation of litigation or for the trial by or for another party or by or for that other party’s representative (including his attorney, consultant, surety, indemnitor, *insurer*, or agent) *only* upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means” (emphasis added). A reinsurer is an insurer or indemnitor of an insurance company. Thus, any communications between Penn National and its reinsurers fall within the scope of this protection.

REQUEST FOR PRODUCTION NO. 12:

ALL documents relating to Covil’s history or business activities.

RESPONSE: Penn National objects to this request to the extent it is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, the only responsive documents provided to Penn National would have been provided during the course of Penn National’s involvement in the *Finch* coverage actions or the underlying asbestos cases

tendered by the Receiver to Penn National. For this reason, such documents are as readily (if not more) available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 13:

ALL documents reflecting any evidence of any insurance issued to, or protective of, Covil by any insurer at any time.

RESPONSE: Penn National objects to this request to the extent it is overly broad, unduly burdensome, and does not seek documents that are relevant or likely to lead to the discovery of relevant evidence in this case. Any documents evidencing insurance issued to Covil, or protective of, Covil by any insurer other than Penn National would have been provided to Penn National by Covil or the Receiver after the appointment of the Receiver. Penn National has previously produced all Penn National insurance related information as to insurance issued to, or protective of, Covil by way of prior responses to subpoenas, discovery requests, or other informal requests in the *Finch* related actions. As such, the requested documents are as readily (if not more) available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 14:

All DOCUMENTS related to YOUR document retention policies, written or oral, from 1950 to 2018.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS that relate to the manner in which YOU maintained, organized, and stored YOUR underwriting and liability claims files from 1950 to 2018.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 11.

REQUEST FOR PRODUCTION NO. 16:

All DOCUMENTS that relate to the manner in which YOU maintained, organized, and stored YOUR copies of claims drafts or payments made under comprehensive general liability policies from 1950 to 2018.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 11.

REQUEST FOR PRODUCTION NO. 17:

All DOCUMENTS that relate to the manner in which YOU maintained, organized, and stored your defense counsel billing and payment records from 1950 to 2018.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 11.

REQUEST FOR PRODUCTION NO. 18:

All DOCUMENTS that relate to or describe all electronic systems used by YOU in connection with claims handling or underwriting from 1950 to 2018, including YOUR policies and practices for purging or deleting information contained in these systems throughout this time period.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 13.

REQUEST FOR PRODUCTION NO. 19:

All DOCUMENTS that relate to, describe, or discuss any forms used by YOU in YOUR comprehensive general liability policies from 1950 to 1986.

RESPONSE: Penn National objects to this Request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National objects to the use of the defined term "YOU" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to this Request because it seeks

information and documents that are neither relevant to any issue in this action nor proportional to the needs of the case.

Pennsylvania National Mutual Casualty Insurance Company had an insuring relationship with Covil between March 31, 1986 to March 31, 1988. As a result, document retention policies from many decades before or after this period are not relevant to any issue in this action. Penn National objects to this Request on the ground that it is overly broad, unduly burdensome, and seeks information or documents not relevant to the parties' claims or defenses or to the subject matter of this action.

Subject to and without waiving the foregoing objections, Penn National reserves the right to supplement this Response with relevant, responsive, and non-protected documents to the extent they exist.

REQUEST FOR PRODUCTION NO. 20:

All DOCUMENTS that relate to YOUR process for assigning prefixes and/or policy numbers to comprehensive general liability policies issued before 1986.

RESPONSE: Penn National objects to this Request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National objects to the use of the defined term "YOUR" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity.

Subject to and without waiving the foregoing objections, the Covil policies found by Penn National were in effect beginning March 31, 1986, and as such, Penn National's manner of assigning prefixes or policy numbers prior to 1986, if any, is irrelevant and not likely to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 21:

All DOCUMENTS evidencing what YOU contend are the material terms and conditions of the insurance policies YOU issued to Covil.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National also objects to the undefined term “insurance policies” in this Request. The only type of insurance policy relevant to the claims and defenses asserted in this action is liability policies. Other types of policies, *e.g.* workers compensation policies, inland marine policies, *etc.*, are not relevant to the claims and defenses in this action. Penn National further objects to this Request to the extent it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, and/or any other applicable privileges and protections.

Pennsylvania National Mutual Casualty Insurance Company had an insuring relationship with Covil between March 31, 1986 to March 31, 1988. Investigation and research of the “material terms and conditions” of the relevant liability insurance policies is conducted on a case-by-case basis with respect to each Covil related asbestos claim tendered to Penn National. Any documents addressing the terms and conditions of Penn National’s Covil related policies as to a Covil related asbestos claim generated by Penn National that are not protected by the attorney-client privilege, work product doctrine, and/or other privilege, would have been provided to Covil, the Receiver, or their respective counsel. As such, such documents would be as readily available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 22:

All DOCUMENTS predating 1986 that refer or relate to YOUR membership in or subscription to the Insurance Services Office (“ISO”) or any of its predecessors.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 14.

REQUEST FOR PRODUCTION NO. 23:

All DOCUMENTS predating 1986 reflecting communications between YOU and the ISO, or any state or regulatory or insurance commission regarding the drafting or meaning of any general liability insurance policy of provision in any general liability insurance policy.

RESPONSE: Penn National refers to and incorporates as if fully stated herein its objections and response to the Receiver's Interrogatory No. 14.

REQUEST FOR PRODUCTION NO. 24:

All DOCUMENTS that refer or relate to YOUR participation in the April 21, 1977 meeting held by the American Insurance Association to discuss insurance coverage for asbestos bodily injury lawsuits.

RESPONSE: Penn National objects to this Request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National objects to the use of the defined term "YOUR" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity.

Subject to and without waiving these objections, Penn National is continuing its search as to any responsive documents, and reserves its right to supplement its response to this Request.

REQUEST FOR PRODUCTION NO. 25:

All entries from YOUR claims registers and microfiche archives regarding your insuring relationship with Covil.

RESPONSE: Penn National objects to this Request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National further objects to the extent that this Request

is for documents protected by the attorney-client privilege and work product doctrine. Penn National also objects to the use of the defined term “YOUR” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity.

Subject to and without waiving these objections, Penn National is continuing its search as to any responsive documents, and reserves its right to supplement its response to this Request beyond the insurance related documents and policies already produced to the Receiver in the *Finch* coverage actions.

REQUEST FOR PRODUCTION NO. 26:

Produce all DOCUMENTS relating to the reasons why any insurance policy YOU issued to Covil is now lost or destroyed.

RESPONSE: Penn National refers to and incorporates its objections and response to Request No. 14, and further responds that it currently has no information or knowledge that any Penn National policy issued to Covil has been “lost or destroyed”. Penn National has previously provided to the Receiver all policy documents it has found as a result of its searches for Covil insurance policies. Penn National reserves the right to supplement this response to the extent further information is found with respect to Covil insurance policies, including if any such policies were “lost or destroyed”.

REQUEST FOR PRODUCTION NO. 27:

All DOCUMENTS YOU were requested to identify, or relied on or referred to in responding to Plaintiff’s First Set of Interrogatories served concurrently herewith.

RESPONSE: Penn National objects to this Request to the extent that it is vague, ambiguous, overly broad, unduly burdensome, and seeks information or documents that are not likely to lead to discovery of admissible evidence. Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than

Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further incorporates any objections asserted by Penn National to Plaintiffs' First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 28:

All responses that you have made to lawsuits tendered to "YOU" for defense and indemnification.

RESPONSE: Penn National objects to the use of the defined term "YOU" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity.

Subject to and without waiving the foregoing objections, the Receiver has tendered each and every Covil related claim to Penn National and no other Covil related claims were submitted to Penn National prior to the appointment of the Receiver. As such, the requested information or documents are as readily available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 29:

All documents reflecting "YOUR" claims handling policies and/or protocols.

RESPONSE: Penn National objects to the use of the defined term "YOUR" in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to this Request on the grounds that it is overly broad, and seeks documents that are irrelevant and not likely to lead to the discovery of admissible evidence. Penn National also objects to this Request to the extent it seeks provision of confidential, or proprietary documents relating to Penn National. To the extent such documents are deemed to be discoverable in this action, Penn National will provide the documents only pursuant to a stipulation and protective order entered in this case.

REQUEST FOR PRODUCTION NO. 30:

All documents regarding the Covil receivership.

RESPONSE: Penn National objects to this Request on the grounds that it is vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in this case. To the extent a response is required, any and all discoverable and non-protected documents that are responsive to this Request are as readily (if not more) available to the Receiver as they are to Penn National.

REQUEST FOR PRODUCTION NO. 31:

All insurance policies, of any type, that YOU issued to Covil or that include Covil as an additional insured, including policies that identify the [Contractors listed in Exhibit A attached to the Request for Production] as the named insured or as an additional insured.

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National further objects to this Request on the basis that it asks Penn National to produce “all insurance policies, of any type that [Penn National] issued to Covil” for 250 Contractors for which the Subpoena fails to identify any relationship or association that each Contractor had with Covil Corporation (*i.e.* subcontractor) relevant to any subject claims in this action, or even that any relationship or association exists between Covil Corporation and such Contractors. Given the scope of this Request and the lack of information provided to Penn National with respect to the Contractors, the Request is not limited in any reasonable manner to avoid imposing undue burden or expense on Penn National.

Penn National further objects to this Request on the basis that it is overbroad, overly burdensome, and seeks documents and information not likely to lead to the discovery of

admissible evidence, because the Request is not limited to the type of policies relevant to the claims and defenses in this action – liability policies – as opposed to other types of insurance.

Penn National objects to this Request to the extent it requests documents that are of a confidential or proprietary nature, including to the extent it requests documents containing confidential or proprietary information of Penn National and its insureds without a confidentiality agreement and protective order that would protect against disclosure of such documents or information related to such documents outside the necessary parties to this action.

Subject to, and without waiving these objections, Penn National has performed the necessary due diligence in researching this request, despite the immense amount of time needed to complete this task, and having exercised reasonable diligence in searching its files, Penn National has not located any documents responsive to this request, with the exception of comprehensive general liability policies issued to Covil for the periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988, bearing policy number 515 50 28 53, which have previously been produced to the Receiver.

REQUEST FOR PRODUCTION NO. 32:

All certificates of insurance or other documents evidencing any insurance coverage that YOU provided to Covil, including certificates of insurance or documents that identify or concern the [Facilities listed in Exhibit A attached to the Request for Production].

RESPONSE: Penn National objects to the use of the defined term “YOU” in this Request because it requires a response on behalf of business entities other than Penn National. Penn National responds to this Request on behalf of Penn National only and not on behalf of any other entity. Penn National objects to this Request on the basis that it asks Penn National to produce “all insurance policies, of any type that [Penn National] issued to Covil” for 250 Facilities for which the Subpoena fails to identify any relationship or association that each Facility had with Covil

Corporation (*i.e.* subcontractor) relevant to any subject claims in this action, or even that any relationship or association exists between Covil Corporation and such Facilities. Given the scope of this Request and the lack of information provided to Penn National with respect to the Facilities, the Request is not limited in any reasonable manner to avoid imposing undue burden or expense on Penn National.

Penn National objects to this Request on the basis that it is overbroad, overly burdensome, and seeks documents and information not likely to lead to the discovery of admissible evidence, because the Request is not limited to the type of policies relevant to the claims and defenses in this action – liability policies – as opposed to other types of insurance.

Penn National objects to this Request to the extent it requests documents that are of a confidential or proprietary nature, including to the extent it requests documents containing confidential or proprietary information of Penn National and its insureds without a confidentiality agreement and protective order that would protect against public disclosure of such documents or information related to such documents.

Subject to, and without waiving these objections, Penn National has performed the necessary due diligence in researching this request, despite the immense amount of time needed to complete this task, and having exercised reasonable diligence in searching its files, Penn National has not located any documents responsive to this request, with the exception of comprehensive general liability policies issued to Covil for the periods of March 31, 1986 to March 31, 1987, and March 31, 1987 to March 31, 1988, bearing policy number 515 50 28 53, which have previously been produced to the Plaintiffs.

REQUEST FOR PRODUCTION NO. 33:

All documents that relate to the steps taken by YOU to locate information and documents responsive to these requests.

RESPONSE: Penn National objects to this Request to the extent it requests documents protected by the attorney-client privilege and/or documents that are of a confidential or proprietary nature, which may include advice of Penn National's counsel.

Subject to and without waiving these objections, Penn National refers to and incorporates its objections and response to the Receiver's Interrogatory No. 5.

This the 10th day of May, 2021.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II (S.C. State Bar No. 101951)

Brady A. Yntema (N.C. State Bar No. 25771)

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Telephone: 336.419.4900

byntema@goldbergsegalla.com

dharris@goldbergsegalla.com

Attorneys for Defendant Penn National

CERTIFICATE OF SERVICE

I hereby certify that on May 10th, 2021, I served the foregoing upon the following persons/entities at the following addresses via electronic mail:

John B. White, Jr.
Marghretta H. Shisko
Griffin L. Lynch
HARRISON WHITE, P.C.
178 W. Main Street
P.O. Box 3547 (29304)
Spartanburg, SC 29306
(864) 585-5100
jwhite@spartanlaw.com
mshisko@spartanlaw.com
glynch@spartanlaw.com

Attorneys for the Plaintiff

Erik T. Norton
HARRELL MARTIN & PEACE, P.A.
135 Columbia Avenue
Chapin, SC 29036
Phone: (803) 345-3353
erik@hmp-law.com

*Attorneys for Defendant South Carolina
Property and Casualty Ins. Guaranty Assoc.*

This the 10th day of May, 2021.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II
David G. Harris II (S.C. State Bar No. 101951)
Brady A. Yntema (N.C. State Bar No. 25771)
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950
byntema@goldbergsegalla.com
dharris@goldbergsegalla.com

Attorneys for Defendant Penn National

EXHIBIT 8

From: Nes, W. Brad
Sent: Wednesday, October 12, 2022 2:51 PM
To: 'Yntema, Brady A.' <byntema@goldbergsegalla.com>
Subject: RE: Covil v. Penn National

Brady,

Thank you again for the call. As discussed, here is the September 1, 2022 letter from Boyd Wright to Peter Protopapas that I referenced, which we will be producing, along with Ellis & Winters' discovery files on these matters, this week. We ask that Penn National supplement its responses to Covil's document requests, including specifically RFP No. 4 to produce Penn National's claims files related to the handling of the asbestos claims listed in this letter.

Please let me know if you have any questions.

Thanks.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

brad.nes@morganlewis.com | www.morganlewis.com

Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Yntema, Brady A. <byntema@goldbergsegalla.com>
Sent: Wednesday, October 12, 2022 11:38 AM
To: Nes, W. Brad <brad.nes@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>
Cc: jon@smithrobinsonlaw.com; Peter Protopapas <pdp@rplegalgroup.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>
Subject: Re: Covil v. Penn National

[EXTERNAL EMAIL]

Brad. Thanks for your email and I did receive you VM. I will call you this afternoon before 4:00 pm EST.

Get [Outlook for iOS](#)

Brady A. Yntema, Esq. | Partner

701 Green Valley Road | Suite 310 | Greensboro, NC 27408
DIRECT 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946
byntema@goldbergsegalla.com | Biography
goldbergsegalla.com



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From: Nes, W. Brad <brad.nes@morganlewis.com>
Sent: Wednesday, October 12, 2022 12:09:21 PM
To: Yntema, Brady A. <byntema@goldbergsegalla.com>; Harris, David G. <dharris@goldbergsegalla.com>
Cc: jon@smithrobinsonlaw.com <jon@smithrobinsonlaw.com>; Peter Protopapas <pdp@rplegalgroup.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>
Subject: RE: Covil v. Penn National

Brady,

Thanks for your email. I hope that your father's surgical procedure went well and that he makes a fully and speedy recovery.

I left a voice message for you this morning regarding deposition scheduling. Please let me know when you are available to speak today.

Many thanks.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347
Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001
brad.nes@morganlewis.com | www.morganlewis.com
Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Yntema, Brady A. <byntema@goldbergsegalla.com>
Sent: Monday, October 10, 2022 3:09 AM
To: Nes, W. Brad <brad.nes@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>
Cc: jon@smithrobinsonlaw.com; Peter Protopapas <pdp@rplegalgroup.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>
Subject: Re: Covil v. Penn National

[EXTERNAL EMAIL]

Good Morning Brad. I was in depositions on Thursday and Friday and then traveled to be with my father for a surgical procedure today. I should be back online tomorrow and will respond to your email asap.

Brady

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Brady A. Yntema, Esq. | Partner

701 Green Valley Road | Suite 310 | Greensboro, NC 27408
DIRECT 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946
byntema@goldbergsegalla.com | Biography
[goldbergsegalla.com](#)



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From: Nes, W. Brad <brad.nes@morganlewis.com>
Sent: Thursday, October 6, 2022 1:54:28 PM
To: Yntema, Brady A. <byntema@goldbergsegalla.com>; Harris, David G. <dharris@goldbergsegalla.com>
Cc: jon@smithrobinsonlaw.com <jon@smithrobinsonlaw.com>; Peter Protopapas <pdp@rplegalgroup.com>; Lindsay Valek <Lindsay@rplegalgroup.com>; Edwards, Brady <brady.edwards@morganlewis.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>
Subject: RE: Covil v. Penn National

Brady Y. and David,

Since we have not heard from you regarding deposition dates, we've gone ahead and re-noticed the depositions of Penn National's Rule 30(b)(6) corporate representative for October 17-18 and Scott Maier for October 24 in Columbia, South Carolina. See attached.

As requested, we have been working on securing deposition dates for our fact and expert witnesses. We can offer November 8 and 10 for Dan Regard and Sharla Frost, respectively. And we can offer November 14 for Peter Protopapas. We are working on a date for Charles Miller and will report back as soon as possible.

Finally, please let us know when we can expect to receive the outstanding discovery addressed in my August 24th letter.

Thank you.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347
Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001
brad.nes@morganlewis.com | www.morganlewis.com

Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Nes, W. Brad

Sent: Thursday, September 22, 2022 5:02 PM

To: 'Yntema, Brady A.' <byntema@goldbergsegalla.com>; Peter Protopapas <pdp@rplegalgroup.com>; jon@smithrobinsonlaw.com

Cc: Edwards, Brady <brady.edwards@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>; Carter, Jane <jcarter@goldbergsegalla.com>; 'Lindsay Valek' <Lindsay@rplegalgroup.com>

Subject: RE: Covil v. Penn National

Brady Y.,

Thank you for your email. We agree that the Parties need to start setting deposition dates. To that end, we have two outstanding deposition notices currently – the attached Rule 30(b)(6) deposition notice and the deposition notice for Scott Maier. We need to secure dates for those depositions as soon as possible.

Likewise, please let us know when we can expect the outstanding discovery addressed in the attached August 24th letter.

We would be happy to have a conference call early next week to discuss discovery scheduling and mediation logistics. Just let us know your availability.

Many thanks.

W. Brad Nes

Morgan, Lewis & Bockius LLP

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

brad.nes@morganlewis.com | www.morganlewis.com

Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com

From: Yntema, Brady A. <byntema@goldbergsegalla.com>

Sent: Wednesday, September 21, 2022 10:21 AM

To: Nes, W. Brad <brad.nes@morganlewis.com>; Peter Protopapas <pdp@rplegalgroup.com>; jon@smithrobinsonlaw.com

Cc: Edwards, Brady <brady.edwards@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>; Carter, Jane <jcarter@goldbergsegalla.com>

Subject: Covil v. Penn National

[EXTERNAL EMAIL]

Good Morning.

With the scheduling order now entered by the Court, we should begin confirming deposition dates for fact and expert witnesses -- preferably October and early November dates. We will need to depose fact witnesses Brian Flatley and Peter Protopapas, and the Receiver's experts, Dan Regard, Sharla Frost, and Charles Miller.

With the Receiver's expert disclosures served last week, we will be providing Penn National's expert disclosures in the next several days. With respect to fact witnesses, I assume you will want to take the deposition of Scott Maier. If so, I will confirm his availability for a deposition.

ELECTRONICALLY FILED - 2022 Nov 04 6:22 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4002098

We have been discussing potential mediators. While we would be in agreement with David Geronemus, we would also like to consider potential South Carolina mediators as an in-person mediation would likely be more productive. Peter and Jon may have some recommendations that we would be happy to consider, and I'll try to circulate some names by the end of this week.

I am happy to schedule a conference call for early next week so that we can keep things moving leading up to October.

Thanks, and please do not hesitate to contact me to discuss this matter.

Brady

Brady A. Yntema, Esq. | Partner

701 Green Valley Road | Suite 310 | Greensboro, NC 27408
DIRECT 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946
byntema@goldbergsegalla.com | Biography
goldbergsegalla.com



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EXHIBIT 9

Morgan Lewis

W. Brad Nes

Partner
+1.202.739.5779
brad.nes@morganlewis.com

October 27, 2022

Brady A. Yntema, Esq.
David G. Harris, Esq.
Goldberg Segalla LLP
701 Green Valley Road
Suite 310
Greensboro, NC 27408

Re: Covil v. Penn Nat'l - Case No: 2020-CP-40-02098: Outstanding Discovery

Dear Brady:

We write regarding Penn National's continued refusal to respond to the Receiver's Fourth Set of Requests for Production, which we served May 13, 2022. As you know, on August 24, following the Supreme Court of South Carolina's denial of Penn National's petition for a writ of certiorari, the Court of Appeals' dismissal of Penn National's separate, parallel appeal on the same issue, and the trial court's denial of Penn National's motion for reconsideration, we immediately sent you a letter requesting Penn National's immediate compliance with its discovery obligations. The letter specifically requested Penn National produce documents responsive to the Receiver's Fourth Set of Requests for Production. You have not responded to the letter or any of my follow up emails on September 22 and October 6. To date, Penn National has not responded to the Requests for Production served nearly six months ago.

We similarly have not received a response to my October 12, 2022 email regarding Penn National's obligation to supplement its document productions with its claims files related to the fourteen cases specifically listed in Boyd Wright's September 1, 2022 letter to Peter Protopapas. As you know, claims files are independently responsive to several Requests for Production, which we served over 17 months ago, including but not limited to Request for Production Number 4, which seeks "[a]ll Documents that relate to all claims submitted by, or on behalf of, Covil for coverage under any insurance policy You issued to Covil."

Penn National's responses and productions are long past due. Please confirm by October 31 that you will produce all documents responsive to Covil's Fourth Requests for Production and all responsive claims files no later than November 4. If we do not receive such confirmation, we will be left with no choice but to seek further relief from the Court.

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, DC 20004
United States

T +1.202.739.3000
F +1.202.739.3001

October 27, 2022
Page 2

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Brad Nes", with a stylized flourish extending from the end.

W. Brad Nes

Attorneys for the Receiver for Covil Corporation



November 7, 2022

VIA E-MAIL ONLY (cposwal@sccourts.org)

The Honorable Jean H. Toal
c/o Ms. Zitel Poswal
Judicial Law Clerk
South Carolina Court Administration
1220 Senate Street, Suite 221
Columbia, SC 29201

RE: *Covil Corp. v. Penn National Mut. Cas. Ins. Co.* (Richland County);
2020-CP-40-02098

Dear Chief Justice Toal:

I am writing on behalf of Pennsylvania National Mutual Casualty Insurance Company ("Penn National") in advance of the Pre-Trial Hearing currently scheduled to be conducted on Monday, November 14, 2022. It is expected that the Receiver will request an "evidentiary" hearing on issues involving alleged spoliation and a non-jury trial on issues involving Penn National's coverage for Covil under Policy Nos. 515 50 28 53 7 and 515 50 28 53 8 – specifically regarding certain coverage issues regarding Penn National's aggregate coverage limit under such policies.

Penn National requested a jury trial on all issues so triable by way of its Answer to the Receiver's Complaint for Declaratory Judgment and Breach of Contract. Fact and expert witnesses are scheduled to be conducted by the parties in November and December leading up to the trial date of December 12 or 14, 2022. Please allow this letter to respectfully confirm that Penn National preserves its right to and requests a jury trial on all factual issues in this case, including on spoliation and coverage issues.

Should you need anything further with respect to this matter, please do not hesitate to contact me.

Sincerely,

GOLDBERG SEGALLA, LLP

A handwritten signature in black ink, appearing to read 'BYA', is written over the printed name of Brady A. Yntema. Below the signature, the name 'David H. Harris' is printed.

Brady A. Yntema
David H. Harris

cc: All Counsel of Record

Please send mail to our scanning center at: PO Box 727, Buffalo NY 14201

From: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Sent: Tuesday, November 8, 2022 10:42 AM
To: Carter, Jane
Cc: Lindsay Valek; Peter Protopapas; Nes, W. Brad; Jon Robinson; Patterson, Nancy L.; Shanon Peake; murrell@smithrobinsonlaw.com; Edwards, Brady; Harris, David G.; Yntema, Brady A.
Subject: RE: Covil v. Penn (2019CP4002098) Rescheduled Pretrial Hearing

Good morning, Mr. Yntema.

Chief Justice Toal has instructed me to inform you that your participation and your client, Penn National's participation in pretrial hearings, discovery activities and any other activities past, present or future pertaining to *Covil v. Penn National* will in no way waive Penn National's right to insist that it is entitled to a jury trial on all or any matters pertaining to this litigation. She will place an order reserving and preserving Penn National's position on its right to a jury trial on the record at the commencement of the Pretrial hearing on Monday, Nov. 14, 2022.

Best,

Zitel Poswal

Judicial Law Clerk
South Carolina Court Administration
1220 Senate Street, Suite 221
Columbia, SC 29201
cposwal@sccourts.org
Office: 803-734-0833

From: Carter, Jane <jcarter@goldbergsegalla.com>
Sent: Monday, November 7, 2022 2:35 PM
To: Poswal, Chukwuzitelu <cposwal@sccourts.org>
Cc: Lindsay Valek <Lindsay@rplegalgroup.com>; Peter Protopapas <pdp@rplegalgroup.com>; Nes, W. Brad <brad.nes@morganlewis.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Patterson, Nancy L. <nancy.patterson@morganlewis.com>; Shanon Peake <shanonp@smithrobinsonlaw.com>; murrell@smithrobinsonlaw.com; Edwards, Brady <brady.edwards@morganlewis.com>; Harris, David G. <dharris@goldbergsegalla.com>; Yntema, Brady A. <byntema@goldbergsegalla.com>
Subject: Covil v. Penn (2019CP4002098) Rescheduled Pretrial Hearing

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. Poswal:

Please find attached a letter from counsel for Penn National to Chief Justice Toal. If you have any questions, please do not hesitate to contact me.

Thank you.

Jane Carter

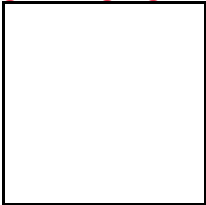
Jane Carter | Legal Assistant

701 Green Valley Road | Suite 310 | Greensboro, NC 27408

DIRECT 336.419.4905 | **EXT** 4905 | **FAX** 336.419.4950

jcarter@goldbergsegalla.com

goldbergsegalla.com



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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through  
its duly appointed Receiver  
Peter D. Protopapas,

C.A. No.: 2020-CP-40-02098

Plaintiff,

**DEFENDANT PENN NATIONAL'S  
RESPONSE IN OPPOSITION TO  
THE RECEIVER'S MOTION TO  
COMPEL**

v.

Pennsylvania National Mutual  
Casualty Insurance Co.; Sam J. Crain &  
Co., Inc.; and South Carolina Property  
and Casualty Insurance Guaranty Association,

Defendants.

NOW COMES Pennsylvania National Mutual Casualty Insurance Company ("Penn National") and hereby respectfully requests this Court to deny the Receiver's Motion to Compel Discovery filed on November 4, 2022, and provides the following response to the same:

**RESPONSE TO THE RECEIVER'S MOTION TO COMPEL**

In its Motion to Compel, the Receiver for Covil Corporation (the "Receiver") seeks an Order compelling Penn National to respond to the Receiver's Fourth Set of Requests for Production, which seek documents and information related to Penn National's policy archives and its related document retention program. The Receiver served its Fourth Set of Requests for Production to Penn National on May 13, 2022,<sup>1</sup> after this Court had entered an Order on May 5, 2022,<sup>2</sup> directing Penn National to take certain actions related to its policy archives and to provide related information and documents to the Receiver (among other relief).

<sup>1</sup> The Receiver's Fourth Request for Production to Penn National is attached as **Exhibit 4** to the Receiver's Motion to Compel filed on November 4, 2022.

<sup>2</sup> The May 5 Order is attached as **Exhibit 3** to the Receiver's Motion to Compel filed on November 4, 2022.



See May 5 Order, pp. 8–11. Penn National filed a Motion for Reconsideration of the May 5 Order, which was denied by the Court on May 26, 2022.

Following the denial of Penn National’s Motion for Reconsideration on May 26, 2022, counsel for the Receiver sent correspondence to Penn National that same day, requesting that Penn National provide dates for the Rule 30(b)(6) deposition of Penn National as ordered by the Court in the May 5 Order.<sup>3</sup> However, on May 31, 2022, Penn National filed a Notice of Appeal of the May 5 Order, and sent correspondence to counsel for the Receiver, advising that Penn National was exercising its right to appeal the May 5 Order, which would automatically stay those matters/issues decided in the May 5 Order on appeal. (See Ex. 1) In follow-up discussions, Penn National’s counsel also advised counsel for the Receiver that it was Penn National’s position that its appeal of the May 5 Order automatically stayed the deadline for responding to the Receiver’s Fourth Document Request because it sought documents and information related to the issues on appeal (i.e. Penn National’s policy archives and the related retention program).

Specifically, Rule 241 of the S.C. Appellate Court Rules provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR.

---

<sup>3</sup> The email correspondence from counsel for the Receiver dated May 26, 2022, to counsel for Penn National is attached hereto as **Exhibit 1**. Additionally, counsel for Penn National sent another letter to counsel for the Receiver on June 6, 2022, attached hereto as **Exhibit 2**, again reiterating its position that the pending appeal stayed those matters/issues at issue in the appeal.

Given that the Receiver's discovery requests sought information and documents related to Penn National's policy archives and its related retention program, and therefore, would be affected by the appeal of the May 5 Order, it was the understanding of counsel for Penn National that the parties would hold the discovery requests in abeyance until resolution of the appeal because they were affected by the appeal. *See* Rules 205 and 241, SCACR; *see e.g. Connor v. Slotchiver (In re Estate of Connor)*, No. 2009-UP-502, 2009 S.C. App. Unpub. LEXIS 524, at \*6 (Ct. App. Oct. 29, 2009).

In fact, tellingly, counsel for the Receiver did not again raise the issue of responses to the Receiver's Fourth Document Request to Penn National again until August 24, 2022, after the Court of Appeals granted the Receiver's Motion to Dismiss the appeal taken by Penn National on August 9, 2022.<sup>4</sup> At that point, counsel for the Receiver sent a letter to Penn National's counsel, advising that it was the Receiver's position that the dismissal of the appeal meant that Penn National must "immediately obey" the Court's May 5 Order, and requesting that Penn National confirm that it would provide responses to the Receiver's Fourth Document Production by September 1<sup>st</sup>. However, the Receiver's request—made under the assumption that the appeal had concluded—was premature because the May 5 Order remains on appeal at this time.

On August 24, 2022, Penn National filed a Petition for Rehearing and Suggestion for Rehearing *En Banc* with the Court of Appeals, which remains pending at this time.<sup>5</sup> Accordingly, the appeal of the May 5 Order remains pending at this time, and those matters/issues affected by

---

<sup>4</sup> *See Exhibit 5* to the Receiver's Motion to Compel filed on November 4, 2022.

<sup>5</sup> The Petition for Rehearing and Suggestion for Rehearing *En Banc* with the Court of Appeals is attached hereto as **Exhibit 3**.

the May 5 Orders remain automatically stayed, including the responses to the Receiver's Fourth Document Request to Penn National.

Accordingly, because the Receiver's Fourth Document Request seeks documents related to the issues which are currently on appeal, the Receiver's Motion to Compel responses to such discovery requests is premature, and Penn National respectfully requests that the Court deny the Receiver's Motion to Compel as it relates to its request that this Court compel Penn National to respond to the Receiver's Fourth Document Request.<sup>6</sup>

Respectfully submitted, this the 10<sup>th</sup> day of November, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: [dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: [byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)

Alexander E. Davis

S.C. Bar # 100061

Email: [aedavis@goldbergsegalla.com](mailto:aedavis@goldbergsegalla.com)

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

*Attorneys for Defendant Penn National*

---

<sup>6</sup> The Receiver's Motion to Compel also asks this Court to compel Penn National to supplement its production to Request No. 4 of the Receiver's First Set of Requests for Production by December 1, 2022. Penn National is in the process of compiling the requested documents for production, which include approximately 61,000 pages, and anticipates being able to comply with this request.



**From:** Yntema, Brady A.  
**Sent:** Tuesday, May 31, 2022 4:24 PM  
**To:** Harris, David G.; 'Nes, W. Brad'  
**Cc:** pdp@rplegalgroup.com; Lindsay@rplegalgroup.com; 'Jspitz@rplegalgroup.com'; Edwards, Brady; McCulloch Semlinger, Lauren A.; Carter, Jane  
**Subject:** Covil v. Penn National

After due consideration of the Court's Orders in this matter, including the Court's most recent Order on Penn National's Motion for Reconsideration, Penn National must exercise its right to appeal the Orders. You will be receiving service of Penn National's Notice of Appeal shortly. Given that Penn National's Rule 30(b)(6) deposition was a matter/issue decided in the Court's Orders, such deposition is automatically stayed and Penn National is not in a position to provide dates for such deposition.

Please do not hesitate to contact us regarding this matter.

Regards,

Brady

**Brady A. Yntema, Esq. | Partner**

701 Green Valley Road | Suite 310 | Greensboro, NC 27408  
MAIL PO Box 727, Buffalo, NY 14201  
DIRECT 336.419.4904 | EXT 4904 | FAX 336.419.4950 | MOBILE 336.908.1946  
[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com) | [Biography](#)  
[goldbergsegalla.com](http://goldbergsegalla.com)



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**From:** Harris, David G. <dharris@goldbergsegalla.com>  
**Sent:** Friday, May 27, 2022 4:48 PM  
**To:** 'Nes, W. Brad' <brad.nes@morganlewis.com>  
**Cc:** pdp@rplegalgroup.com; Lindsay@rplegalgroup.com; 'Jspitz@rplegalgroup.com'; Edwards, Brady <brady.edwards@morganlewis.com>; McCulloch Semlinger, Lauren A. <lauren.semlinger@morganlewis.com>; Carter, Jane <jcarter@goldbergsegalla.com>; Yntema, Brady A. <byntema@goldbergsegalla.com>  
**Subject:** RE: Covil v. Penn National

Brad,

Thank you for your email below. I hope that you are doing well and ready for the holiday weekend.

We received Justice Toal's Order denying Penn National's Motion for Reconsideration late yesterday afternoon and have provided a copy of the same to our client for their review and evaluation. Our contact at Penn National is out of the office today through Monday for the holiday weekend; however, we will confer with our client and respond to your request for dates by the end of the day on Tuesday.

Have a nice holiday weekend.

Sincerely,

David

**David G. Harris, Esq. | Partner**

701 Green Valley Road | Suite 310 | Greensboro, NC 27408  
MAIL PO Box 727, Buffalo, NY 14201  
DIRECT 336.419.4910 | EXT 4910 | FAX 336.419.4950 | MOBILE 336.301.0101  
[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com) | [Biography](#)  
[goldbergsegalla.com](http://goldbergsegalla.com)



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New Jersey | New York | North Carolina | Pennsylvania

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**From:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>  
**Sent:** Thursday, May 26, 2022 5:13 PM  
**To:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>; Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>  
**Cc:** [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com); [Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com); 'Jspitz@rplegalgroup.com'; Edwards, Brady <[brady.edwards@morganlewis.com](mailto:brady.edwards@morganlewis.com)>; McCulloch Semlinger, Lauren A. <[lauren.semlinger@morganlewis.com](mailto:lauren.semlinger@morganlewis.com)>  
**Subject:** RE: Covil v. Penn National

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Brady Y. and David,

The Court has denied Penn National's motion for reconsideration, making clear that Penn National must "immediately obey" its Discovery Order, including but not limited to sitting for a Rule 30(b)(6) deposition. Please provide dates that your witness(es) are available to be deposed in Columbia, South Carolina by close of business tomorrow.

Thanks.

**W. Brad Nes**

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW | Washington, DC 20004-2541  
Direct: +1.202.739.5779 | Main: +1.202.739.3000 | Fax: +1.202.739.3001

brad.nes@morganlewis.com | www.morganlewis.com  
Assistant: Joyce E. Burroughs | +1.202.739.5703 | joyce.burroughs@morganlewis.com



**From:** Carter, Jane <[jcarter@goldbergsegalla.com](mailto:jcarter@goldbergsegalla.com)>  
**Sent:** Wednesday, May 25, 2022 2:47 PM  
**To:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>; [pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com); [Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com); Edwards, Brady <[brady.edwards@morganlewis.com](mailto:brady.edwards@morganlewis.com)>; 'Jspitz@rplegalgroup.com'  
**Cc:** Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>; Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>  
**Subject:** Covil v. Penn National

[EXTERNAL EMAIL]

Good afternoon. I am attaching a letter regarding the above case.

Thank you.

**Jane Carter** | Legal Assistant

701 Green Valley Road | Suite 310 | Greensboro, NC 27408  
**MAIL** PO Box 727, Buffalo, NY 14201  
**DIRECT** 336.419.4905 | **EXT** 4905 | **FAX** 336.419.4950  
[jcarter@goldbergsegalla.com](mailto:jcarter@goldbergsegalla.com)  
[goldbergsegalla.com](http://goldbergsegalla.com)



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Brady A. Yntema | Partner  
Direct 336.419.4904 | byntema@goldbergsegalla.com

June 8, 2022

VIA E-MAIL – [brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)

W. Brad Nes  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004-2541

RE: Covil v. Penn National, *et al.*; Richland County Court of Common Pleas  
Case No.: 2020-CP-40-02098  
Receiver's Amended Notice of Rule 30(b)(6) Deposition of Penn National

Dear Brad:

Please accept this correspondence in response to the Receiver's Amended Notice of Videotaped Deposition of Scott Maier, which was electronically served by e-mail on May 31, 2022. The Notice unilaterally scheduled the deposition to be conducted on June 13, 2022, or at a day and time mutually agreeable to the parties, at the offices of Rikard Protopapas, LLC in Columbia, South Carolina.

Penn National filed a Notice of Appeal on May 31, 2022, which acts to automatically stay the deposition of Scott Maier as it is currently scheduled. Also, the date of June 13, 2022 is not mutually convenient for Mr. Maier or counsel for Penn National. To the extent the deposition is allowed to proceed in the future, please understand that Mr. Maier is employed by Penn National and works at Penn National's headquarters in Harrisburg, Pennsylvania, and as such, Mr. Maier would be able to attend a future deposition, if necessary, in Harrisburg, Pennsylvania, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure.

Please do not hesitate to contact us to discuss this matter further.

Sincerely,

GOLDBERG SEGALLA, LLP

A handwritten signature in black ink, appearing to be 'BYntema', written over the printed name of Brady A. Yntema.

Brady A. Yntema  
David G. Harris II

cc: Receiver and Counsel

Please send mail to our scanning center at: PO Box 727, Buffalo NY 14201



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Case No. 2020-CP-40-02098

---

Appellate Case No. 2022-000761

---

Covil Corporation, by and through its Receiver, Peter D. Protopapas,

Respondent,

v.

Pennsylvania National Mutual Casualty Insurance Co.; Sam J. Crain & Co., Inc.; and  
South Carolina Property and Casualty Insurance Guaranty Association, Defendants,

Of whom Pennsylvania National Mutual Casualty Insurance Company is the Appellant.

---

**APPELLANT’S PETITION FOR REHEARING AND SUGGESTION  
FOR REHEARING *EN BANC***

---

Pennsylvania National Mutual Casualty Insurance Company (“Penn National”), by and through counsel, and pursuant to the South Carolina Appellate Court Rules, Rules 221(a) and Rule 240, hereby respectfully moves and petitions the Court for a rehearing of the Court’s Order issued August 9, 2022, (“August 9 Order”), granting the motion to dismiss filed by Respondent Covil Corporation, by and through its duly appointed Receiver Peter D. Protopapas

(“Covil Corporation”). Penn National further suggests rehearing *en banc*, pursuant to Rule 219(b) of the South Carolina Appellate Court Rules. Consideration by the full court is necessary to maintain uniformity of decisions and resolve questions of exceptional importance, including but not limited to questions relating to the appealability of the imposition of severe sanctions in the guise of a discovery order for petitioner’s business decision to maintain its records in a manner amenable to the conduct of its business as an insurer.

The Court of Appeals’ August 9 Order as it currently stands allows the dismissal of Penn National’s appeal on the grounds that it is an interlocutory appeal of discovery orders of the circuit court. However, while titled discovery orders, the circuit court orders appealed by Penn National are in fact contempt or sanction orders in that they punish Penn National for its alleged “intransigence” by imposing burdensome sanctions and monetary penalties for its decision to store its historical policies by policy number. Such orders, in contrast to ordinary discovery orders, are immediately appealable.

The Court should grant Penn National’s Petition for Rehearing of Covil Corporations’ motion to dismiss Penn National’s appeal based on the arguments herein, as well as all arguments previously raised by Penn National in its prior submissions, which Penn National incorporates herein by reference.

## INTRODUCTION

Penn National has appealed two orders of the circuit court, dated May 5, 2022<sup>1</sup> and May 26, 2022<sup>2</sup> (hereinafter collectively “the Orders”), that go well beyond an order that simply resolves a discovery dispute between Penn National and the Receiver. The Orders adopted by the circuit court found that Penn National “refused” to properly review its insurance repository for Covil related policy documents, and that Penn National has been “intransigent” in its search for such documents. The trial court asserts that “[d]espite prior orders” of the circuit court, Penn National has taken a “defiant stance” in failing to appropriately maintain and search its insurance repository of historical policy related documents.

Penn National’s historical policy related documents (pre-1992) are stored on microfiche by policy number, and include more than 200,000 historic policies, with the commercial line policies alone being stored on approximately 300,000 microfiche cards, each of which is comprised of up to 60 images, meaning that there are roughly 18 million pages of commercial lines policies stored on microfiche. It is evident that the circuit court takes issue with Penn National’s document storage practices, believing that Penn National should have altered its document retention and storage policies at some point and processed the microfiche so that the cards could be searched electronically. The circuit courts’ belief that Penn National’s continued failure to take this step, “despite the [circuit court’s] prior orders,” constitutes a “defiant stance” and “intransigence” by Penn National. Therefore, the circuit court took the unprecedented step of

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<sup>1</sup> A copy of this order, hereinafter referred to as “the May 5 Order” and previously attached to Penn National’s Notice of Appeal, is attached hereto as **Exhibit 1**, for ease of reference.

<sup>2</sup> A copy of this order denying Penn National’s Motion to Reconsider the May 5 Order, hereinafter referred to as “the May 26 Order” and previously attached to Penn National’s Notice of Appeal, is attached hereto as **Exhibit 2**, for ease of reference.

directing Penn National to allow other parties to re-image and digitize its entire repository of historic commercial lines insurance policy related documents stored on microfiche, contrary to its long-standing document retention policies, and to allow opposing counsel to have unrestricted and unfettered access to the database that would be created by such process, at an exorbitant expense to be solely incurred by Penn National. Further, the Orders expressly refuse Penn National any say in the method or manner in which the process is to take place, selection of any vendors for the required digitization, or any ability to contest or restrict production of the digitized documents, and require that the Orders be sent to the Office of Consumer Services for the South Carolina Department of Insurance. May 5 Order, p. 15. The Orders adopted by the circuit court fundamentally imposed a sanction or penalty on Penn National, including a punitive monetary component. In granting Covil Corporation's motion to dismiss Penn National's appeal, there was an oversight of the significant penalties imposed on Penn National by the Orders and, as such, a misapprehension of case precedent that otherwise establish the right to an immediate appeal of the Orders in this case.

### **ARGUMENT**

Rule 221(a) of the South Carolina Appellate Court Rules permits a party to petition for rehearing where it supposes the court to have "overlooked or misapprehended" issues on appeal. *See also Ex parte Dunovant*, 16 S.C. 299, 301 (1881) ("[E]very party considering himself aggrieved by what he regards an erroneous decision of this court may apply for a rehearing upon certain well-established grounds."). The Court has failed to consider Penn National's argument that the Orders, in imposing monetary and other penalties on Penn National, operate as contempt orders, and thus, are immediately appealable. In general, "[s]tatutes and rules of court should be construed liberally in favor of the right of appeal." *Wieters v. Bon-Secours St. Francis Xavier*

*Hosp., Inc.*, 378 S.C. 160, 167, 662 S.E.2d 430, 434 (2008) (citations omitted). This Court should grant a petition for rehearing to allow Penn National to exercise its right of appeal and have this appeal heard on the merits.

Despite styling the Orders as “discovery orders,” the circuit court imposed a number of sanctions on the basis of Penn National’s alleged “defiant stance” and “intransigence,” including punitive orders that force Penn National to (1) finance the actions of third-parties in digitizing its confidential records, (2) provide unfettered access of third-parties to Penn National’s *entire* library of microfiche records containing policy related underwriting files without evidence that any such files that have not already been disclosed may be relevant to the litigation in question, and (3) prevent Penn National from exercising any oversight or taking any steps whatsoever to protect confidential information unrelated to this litigation. May 5 Order, p. 8. The circuit court further ordered that the Receiver provide a copy of the May 5 Order to the Office of Consumer Services for the South Carolina Department of Insurance. May 5 Order, p. 15. The dismissal of Penn National’s appeal on the basis of the Orders’ characterization as discovery orders overlooks the nature of the circuit court’s Orders, which actually impose sanctions on Penn National in the nature of a contempt order.

The substance of orders is subject to review regardless of the order’s title or styling. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (“Our review of trial court orders is not constrained by how the order is styled”). While the Orders appealed are styled as discovery orders, they are in the nature of contempt orders or sanctions in their substance, and should be immediately appealable. The effect of an order, not its styling, determines whether it is immediately appealable. *Id.* at 539 (“An appellate court should look to the effect of an . . . order to determine its appealability”) (quoting *Thornton v. S.C.*

*Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). See e.g. *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554, 684 S.E.2d 779, 781 (Ct. App. 2009) (an order granting a motion to dismiss would be considered one granting summary judgment because the trial court considered matters outside the pleadings); *Patterson v. Witter*, 425 S.C. 213, 225-26, 821 S.E.2d 677, 684 (2018) (same); *Wetzel v. Woodside Dev. Ltd. P'ship*, 364 S.C. 589, 592-93, 615 S.E.2d 437, 438-39 (2005) (treating motion to quash affidavit of default as equivalent of granting a motion to dismiss, making it immediately appealable). The Order's styling as discovery orders is irrelevant in this case. Its substance as a contempt order imposing penalties on Penn National is the essential consideration that was overlooked in the August 9 Order to dismiss Penn National's appeal. Ordinary discovery orders are indeed "interlocutory and not immediately appealable." *Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 335, 852 S.E.2d 744, 747 (2020). Contempt orders, in contrast, are immediately appealable. See *Tucker v. Honda of S.C. Mfg.*, 354 S.C. 574, 577, 582 S.E.2d 405, 407 (2003), *Hooper v. Rockwell*, 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999) ("[A] contempt order also is a final order that is immediately appealable."). Whether or not the Orders are substantively ordinary discovery orders or contempt orders is essential to determining their appealability.

Contempt orders have previously been styled as discovery orders and subsequently reviewed by the South Carolina Supreme Court. *Grosshuesch v. Cramer*, 377 S.C. 12, 18, 659 S.E.2d 112, 115 (2008) (referring to various orders appealed, including contempt orders, as "several discovery orders"). Thus, the manner in which an order is titled does not in and of itself control a determination of whether it is immediately appealable. Rather, it is the substance of the order that should control.



For example, the South Carolina Supreme Court in *Grosshuesch* heard consolidated appeals related to several orders characterized by the court as “discovery orders,” which included orders granting sanctions for contempt against a defendant and her attorneys and a protective order issued by the trial court. 377 S.C. at 18. The Supreme Court, holding that the orders concerning contempt and sanctions were immediately appealable, vacated the contempt order and sanctions against the defendant and reversed the contempt order and sanctions as to her counsel. 377 S.C. at 31. However, the Supreme Court held that the questions on appeal relating to the protective order were not immediately appealable. Each of the questions on appeal was characterized by the Supreme Court as “relate[d] to several discovery orders.” 377 S.C. at 18. However, questions concerning discovery orders that dealt with contempt and sanctions, which are immediately appealable, were distinguished from discovery orders that dealt with protective orders, which are not immediately appealable. 377 S.C. at 30. As such, *Grosshuesch* stands for three essential propositions: (1) some orders characterized as “discovery orders” are appealable; (2) the substance of a “discovery order,” and not its characterization as a “discovery order,” determines whether or not the order is appealable; and (3) “discovery orders” that in substance concern contempt or sanctions are immediately appealable, regardless of their characterization.

The Supreme Court of South Carolina has specifically held that the refusal of a party to comply with an order to participate in discovery, resulting in contempt, is immediately appealable. *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986); *See E.g. Hooper v. Rockwell*, 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999) (“a contempt order is also a final order that is immediately appealable”); *Arnal v. Arnal*, 363 S.C. 268, 297, 609 S.E.2d 821, 42 (Ct. App. 2005) (“[a]n order finding a party in contempt is immediately appealable”) (citing *Hooper*, 334 S.C. at 291, 513 S.E.2d at 364), *aff’d as modified* 371 S.C. 10, 636 S.E.2d 864 (2006); *Grosshuesch v. Cramer*,

377 S.C. 12, 659 S.E.2d 112 (2008) (referring to various orders appealed, including contempt orders, as “several discovery orders”, but addressing and reversing the immediately appealable contempt orders). It is well-settled law that “[a] contempt order is a final order that is immediately appealable.” *McCain v. Brightharp*, 399 S.C. 240, 251, 730 S.E.2d 916, 922 (2012).

South Carolina’s appellate courts have held that contempt orders, because of their nature, are final and immediately appealable. As set forth above, regardless of the title of the Orders in question, they are final and award relief identical to what could be awarded by a contempt order. The Orders do not compel any additional acts on the part of Penn National; they expressly take away any involvement of Penn National in the method or manner in which the documents are digitized. The Orders also impose in essence a fine in the amount of the cost to get the documents digitized on Penn National, as Penn National is ordered to pay the costs with no involvement in the selection of a vendor or any other aspect of the digitization, and has no recourse or ability to attempt to control costs. Finally, the Orders direct additional punishment in the transmission of the May 5 Order to the Department of Insurance. An immediate appeal of these contempt-type sanctions against Penn National, which were expressly imposed in response to Penn National’s alleged “intransigence” and “defiant stance” with respect to prior discovery orders of the circuit court, should be allowed to proceed. Penn National’s appeal should not be dismissed on the grounds that the circuit court’s Orders were simply styled as discovery orders. Respectfully, such a dismissal was a result of an oversight of the substance of the Orders that were styled as “discovery” orders when they were indeed contempt orders that sanctioned Penn National, which are immediately appealable pursuant to appellate court precedent. As such,

a petition for rehearing is appropriate here and should be granted to allow Penn National's appeal to be heard on the merits.

### CONCLUSION

Penn National respectfully requests that the Court grant Penn National's Petition for Rehearing and Suggestion for Rehearing *En Banc*, and to hear Penn National's appeal on the merits.

This the 24<sup>th</sup> day of August, 2022.

/s/ David G. Harris II

David G. Harris II (S.C. State Bar No: 101951)

Brady A. Yntema (*Admitted Pro Hac Vice*)

N.C. State Bar No: 25771

David L. Brown

GOLDBERG SEGALLA LLP

701 Green Valley Road, Suite 310

Greensboro, NC 27408

(336) 419-4900

[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)

[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)

[dbrown@goldbergsegalla.com](mailto:dbrown@goldbergsegalla.com)

*Attorneys for Appellant Pennsylvania National  
Mutual Casual Insurance Company*

# EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Covil Corporation, by and through its duly  
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty  
Insurance Co.; Sam J. Crain & Co., Inc.; and  
South Carolina Property and Casualty  
Insurance Guaranty Association,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-40-02098

**ORDER ON DISCOVERY MOTIONS**

This matter is before the Court on various discovery disputes between the Receivership for Covil Corporation (“Covil”) and Pennsylvania National Mutual Casualty Insurance Company (“Penn National”). There are numerous matters before the Court at this time, including Ellis & Winters LLP’s March 22, 2022 letter report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court’s November 5, 2021 Discovery Order;<sup>1</sup> the Receiver’s February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; the Receiver’s March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents; Penn National’s December 22, 2021 Motions to Quash; and Penn National’s April 7, 2022 Motion to Seal.<sup>2</sup>

<sup>1</sup> The Court also considered the prior letter reports filed by Penn National in response to the Court’s November 5, 2021 Discovery Order.

<sup>2</sup> Also before the Court is the Receiver’s motion to compel Penn National in the non-Covil Receiverships. Specifically, the Receiver seeks insurance policies and policy-related documents from Penn National for 14 other entities for which Mr. Protopapas is currently the receiver. In response to the Receiver’s Subpoenas *Duces Tecum*, Penn National produced boiler plate objections and zero documents. *See* March 1, 2022 Motion to Compel filed against Penn National on behalf of the Receiver for Flame Refractories, Inc. and United Construction Co. of Rome, Inc., General Boiler Casing Company, Inc., Payne & Keller Company, Piedmont Insulation, Inc. and Reynolds Insulation, Pipe & Boiler Insulation, Inc. and Carolina Industrial Insulating Co., Presnell Insulation, Co., Standard Insulation Company of N.C.

### **BACKGROUND**

Peter D. Protopapas was appointed by this Court in 2018 as the Receiver for Covil, a defunct South Carolina corporate entity. Covil engaged in the business of installing, removing and sometimes selling insulation made with asbestos materials in the State of South Carolina and in other places in the Southeast for many years between the 1960s and the 1990s. Covil has been sued in many asbestos lawsuits, and this Court was appointed to manage the asbestos docket at the direction of the Chief Justice of the Supreme Court of South Carolina. This Court therefore charged the Receiver with marshalling Covil's assets, including all occurrence-based liability insurance policies, that may respond to the asbestos suits pending against Covil.

Prior to the Receiver's appointment, this Court had a regular situation occur in which Covil Corporation would not respond to requests for information, necessitating orders compelling compliance with discover obligations. Ultimately, after granting numerous motions to compel with no response, this Court struck Covil's pleadings in an underlying asbestos case as a sanction for its failure to respond to discovery.

This Court learned subsequently that, after letting its charter lapse from the State of South Carolina, Covil had been effectively managed by the attorneys for certain insurance companies that covered Covil.<sup>3</sup> The strategic litigation approach adopted on Covil's behalf by other insurers was to not participate in discovery. Rather, it was to accept the pleadings on Covil's behalf and then engage in a course of conduct of waiting until the last moment and then settling the cases at a nuisance value. The other insurers appeared to want to be as minimally responsive as possible

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Inc., Davis Mechanical Contractors, Inc., Great Barrier Insulation Co., HEFCO, Inc., J. & L. Insulation, Inc., and J.R. Deans Company, Inc., in Case Numbers 2020-CP-40-04475, 2021-CP-40-03484, 2020-CP-40-01821, 2020-CP-40-05526, 2021-CP-40-01364, and 2020-CP-40-01952. Penn National takes the position that it cannot reasonably search its historic policies contained on microfiche cards unless the Receiver provides a specific policy number.

<sup>3</sup> Penn National was not providing a defense in the underlying asbestos cases for Covil at that time.

to avoid discovery of the occurrence-based general liability policies covering Covil. When this Court learned of certain Covil insurers' conduct, it appointed a receiver to manage Covil's assets. And the only assets Covil had at that time, and has to this day, are the coverage provided by the "legacy" occurrence-based general liability insurance policies covering Covil that were issued during the time it was an active asbestos insulation company.<sup>4</sup>

Covil, under the guidance of the Receiver, has identified numerous insurance policies issued by several different insurance companies covering its defense and indemnity obligations for the asbestos suits. A court-approved Qualified Settlement Fund ("QSF") has been created and funded by the proceeds of settlements with at least six insurers. Those insurance companies went through a long process of disclosure and negotiation, resulting in approval by the Court of settlement proposals that initially funded the QSF.

Penn National is now the company with which the Receiver is seeking information and documents related to the "legacy" occurrence-based liability policies it issued covering Covil as a primary or additional insured. Penn National first came to this Court's attention in connection with the *Finch* case, which was an asbestos case tried in federal court in North Carolina resulting in a \$32.7 million judgment against Covil. Specifically, certain general liability insurance policies issued by Penn National that covered Covil were located by Penn National in response to an asbestos claimant subpoena in the *Finch* case that provided specific policy numbers for certain policies issued by Penn National to Covil. After his appointment, the Receiver subsequently requested insurance policy information from Penn National as well.

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<sup>4</sup> In PCS Nitrogen, Inc. v. Continental Casualty Company, et al., the SC Supreme Court adopted "the post-loss exception and [held] insurer consent is not required for an assignment of liability insurance coverage rights made after a loss." No. 28093, 2022 WL 1101704, at \*4 (S.C. April 13, 2022).

Throughout the Covil litigation, Penn National has taken the position that it is unable to access any possible historic occurrence-based liability coverage, from its Iron Mountain, Inc. storage facility<sup>5</sup> or any other storage facility, for Covil or any other policyholder it may have insured in the past unless it is provided with a policy number. It was then developed that Penn National has stored a significant amount of historic policy-related material on microfiche cards. But, again, Penn National has repeatedly taken the position that given that its historic policy related documents are stored on microfiche by policy number, and due to the fact that the material is so voluminous, it cannot search its historic policy related documents on microfiche unless it is given a policy number.

Covil diligently pursued discovery of all insurance policies issued by Penn National that cover Covil, in any way, through written requests for information as well as multiple depositions. This Court has now gone through several hearings with Penn National and the Receiver on motions to compel relating to the ability to locate policies in Penn National's historic repositories to discover whether any of them relate to Covil or to other receiverships that have been established in this state, of which Mr. Protopapas is the Receiver. No material has been forthcoming from Penn National's historic or "legacy" microfiche archives unless it was provided with a policy number. That is still where the Court finds itself today.

It is axiomatic that insurers, such as Penn National, have a duty to cooperate with the Receiver in the search for historic liability policies by complying with their discovery obligations. Failure to do so increases expenses and wastes this Court's time. This Court fully expects that an insurance company served with discovery requests from a receiver in this state, seeking the

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<sup>5</sup> Iron Mountain Inc. is a national document management firm which provides storage and information management services, including information management, digital transformation, secure storage, secure destruction, data centers, cloud services, and art storage and logistics. It is highly likely this firm could provide services that would digitize and make searchable all policies and documents that Penn National stores with it.



identification and production of insurance policies issued to the company as a named insured or which otherwise includes the company as a supplemental or additional insured, will search its entire repository of insurance policies and policy-related information for documents identifying the defunct company at issue. The Receiver need only provide the insurance company with the name of the defunct company for which it is seeking to marshal insurance assets. For the avoidance of doubt, this Court flatly rejects any assertion that an insurance company may refuse to search its repositories of insurance policies for responsive documents unless and until it is provided with a specific policy number.

Penn National has totally and completely failed to meet this most basic discovery obligation here. Penn National's discovery conduct has created considerable burdens for Covil and this Court. The Receiver has diligently sought discovery of Covil insurance policies and related documentation from Penn National for several years. However, Penn National refused to review its own microfiche and paper policy related historical documents unless it was provided with a policy number for the specific policy requested. Covil was therefore forced to file numerous motions to compel. This Court conducted multiple hearings on Penn National's discovery intransigence and issued multiple discovery orders compelling Penn National to meaningfully participate in discovery. A brief summary follows:

- At the January 25, 2021 discovery hearing, the Court ordered the Receiver for Covil to develop a specific inquiry and issue a new subpoena, if necessary, providing a list of job sites and owners to Penn National and ordered Penn National to conduct the searches and to respond with its findings promptly.
- On April 22, 2021, Covil filed a second motion to compel when Penn National refused to comply with its discovery obligations. Following a hearing, the Court granted the motion, finding that "Penn National has a duty to fully, completely, and thoroughly search both its electronic records and its hard copy paper records for the information and documents sought by the Receiver." July 1, 2021 Order at 6. The Court ordered Penn National to "thoroughly search its paper records using the list

of contractors and facilities provided by the Receiver in connection with [Covil's] February 8, 2021, subpoena to Penn National." *Id.*

- On August 20, 2021 and September 8, 2021, Covil filed additional motions to compel in which Covil informed the Court that, among other things, Penn National, despite the Court's previous orders, continued to take the position that it could only search its historic policies contained on microfiche cards by policy number. On October 28, 2021, the Court held a motions hearing, and on November 5, 2021, the Court granted Covil's motions to compel, ordering that Covil's defense counsel in underlying asbestos cases, Ellis & Winters LLP, use its professional judgment to develop and implement an effective scope of document review to identify any additional Penn National policies that may provide coverage for Covil as either a primary or additional insured and make "suggestions for meeting Covil's needs to identify responsive coverage" while "not wasting Penn National's resources".
- Most recently, in light of Penn National's failure to issue a litigation hold to prevent the routine or automatic destruction of documents related to the Covil litigation, on February 11, 2022 the Court granted Covil's motion for a protective order, prohibiting Penn National from destroying its historic-policy related documents until the Court holds otherwise.

Despite this Court's prior orders, as of November 5, 2021, Penn National had not performed a complete manual search of its historic insurance policies contained on microfiche cards. Nor had it processed the microfiche cards so that the information could be searched electronically. It had not even sought estimates to do such work from vendors with experience imaging microfiche. This information is critical and discoverable not only in this coverage action, but also in the numerous underlying asbestos lawsuits in which Covil is a defendant. Covil has been sued in asbestos liability cases in South Carolina state courts and federal courts, and Covil needs its insurance policies to respond to routine discovery.<sup>6</sup>

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<sup>6</sup> See Rule 26(b)(2), SCRCP ("A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfying the judgment."); Rule 33(b)(4), SCRCP standard interrogatory (4) ("Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of policies involved and the amount or amounts of liability coverage provided in each policy); see also Fed. R. Civ. P. 26(a)(1)(A)(iv) ("a party must . . . provide to the other parties . . . for inspection and copying . . . any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment").

Ellis & Winters LLP was appointed by Covil's insurers to defend Covil in the underlying asbestos cases. Ellis & Winters' defense costs have been funded by Covil's insurers, including Penn National. This Court therefore ordered Penn National to open its repository of insurance policies and to facilitate a review performed by Covil's insurer-appointed defense counsel, Ellis & Winters. The Court directed the firm to perform this review using its own sound professional judgment and to report back to the Court with suggestions for meeting Covil's needs to identify responsive coverage while not wasting Penn National's resources. This Court entrusted Ellis & Winters with responsibility for this search because the insurance information is important and discoverable in its work as Covil's underlying asbestos defense counsel.

Approximately 120 days later, Ellis & Winters filed its March 22, 2022 report with this Court ("the Report"). After years of assurances from Penn National that it could not locate historic policies without a policy number, the Report provided an array of options for imaging and review of Penn National's policies, even in the absence of a policy number. As is relevant here, the "third option" involves imaging commercial line policy microfiche cards, eliminating certain cards solely by policy prefix. Specifically, Ellis & Winters selects a subset of commercial line microfiche cards to image by eliminating cards bearing prefixes that correspond to certain non-commercial liability policy types. The Report also explained that, after one day of in-person searching within microfiche cards at Penn National's headquarters, Ellis & Winters located three newly discovered policies covering Covil that Penn National had not produced to Covil, which all spanned the relevant timeframe of 1984 to 1986 and consisted of one inland marine policy, one boiler machinery policy, and one auto policy. Penn National's failure to independently identify and produce these additional insurance policies to Covil, which were requested years ago, is cause for great concern not only here but also in other Receivership litigation involving Penn National.

This Court has now lost all confidence in Penn National's willingness and ability to independently participate in discovery. The Court finds that Penn National's conduct with respect to its searches for historic Covil insurance policies (as well as non-Covil Receivership policies) amounts to a total and complete refusal to comply with its discovery obligations. It could well have done exactly what Ellis & Winters has proposed here. Penn National could have selected a vendor, processed the information on its microfiche cards, and conducted a review. It did not. Instead, Penn National took the defiant stance that it could not search for historic policies on its microfiche cards without being provided a policy number. That position turns out not to be so. This Court is left with no choice but to allow the Receiver to examine the records.

### **RULINGS AND ORDERS**

#### **1. Ellis & Winters' Report and Recommendations**

##### ***A. Imaging and Review of Penn National's Microfiche Cards***

After careful consideration, the Court is persuaded that the third option recommended by Ellis & Winters in its March 22 report will meet Covil's needs to identify responsive coverage while conserving Penn National's resources.

The Court finds that Ellis & Winters has effectively narrowed the universe of potentially responsive documents down to a set of microfiche cards containing historic insurance policies and policy-related information issued prior to 1992 and maintained by Penn National. The Court finds that Ellis & Winters' third option provides a reasonable and intentional process for further reducing that universe by policy number prefix to identify types of policies that are not relevant and can be excluded from scanning.

The Court therefore adopts the “third option” recommended by Ellis & Winters and DIRECTS Ellis & Winters to use its professional judgment<sup>7</sup> to develop a methodology to select a subset of commercial line microfiche cards to image by eliminating certain cards bearing prefixes that correspond to certain non-commercial liability policy types.<sup>8</sup> The methodology will be shared with both the Receiver and Penn National. However, Ellis & Winters is not required to receive the approval of either the Receiver or Penn National in developing its methodology.

The Court also DIRECTS Ellis & Winters to use its professional judgment to solicit bids from two or more vendors with experience imaging microfiche, to select an appropriate vendor (the “selected vendor”), to award the bid, and to supervise the selected vendor’s imaging of the microfiche cards into a format that is in a searchable database. Ellis & Winters will advise the Court and the parties as to the identity of the selected vendor and the terms of the selection.

Once the universe of records to image is determined by Ellis & Winters, images are scanned by the selected vendor, and information is available in a searchable database, the Court DIRECTS Ellis & Winters to provide Penn National and the Receiver with full access, on a rolling basis, to the database to conduct document reviews in order to search for responsive information for the Covil Receivership as well as the other Receiverships for which Peter D. Protopapas has been appointed Receiver.

To be clear, Ellis & Winters is not charged with reviewing the policies in the final database for responsiveness to the Receiver’s discovery requests. Ellis & Winters and its selected vendor are the vehicles to get the policies into a database where the information can be reviewed for responsiveness by the Receiver and his outside counsel. The Receiver and his outside counsel

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<sup>7</sup> Both the Receiver for Covil and Penn National have expressed confidence in the professional judgment of Ellis & Winters. *See* November 5, 2021 Discovery Order at 2.

<sup>8</sup> The non-commercial liability policy types include business owner, fidelity bond, surety bond, and personal umbrella policies.



therefore must have full and unfettered access to every page of every insurance policy and policy-related document that Ellis & Winters and its selected vendor make available in the database. This will necessarily include reviewing records of other insureds' policies.

The Receiver will be entitled to review the policy records uploaded to the database to identify potentially responsive documents. The Receiver will be entitled to examine each and every policy to understand whether it is a policy that in any way, shape, or form covers Covil's asbestos responsibilities and liabilities. Because of Penn National's intransigence, the Court will not limit the Receiver's access to any of the information in the microfiche database. Ellis & Winters, however, should continue to make itself available to assist the Receiver search the records for the information that is needed to provide Covil with knowledge about its assets, including information concerning Penn National's policy prefixes and the identification of prefixes with policy lines of business identified in Ellis & Winters' report.

This Court DIRECTS Ellis & Winters to initiate and facilitate the above-referenced process immediately and to report back to the Court, on an interim basis, regarding progress made and any impediments to its progress. Time is of the essence.

Penn National is ORDERED to make all of its microfiche cards immediately available for review and imaging by Ellis & Winters and its selected vendor.

Penn National is also ORDERED to produce immediately to Covil all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report.<sup>9</sup>

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<sup>9</sup> Ellis & Winters explained to the Court at the April 11, 2022 hearing that it learned during its inquiry that Penn National policy numbers are constructed typically to have a numeric or an alpha prefix that indicates the type of policy. The Receiver is entitled to all information Penn National provided to Ellis & Winters regarding its policy prefixes. *See, e.g.*, Ellis & Winters' Report at 2.

Penn National is further ORDERED to produce immediately to Covil all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022. *See* Report at 3. This Court is deeply troubled that Penn National had access to these policy numbers in its underwriting files but did not disclose the existence of this information to the Court or bother to produce the three policies to Covil for several years.

Finally, Penn National is ORDERED to produce immediately all underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver.

***B. Ellis & Winters Fees – Work to Date***

Ellis & Winters reported at the April 11, 2022 hearing that all of its invoices for work to date, totaling approximately \$67,000, have been submitted to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP for payment but that those invoices have not been paid.

The Court finds that the fees and costs incurred by Ellis & Winters to date are reasonable for the tasks that were performed.

The Court hereby ORDERS Penn National to pay all outstanding invoices submitted by Ellis & Winters to Penn National and/or Penn National's outside counsel at Goldberg Segalla LLP in connection with this Court's November 5, 2021 Order within ten business days from the date of this Order.

***C. Ellis & Winters and Selected Vendor Fees – Work Going Forward***

This Court DIRECTS Ellis & Winters to set up a system of periodic billing to Penn National through Penn National's outside counsel at Goldberg Segalla for its work and its selected vendor's work in accordance with this Order.

This Court ORDERS that Penn National will pay all reasonable fees and costs invoiced by Ellis & Winters and its selected vendor for the work undertaken in accordance with this Order within thirty calendar days of receipt of the invoice.

This Court finds that the reasonable fees and costs that will be paid by Penn National are proportional to the needs of this case as well as the numerous other Receiverships for which this Court has appointed Mr. Protopapas. The Court is also in agreement with Ellis & Winters' well-reasoned evaluation at the April 11 hearing that its "third option" proposal constitutes "fairly typical discovery" in the context of the microfiche cards that are stored at Penn National.

This Court DIRECTS Ellis & Winters to advise the Receiver and the Court, on a periodic basis, of the expenses incurred for the work performed in accordance with this Order.

***D. Confidentiality***

This Court ORDERS Ellis & Winters and its selected vendor to keep confidential all insurance policies and policy-related documents processed from the microfiche cards and uploaded to the database.

This Court ORDERS the Receiver and his outside counsel to keep confidential all insurance policy or policy-related documents processed from the microfiche cards and uploaded to the database, and information obtained from those documents, that provide coverage to Covil or any other entities under Receiverships for which Mr. Protopapas is the court-appointed Receiver, except to the extent that such policies or information need to be disclosed in connection with mediation or any other court-supervised activity, including litigation.



This Court further ORDERS the Receiver to keep confidential all non-Covil and non-Receivership policies and policy related documents processed from the microfiche cards and uploaded to the database.

2. **Covil's Motion to Challenge Confidentiality and Penn National's Motion to Seal**

Covil moves to lift the confidential designation on the Document Retention Policies and Litigation Hold Procedure that Penn National produced to the Receiver on March 9, 2022 as "confidential material." This Court GRANTS the motion.

Penn National has not demonstrated that the documents contain propriety or commercially sensitive information worthy of protection under South Carolina law. The Court is also persuaded that Penn National has waived its argument that its document retention policies are confidential given that it made its retention document publicly available in other coverage litigation.<sup>10</sup> Penn National's arguments to the contrary are unpersuasive and border on being specious.

Penn National is therefore ORDERED to remove the confidential designation from its Document Retention Policies and Litigation Hold Procedures and to produce all of them to Covil within five business days.

Penn National also filed a Motion to Seal Exhibit 12 to its opposition to Covil's Motion and Supplemental Motion to Compel. Covil has no objection to the motion. The motion is GRANTED, and Exhibit 12, which is a spreadsheet that purportedly shows information regarding non-workers compensation insurance policies issued by Penn National, is SEALED.

3. **Penn National's Motion to Quash Deposition(s) and Covil's Motions to Compel**

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<sup>10</sup> See, e.g., *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Tate Andale, Inc.*, No. 1:17-cv-00670 (D. Md.), ECF No. 50-32.

During the January 11, 2022 motions hearing, this Court noted that it would hold Penn National's motion to quash Covil's Rule 30(b)(6) deposition in abeyance until the Receiver has had an opportunity to develop the record more thoroughly through written discovery.

On January 18, the Receiver served requests for admission, requests for production, and interrogatories on Penn National. On February 17, Penn National produced its written responses to the Receiver's discovery requests and, on March 9, it produced certain documents.

Covil argues that Penn National failed to produce all responsive documents and failed to disclose all relevant information in response to its discovery requests. Covil also argues that Penn National, in certain instances, provided evasive answers. Covil therefore moved for an order compelling Penn National to provide revised and complete discovery responses.

This Court DENIES Penn National's motion to quash and DIRECTS Covil to serve a Rule 30(b)(6) deposition notice on Penn National for a deposition to take place as soon as practicable based on the date of this Order. With respect to at least one of the topics at the Rule 30(b)(6) deposition, this Court further ORDERS Penn National to provide a corporate representative to testify as to why Penn National uses the terminal digit filing system to store its historic occurrence-based liability policies.<sup>11</sup>

Finally, the Court will HOLD IN ABEYANCE Covil's Motion to Compel and Supplemental Motion to Compel until the Receiver has had an opportunity to conduct the Rule 30(b)(6) deposition. If, after the deposition, the parties still cannot resolve any outstanding disputes, then they are ordered to report back to this Court to identify any remaining issues.

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<sup>11</sup> This Court learned from Ellis & Winters during the April 11 hearing that Penn National used a terminal digit system to file its historic insurance policies and policy-related documents. That is, Penn National used approximately eight- or nine-digit policy numbers and filed the policies not by the numbers on the left side but by the numbers on the right side. Ellis & Winters' IT professional, Brian Flatley, could not speak to why a corporate entity, such as Penn National, would utilize such a system. However, this Court observes that such a system appears to make it much harder to find historic insurance policies when requested by their insureds.

**CONCLUSION**

This Court has serious concerns that Penn National's systemic failure to search for and produce insurance policy information to its insured in this case, unless it is given a specific policy number, may impact other South Carolina consumers who no longer have access to their policy numbers as well. The Court therefore DIRECTS the Receiver to transmit a copy of this order to the South Carolina Department of Insurance, Office of Consumer Services, for its review and information, at the following address: P.O. Box 100105, Columbia, South Carolina 29202-3105.

This Order applies in this case as well as in any other matters in which Mr. Protopapas is appointed the Receiver.

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Richland Common Pleas

**Case Caption:** Covil Corporation By And Through Its Receiver , plaintiff, et al vs  
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al  
**Case Number:** 2020CP4002098  
**Type:** Order/Other

So Ordered

Jean H. Toal

# EXHIBIT 2

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL DISTRICT  
CASE NUMBER: 2020-CP-40-02098

Covil Corporation, by and through its  
duly appointed receiver Peter D.  
Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual  
Casualty Insurance Company; Sam J.  
Crain & Co., Inc.; and South Carolina  
Property & Casualty Insurance  
Guaranty Association,

Defendants.

**ORDER**

Penn National moves this Court to reconsider its May 5, 2022 Order on Discovery Motions, which addressed: (1) Ellis & Winters LLP's March 22, 2022 report on its inquiry into the existence and storage of certain historic policy documents pursuant to this Court's November 5, 2021 Discovery Order; (2) the Receiver's February 24, 2022 Motion to Compel and April 1, 2022 Supplemental Motion to Compel; (3) the Receiver's March 17, 2022 Motion to Challenge the Confidentiality of Certain Documents and Penn National's April 7, 2022 Motion to Seal; and (4) Penn National's December 22, 2021 Motions to Quash.

Upon consideration of Penn National's Motion for Reconsideration, the Receiver's Opposition to Penn National's Motion for Reconsideration, and for good cause shown, it is **HEREBY ORDERED** that Penn National's Motion for Reconsideration is **DENIED**. By separate

Order Penn National's 2022 Motion to Seal Exhibit 1 has been granted with consent of the Receiver.

This matter is an ongoing discovery issue, revolving around Penn National's refusal to produce insurance policies, and thus is not immediately appealable. Accordingly, a Motion for Reconsideration is inappropriately raised. The South Carolina Supreme Court has held, "an order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision." *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005)(See, *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974); *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985)). Pursuant to S.C. Code § 14-3-330(1), intermediate orders that involve the merits of the case may be immediately appealed and pursuant to S.C. Code § 14-3-330(2), interlocutory orders affecting a substantial right may be immediately appealed. An order which involves the merits, "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Id.* (Citing, *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780)). An order affecting a substantial right must "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* (Citing, *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4). Orders involving discovery disputes such as this do not qualify as appealable Orders.

Additionally, Penn National's Motion for Reconsideration does not recite an accurate reflection of this Court's Order or the activity of the parties in this protracted discovery dispute. The Receiver's reply, filed May 18, 2022, in opposition to Penn National's Motion for Reconsideration is a completely accurate recital of the law and facts of this discovery dispute and of the Orders of this Court including the May 5, 2022 Order on discovery motions. This Order must be immediately obeyed.

It is **SO ORDERED**.

*[Electronic Signature on Following Page]*

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Richland Common Pleas

**Case Caption:** Covil Corporation By And Through Its Receiver , plaintiff, et al vs  
Pennsylvania National Mutual Casualty Insurance Co , defendant, et al  
**Case Number:** 2020CP4002098  
**Type:** Order/Other

So Ordered

Jean H. Toal

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly  
appointed receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty  
Insurance Company; Sam J. Crain & Co.,  
Inc.; and South Carolina Property & Casualty  
Insurance Guaranty Association,

Defendants.

CASE NUMBER: 2020-CP-40-02098

**THE RECEIVER FOR COVIL  
CORPORATION'S PRE-TRIAL  
HEARING STATUS REPORT**

In advance of the final pre-trial hearing to be conducted by the Court on November 14, 2022, the Receiver for Covil Corporation provides this status report on the case containing the following information: (1) the non-jury nature of the upcoming evidentiary hearing and trial, (2) the status of discovery, and (3) a proposed schedule for the trial during the week of December 12, 2022.

**I. Evidentiary Hearing and Non-Jury Trial**

The December evidentiary hearing and trial relates to two sets of issues: (1) Penn National's discovery violations in this case that warrant sanctions, including but not limited to spoliation of documents, and the appropriate relief and (2) Covil's requests for declarations as to the interpretation and meaning of the insurance policies that Penn National issued to Covil. Both sets of issues are non-jury issues that can be tried to the bench the week of December 12.

**A. The declaratory judgment issues are properly before the Court as non-jury trial issues.**

First, South Carolina courts recognize that a determination of coverage under an insurance policy is a question of law to be tried to a bench. “Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 491 S.E.2d 240, 242 (1997). “The character of an action as legal or equitable depends on the relief sought.” *Bank of New York Mellon v. Lindsay*, No. 2015-UP-208, 2015 WL 1880195, at \*1 (S.C. Ct. App. Apr. 22, 2015). “A declaratory judgment action is neither legal nor equitable, but is determined by the nature of the underlying issue.” *State Farm Fire & Cas. Co. v. Barrett*, 530 S.E.2d 132, 134 (Ct. App. 2000) (quoting *Felts v. Richland County*, 400 S.E.2d 781, 782 (1991)). “An action to determine coverage under an insurance policy is an **action at law**.” *Barrett*, 530 S.E.2d at 134; *see also Pennell v. Foster*, 524 S.E.2d 630, 633 (Ct. App. 1999) (“A declaratory judgment action to determine the coverage under an insurance policy's omnibus clause is an action at law. An action to declare excess or secondary liability coverage is an action at law.”) (citations omitted); *see also U.S. Fire Ins. Co. v. Macloskie*, 320 S.C. 459, 462, 465 S.E.2d 759, 760-61 (Ct. App. 1995) (same); *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Func*, 382 S.C. 535, 542, 677 S.E.2d 574, 578 (S.C. 2009) (same).

**B. Spoliation is not a cause of action in South Carolina, and therefore is not an issue for a jury.**

Second, South Carolina “does not recognize an independent tort for the negligent spoliation of evidence.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 154, 714 S.E.2d 537, 542 (2011). Instead, spoliation of evidence is recognized as a discovery violation potentially warranting sanctions, including the potential for an adverse inference, left to the discretion of the trial court. *See Kershaw County Bd. Of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990).

Here, Covil has requested an evidentiary hearing related to Penn National's spoliation of evidence, and will seek sanctions related to that conduct. This evidentiary hearing is appropriately before this Court as a bench trial, and not a matter for a jury.

**C. Penn National waived its right to seek a jury trial.**

By letter to the Court dated November 7, 2022, Penn National requested a jury trial "on all issues so triable". Notwithstanding the fact that neither set of issues to be addressed during the upcoming December trial could be properly presented to a jury, Penn National has already waived its right to request a jury at this late hour.

On September 6, 2022, the Receiver filed a status report requesting that the Court set (1) a pre-trial conference in November 2022 and (2) a combined evidentiary hearing and non-jury trial in December 2022. *See* Exhibit A, Covil's September 6 Status Report at 5 ("The Receiver requests an evidentiary hearing regarding Penn National's spoliation of evidence in order for the Court to make factual findings regarding the scope of the harm to Covil and to fashion appropriate remedies to address that harm. The Receiver also asks for a non-jury trial on Covil's declaratory relief against Penn National concerning Penn National's obligations to Covil under Policy Nos. 515 50 28 53 7 and 515 50 28 53 8"). Penn National did not file any objection or response.

Then, at the Court's status conference on September 8, 2022, the Receiver again requested a nonjury trial. *See* Exhibit B, Transcript of September 8 Hearing at 4-5 ("We believe, Your Honor, that that issue can be resolved in a nonjury trial as the court's schedule would allow. It is a straight-up declaratory judgment on two insurance policies. Our research has indicated that that is a proper nonjury matter for this court."); *see also id.* at 10-11 ("This is a nonjury case."). In discussing scheduling, the Court confirmed that this was a nonjury matter: "Well, I'm not inclined to wait until June of 2023 to try this matter, this nonjury matter; I'm not going to do that." *Id.* at 12. Again,

Penn National neither raised any objection at the hearing nor even hinted that it expected a jury trial on any of the issues raised.

Following the September 8 hearing, Penn National participated in the preparation of the scheduling order for the December trial. *See* Exhibit C, E-mail Correspondence between B. Nes and B. Yntema. The proposed scheduling order included a deadline for submitting and exchanging Findings of Fact and Conclusions of Law, which necessarily anticipate a bench trial. *See* Exhibit D at 1. Penn National did not object to the exchange of the Findings of Fact and Conclusions of Law, but instead wrote to the Receiver's counsel, "the only concern is the 10/18 mediation deadline." Exhibit C at [2] (email from B. Yntema to B. Nes dated September 13, 2022 at 11:06 a.m.). Prior to Covil filing the proposed scheduling order, Penn National's counsel wrote, "I do not have anything further. Thanks so much." *Id.* (email from B. Yntema to B. Nes dated September 14, 2022 at 5:56 a.m.). Throughout this process and during the nearly 2 months since September 8 status conference, Penn National never raised any objection to a bench trial, nor did Penn National ever suggest that the scheduling order should incorporate any element suggestive of a jury trial.

Having failed at every opportunity to raise the issue, Penn National has waived its right to request a jury just five weeks before the scheduled non-jury trial date.

## **II. Status of Discovery**

Covil will be prepared to begin trial the week of December 12, 2022 as previously scheduled by the Court. To that end, Covil has been diligently working to complete necessary discovery and wishes to provide the Court an update on the status of discovery in advance of the upcoming trial date.

### **A. Outstanding Document Production and Discovery Responses**

As outlined in more detail in Covil's Motion to Compel filed with this Court on November 4, 2022, Penn National has failed to produce certain documents and respond fully to certain discovery requests. Covil respectfully requests that this Court address its November 4, 2022 Motion to Compel during the pre-trial hearing.

Similarly, Covil filed previously a Motion to Compel on February 24, 2022 and a Supplemental Motion to Compel on April 1, 2022. The Court held those motions in abeyance until the Receiver had an opportunity to conduct the Rule 30(b)(6) deposition. See May 5, 2022 Order at 14. Penn National, however, refuses to produce a witness to testify on 17 of the 32 topics noticed in Covil's Amended Rule 30(b)(6) deposition notice. Exhibit E at 2 (letter from B. Yntema to B. Nes dated November 7, 2022). Unable to secure the information requested through deposition testimony, Covil respectfully requests that this Court address its February and April Motions to Compel during the pre-trial hearing.

### **B. Outstanding Depositions**

Despite receiving Covil's Notice of Rule 30(b)(6) deposition on May 13, 2022 and its Amended Notice of Deposition on October 6, 2022, Penn National waited until November 7, 2022 (three days before the agreed upon deposition date) to unilaterally and improperly narrow the scope of the deposition, notifying Covil that it would not produce a witness on 17 noticed topics. Nor did Penn National file a protective order. Covil respectfully requests that this Court address Penn National's deposition obligations during the pre-trial hearing.

### **III. Proposed Trial Schedule**

Covil respectfully requests that this Court enter a trial schedule similar to the one it entered for the bench trial in *Ann Finch v. United States Fidelity & Guaranty Company*, 2020-CP-40-

001663, in January 2021. *See* Exhibit F. Following the outline of that trial schedule, Covil respectfully requests that this Court enter a trial scheduling order as follows:

**A. Daily Schedule**

1. Day 1 belongs to plaintiff for presentation of Plaintiff's case.
2. Day 2 belongs to defendant for presentation of Defendant's case.
3. Day 3 will proceed as follows:
  - a. Beginning at 9:30 and ending at 12:00 p.m., Plaintiff may offer its reply case.
  - b. One hour break for lunch beginning at 12:00 p.m.
  - c. Beginning at 1:00 p.m., attorneys will present their closing arguments, with 2 hours for each side and an additional 30 minutes for plaintiff's reply.
4. The Court will then take the case under advisement and render a decision thereafter.

**B. Limitations on Witnesses and Times of Presentation**

Each side must designate the witnesses it intends to present by live testimony. Each side will have no more than three hours total for direct and re-direct examinations and no more than three hours total for cross-examinations. Every witness to be presented will be listed in advance, as well as the name of the attorney examining or cross-examining.

In addition to the presentation of live testimony, the parties will be allowed to present as a trial exhibit any of the deposition testimony that has been taken. If deposition testimony will be presented at trial, page and line designations must be provided to the Court no later than seven days before trial. Any responses or objections to what is designated by opposing counsel must be provided to the Court no later than four days before trial. Any objections to counter page/line

designations and any final counter designations must be provided to the Court no later than two days before trial.

Finally, one of Covil's expert witnesses, Charles Miller, is unable to travel to South Carolina for trial due to the ongoing COVID-19 pandemic. Covil respectfully requests that Mr. Miller be allowed to present his live trial testimony remotely via Zoom.

### **C. Pre-trial Admission of Exhibits**

Covil respectfully requests that exhibits be pre-admitted into evidence by the Court due to the abbreviated trial schedule.

This Court has inherent power to manage its docket in the most efficient manner to avoid unnecessary costs or use of the Court's time. *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Pre-admitting evidence will save this Court the time and burden of lawyers arguing about exhibits during the trial day. Therefore, pursuant to South Carolina Rules of Evidence, the Receiver requests that this Court set forth an order which includes a deadline by which the parties are to submit a list of exhibits that they seek to pre-admit into evidence.

Respectfully submitted,

/s/ Jonathan M. Robinson

G. Murrell Smith, Jr.

**Jonathan M. Robinson**

Smith Robinson LLC

2530 Devine Street, 3<sup>rd</sup> Floor

Columbia, SC 29205

Phone: (803) 254-5445

AND

Jescelyn Spitz

Rikard & Protopapas, LLC

2110 N. Beltline Blvd.

Columbia, SC 29204

803.978.611

[jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com)



*Counsel for the Receiver for Covil  
Corporation*

DATED: November 10, 2022

# EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly  
appointed Receiver Peter D. Protopapas,

Plaintiff,

Vs.

Pennsylvania National Mutual Casualty  
Insurance Co.; Sam J. Crain & Co., Inc.; and  
South Carolina Property and Casualty  
Insurance Guaranty Association,

Defendants.

Case Number: 2020-CP-40-02098

**RECEIVER FOR COVIL  
CORPORATION  
STATUS REPORT**

In response to this Court's scheduling of a status conference on September 8, 2022, the Receiver for Covil provides this status report of the case containing the following information: (1) procedural history of the case, (2) status of discovery, and (3) request for trial and anticipated length of trial.

**I. PROCEDURAL HISTORY**

The procedural history of this case is extensive and the below provides a chronology of relevant events:

4.27.2020      This matter began with the initial summons and complaint brought by the Receiver for Covil against Pennsylvania National Mutual Casualty Insurance Co., Sam Crain & Co. Inc, and South Carolina Property and Casualty Insurance Guaranty Association on April 27, 2020.

The Receiver brought causes of action against:

- a. Pennsylvania National Mutual Casualty Insurance Co. (“Penn National”) for Declaratory Judgment seeking a declaration that the Receiver is entitled to compensation (First Cause of Action), the Penn National policies and related documents in Penn National’s possession are the property of the Receivership (Second Cause of Action, and declaration of the rights and responsibilities of Penn National under the policies issued to Covil Corporation (Third Cause of Action).
- b. Sam Crain & Co for Failure to procure insurance (Fourth Cause of Action and for Breach of Contract (Fifth Cause of Action).
- c. The South Carolina South Carolina Property and Casualty Insurance Guaranty Association for a declaration as to their responsibilities for the Mission Insurance Company (“Mission”) umbrella policy where Mission is now out of business (Sixth Cause of Action).

|           |                                                                                            |
|-----------|--------------------------------------------------------------------------------------------|
| 5.22.2020 | Penn National removed this matter to federal court.                                        |
| 6.1.2020  | Penn National filed an Answer to Complaint.                                                |
| 6.16.2020 | Covil moved the Federal Court to remand the matter to State Court.                         |
| 3.30.2021 | The Federal Court issued its Order remanding the case to State Court.                      |
| 3.31.2021 | Penn filed an answer to the complaint and sought a jury trial for “all issues so triable”. |
| 4.9.2021  | Discovery is initiated by Covil.                                                           |
| 11.5.2021 | The Court issues an Order addressing several discovery disputes.                           |
| 2.11.2021 | The Court issues an Order addressing additional discovery disputes.                        |

- 5.5.2022 The Court issues an Order addressing further discovery disputes.
- 5.16.2022 Penn National moves the Court for Reconsideration of its 5.5.2022 Discovery Order, which Covil opposes.
- 5.26.2022 The Court issues its Order denying the Motion to Reconsider.

#### **COURT OF APPEALS CHRONOLOGY**

- 5.31.2022 Penn National files its Notice of Appeal of Orders dated 5.5.2022 and 5.26.2022.
- 6.6.2022 Covil moves the Court of Appeals to dismiss the appeal as interlocutory.
- 8.9.2022 Court of Appeal grants Covil's Motion to dismiss appeal as interlocutory.
- 8.24.2022 Penn National files its Petition for Rehearing En Blanc which is now **pending**.

#### **SUPREME COURT CHRONOLOGY**

- 6.16.2022 Penn National files Petition for Writ of Certiorari (Appellate case number 2022-000785).
- 8.22.2022 The Supreme Court issues its Order Denying Penn National's Petition for Writ of Certiorari.

## **II. STATUS OF DISCOVERY**

On August 24, 2022, following the Supreme Court of South Carolina's denial of Penn National's petition for a writ of certiorari (Appellate Case Number 2022-000785), the Court of Appeals' dismissal of Penn National's separate, parallel appeal on the same issue (Appellate Case Number 2022-000761), and this Court's denial of Penn National's motion for reconsideration (Case Number 2020-CP-40-02098), counsel for the Receiver sent a letter to counsel for Penn National requesting that Penn National "immediately obey" the Court's May 5, 2022 Discovery Order, as instructed by the Court. To date, Penn National has not responded.

**A. Outstanding Depositions**

Immediate compliance with the Court's Discovery Order includes, but is not limited to, sitting for the depositions noticed by the Receiver on May 13th and May 31st respectively (i.e., Penn National's 30(b)(6) deposition and the deposition of Scott Maier). The Receiver has asked for deposition dates, but has not received a response.

**B. Outstanding Documents**

In addition, the Receiver has not received Penn National's responses to Covil's Fourth Set of Requests for Production, which was served on May 13th. The Receiver asked that Penn National provide all responsive documents by September 1, 2022, but has not received a response.

Finally, the Court's May 5, 2022 Discovery Order directed Penn National to "produce immediately" to Covil the following documents:

- "all code keys for its policy prefixes, including but not limited to the documentation identifying prefixes with policy lines of business identified in Ellis & Winters' report";
- "all information that was disclosed to Ellis & Winters and used as a basis for identifying policy numbers for the three newly discovered Covil insurance policies located by Ellis & Winters on March 17, 2022"; and
- "underwriting documentation in its possession, custody, or control for all the Receiverships for which Mr. Protopapas is the court-appointed Receiver."<sup>1</sup>

Again, the Receiver asked Penn National to confirm that these documents would be produced by September 1, 2022, but has not received a response.

Upon completion of the above outstanding discovery, the Receiver will be ready for trial.

---

<sup>1</sup> See Court's May 5, 2022 Order at 10-11.

### III. REQUEST FOR DATES FOR PRE-TRIAL CONFERENCE AND TRIAL

The Receiver respectfully requests that the Court set dates for:

- (1) pre-trial conference in November 2022; and
- (2) combined evidentiary hearing and non-jury trial in December 2022.

The Receiver requests an evidentiary hearing regarding Penn National's spoliation of evidence in order for the Court to make factual findings regarding the scope of the harm to Covil and to fashion appropriate remedies to address that harm. The Receiver also asks for a non-jury trial on Covil's declaratory relief against Penn National concerning Penn National's obligations to Covil under Policy Nos. 515 50 28 53 7 and 515 50 28 53 8.

The Receiver further requests that the Court combine the evidentiary hearing regarding spoliation with the trial on declaratory judgment issues into a single trial that lasts no more than three days. The Receiver also requests that the Parties be allowed to submit proposed findings of fact and conclusions of law in advance of trial. The Receiver anticipates calling three expert witnesses live at trial (with no more than 1 hour direct examination, 1 hour cross examination, and 15 minutes for redirect) and entering the testimony of three fact witnesses via deposition testimony. The Receiver also anticipates offering between 25 to 30 exhibits at trial.

Respectfully submitted,

s/Jescelyn T. Spitz  
Jescelyn T. Spitz SC BAR 101880  
Rikard & Protopapas, LLC  
2110 N. Beltline Blvd.  
Columbia, SC 29204  
803.978.6111  
[jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com)

*Attorney for the Receiver*

This 6<sup>th</sup> Day of September, 2022

# EXHIBIT B



Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

## A P P E A R A N C E S:

W. Brad Nes, Esquire  
Peter D. Protopapas, Esquire  
Jonathan M. Robinson, Esquire  
G. Murrell Smith, Jr., Esquire  
Attorneys for Covil Corporation

Brady A. Yntema, Esquire (via Webex)  
David G. Harris, II, Esquire (via Webex)  
Attorneys for Pennsylvania National

Elizabeth B. Harris, CVR-M-CM  
Circuit Court Reporter

I N D E X

| <u>Witness/Description</u>  | <u>Page No.</u> |
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NO EXHIBITS INTRODUCED.

1           THE COURT: All right, court will come to order. This  
2 is the matter of Covil, C-o-v-i-l, Covil Corporation  
3 against Pennsylvania National and others. This is  
4 2020-CP-40-02098. In the courtroom we have Mr. Protopapas  
5 for Covil; he is the receiver and a lawyer for Covil. We  
6 have Brad Nes and Murrell Smith from Morgan, Lewis, Bockius  
7 as counsel for the receiver. Mr. Brady Yntema from  
8 Goldberg and Segalla is Penn National's principal attorney.  
9 Mr. Yntema is attending via WebEx. He is ill with COVID,  
10 and we are deeply appreciative of his being willing to  
11 attend the hearing in this format. And Mr. David Harris is  
12 also here virtually.

13           Are you not, Mr. Harris? I see you.

14           And Mr. Harris is also with Goldberg and Segalla and  
15 is representing Penn National.

16           All right, Mr. Protopapas, you may proceed.

17           MR. PROTOPAPAS: Thank you, Your Honor. We'd like to  
18 give you a procedural status of the Covil-Penn matter. As  
19 the court's aware, this is the second Covil-Penn case. The  
20 first Covil-Penn case dealt with a coverage issue over 50  
21 or so thousand dollars for the Rollins case. That's  
22 currently -- Court of Appeals has affirmed. There's a  
23 petition for cert pending, and that case is working its way  
24 to ultimate conclusion.

25           *Covil v. Penn* two is the case we're here about today.

As the court recalls, there had been extensive discovery practice and motions practice in that matter that ultimately led to an order of this court in May of -- April of 2022 that Penn National, we argue, took an interrogatory appeal from. That appeal was to the South Carolina Court of Appeals. We moved to dismiss; Penn National opposed it, and the Court of Appeals granted the motion to dismiss in August. Penn National has moved to reconsider that order; we, of course, have opposed it at the Court of Appeals. On a parallel path, Penn National filed a petition for *certiorari* to the South Carolina Supreme Court. That petition was denied by the South Carolina Supreme Court as well as in August.

It seemed appropriate that with our 2020 civil action number that we give the court an update as to where we stand and advise the court of where we believe the best path forward is. Your Honor is intimately familiar with Covil and the two legacy liability insurance policies that Penn National issued and admits to issuing for '86 to '87 and for 1987 to 1988. We believe those legacy liability policies are ripe for adjudication by this court as to the obligations that Penn National has to Covil to defend and to indemnify Covil for asbestos liability claims.

We believe, Your Honor, that that issue can be resolved in a nonjury trial as the court's schedule would

1 allow. It is a straight-up declaratory judgment on two  
2 insurance policies. Our research has indicated that that  
3 is a proper nonjury matter for this court.

4 We have three experts that would testify at trial. We  
5 don't believe it would take more than half to  
6 three-quarters of a day for us to put our case up. We  
7 don't believe that the rebuttal or response would be more  
8 than a day, and we could have the case finished in two  
9 nonjury days. And the pace this court operates, it could  
10 well be one day.

11 And so we feel thirty exhibits at most from the  
12 plaintiff's side. We think that what, what the court has  
13 done in the past, which is preliminary findings of fact  
14 with exhibits presented to the court in advance, then  
15 trial, the testimony, a presentation of the testimony, and  
16 a streamlined process. The court is educated on all these  
17 issues, and then that issue will end.

18 There is discovery that's still outstanding. As the  
19 receiver, Your Honor, I don't believe it's in the best  
20 interests of Covil to delay this trial and these policies  
21 to allow the six to nine-month process that Ellis Winters  
22 would need to comb through the microfiche that Penn  
23 National has if the motion to reconsider is ultimately  
24 denied by the Court of Appeals.

25 So, the heart of that appeal, Your Honor, is the Ellis

1 and Winters project which has been stalled since the court  
2 issued its order. So, nothing -- Ellis Winters has not had  
3 an opportunity to begin that process simply because of this  
4 appeal, and from the perspective of the receivership, we  
5 need this insurance policy to be as responsive as it can  
6 be.

7 Now, Penn National disagrees with us and the meaning  
8 of those policies, disagrees on the scope of the erosion or  
9 aggregate limits and all those traditional legacy liability  
10 issues. But what we would ask the court is allow Ellis and  
11 Winters at the appropriate moment to move forward with  
12 enforcement of that discovery order. Allow us to take our  
13 deposition of Penn National, allow them to depose our  
14 experts, and let's set this thing for a nonjury trial and  
15 put to bed a big chunk, perhaps the last, the last Covil  
16 coverage action, I believe, that is pending in federal or  
17 state court.

18 And it is a 2020 action, Your Honor, and I do  
19 apologize it's taken us this long to get here. I don't  
20 like having cases that are two years old before this court,  
21 but we'll be ready at trial to try those two policies and  
22 the spoliation issues surrounding those policies on the  
23 document destruction. We can be ready as soon as December,  
24 and that would...

25 THE COURT: Why is there a motion still pending for

1 reconsideration in light of the Supreme Court's denial of  
2 *certiorari*?

3 MR. PROTOPAPAS: It's a motion for an *en banc*  
4 decision, Your Honor, and we believe that will be -- we  
5 were hoping that would be denied in relatively quick order,  
6 but it deals only with this one discovery issue that Ellis  
7 and Winters is ---

8 THE COURT: I am very, very familiar with what it  
9 deals with, and I am very unhappy that we are still talking  
10 about sixty to ninety days or longer than that to do this  
11 discovery. I know what was said when the firms talked  
12 about this. These documents are stored at Iron Mountain, a  
13 national manager of paper records and digitized records for  
14 governments and private corporations all over America.  
15 It's not going to take them that kind of time to digitize  
16 these records and make them searchable. That's what  
17 they're in the business of doing. So, that piece of it is  
18 something I don't understand.

19 MR. PROTOPAPAS: Your Honor, we, we don't disagree  
20 with the court. We put our trust into Ellis and Winters,  
21 who, my understanding, has stopped all activity until the  
22 appeal is concluded, feeling that it would be inappropriate  
23 for them to proceed forward until that appeal is finally  
24 completed.

25 THE COURT: Have they been paid?

1 MR. PROTOPAPAS: I apologize, Your Honor. I have not  
2 asked. I, I ---

3 THE COURT: Let me turn to Mr. Yntema.

4 MR. YNTEMA: Your Honor, I apologize. You're breaking  
5 up on me a little bit, but I did hear that ---

6 THE COURT: I'm not hearing -- whoa, whoa, whoa. Wait  
7 a minute. I'm not hearing you.

8 (A PAUSE.)

9 THE COURT: Mr. Yntema, I'm going to come up here  
10 where I can see and hear you a little bit better. I'm at a  
11 podium right here.

12 First of all, tell me why appellate activity is still  
13 being pursued here in light of the fact that the Supreme  
14 Court denied *certiorari*.

15 MR. YNTEMA: Your Honor, the Supreme Court denied  
16 *certiorari* in its original jurisdiction. That's what we  
17 petitioned the Supreme Court to review. The Court of  
18 Appeals motion of the receiver did, in fact, dismiss the  
19 appeal. We've asked for a petition for rehearing *en banc*;  
20 that's currently pending. There was -- I won't go on in  
21 detail about the briefing, but the core issue was whether  
22 it was indeed a discovery order or essentially was a order  
23 holding Penn National in contempt or as a sanction order  
24 enforcing an order that had Penn National conducting a  
25 search at its sole expense by way of a third party, and



1 then allowing the microfiche to be digitized and be used at  
2 the receiver's sole expense. That was the main issue with  
3 respect to as to whether it was an interlocutory appeal or  
4 not.

5 THE COURT: Let me stop you there, Mr. Yntema. Those  
6 issues, you are raising these issues of whether it's a  
7 discovery or a sanctions order before the Court of Appeals  
8 now?

9 MR. YNTEMA: Yes, Your Honor, we have.

10 THE COURT: Well, you did not raise those issues in  
11 front of me. So, how in the world are you going to ask an  
12 appellate court to review trial court orders if you haven't  
13 asked the trial court to make any determinations about  
14 that?

15 MR. YNTEMA: I think in our motion for reconsideration  
16 we did address that issue at, at trial court level, and  
17 Your Honor denied our motion for reconsideration, which I  
18 appreciate and I understand.

19 THE COURT: Well, I won't spend a great deal of time  
20 debating it, but I certainly will go back and look at it.  
21 It strikes me that it's simply a delaying tactic, and I'm  
22 frustrated about that, to be honest with you. But  
23 hopefully that will be resolved fairly shortly when the  
24 Court of Appeals tells us whether it wants to continue with  
25 the case or whether it's going to dismiss the *en banc*

1 request. I guess we'll just have to wait on that.

2 Has Ellis and Winters been paid?

3 MR. YNTEMA: Your Honor, we did make a payment to  
4 them, I believe, in the spring after their first phase of  
5 searching through the insurance repository for Penn  
6 National was complete and after the reporting to the court  
7 was complete. They were paid in full. I'm not sure if  
8 they have incurred any other expenses since that time.  
9 I'm, I'm, I'm not sure if they have since if was mainly  
10 motion practice thereafter, and then an appeal was taken.  
11 So, I don't think there has been any conduct or expenses  
12 incurred by Ellis and Winters since that time, nor have I  
13 been notified of that.

14 THE COURT: Okay. All right.

15 (A PAUSE.)

16 MR. SMITH: Chief Justice, Murrell -- for the record,  
17 Murrell Smith for Covil. One issue we got is that, is that  
18 the experts are not going to be available on December 5th  
19 for us, and more importantly for me -- I hope to  
20 participate in this case. As you know, we have an  
21 organizational session after the election.

22 THE COURT: Oh, yeah.

23 MR. SMITH: And so it's going to be on December 6th  
24 and 7th. So, if we could try this case on the 12th, Your  
25 Honor, that would be great if you would -- could do that.

1 This is a nonjury case. Hopefully, Court Administration or  
2 if you got that December block carrying over -- but we  
3 would request December 12th would probably be the best time  
4 for us, and we could have our experts ready also.

5 And then, you know, Your Honor, I will -- if we have  
6 to try the case in the new year, I'll skip session, but  
7 it's a little difficult for me now for me to skip session  
8 where ---

9 THE COURT: No, you're the chief presiding officer, so  
10 you can't.

11 MR. SMITH: Yes, ma'am. That's, that's my concern is  
12 I have to turn it over to Mr. Pope, and you know how Mr.  
13 Pope can mess things up.

14 THE COURT: No comment.

15 MR. SMITH: Thank you.

16 THE COURT: All right, hang on for a minute. Let me  
17 go back.

18 MR. YNTEMA: I wonder if I may? I'm not sure if it's  
19 appropriate for me to ---

20 THE COURT: Yes, sir, say again?

21 MR. YNTEMA: Yes. Your Honor, yesterday was the first  
22 time that I had seen a suggestion of a December trial date  
23 and a suggestion that the receiver had three experts that  
24 have yet to be disclosed to us. I certainly haven't had an  
25 opportunity to check with any experts that we may have or

1 with respect to their availability during the December  
2 timeframe. So, I just wanted to put that out there for  
3 Your, for Your Honor's consideration.

4 I don't know. I know Mr. Smith may have some  
5 conflicts early on next year, and -- but as far as a trial  
6 date in, in, in 2023, we are certainly willing to consider  
7 that as well.

8 THE COURT: Well, I'm not inclined to wait until June  
9 of 2023 to try this matter, this nonjury matter; I'm not  
10 going to do that. I'm going to go back here and look at  
11 December just for a minute, but what you're asking is, in  
12 fact, to not have it tried until they get out of session  
13 next year. I'm not going to do that.

14 They've been ready to proceed on this thing and tried  
15 to get through the discovery and all this kind of thing,  
16 and it's been a foot dragging operation by Penn National  
17 the whole time and I just can't -- well, I'm not going to  
18 allow that to continue. Let me look at my calendar a  
19 minute.

20 (A PAUSE.)

21 THE COURT: What I'm going to do is this. I'm going  
22 to set this case for December the 14th -- that is a  
23 Wednesday -- with the thought that it would take no more  
24 than three days to try because I've got four cases in that  
25 December block. They're all in Charleston, and I can't

1 tell about these cases. We settled the one I thought we  
2 had there; that was disposed and now we've got these  
3 others, but one of them is a 2018 case. So, you know,  
4 unless it settles, that's probably the one that we would  
5 deal with, and it could be tried in a week, in which case I  
6 could move the thing up.

7 (A PAUSE.)

8 THE COURT: I'm going to tentatively say the 12th and  
9 as you all know, I'm going to meet with the Asbestos  
10 Steering Committee next Monday, and let me see what I can  
11 find out about this December term, but I'm going to  
12 tentatively set it for Monday here. So, we'll see if we  
13 can get a spot to lay our head, and it would be nonjury.  
14 So, if we had to go to one of those family court  
15 courtrooms, we could do it. And as I say, that's tentative  
16 right now. I will finalize that next Monday after I meet  
17 with the asbestos people, if that's okay.

18 MR. PROTOPAPAS: Thank you, Your Honor.

19 THE COURT: Okay. What else do we need first of all  
20 from you, Mr. Protopapas, or from Mr. Smith by way of this  
21 matter?

22 MR. PROTOPAPAS: Nothing further, Your Honor.

23 THE COURT: All right. Are there ---

24 MR. YNTEMA: Your Honor.

25 THE COURT: I'm get to you in a minute. I'm not

1 leaving you out. Don't worry, Mr. Yntema. You'll have  
2 plenty of chances.

3 Do we need any kind of pretrial hearing on any of this  
4 stuff? Probably so.

5 MR. PROTOPAPAS: I believe, Your Honor, thirty days in  
6 advance a pretrial, and we can propose with Mr. Yntema a  
7 schedule for proposed order, findings of fact, conclusions  
8 of law, and an exhibit list, and a trial schedule.

9 THE COURT: All right, the 24th is Thanksgiving. All  
10 right, all right, let's have a pretrial hearing on November  
11 the 18th; that's the previous Friday from Thanksgiving.  
12 So, we would have November the 18th for a pretrial hearing  
13 on all outstanding motions, and then we would have the  
14 trial on December the 12th.

15 Now I will turn to you, Mr. Yntema.

16 MR. YNTEMA: Yes. Thank you, Your Honor. Brady  
17 Yntema from Penn National. I, I -- you broke up on me.  
18 Now I, I hear you clearly now, and you have stated that  
19 you're looking at December 12th tentatively, and you were  
20 talking as though maybe the December 14th date may be the  
21 most likely for you. Is that right?

22 THE COURT: What's that?

23 MR. YNTEMA: You had broken up on me a little bit and  
24 I apologize, but it seems, it seems that you've, you've set  
25 the trial, tried to set the trial for December 12th and --

1 but you had, you had discussed potentially actual start  
2 date of that trial being in the middle of the week of  
3 December 14th. Is that correct?

4 THE COURT: Yes, and what I was trying to say is the  
5 second week of the Charleston term, that I've got asbestos  
6 cases then, but I don't know that I could say it's for more  
7 than a week. Are you saying the 14th works better for you  
8 than the 12th?

9 MR. YNTEMA: I can't speak to either right now. I  
10 haven't had that opportunity to speak to any of my folks.  
11 I just want to get an understanding from the court what  
12 your -- what the court is inclined as far as the dates. It  
13 sounds like you're setting it for December 12th tentatively  
14 but likely it may go on December 14th?

15 THE COURT: That's correct. I'm going to let you know  
16 for sure about that after I meet this coming Monday with my  
17 Asbestos Steering Committee. This is a group of plaintiff  
18 and defendants' bar that we try to work out the blocks for  
19 the whole year, and I can find out then from the people  
20 that are involved in that December block of four cases what  
21 realistically I can expect out of those, and then I can let  
22 you know about that week in December.

23 MR. YNTEMA: I appreciate that, and then, and then we  
24 have, just to be clear, November 18th is what you were  
25 inclined to have a -- schedule a pretrial conference?

1 THE COURT: Yeah. That would be on November the 18th.  
2 That's a Friday.

3 MR. YNTEMA: Yes, Your Honor, thank you, and then the  
4 last thing I think I understood -- I just want to make sure  
5 I'm clear -- is that I guess Mr. Nes will be contacting me  
6 or Mr. Protopapas will be contacting me to discuss the, the  
7 -- a scheduling order that we could have proposed to the  
8 court to -- for this case leading up to the pretrial  
9 conference.

10 THE COURT: Sure, sure, sure. You and Mr. Protopapas,  
11 Mr. Smith, and all the rest of the folks involved in this  
12 case will a full opportunity to see if you can get together  
13 and decide what an agenda is going to look like for this  
14 thing.

15 MR. YNTEMA: Appreciate that, and I guess just for  
16 other conversation is that I know Mr. Protopapas and I and,  
17 and the receivers' counsel have had some conversations  
18 about potential settlement options and things of that  
19 nature, and I, I would be inclined to continue to work  
20 toward that endeavor. I didn't know if the court would be  
21 amenable to having some sort of potential mediation  
22 deadline incorporated into the pretrial -- into the, into  
23 the, I guess, scheduling order.

24 THE COURT: Well, talk with them about how that would  
25 work. I am always amenable to things that encourage



1 settlement, as you know. So, and lord knows if there's a  
2 case where that ought to be done, it's this one. So, this  
3 doesn't exclude that at all.

4 Anything further?

5 MR. PROTOPAPAS: No, ma'am.

6 THE COURT: All right, I close the proceedings. Thank  
7 you very much so all.

8 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 8TH DAY OF SEPTEMBER, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

*/s/ELIZABETH B. HARRIS, CVR-M-CM*

COLUMBIA, SOUTH CAROLINA

NOVEMBER 6TH, 2022

# EXHIBIT C

**From:** [Nes, W. Brad](#)  
**To:** [McCulloch Semlinger, Lauren A.](#)  
**Subject:** FW: Covil v. Penn National  
**Date:** Monday, November 7, 2022 4:43:14 PM

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**W. Brad Nes**

**Morgan, Lewis & Bockius LLP**

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)

Assistant: Joyce E. Burroughs | +1.202.739.5703 | [joyce.burroughs@morganlewis.com](mailto:joyce.burroughs@morganlewis.com)

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**From:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>

**Sent:** Wednesday, September 14, 2022 5:56 AM

**To:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>; Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>

**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>; Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>

**Subject:** Re: Covil v. Penn National

[EXTERNAL EMAIL]

I do not have anything further. Thanks so much.

Brady

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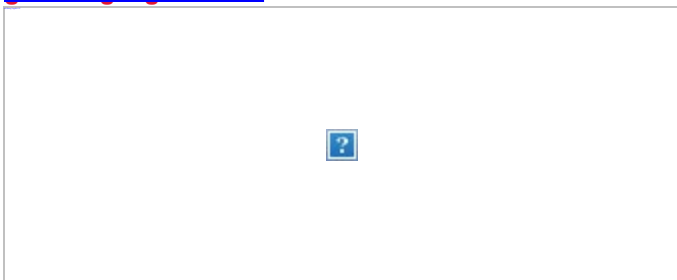
**Brady A. Yntema, Esq. | Partner**

701 Green Valley Road | Suite 310 | Greensboro, NC 27408

**DIRECT** 336.419.4904 | **EXT** 4904 | **FAX** [336.419.4950](tel:336.419.4950) | **MOBILE** [336.908.1946](tel:336.908.1946)

[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com) | [Biography](#)

[goldbergsegalla.com](http://goldbergsegalla.com)



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**From:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>

**Sent:** Tuesday, September 13, 2022 5:58:44 PM

**To:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>; Harris, David G.

<[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>

**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>; Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>

**Subject:** RE: Covil v. Penn National

Brady,

November 10 is fine with us for the mediation deadline. Let us know if you have any other questions. Otherwise, we'll update the proposed order and file it with Justice Toal.

Many thanks.

**W. Brad Nes**

**Morgan, Lewis & Bockius LLP**

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)

Assistant: Joyce E. Burroughs | +1.202.739.5703 | [joyce.burroughs@morganlewis.com](mailto:joyce.burroughs@morganlewis.com)

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**From:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>

**Sent:** Tuesday, September 13, 2022 11:06 AM

**To:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>; Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>

**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>; Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>

**Subject:** Re: Covil v. Penn National

[EXTERNAL EMAIL]

Brad -- I had an opportunity to talk with Boyd this morning. I left you a voicemail, but I thought I would e-mail you as well with cc to Peter. I think the only concern is the 10/18 mediation deadline. Boyd agreed that he would like to have a mediation session with everyone present. In looking at his calendar he was reluctant to commit to a mediation deadline of 10/18, and actually preferred a mediation deadline of 11/10 so that we would not have to keep going back to Judge Toal for extended mediation deadlines. I am on the road this afternoon, but you can reach me on my cell phone -- 336.908.1946.

Thanks so much.

Brady

**Brady A. Yntema, Esq. | Partner**

701 Green Valley Road | Suite 310 | Greensboro, NC 27408

**DIRECT** 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946

[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com) | [Biography](#)

[goldbergsegalla.com](http://goldbergsegalla.com)



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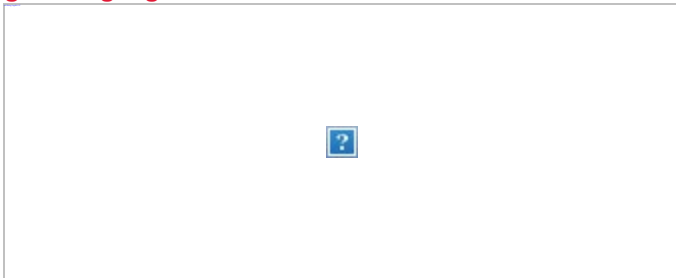
**From:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>  
**Sent:** Tuesday, September 13, 2022 6:16 AM  
**To:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>; Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>  
**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>; Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>  
**Subject:** Re: Covil v. Penn National

Good Morning. Boyd and I could not connect yesterday on the pre-trial schedule, but I will be talking to him mid-morning today. So, I expect to get back to you before noon. Thanks so much.

Brady

**Brady A. Yntema, Esq. | Partner**

701 Green Valley Road | Suite 310 | Greensboro, NC 27408  
**DIRECT** 336.419.4904 | **EXT** 4904 | **FAX** 336.419.4950 | **MOBILE** 336.908.1946  
[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com) | [Biography](#)  
[goldbergsegalla.com](http://goldbergsegalla.com)



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**From:** Nes, W. Brad <[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)>  
**Sent:** Monday, September 12, 2022 11:30 AM  
**To:** Yntema, Brady A. <[byntema@goldbergsegalla.com](mailto:byntema@goldbergsegalla.com)>; Harris, David G. <[dharris@goldbergsegalla.com](mailto:dharris@goldbergsegalla.com)>  
**Cc:** Peter Protopapas <[pdp@rplegalgroup.com](mailto:pdp@rplegalgroup.com)>; Lindsay Valek <[Lindsay@rplegalgroup.com](mailto:Lindsay@rplegalgroup.com)>; Edwards, Brady <[brady.edwards@morganlewis.com](mailto:brady.edwards@morganlewis.com)>  
**Subject:** Covil v. Penn National

Brady Y. and David,

Please find attached the Receiver's fact and expert witness disclosure list.

I have also attached a revised version of the draft pretrial scheduling order for your review.

We look forward to speaking with you shortly.

Thank you.

**W. Brad Nes**

**Morgan, Lewis & Bockius LLP**

1717 Main Street, Suite 3200 | Dallas, TX 75201-7347

Direct: +1.214.466.4116 | Main: +1.214.466.4000 | Fax: +1.214.466.4001

[brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)

Assistant: Joyce E. Burroughs | +1.202.739.5703 | [joyce.burroughs@morganlewis.com](mailto:joyce.burroughs@morganlewis.com)

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# EXHIBIT D



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly  
appointed receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty  
Insurance Company; Sam J. Crain & Co.,  
Inc.; and South Carolina Property & Casualty  
Insurance Guaranty Association,

Defendants.

CASE NUMBER: 2020-CP-40-02098

PROPOSED SCHEDULING ORDER

Upon consideration of the arguments made at the Status Conference held in the above referenced matter on September 8, 2022, the Court orders as follows:

1. Mediation shall occur on or before November 10, 2022.
2. A pre-trial hearing shall be held on November 18, 2022.
3. This matter is set for trial on December 12<sup>th</sup> or December 14<sup>th</sup>.
4. The parties shall submit and exchange Findings of Fact/Conclusions of Law (hereinafter “FOF/COL”) no later than seven (7) days before the trial of this matter.
  - a. Responses to each party’s FOF/COL shall be submitted and exchanged no later than four (4) days before trial.
5. The parties shall submit and exchange pre-marked trial exhibits no later than twenty-one (21) days before trial.
  - a. The parties shall submit and exchange objections to pre-marked trial exhibits no later than fourteen (14) days before trial.

- b. Responses to each party's exhibit objections shall be submitted and exchanged no later than seven (7) days before trial.
- 6. The parties shall submit and exchange trial witness lists to include expert witnesses no later than twenty-one days (21) days before trial.
- 7. The parties shall submit and exchange deposition designations no later than seven (7) days before trial.
  - a. The parties shall submit and exchange any objections and counter page/line designations of depositions to be read at trial no later than four (4) days before trial.
  - b. The parties shall submit and exchange any objections to counter page/line designations and any final counter designations no later than two (2) days before trial.
- 8. The parties shall file motions in limine no later than fourteen (14) days before trial.
  - a. Responses to each party's motions in limine shall be submitted and exchanged no later than seven (7) days before trial.

IT IS SO ORDERED.

---

The Honorable Jean H. Toal, (Ret.)

This \_\_\_\_ day of September, 2022

# EXHIBIT E



November 7, 2022

**VIA E-MAIL – [brad.nes@morganlewis.com](mailto:brad.nes@morganlewis.com)**

W. Brad Nes  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004-2541

RE: Covil v. Penn National, *et al.*; Richland County Court of Common Pleas  
Case No.: 2020-CP-40-02098  
Receiver's Amended Notice of Rule 30(b)(6) Deposition of Penn National

Dear Brad:

I am receipt of your October 27, 2022 letter responding to Penn National's objections to the Receiver's Second Amended Notice of Videotaped Deposition of Pennsylvania National Mutual Casualty Company Pursuant to Rule 30(b)(6) ("Amended 30(b)(6) Notice"). Initially, I appreciate your willingness to allow the deposition to take place in a location more convenient to Penn National's representative. This correspondence will confirm that Penn National will have representatives present for the Rule 30(b)(6) deposition as it is currently scheduled. With respect to Mr. Wright, he has been out of the office for an extensive period and has returned this week. We are considering your request for Mr. Wright's deposition and his availability, and we will respond by Friday, November 11.

While we appreciate your willingness to work with us on the location for the deposition, we would like to briefly address your contentions regarding Penn National's objections. As to your objection to the use of the term "relevance" in Penn National's objections, I would note that the objections specifically took issue not only with regard to whether the topics in question were relevant within the meaning of the Rules of Evidence, but also whether they were "reasonably calculated to lead to the discovery of admissible evidence," which is the discovery standard under Rule 26 of the South Carolina Rules of Civil Procedure. Penn National also disagrees with your contention that the prior order of Court on Penn National's Motion to Quash, which remains on appeal, provides the Receiver with unlimited breadth to inquire into topics beyond the bounds of Rule 26. Indeed, the previous deposition notice that was at issue in the Motion to Quash and the appealed order was much more limited than the Amended Rule 30(b)(6) Notice. Penn National also rejects your characterization of the deposition as a "continuation." Indeed, nothing in the record indicates that the prior deposition was left open.

Please send mail to our scanning center at: PO Box 727, Buffalo NY 14201

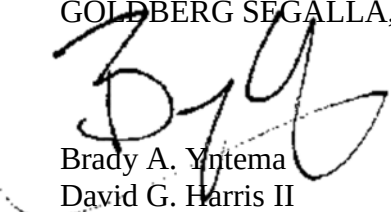
Page 2 of 2

While Penn National stands by its objections, as previously stated, Penn National will produce representatives to testify on topics 1 through 15. As to topics 11 and 14, the testimony will relate only to the Court's November 5, 2021 Order inasmuch as the May 5, 2022 Order is currently on appeal. The representatives will be prepared to testify as required under Rule 30(b)(6), and Penn National expressly reserves the right to raise any necessary objections during the Rule 30(b)(6) deposition.

Should you have any questions prior to the deposition, please do not hesitate to contact me.

Sincerely,

GOLDBERG SEGALLA, LLP

A handwritten signature in black ink, appearing to read "BYA", is written over the printed name of Brady A. Yntema.

Brady A. Yntema  
David G. Harris II

# EXHIBIT F

**From:** [Perry, Christina M.](#)  
**To:** [Theile McVey](#); [Toal, Jean](#); [todd.carroll@wbd-us.com](#); [elizabeth.oneill@wbd-us.com](#); [wdavis@brblegal.com](#); [sdubose@brblegal.com](#); [michael.carnevale@stblaw.com](#); [afrankel@stblaw.com](#); [aturner@stblaw.com](#); [mforshaw@stblaw.com](#); [mwhardee@bellsouth.net](#); [jon@smithrobinsonlaw.com](#); [murrell@smithrobinsonlaw.com](#); [shanonp@smithrobinsonlaw.com](#); [Jescelyn Spitz](#); [jwhite@spartanlaw.com](#); [mshisko@spartanlaw.com](#); [jonescr@gmail.com](#); [austintreed32@gmail.com](#)  
**Cc:** [debbie.johnson@wbd-us.com](#); [wbd.scasbestos@wbd-us.com](#); [srodriguez@brblegal.com](#); [sclause@brblegal.com](#); [Elizabeth Moultrie](#); [dot@smithrobinsonlaw.com](#); [hydie.kirkland@smithrobinsonlaw.com](#); [Lindsay Valek](#); [cwilson@spartanlaw.com](#); [Nicole M. Rice](#); [cjones@spartanlaw.com](#); [austin.reed@smithrobinsonlaw.com](#); [Covil Internal Team](#); [Bev Carroll](#); [wpowell@brunerpowell.com](#); [cclark@brunerpowell.com](#)  
**Subject:** RE: Ann Finch v. United States Fidelity//2020-001663  
**Date:** Friday, January 8, 2021 3:39:15 PM

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Counsel-

Chief Justice Toal has advised me to send the following email.

Pursuant to CJ Beatty's latest order of January 6, 2021, the bench trial in the alter-ego part of this case will be entirely virtual and will commence on January 25, 2021. The time-frame of trial will work as follows with court starting at 9:30 a.m. every day.

1. January 25, 2021 belongs to plaintiffs for presentation of Plaintiff's case.
2. January 26, 2021 will be defendant's day for presentation of Defendant's case.
3. January 27, 2021 will go as follows:
  - a. Beginning at 9:30 and ending at 12:00 p.m., Plaintiff may offer its reply case.
  - b. We will then break for lunch for an hour.
  - c. Beginning at 1:00 p.m. Attorneys will present their closing arguments with 2 hours for each side and an additional 30 minutes for Plaintiff's reply.
4. I will then take the case under advisement and render a decision thereafter.

Limitations on witnesses and times of presentation

Each side must completely designate the witnesses it intends to present by virtual live testimony, with the testimony being presented no more than 1 hour for direct examination, no more than 1 hour for cross-examination, no more than 15 minutes for re-direct. Every witness to be presented will be listed in advance and the name of the attorney examining or cross-examining the witness since we have to operate this by WebEx. No more than 2 experts may be presented by plaintiff and 2 by the defense. In addition to the presentation of virtual live testimony, the parties will be allowed to present as a trial exhibit any of the deposition testimony that has been taken. If deposition testimony is going to be presented, page and line designations must be provided to me no later than close of business on January 13, 2021. Any responses or objections to what is designated by opposing counsel must be provided to me no later than close of business January 14, 2021.

We will conduct a hearing on all outstanding motions and objections on January 22, 2021. It will be by virtual courtroom and designations about who will argue what must be provided by close of business January 21, 2021. I will work to limit argument times and I will rule promptly.

Parties must designate any exhibits which will be presented no later than close of business January 13, 2011 and responses by January 14, 2021.

We will attempt to get a court reporter for trial and will let you know as soon as possible if a private Court Reporter is needed. Court will open every day at 9:30, a break will be taken at

12 every day for an hour and court will be adjourned at 5:30 p.m. every day.

Best,  
JHT

Kind regards,

**Christina M. Perry, Esq.**

Circuit Court Law Clerk-Floater  
South Carolina Judicial Branch  
1220 Senate Street, Suite 242  
Columbia, SC 29201  
(803) 734-0833  
[cmperry@sccourts.org](mailto:cmperry@sccourts.org)  
[www.sccourts.org](http://www.sccourts.org)

---

**From:** Theile McVey <TMcVey@kassellaw.com>

**Sent:** Thursday, January 7, 2021 9:25 AM

**To:** Toal, Jean <JToal@sccourts.org>; todd.carroll@wbd-us.com; elizabeth.oneill@wbd-us.com; wdavis@brblegal.com; sdubose@brblegal.com; michael.carnevale@stblaw.com; afrankel@stblaw.com; aturner@stblaw.com; mforshaw@stblaw.com; mwhardee@bellsouth.net; jon@smithrobinsonlaw.com; murrell@smithrobinsonlaw.com; shanonp@smithrobinsonlaw.com; jspitz@rplegalgroup.com; jwhite@spartanlaw.com; mshisko@spartanlaw.com; jonescr@gmail.com; austintreed32@gmail.com

**Cc:** debbie.johnson@wbd-us.com; wbd.scasbestos@wbd-us.com; srodriguez@brblegal.com; sclause@brblegal.com; Elizabeth Moultrie <EMoultrie@kassellaw.com>; dot@smithrobinsonlaw.com; hydie.kirkland@smithrobinsonlaw.com; lindsay@rplegalgroup.com; cwilson@spartanlaw.com; nrice@spartanlaw.com; cjones@spartanlaw.com; austin.reed@smithrobinsonlaw.com; Covil Internal Team <CovilInternalTeam@rplegalgroup.onmicrosoft.com>; Perry, Christina M. <cmperry@sccourts.org>

**Subject:** Re: Ann Finch v. United States Fidelity//2020-001663

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Chief Justice Toal:

Since USF&G has not commented on whether they wish to go forward on Monday, Plaintiff and the Receiver look forward to the trial of this case on the 25th. As we previously submitted to the Court, the Plaintiff and the Receiver believe that the case can be fully tried based on the evidence submitted to the Court by both parties. I understand that the Court has reviewed both parties submissions. The facts and evidence submitted by the parties are essentially the same.



In light of Chief Justice Beatty's order issued yesterday cancelling all in person hearings for the foreseeable future, we believe a trial based on the submissions is the correct way to move forward. To the extent the Court wishes to hear arguments from the lawyers, that can certainly be conducted virtually.

We would ask for a status conference and or motions hearing prior to the 25th so that the parties know how the Court wishes to move forward. Please let me know if you have any questions or concerns. Thank you, Theile McVey

---

**From:** Toal, Jean <[JToal@sccourts.org](mailto:JToal@sccourts.org)>

**Sent:** Wednesday, January 6, 2021 4:30 PM

**To:** Theile McVey; [todd.carroll@wbd-us.com](mailto:todd.carroll@wbd-us.com); [elizabeth.oneill@wbd-us.com](mailto:elizabeth.oneill@wbd-us.com); [wdavis@brblegal.com](mailto:wdavis@brblegal.com); [sdubose@brblegal.com](mailto:sdubose@brblegal.com); [michael.carnevale@stblaw.com](mailto:michael.carnevale@stblaw.com); [afrankel@stblaw.com](mailto:afrankel@stblaw.com); [aturner@stblaw.com](mailto:aturner@stblaw.com); [mforshaw@stblaw.com](mailto:mforshaw@stblaw.com); [mwhardee@bellsouth.net](mailto:mwhardee@bellsouth.net); [jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com); [murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com); [shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com); [jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com); [jwhite@spartanlaw.com](mailto:jwhite@spartanlaw.com); [mshisko@spartanlaw.com](mailto:mshisko@spartanlaw.com); [jonescr@gmail.com](mailto:jonescr@gmail.com); [austintreed32@gmail.com](mailto:austintreed32@gmail.com)

**Cc:** [debbie.johnson@wbd-us.com](mailto:debbie.johnson@wbd-us.com); [wbd.scasbestos@wbd-us.com](mailto:wbd.scasbestos@wbd-us.com); [srodriguez@brblegal.com](mailto:srodriguez@brblegal.com); [sclause@brblegal.com](mailto:sclause@brblegal.com); Elizabeth Moultrie; [dot@smithrobinsonlaw.com](mailto:dot@smithrobinsonlaw.com); [hydie.kirkland@smithrobinsonlaw.com](mailto:hydie.kirkland@smithrobinsonlaw.com); [lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com); [cwilson@spartanlaw.com](mailto:cwilson@spartanlaw.com); [nrice@spartanlaw.com](mailto:nrice@spartanlaw.com); [cjones@spartanlaw.com](mailto:cjones@spartanlaw.com); [austin.reed@smithrobinsonlaw.com](mailto:austin.reed@smithrobinsonlaw.com); Covil Internal Team; Perry, Christina M.

**Subject:** RE: Ann Finch v. United States Fidelity//2020-001663

Dear Ms. McVey and all Counsel: I would propose that we set the Bench Trial on the Alter Ego issue for Jan. 25, 2021. We could set the PreTrial Hearing on outstanding motions and a Status discussion of how the case will procedurally be conducted for sometime the week before Jan. 25. I would like to hear from counsel for Plaintiff Finch, for the Receiver and for USF&G as to how you suggest we proceed. I have now read and made notes on everything submitted to me and reviewed all Receiver Exhibits and around 60 percent of USF&G's exhibits. I will begin to map out my suggestions as to how we try this matter. Let's see if we can't cooperate to get this matter tried. Thanks so much to each of you. I look forward to hearing from you at your earliest convenience. Best regards, Jean Toal

---

**From:** Theile McVey [<mailto:TMcVey@kassellaw.com>]

**Sent:** Wednesday, January 6, 2021 4:04 PM

**To:** [todd.carroll@wbd-us.com](mailto:todd.carroll@wbd-us.com); [elizabeth.oneill@wbd-us.com](mailto:elizabeth.oneill@wbd-us.com); [wdavis@brblegal.com](mailto:wdavis@brblegal.com); [sdubose@brblegal.com](mailto:sdubose@brblegal.com); [michael.carnevale@stblaw.com](mailto:michael.carnevale@stblaw.com); [afrankel@stblaw.com](mailto:afrankel@stblaw.com); [aturner@stblaw.com](mailto:aturner@stblaw.com); [mforshaw@stblaw.com](mailto:mforshaw@stblaw.com); [mwhardee@bellsouth.net](mailto:mwhardee@bellsouth.net); [jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com); [murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com); [shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com); [jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com); [jwhite@spartanlaw.com](mailto:jwhite@spartanlaw.com); [mshisko@spartanlaw.com](mailto:mshisko@spartanlaw.com); [jonescr@gmail.com](mailto:jonescr@gmail.com); [austintreed32@gmail.com](mailto:austintreed32@gmail.com); Toal, Jean <[JToal@sccourts.org](mailto:JToal@sccourts.org)>

**Cc:** [debbie.johnson@wbd-us.com](mailto:debbie.johnson@wbd-us.com); [wbd.scasbestos@wbd-us.com](mailto:wbd.scasbestos@wbd-us.com); [srodriguez@brblegal.com](mailto:srodriguez@brblegal.com);

[sclause@brblegal.com](mailto:sclause@brblegal.com); Elizabeth Moultrie <[EMoultrie@kassellaw.com](mailto:EMoultrie@kassellaw.com)>;  
[dot@smithrobinsonlaw.com](mailto:dot@smithrobinsonlaw.com); [hydie.kirkland@smithrobinsonlaw.com](mailto:hydie.kirkland@smithrobinsonlaw.com); [lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com);  
[cwilson@spartanlaw.com](mailto:cwilson@spartanlaw.com); [nrice@spartanlaw.com](mailto:nrice@spartanlaw.com); [cjones@spartanlaw.com](mailto:cjones@spartanlaw.com);  
[austin.reed@smithrobinsonlaw.com](mailto:austin.reed@smithrobinsonlaw.com); Toal, Jean <[JToal@sccourts.org](mailto:JToal@sccourts.org)>; Covil Internal Team  
<[CovilInternalTeam@rplegalgroup.onmicrosoft.com](mailto:CovilInternalTeam@rplegalgroup.onmicrosoft.com)>; Perry, Christina M. <[cmperry@sccourts.org](mailto:cmperry@sccourts.org)>  
**Subject:** Re: Ann Finch v. United States Fidelity//2020-001663

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Chief Justice Toal and Counsel:

The Court of Appeals has ruled that the order on bifurcation is not immediately appealable. I understand from the rule that the Remittitur will be sent in 15 days. If USF&G does not intend to go forward with any additional motions in the appellate court, I believe the remittitur could be sent earlier by order of the Court of Appeals. It would be helpful to know about USF&G's plan.

If we are unable to go forward on Monday, I believe we should schedule the trial in 15 days., In the meantime, we could schedule a status conference and motions hearing so that we are prepared for trial.

I look forward to hearing from you, Theile

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---

**From:** Singleton, Mary C. <[msingleton@sccourts.org](mailto:msingleton@sccourts.org)>  
**Sent:** Wednesday, January 6, 2021 3:10:45 PM  
**To:** [todd.carroll@wbd-us.com](mailto:todd.carroll@wbd-us.com) <[todd.carroll@wbd-us.com](mailto:todd.carroll@wbd-us.com)>; [elizabeth.oneill@wbd-us.com](mailto:elizabeth.oneill@wbd-us.com) <[elizabeth.oneill@wbd-us.com](mailto:elizabeth.oneill@wbd-us.com)>; [wdavis@brblegal.com](mailto:wdavis@brblegal.com) <[wdavis@brblegal.com](mailto:wdavis@brblegal.com)>; [sdubose@brblegal.com](mailto:sdubose@brblegal.com) <[sdubose@brblegal.com](mailto:sdubose@brblegal.com)>; [michael.carnevale@stblaw.com](mailto:michael.carnevale@stblaw.com) <[michael.carnevale@stblaw.com](mailto:michael.carnevale@stblaw.com)>; [afrankel@stblaw.com](mailto:afrankel@stblaw.com) <[afrankel@stblaw.com](mailto:afrankel@stblaw.com)>; [aturner@stblaw.com](mailto:aturner@stblaw.com) <[aturner@stblaw.com](mailto:aturner@stblaw.com)>; [mforshaw@stblaw.com](mailto:mforshaw@stblaw.com) <[mforshaw@stblaw.com](mailto:mforshaw@stblaw.com)>; Theile McVey <[TMcVey@kassellaw.com](mailto:TMcVey@kassellaw.com)>; [mwhardee@bellsouth.net](mailto:mwhardee@bellsouth.net) <[mwhardee@bellsouth.net](mailto:mwhardee@bellsouth.net)>; [jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com) <[jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com)>; [murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com) <[murrell@smithrobinsonlaw.com](mailto:murrell@smithrobinsonlaw.com)>; [shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com) <[shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com)>; [jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com) <[jspitz@rplegalgroup.com](mailto:jspitz@rplegalgroup.com)>; [jwhite@spartanlaw.com](mailto:jwhite@spartanlaw.com) <[jwhite@spartanlaw.com](mailto:jwhite@spartanlaw.com)>; [mshisko@spartanlaw.com](mailto:mshisko@spartanlaw.com) <[mshisko@spartanlaw.com](mailto:mshisko@spartanlaw.com)>; [jonescr@gmail.com](mailto:jonescr@gmail.com) <[jonescr@gmail.com](mailto:jonescr@gmail.com)>; [austintreed32@gmail.com](mailto:austintreed32@gmail.com) <[austintreed32@gmail.com](mailto:austintreed32@gmail.com)>  
**Cc:** [debbie.johnson@wbd-us.com](mailto:debbie.johnson@wbd-us.com) <[debbie.johnson@wbd-us.com](mailto:debbie.johnson@wbd-us.com)>; [wbd.scasbestos@wbd-us.com](mailto:wbd.scasbestos@wbd-us.com) <[wbd.scasbestos@wbd-us.com](mailto:wbd.scasbestos@wbd-us.com)>; [srodriguez@brblegal.com](mailto:srodriguez@brblegal.com) <[srodriguez@brblegal.com](mailto:srodriguez@brblegal.com)>; [sclause@brblegal.com](mailto:sclause@brblegal.com) <[sclause@brblegal.com](mailto:sclause@brblegal.com)>; Elizabeth Moultrie <[EMoultrie@kassellaw.com](mailto:EMoultrie@kassellaw.com)>; [dot@smithrobinsonlaw.com](mailto:dot@smithrobinsonlaw.com) <[dot@smithrobinsonlaw.com](mailto:dot@smithrobinsonlaw.com)>; [hydie.kirkland@smithrobinsonlaw.com](mailto:hydie.kirkland@smithrobinsonlaw.com) <[hydie.kirkland@smithrobinsonlaw.com](mailto:hydie.kirkland@smithrobinsonlaw.com)>; [dot@smithrobinsonlaw.com](mailto:dot@smithrobinsonlaw.com)

[<dot@smithrobinsonlaw.com>](mailto:dot@smithrobinsonlaw.com); [lindsay@rplegalgroup.com](mailto:lindsay@rplegalgroup.com) [<lindsay@rplegalgroup.com>](mailto:lindsay@rplegalgroup.com);  
[cwilson@spartanlaw.com](mailto:cwilson@spartanlaw.com) [<cwilson@spartanlaw.com>](mailto:cwilson@spartanlaw.com); [nrice@spartanlaw.com](mailto:nrice@spartanlaw.com)  
[<nrice@spartanlaw.com>](mailto:nrice@spartanlaw.com); [cjones@spartanlaw.com](mailto:cjones@spartanlaw.com) [<cjones@spartanlaw.com>](mailto:cjones@spartanlaw.com);  
[austin.reed@smithrobinsonlaw.com](mailto:austin.reed@smithrobinsonlaw.com) [<austin.reed@smithrobinsonlaw.com>](mailto:austin.reed@smithrobinsonlaw.com); Toal, Jean  
[<JToal@sccourts.org>](mailto:JToal@sccourts.org)

**Subject:** Ann Finch v. United States Fidelity//2020-001663

Dear Counsel:

Attached please find correspondence from the Court of Appeals.

Sincerely,

**Mary-Caitlyn Singleton**  
Appeals Specialist II  
SC Court of Appeals  
1220 Senate St.  
Columbia, SC 29201  
Ph: (803) 734-1890  
F: (803) 734-1839

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through
its duly appointed Receiver
Peter D. Protopapas,

C.A. No.: 2020-CP-40-02098

Plaintiff,

**DEFENDANT PENN NATIONAL'S
RESPONSE TO THE RECEIVER'S
PRE-TRIAL STATUS REPORT**

v.

Pennsylvania National Mutual
Casualty Insurance Co.; Sam J. Crain &
Co., Inc.; and South Carolina Property
and Casualty Insurance Guaranty Association,

Defendants.

In advance of the pre-trial hearing to be conducted Monday, November 14, 2022, Pennsylvania National Mutual Casualty Insurance Company ("Penn National") submits this response to the Receiver for Covil Corporation's Pre-Trial Hearing Status Report ("Status Report") to address certain issues therein. This response is not meant to be inclusive of all issues that may be discussed at the hearing, but rather to specifically respond to the issue of Penn National's jury trial request and its preservation of same.

RESPONSE TO THE RECEIVER'S STATUS REPORT

In its Status Report, the Receiver for Covil Corporation (the "Receiver") contends that Penn National is not entitled to a jury trial based on the following three assertions: 1) the action is a declaratory judgment action and is, therefore, a non-jury action; 2) issues relating to spoliation are not jury issues; and 3) Penn National has waived its right to a jury trial. Penn National briefly addresses each of these contentions in turn.

(1) Factual Issues for Trial by Jury:

The Receiver recognizes that in determining whether there is a right to a jury trial the principle question is whether the action is legal or equitable inasmuch as there is no right to a trial by jury for equitable actions. See Receiver's Status Report p. 2. The Receiver further recognizes that a declaratory judgment action for the determination of insurance coverage is an "action at law." *Id.* However, while it is true that contracts may be construed by a court, "where a contract is capable of more than one construction, the question of what the parties intended becomes one of fact to be submitted to the jury." *Soil Remediation Co. v. Nu-Way Env't'l*, 325 S.C. 231, 234, 482 S.E.2d 554, 555-56 (1997) (citing *Café Assoc. Ltd. V. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991); *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990)). Under South Carolina law, the terms of an insurance policy "are to be construed according to contract law." *Coakley v. Horace Mann Ins. Co.*, 376 S.C. 2, 5-6, 656 S.E.2d 17, 18-19 (2007) (citation omitted). Thus, just as with other contracts, the construction of an insurance policy may be a question of fact for the jury. *E.g. NGM Ins. Co. v. Low Country Finish Carpentry, Inc.*, 2012 U.S. Dist. LEXIS 200367 at * 7-9, (D.S.C. Oct. 31, 2012) (denying summary judgment and finding question of applicability of certain policy provisions was a jury question).

Here, there are factual issues that will need to be resolved by a fact-finder. For example, the existence of policies issued by Penn National is a fact issue that will need to be resolved by a fact-finder (as discussed below). Indeed, the Court's recent pre-trial scheduling order includes a deadline for the parties to submit proposed findings of fact. Any disagreement over these proposed findings of fact will result in a question of fact, and Penn National is entitled to have such questions, along with any ambiguities in construction, submitted to a jury.

See e.g. Collins v. Frasier, 378 S.C. 249, 252, 662 S.E.2d 464, 466 (Ct. App. 2008) (“Juries resolve questions of fact”).

(2) Jury Issues as to Alleged Spoliation:

As to spoliation, while there is no recognized cause of action, there are threshold issues of fact to resolve before there can be any determination that spoliation even took place. Courts have held that such determinations are properly put to a jury. *E.g. Evans v. Quintiles Transnat’l Corp.*, 2015 U.S. Dist. LEXIS 171750 at * 13-14 (D.S.C. Dec. 23, 2015) (holding that where there was a factual dispute as to whether an allegedly spoliated computer file ever even existed, it was proper to allow the jury to resolve the threshold issue of its existence). To the extent that the Receiver claims that Penn National has spoliated Covil policies, there will likely be factual issues regarding whether such alleged spoliated policies ever existed in the first place. For this reason, fact issues for a jury to determine would exist with respect to the issue of spoliation.

(3) Penn National Has Not Waived Its Right to a Jury Trial:

Penn National disputes that it has waived its right to a jury trial. Penn National made a proper demand for a jury trial in this action by way of its Answer to the Receiver’s Complaint for Declaratory Judgment and Breach of Contract. Counsel for Penn National has never agreed to a non-jury trial in this action and has not waived this right “by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record” as is required by Rule 39, SCR.P. Indeed, as is clear from the transcript of the September 8, 2022 hearing, counsel for Penn National, who had to attend the proceedings remotely because of COVID-19, advised the Court that he had difficulty hearing the Receiver’s requests as to possible trial dates and pre-trial deadlines, but yet repeated his understanding of same, which did not include

any discussion of the trial being a non-jury trial. Penn National has not waived its right to a jury trial on all issues so triable in this action, and any argument to the contrary should be disregarded.¹

Respectfully submitted, this the 11th day of November, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: dharris@goldbergsegalla.com

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: byntema@goldbergsegalla.com

Alexander E. Davis

S.C. Bar # 100061

Email: aedavis@goldbergsegalla.com

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

Attorneys for Defendant Penn National

¹ Penn National does not, at this time, have knowledge of all the factual issues that may be sought to be tried and, therefore, reserves its right to assert entitlement to a jury trial on any other issues in this action, as appropriate.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

v.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty Insurance
Guaranty Association,

Defendants.

Case Number: 2020-CP-40-02098

**DEFENDANT PENN NATIONAL'S
PRE-MARKED TRIAL EXHIBITS
AND TRIAL WITNESS LIST**

TO: COVIL CORPORATION, BY AND THROUGH ITS DULY APPOINTED RECEIVER,
THROUGH RECEIVER'S COUNSEL OF RECORD

COMES NOW Pennsylvania National Mutual Casualty Insurance Co. ("Penn National"),
by and through counsel, and serves its pre-marked trial exhibits and trial witness list, pursuant to
the Court's scheduling order entered September 16, 2022.

Penn National hereby incorporates into its trial witness list, as if fully reproduced herein,
any and all lay witnesses who may be listed by any other party. Penn National further reserves
the right to supplement its pre-marked trial exhibits and trial witness list relating to any documents
or witnesses necessary to authenticate documents or exhibits and/or for purposes of rebuttal.
Penn National further reserves the right to supplement its pre-marked trial exhibits and use
any depositions that have been conducted but for which the deposition transcript has not yet been
provided by the court reporter and any depositions that will be conducted in this case after service
of Penn National's pre-marked trial exhibits and trial witness list in accordance with the provisions
governing the use of depositions contained in the South Carolina Rules of Civil Procedure and

the applicable rules of evidence. Penn National further reserves the right to identify and supplement its pre-marked trial exhibits and trial witness list based upon further evaluation of the information that continues to be gathered through ongoing pre-trial discovery in this case.

Penn National's pre-marked trial exhibits are identified in Exhibit A attached hereto and are served herewith, and Penn National's trial witness list is attached hereto as Exhibit B.

Dated: November 23, 2022

Respectfully submitted,

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar No. 101951

701 Green Valley Road, Suite 310

Greensboro, North Carolina 27408

Telephone: 336.419.4910

Email: dharris@goldbergsegalla.com

Attorneys for Defendant Penn National

EXHIBIT A

Penn National's Pre-Marked Trial Exhibit List

<u>No.</u>	<u>Exhibit</u>
1	Complaint
2	Penn National's Answer
3	Subpoena 5.29.2018
4	Letter from Boyd Wright to Sabrina Stone with attached documents in Response to Subpoena 6.15.2018
5	Penn National's Policy 1986-1987
6	Penn National's Policy 1987-1988
7	Covil's General Liability Underwriting Materials
8	Non-CGL Policy Documents Produced by Penn National
9	Covil's Policy Charts
10	Subpoena Duces Tecum to Penn National 2.8.2021
11	Brady Yntema's Letter to Marghretta Shisko 2.12.2021
12	Receiver's Responses to Penn National's First Set of Interrogatories
13	Receiver's Responses to Penn National's First Request for Production of Documents
14	Affidavit of Boyd Wright 6.3.2021
15	Affidavit of Boyd Wright 6.11.2021
16	Brent Reifsnnyder Affidavit 7.9.2021
17	Brent Reifsnnyder Affidavit 7.23.2021
18	Brent Reifsnnyder Affidavit 12.22.2021
19	Penn National's Document Retention Policy
20	Penn National's Litigation Hold Policy
21	Penn National's Litigation Hold Notice 12.17.2021
22	Ellis & Winters Report 3.22.2022
23	Y2K10 Database Spreadsheet
24	Impairment Letter from Penn National to Receiver 9.1.2022
25	Order Granting Joint Motions to Establish Covil QSF
26	QSF Operating Agreement
27	Motions to Compel/Sanctions by Receiver Against Other Insurers
28	Boyd Wright Depo Trans/Exhibits 1.7.2021
29	Boyd Wright Depo Trans/Exhibits 8.26.2021
30	Brent Reifsnnyder Depo Trans/Exhibits 8.3.2021
31	Brent Reifsnnyder Depo Trans ROUGH DRAFT 11.10.2022
32	Sharla Frost Depo Trans/Exhibits 11.9.2022
33	Peter Protopapas Depo Trans ROUGH DRAFT 11.17.2022
34	Bernd G. Heinze - CV
35	James A. Robertson - CV
36	Joint Stipulation Regarding Finch
37	Penn National's Responses to First Set of Interrogatories
38	Penn National's Responses to First Request for Production of Documents
39	Penn National's Supplemental Responses to First Set of Interrogatories

40	Penn National's First Supplemental Responses to First Request for Production of Documents
41	Penn National's Responses to Second Set of Interrogatories
42	Penn National's Response to Second Request for Production of Documents
43	Penn National's Response to Third Set of Production of Documents
44	Penn National's Supplemental Response to Third Set of Production of Documents
45	Penn National's Responses to Requests for Admission
46	Penn National's Objection to Subpoena (Finch) 2.22.2021
47	Penn National's Supplemental Objections to Subpoena (Finch) 3.9.2021
48	Penn National Interim Reports
49	Covil Corporation's Amended Expert Disclosures
50	Defendant's Fact and Expert Witness Disclosures

EXHIBIT B

Penn National's Trial Witness List

Fact Witnesses:

Peter D. Protopapas
Troy L. Chute
Brent Reifsnyder
Boyd Wright
Scott Maier

Expert Witnesses:

Bernd G. Heinze
James A. Robertson, CPCU, ARM

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

Covil Corporation, by and through its duly
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Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.;
and South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

CASE NUMBER: 2020-CP-40-02098

**THE RECEIVER FOR COVIL
CORPORATION'S TRIAL
EXHIBIT LIST**

**THE RECEIVER FOR COVIL CORPORATION'S
TRIAL EXHIBIT LIST**

Exhibit No.	Document	Document Identification	Confidential
1)	GL Policy Number 515 50 28 53-7	Penn National Policies 000001 – 000043	
2)	GL Policy Number 515 50 28 53-8	Penn National Policies 000044 – 000091	
3)	Boyd Wright Affidavit in Opposition to Receiver's Motion for Summary Judgment, dated October 22, 2021		
4)	Inland Marine Policy	PNI-1225 – 1324	
5)	Auto Policy	PNI-1325 – 1611	
6)	Auto, Inland Marine, and Workers Compensation Policies	PNI-0393 – 0596	
7)	Penn National-Covil Underwriting File	PNI-0304 – 0392	
8)	Penn National Document Retention Policies	PNI-0598 – 1158	
9)	Litigation Hold Procedure	PNI-1159 – 1161	

Exhibit No.	Document	Document Identification	Confidential
10)	Dec. 17, 2021 Litigation Hold Email		
11)	Microfiche Destruction Dates Spreadsheet	PNI-0597	X
12)	Underlying subpoena served in <i>Finch</i> asbestos suit dated May 29, 2018		
13)	Penn National's June 15, 2018 letter and documents served in response to subpoena in <i>Finch</i> asbestos suit		
14)	Sept. 1, 2022 Letter from Boyd Wright to Peter Protopapas	Covil v Penn 2098_000001 – 000002	X
15)	Estate of Jerry W. Archer, Sr. asbestos file	Covil v. Penn 2098_000003-166	
a)	Complaint	Covil v. Penn 2098_000003-68	
b)	Work Sites	Covil v Penn 2098_000069	
c)	Plaintiff's Responses to Interrogatories	Covil v Penn 2098_000070-81	
d)	Plaintiff's Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_000082-147	
e)	Deposition transcript of B. Glenn – dated July 28, 2010	Covil v Penn 2098_000148-66	
16)	Estate of Robert J. Ashworth asbestos file	Covil v Penn 2098_000167-638	
a)	Complaint	Covil v Penn 2098_000167-215	
b)	Work Sites	Covil v Penn 2098_000216-17	
c)	Plaintiff's Responses to Interrogatories	Covil v Penn 2098_000218-29	
d)	Plaintiff's Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_000230-85	
e)	Covil Motion for Summary Judgment.pdf	Covil v Penn 2098_000286-90	

Exhibit No.	Document	Document Identification	Confidential
f)	Deposition transcript excerpt of D. Rollins – dated June 7, 2019	Covil v Penn 2098_000291-96	
g)	Plaintiff's Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_000297-303	
h)	Deposition transcript of D. Rollins – dated Feb. 18, 2019	Covil v. Penn 2098_000304-441	
i)	Deposition transcript of D. Rollins – dated Feb. 19, 2019	Covil v. Penn 2098_000442-528	
j)	Invoices	Covil v. Penn 2098_000529-36	
k)	Project listings document	Covil v. Penn 2098_000537-42	
l)	Deposition transcript of R. Ashworth – dated Aug. 2, 2017 (de bene esse)	Covil v Penn 2098_000543-588	
m)	Deposition transcript of R. Ashworth – dated Aug. 2, 2017 (discovery)	Covil v Penn 2098_000589-638	
17)	Robert E. Aspray asbestos file	Covil v Penn 2098_000639-829	
a)	Complaint	Covil v Penn 2098_000639-99	
b)	Work History	Covil v Penn 2098_000700-3	
c)	Second Amended Complaint	Covil v Penn 2098_000704-52	
d)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_000753-66	
e)	Covil's Amended Motion for Summary Judgment	Covil v Penn 2098_000767-70	
f)	Plaintiff's Response in Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_000771-87	
g)	Deposition transcript of P. Haynes – dated June 30, 2020	Covil v Penn 2098_000788-829	
18)	Jerry V. Campbell asbestos file	Covil v. Penn 2098_000830-1441	
a)	Complaint	Covil v Penn 2098_000830-912	
b)	First Amended Complaint	Covil v Penn 2098_000913-1002	

Exhibit No.	Document	Document Identification	Confidential
c)	Work Sites	Covil v Penn 2098_001003	
d)	Plaintiffs' Answers to Standard Interrogatories	Covil v Penn 2098_001004-1013	
e)	Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_001014-1156	
f)	Plaintiffs' Supplemental Answers to Standard Interrogatories	Covil v Penn 2098_001157-58	
g)	Plaintiffs' Supplemental Responses to Master Interrogatories and Requests for Production	Covil v Penn 2098_001159-1210	
h)	Covil's Motion for Summary Judgment	Covil v Penn 2098_001211-16	
i)	Deposition transcript of M. Sanders – dated Feb. 1, 2022	Covil v Penn 2098_001217-55	
j)	Deposition transcript of M. Sanders – dated Feb. 2, 2022	Covil v Penn 2098_001256-1303	
k)	Deposition transcript of M. Sanders – dated Feb. 4, 2022	Covil v Penn 2098_001304-51	
l)	Deposition transcript of J. Campbell – dated Oct. 21, 1999	Covil v Penn 2098_001352-1402	
m)	Deposition transcript of J. Campbell – dated July 28, 2021	Covil v Penn 2098_001403-41	
19)	Estate of Julian D'Amico, Jr. asbestos files	Covil v Penn 2098_001442-1918	
a)	Complaint	Covil v Penn 2098_001442-1517	
b)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_001518-1531	
c)	Plaintiff's Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_001532-1609	
d)	Covil's Motion for Summary Judgment	Covil v Penn 2098_001610-13	
e)	Plaintiff's Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_001614-24	

Exhibit No.	Document	Document Identification	Confidential
f)	Deposition transcript of J. D'Amico – dated Oct. 11, 1999	Covil v Penn 2098_001625-43	
g)	Deposition transcript of J. D'Amico – dated Oct. 26, 1994	Covil v Penn 2098_001644-1881	
h)	Deposition transcript of J. D'Amico – Jan. 30, 2001	Covil v Penn 2098_001882-1918	
20)	Galen Garren asbestos files	Covil v Penn 2098_001919-2129	
a)	Complaint	Covil v Penn 2098_001919-84	
b)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_001985-97	
c)	Plaintiff's Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_001998-2014	
d)	Covil's Motion for Summary Judgment	Covil v Penn 2098_002015-20	
e)	Deposition transcript of G. Garren – dated Oct. 13, 2021	Covil v Penn 2098_002021-2104	
f)	Deposition transcript of G. Garren – dated Oct. 14, 2021	Covil v Penn 2098_002105-29	
21)	Estate of Beverly D. Jolly asbestos files	Covil v Penn 2098_002130-2266	
a)	Complaint	Covil v Penn 2098_002130-71	
b)	Second Amended Complaint	Covil v Penn 2098_002172-2213	
c)	Work Sites	Covil v Penn 2098_002214	
d)	Plaintiffs' Responses to Standard Interrogatories	Covil v Penn 2098_002215-45	
e)	Covil's Motion for Summary Judgment	Covil v Penn 2098_002246-55	
f)	Covil's Amended Motion for Summary Judgment	Covil v Penn 2098_002256-66	
22)	Ronnie J. Jonas asbestos files	Covil v Penn 2098_002267-2683	
a)	Complaint	Covil v Penn 2098_002267-2341	
b)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_002342-55	

Exhibit No.	Document	Document Identification	Confidential
c)	Plaintiff's Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_002356-2426	
d)	Covil's Motion for Summary Judgment	Covil v Penn 2098_002427-31	
e)	Plaintiff's Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_002432-2442	
f)	Deposition transcript of George Fincher – dated Oct. 22, 2020	Covil v Penn 2098_002443-2569	
g)	Deposition transcript of C. Bell – dated Nov. 20, 2020	Covil v Penn 2098_002570-2683	
23)	Estate of Teddy L. Knight, Sr. asbestos files	Covil v Penn 2098_002684-3194	
a)	Complaint	Covil v Penn 2098_002684-2748	
b)	Work Sites	Covil v Penn 2098_002749-51	
c)	Plaintiffs' Responses to Standard Interrogatories	Covil v Penn 2098_002752-63	
d)	Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_002764-2842	
e)	Covil's Amended Motion for Summary Judgment	Covil v Penn 2098_002843-48	
f)	Plaintiffs' Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_002849-58	
g)	Deposition transcript of R. Cassidy – dated March 19, 2020	Covil v Penn 2098_002859-2950	
h)	Deposition transcript of K. Knight – dated March 19, 2020	Covil v Penn 2098_002951-3194	
24)	Edward R. Morgan, Sr. asbestos files	Covil v Penn 2098_003195-4118	
a)	Complaint	Covil v Penn 2098_003195-3292	
b)	First Amended Complaint	Covil v Penn 2098_003293-3396	

Exhibit No.	Document	Document Identification	Confidential
c)	Plaintiffs' Responses to Standard Interrogatories	Covil v Penn 2098_003397-3460	
d)	Plaintiffs' Responses to Standard Interrogatories	Covil v Penn 2098_003461-72	
e)	Covil's Motion for Summary Judgment	Covil v Penn 2098_003473-79	
f)	Plaintiffs' Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_003480-93	
g)	Opposition exhibits excerpts	Covil v Penn 2098_003494-3772	
h)	Deposition transcript of E. Morgan – dated Feb. 22, 2021	Covil v Penn 2098_003773-3809	
i)	Deposition transcript of E. Morgan – dated Feb. 23, 2021 (preservation)	Covil v Penn 2098_003810-55	
j)	Deposition transcript of E. Morgan – dated Feb. 23, 2021	Covil v Penn 2098_003856-3920	
k)	Deposition transcript of E. Morgan – dated Feb. 26, 2021	Covil v Penn 2098_003921-4023	
l)	Deposition transcript of E. Morgan – dated March 1, 2021	Covil v Penn 2098_004024-93	
m)	Deposition transcript of E. Morgan – dated March 2, 2021 (preservation)	Covil v Penn 2098_004094-4100	
n)	Deposition transcript of E. Morgan – dated March 2, 2021	Covil v Penn 2098_004101-4118	
25)	Estate of Gary J. Moss asbestos files	Covil v. Penn 2098_004119-4459	
a)	Complaint	Covil v Penn 2098_004119-4204	
b)	Amended Complaint	Covil v Penn 2098_004205-89	
c)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_004290-4303	
d)	Plaintiff's Responses to Master Interrogatories and Requests for Production of Documents	Covil v Penn 2098_004304-74	
e)	Covil's Motion for Summary Judgment	Covil v Penn 2098_004375-79	
f)	Deposition transcript of G. Moss – dated April 6, 2010	Covil v Penn 2098_004380-4459	

Exhibit No.	Document	Document Identification	Confidential
26)	Nicholas L. Murphy asbestos files	Covil v Penn 2098_004460-5005	
a)	Complaint	Covil v Penn 2098_004460-4537	
b)	First Amended Complaint	Covil v Penn 2098_004538-4620	
c)	Second Amended Complaint	Covil v Penn 2098_004621-4704	
d)	Plaintiffs' Responses to Standard Interrogatories	Covil v Penn 2098_004705-79	
e)	Covil's Motion for Summary Judgment	Covil v Penn 2098_004792-96	
f)	Deposition transcript of N. Murphy – dated April 28, 2020	Covil v Penn 2098_004797-4834	
g)	Deposition transcript of N. Murphy – dated April 29, 2020	Covil v Penn 2098_004835-69	
h)	Deposition transcript of N. Murphy – dated April 30, 2020	Covil v Penn 2098_004870-95	
i)	Deposition transcript of N. Murphy – dated May 1, 2020	Covil v Penn 2098_004896-4927	
j)	Deposition transcript of N. Murphy – dated May 7, 2020	Covil v Penn 2098_004928-69	
k)	Deposition transcript of N. Murphy – dated May 8, 2020	Covil v Penn 2098_004970-5005	
27)	Estate of Waymon F. Sims, Jr. asbestos files	Covil v Penn 2098_005006-5181	
a)	Complaint	Covil v Penn 2098_005006-73	
b)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_005074-85	
c)	Plaintiffs' Responses to Master Interrogatories and Request for Production of Documents	Covil v Penn 2098_005086-5156	
d)	Covil's Motion for Summary Judgment	Covil v Penn 2098_005157-62	
e)	Plaintiff's Opposition to Covil's Motion for Summary Judgment	Covil v Penn 2098_005163-81	

Exhibit No.	Document	Document Identification	Confidential
28)	Tommy D. Wannamaker asbestos files	Covil v. Penn 2098_005182-5730	
a)	Complaint	Covil v Penn 2098_005182-5265	
b)	Second Amended Complaint	Covil v Penn 2098_005266-5345	
c)	Third Amended Complaint	Covil v Penn 2098_005346-5418	
d)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_005419-34	
e)	Plaintiff's Responses to Standard Interrogatories	Covil v Penn 2098_005435-45	
f)	Covil's Motion for Summary Judgment	Covil v Penn 2098_005446-50	
g)	Deposition transcript of T. Wannamaker – dated April 1, 2021	Covil v Penn 2098_005451-97	
h)	Deposition of T. Wannamaker: Statement on the Record – dated April 2, 2021	Covil v Penn 2098_005498-5508	
i)	Deposition transcript of T. Wannamaker – dated April 13, 2021	Covil v Penn 2098_005509-5626	
j)	Deposition transcript of T. Wannamaker – dated April 14, 2021	Covil v Penn 2098_005627-5730	
29)	Article: Assessing the Coverage Carnage: Asbestos Liability and Insurance After Three Decades of Dispute, 12 Conn. Ins. L. J. 349 (2005-2006)		
30)	Insurance Protection for Products Liability and Completed Operations – What Every Lawyer Should Know, Nebraska Law Review, Vol. 50, No. 3, Spring 1971		
31)	Risk and Insurance: Sixth Edition, James L. Athearn and S. Travis Pritchett (University of South Carolina)		

Exhibit No.	Document	Document Identification	Confidential
32)	Introduction to Risk Management and Insurance: Seventh Edition, Mark Dorfman (University of North Carolina at Charlotte)		
33)	General Liability Coverage, 1986: 3rd Edition (1985)		
34)	Risk & Insurance (IRM) – Insurance Glossary - definition of “premises-operations”		
35)	Comprehensive General Liability Insurance: FC&S Bulletins, National Underwriter Co. (1985)		
36)	P. Protopapas email to F. Benedek, Penn National’s VP of Claims, regarding tender of <i>Timothy Howe v. Air & Liquid Systems Corporation, et al.</i> (York County, SC, 2015-CP-46-03456), dated August 5, 2019.		
37)	B. Wright letter to P. Protopapas in response to August 5, 2019 letter regarding tender of <i>Timothy Howe v. Air & Liquid Systems Corporation, et al.</i> (York County, SC, 2015-CP-46-03456), dated August 21, 2019.		
38)	Hartford Accident and Indemnity Company’s Third-Party Complaint (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated October 2, 2019.		
39)	Summons on Penn National (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> ,		

Exhibit No.	Document	Document Identification	Confidential
	MDNC, No. 1:18-cv-932), dated October 3, 2019.		
40)	Covil's 30(b)(6) notice of deposition of Penn National, dated November 19, 2019		
41)	Penn National's Motion to Dismiss Hartford's Third-Party Complaint (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated November 21, 2019.		
42)	Penn National's Answers to Covil's First Set of Interrogatories (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated December 18, 2019.		
43)	Penn National's Responses to Covil's First Set of Requests for Admission (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated December 18, 2019.		
44)	30(b)(6) deposition notice served on Penn National (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated November 5, 2019.		
45)	B. Yntema letter to B. Edwards objecting to 30(b)(6) deposition notice served on Penn National (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC,		

Exhibit No.	Document	Document Identification	Confidential
	No. 1:18-cv-932), dated November 12, 2019.		
46)	B. Edwards email to B. Yntema re Zurich v. Covil (North Carolina), dated November 15, 2019.		
47)	Covil's subpoena duces tecum to Penn National, dated November 25, 2019 (<i>Hopper v. Air & Liquid Systems Corporation, et al.</i> , No. 19-CP-40-00076).		
48)	South Carolina Department of Insurance's notification of acceptance of service of Covil's 11/25/2019 subpoena duces tecum to Penn National, dated November 26, 2019 (<i>Hopper v. Air & Liquid Systems Corporation, et al.</i> , No. 19-CP-40-00076).		
49)	Penn National's responses to Covil's subpoena duces tecum, dated December 9, 2019 (<i>Hopper v. Air & Liquid Systems Corporation, et al.</i> , No. 19-CP-40-00076).		
50)	Penn National's Answers to Covil's First Set of Interrogatories and Responses to Covil's First Set of Requests for Admission, dated December 18, 2019 (<i>Zurich American Insurance Company v. Covil Corporation, et al.</i> , MDNC No. 1:18-cv-000932).		
51)	Penn National's Answers to Covil's First Set of Interrogatories, dated May 15, 2020 (<i>Covil v. Penn National</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226).		

Exhibit No.	Document	Document Identification	Confidential
52)	Penn National's Responses to Covil's First Set of Requests for Production, dated May 15, 2020 (<i>Covil v. Penn National</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2020-CP-40-01226).		
53)	Covil's subpoena duces tecum to Penn National, dated February 8, 2021 (<i>Finch and Covil v. USF&G</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003).		
54)	Letter from D. Harris to M. Shisko dated Feb. 12, 2021		
55)	Penn National's objections to Covil's subpoena duces tecum to Penn National, dated February 22, 2021 (<i>Finch and Covil v. USF&G</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003).		
56)	Penn National's supplemental objections to Covil's subpoena duces tecum to Penn National, dated March 9, 2021 (<i>Finch and Covil v. USF&G</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003).		
57)	Penn National's Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated May 10, 2021		
58)	Penn National's Responses to the Receiver of Covil Corporation's Request for		

Exhibit No.	Document	Document Identification	Confidential
	Production, dated May 10, 2021		
59)	Penn National's Supplemental Answers to the Receiver of Covil Corporation's First Set of Interrogatories, dated June 11, 2021		
60)	Penn National's Supplemental Responses to the Receiver of Covil Corporation's Request for Production, dated June 11, 2021		
61)	Receiver's Notice of Filing of Late-Produced Policies, dated June 15, 2021 (<i>Finch and Covil v. USF&G</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003).		
62)	Order granting Covil's motions to compel, dated July 1, 2021 (<i>Finch and Covil v. USF&G</i> , Court of Common Pleas for the Fifth Judicial Circuit, County of Richland, SC, 2019-CP-40-03003).		
63)	Order granting Covil's motions to compel and ordering Ellis & Winters' review of Penn National's documents, dated November 5, 2021.		
64)	Penn National's Responses to Plaintiff's Second Set of Requests for Production, dated December 20, 2021		
65)	B. Yntema letter to B. Nes regarding Penn National's litigation hold and document retention policy, dated December 28, 2021.		
66)	Order granting Receiver's Motion for Protective Order		

Exhibit No.	Document	Document Identification	Confidential
	requiring Penn National to preserve all historic insurance policies, dated February 11, 2022		
67)	Penn National's Responses to the Receiver for Covil's Third Set of Requests for Production dated Feb. 17, 2022		
68)	Penn National's Responses to the Receiver of Covil Corporation's First Set of Requests for Admission, dated February 17, 2022		
69)	Penn National's Answers to the Receiver of Covil Corporation's Second Set of Interrogatories, dated February 17, 2022		
70)	Notice of Filing of Ellis & Winters, LLP Report Identifying Three Additional Covil Insurance Policies After One Day of Searching (attaching Ellis & Winters March 22, 2022 Letter Report to the Court)		
71)	Order on Discovery Motions, dated May 5, 2022		
72)	6/11/2021 Affidavit of B. Wright		
73)	7/9/2021 Affidavit of B. Reifsnyder		
74)	7/23/2021 Affidavit of B. Reifsnyder		
75)	12/22/2021 Affidavit of B. Reifsnyder		
76)	1/7/2021 Deposition Transcript of B. Wright		
77)	8/3/2021 Deposition Transcript of B. Reifsnyder		
78)	8/26/2021 Deposition Transcript of B. Wright		

Exhibit No.	Document	Document Identification	Confidential
79)	7/13/1977 Deposition Transcript Excerpts of P. Covil		
80)	Covil Corporation Certificate of Incorporation		
81)	Resume of Work Performed by Covil Corporation	COV_005785-89	
82)	Order on Discovery Motions, dated November 16, 2022		
83)	Deposition Transcript of Edwin L. Rice, dated October 3, 1991		
84)	11/10/2022 Deposition Transcript of B. Reifsnyder		
85)	Pretrial Report of Gary J. Moss dated 9/27/21		X
86)	Pretrial Report of Jerry W. Archer dated 7/24/20		X
87)	Initial Report of Nicholas L. Murphy dated 7/22/21		X
88)	Initial Report of Tommy D. Wannamaker dated 5/5/22		X
89)	Initial Report of Waymon F. Sims dated 2/9/22		X
90)	Covil Certificate Revocation of Authority dated 7/30/93		
91)	Court Order (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated February 24, 2020.		
92)	Court Order (<i>Zurich American Insurance Company v. Hartford Accident and Indemnity Company</i> , MDNC, No. 1:18-cv-932), dated April 22, 2020.		

Exhibit No.	Document	Document Identification	Confidential
93)	Penn National's Interim Report Regarding Progress of Document Sampling/Review of Penn National's Insurance Policy Related Documents, Pursuant to the November 5, 2021 Order of the Court, dated December 7, 2021		
94)	Sharla J. Frost CV	FROST 0999-1008	
95)	Charles M. Miller, Esq. CV	MILLER 01350-59	

Discovery is ongoing. The Receiver reserves the right to list additional trial exhibits at the conclusion of discovery.

Dated: November 23, 2022

Respectfully submitted,

s/ Jonathan M. Robinson

Jonathan M. Robinson (S.C. Bar No. 68285)

Smith Robinson, LLC

2530 Devine Street, 3rd Floor

Columbia, SC 29205

Phone: (803) 254-5445

G. Murrell Smith, Jr. PO Box 580

Sumter, SC 29151-0580

803-778-2471

ATTORNEYS FOR THE RECEIVER FOR COVIL CORPORATION

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

Case Number: 2020-CP-40-02098

Vs.

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

THE RECEIVER FOR COVIL CORPORATION'S TRIAL WITNESS LIST

COMES NOW Peter Protopapas, as Court Appointed Receiver for Covil Corporation (the "Receiver"), by and through his counsel of record, and serves his Trial Witness List pursuant to the Court's September 16, 2022 Scheduling Order and the agreement of the Parties.¹

FACT WITNESSES:

- Peter D. Protopapas
- Brett Reifsnyder (adversely)
- Boyd Wright (adversely)
- Scott Maier (adversely)
- Penn National, through its corporate representatives (adversely)

EXPERT WITNESSES:

- Sharla Frost
- Charles Miller

¹ On November 16, 2022, counsel for Penn National requested that the Parties extend the deadline for the exchange of witnesses from November 21 to November 23. On November 16, counsel for the Receiver communicated that he had no objection to moving the dates.

Discovery is ongoing. The Receiver reserves the right to name additional trial witnesses, based upon further evaluation of the information gathered through the discovery process. The Receiver further reserves the right to use any deposition testimony in accordance with the provisions governing the use of depositions contained in the South Carolina Rules of Civil Procedure, the applicable rules of evidence, and this Court's scheduling order.

Dated: November 23, 2022

Respectfully submitted,

s/ Jonathan M. Robinson

Jonathan M. Robinson (S.C. Bar No. 68285)
Smith Robinson, LLC
2530 Devine Street, 3rd Floor
Columbia, SC 29205
Phone: (803) 254-5445

G. Murrell Smith, Jr. PO Box 580
Sumter, SC 29151-0580
803-778-2471

ATTORNEYS FOR THE RECEIVER FOR COVIL
CORPORATION

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through
its duly appointed Receiver
Peter D. Protopapas,

C.A. No.: 2020-CP-40-02098

Plaintiff,

**DEFENDANT PENN NATIONAL'S
MOTION *IN LIMINE* TO EXCLUDE
CERTAIN OPINIONS AND
TESTIMONY OF SHARLA FROST**

v.

Pennsylvania National Mutual
Casualty Insurance Co.; Sam J. Crain &
Co., Inc.; and South Carolina Property
and Casualty Insurance Guaranty Association,

Defendants.

Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), by and through undersigned counsel, hereby presents this motion *in limine*, to exclude certain opinions and testimony and testimony of Sharla Frost, Esq. at the upcoming "trial" set for December 12, 2022, in the above-referenced matter. Specifically, Penn National requests exclusion of the opinion testimony of Sharla Frost, Esq., retained as an expert by the Receiver for Covil Corporation (the "Receiver"), regarding when or the period of time that an insurer should have maintained insurance policy documents. Additionally, Penn National requests that this Court preclude Ms. Frost from offering opinions as to Covil's "verdict risk" in certain asbestos cases and *ipse dixit* testimony that summarizes documents in those asbestos cases. In support of this motion, Penn National states as follows:

INTRODUCTION

Penn National moves this Court for an order prohibiting the Receiver's expert witness, Ms. Frost, from providing opinion testimony regarding the period of time or when an insurer,

such as Penn National, should have maintained insurance policy documents for an insured, such as Covil. Ms. Frost, an asbestos trial lawyer, has been disclosed by the Receiver as an expert who will testify about the development and evolution of the asbestos litigation over the course of its history, the standard for analysis and management of asbestos litigation, and the evaluation of the asbestos personal injury claims against Covil for which Penn National contributed to settlements. Additionally, the Receiver has disclosed Ms. Frost as an expert who will testify about the knowledge of asbestos defendants and potential asbestos defendants, as well as their insurers and other indemnitors, with regard to the scope of the litigation and the requirement to maintain historical records for policyholders.¹ However, Ms. Frost has no experience with regard to document maintenance or retention by insurance companies. Ms. Frost has never been employed by an insurance company or even consulted with an insurance company regarding documents that it should maintain or retain.² Rather, Ms. Frost's experience is limited to her role as counsel for defendants in asbestos litigation, and retention of documents by her clients—defendants in asbestos litigation, not insurance companies—in that context.

Despite this lack of experience or support for her opinion, Ms. Frost intends to provide the opinion in this case that because another company completed unrelated to Covil or this case—Johns-Manville—filed for bankruptcy in 1982—which Ms. Frost claims was “front-page news”, Penn National and all other insurers who may have issued insurance policies to entities in the asbestos industry should have retained their insurance documents for those entities from 1982 to present.³ However, Ms. Frost has not acquired the requisite knowledge and skill to qualify as an expert as to the document retention or maintenance programs for insurance companies, and

¹ The Receiver's Amended Fact and Expert Disclosure is attached hereto as **Exhibit 1**.

² The Curriculum Vitae for Ms. Frost is attached hereto as **Exhibit 2**.

³ The deposition of Ms. Frost conducted on November 9, 2022, is attached hereto as **Exhibit 3**.

her testimony regarding “best practices” for insurance companies is not reliable. Accordingly, such opinion testimony intended to be offered by Ms. Frost—who has never been admitted as an expert in any case to her knowledge—should be excluded in this case.

Ms. Frost also appears to intend to offer opinions regarding whether a “verdict risk” existed for Covil in certain asbestos cases and testimony consisting of her own gloss on evidence from record excerpts in those asbestos cases, summarizing various pleadings and transcripts from depositions in narrative form. However, the issues set for hearing on December 12, 2022, are whether Penn National spoliated evidence in this action and the scope of coverage under the policies issued by Penn National to Covil. Ms. Frost’s opinions as to whether a “verdict risk” existed for Covil in certain asbestos cases (which have been settled by Covil with contributions by Penn National) is not relevant to any issue presently set for hearing. Further, testimony offered by Ms. Frost that simply provides her summary and characterization of pleadings and documents in certain asbestos cases is not proper subject of expert testimony and should be precluded.⁴

BACKGROUND

This matter has been set for a trial/evidentiary hearing before this Court. The two issues to be addressed at that trial/evidentiary hearing is whether Penn National spoliated evidence—insurance documents related to policies issued by Penn National to Covil—and the scope of coverage afforded under the insurance policies issued by Penn National to Covil. In support of its position that Penn National spoliated evidence in this case, the Receiver seeks to introduce testimony from its retained expert, Sharla Frost, Esq., that all insurance companies, including Penn National, who issued insurance policies to entities whose products or services may have

⁴ Penn National reserves the right to object to any and all additional testimony of Ms. Frost and does not intend to waive any such objections by not including them in this motion. Furthermore, by filing this motion *in limine* as to certain opinions and testimony offered by Ms. Frost, Penn National does not waive its right to raise objections to other evidence that may be presented by the Receiver in this matter.

involved asbestos, were obligated to maintain or retain their insurance documents related to those policies since 1982 to the present.

Ms. Frost also seeks to offer opinions as to the “verdict risk” to Covil in asbestos cases in which Covil has been named as a defendant.⁵ In stating her opinion as to the “verdict risk” to Covil, Ms. Frost also provides her summary and characterization of the pleadings and documents in the Asbestos Cases, making statements regarding when and where she believes Covil performed work in relation to the plaintiffs in the Asbestos Cases.

Ms. Frost is an attorney licensed in Texas who represents defendants in asbestos litigation. (Ex. 2, Frost CV) Ms. Frost is not licensed as an attorney in South Carolina. *Id.* Ms. Frost has never been employed by an insurance company or consulted with an insurance company on retention of documents. (Ex. 2, Frost CV; Ex. 3, Frost Depo., 16:6-16:17) Rather, as admitted during her deposition, Ms. Frost’s experience has been limited to the maintenance of historic records by her clients—i.e. defendants in asbestos litigation, not insurance companies. (Ex. 3, Frost Depo., 13:18–15:20) Similarly, Ms. Frost’s presentations and publications all involve topics related to the litigation of asbestos or other types of cases and the practice of law (and some children’s books), and none relate to the insurance industry or the standards or practices of insurance companies in maintaining or retaining insurance documents.

LEGAL ARGUMENT

In evaluating whether an expert is qualified, the starting point is Rule 702 of the South Carolina Rules of Evidence, which provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an

⁵ The asbestos cases for which Ms. Frost seeks to offer opinions are listed on Ex. 9 to Ms. Frost’s deposition, and include the Archer case, the Ashworth case, the Aspray case, the Campbell case, the D’Amico case, the Garren case, the Jolly case, the Jonas case, the Knight case, the Morgan case, the Moss case, the Murphy case, the Sims case, and the Wannamaker case (collectively, the “Asbestos Cases”). (Ex. 3, Frost Deposition, pp. 65:13–67:16 and Ex. 9)

expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.”

Rule 702, SCRE.

“All expert testimony must meet the requirements of Rule 702, regardless of whether it is scientific, technical, or otherwise.” *Graves v. CAS Med. Sys.*, 401 S.C. 63, 73-74, 735 S.E.2d 650, 655 (2012); *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 374, 635 S.E.2d 97, 104 (2006) (holding that where expertise is needed to aid the fact-finder, the witness must possess the requisite “knowledge, skill, experience, training, or education” in a particular field to qualify as an expert and ensure that the opinion is reliable.”)

In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether “the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury.” *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). Second, the expert must have “acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter.” *Id.* Third, the substance of the testimony must be reliable. *Id.* This final requirement of reliability is the central feature of the inquiry. *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

I. Ms. Frost’s Opinions Regarding Document Retention and Maintenance Policies for Insurance Companies Should Be Excluded.

Within this framework, courts have routinely held that attorneys who may handle litigation involving insurance companies, but do not otherwise have experience in the insurance industry, do not qualify as experts on insurance standards and practices. For example, in *Modern Auto. Network, LLC v. E. Alliance Ins. Co.*, 416 F. Supp. 3d 529 (M.D.N.C. 2019), aff’d *Modern Auto. Network, LLC v. Eastern Alliance Ins. Co.*, 842 Fed. Appx. 847 (4th Cir. 2021), the court addressed the admissibility of expert testimony concerning “many of the nuances of claims handling”

offered by an attorney with more than forty-five years of experience in the practice of law. *Modern Auto. Network, LLC v. E. Alliance Ins. Co.*, 416 F. Supp. 3d 529, 537 (M.D.N.C. 2019).⁶ The case concerned insurance claims settlement for a worker's compensation claim, and the attorney-expert, William Senter, primarily practiced in workers' compensation, personal injury, mediations, and arbitration," and "'mediated in excess of 5,000 cases as a plaintiff's attorney or a mediator,' with a majority of those cases being workers' compensation cases." *Id.* at 538. The court excluded the report and testimony because it was "unclear 'how [Mr. Senter's] experience le[d] to [certain] conclusion[s] reached" in light of his lack of experience in insurance claim handling." *Id.* at 538.

In *Nature's Way Marine, LLC, v. Everclear of Ohio, LTD*, the court also considered the admissibility of expert testimony by two attorneys under Rule 702's three part analysis of qualifications, reliability, and helpfulness. *Nature's Way Marine*, No. 12-316-CG-M. 2014 U.S. Dist. LEXIS 158568 (S.D. Al. November 10, 2014). The court found that the proffered witness, a lawyer working in admiralty and maritime law failed the qualifications criteria to testify as an expert about a charter agreement because he had "no experience ... performing any of the actual work called for in the charter agreement," and his legal training and experience made him no more qualified "to testify about a charter agreement breach than a layperson who has heard the evidence... and is provided jury instructions." *Id.* at *8. Similarly, in *Estate of Arroyo v. Infinity Indem. Ins. Co.*, 2016 U.S. Dist. LEXIS 115669, *6-7, 2016 WL 4506991 (S.D.Fla. 2016), the court excluded testimony by an insurance attorney despite his experience advising insurers about claims handling because he had no experience personally handling claims.

⁶ While South Carolina has not expressly accepted the federal *Daubert* framework for the admissibility of expert testimony, the approach taken by South Carolina courts "is 'extraordinarily similar' to the federal test." *Warner*, 430 S.C. at 86, 842 S.E.2d at 366 (citing *Young, How Do You Know What You Know?*, 15 S.C. Law. Rev. 28, 31 (2003)).

Similar to these cases, the proposed testimony of Ms. Frost in relation to the standards or best practices for insurance companies in maintaining and retaining insurance documents should be excluded because Ms. Frost is not qualified to offer opinion testimony regarding the standards or best practices for insurance companies in maintaining and retaining documents. Although Ms. Frost is an attorney who has experience representing defendants in asbestos cases and litigating those cases, she has never worked in the insurance industry or even consulted with an insurance company on maintaining or retaining insurance documents.

In fact, Ms. Frost testified that her opinion that insurance companies (and their insureds) should maintain and retain insurance documents starting in 1982, is solely based on the fact that another company, Johns-Manville (which is completely unrelated to Penn National or its insured), filed for bankruptcy due to asbestos liabilities in 1982, which Ms. Frost testified was “front-page news” at the time. (Ex. 3, Frost Depo, pp. 34:11-18, 121:8-122:19) Coupled with the fact that asbestos litigation is expected to continue for many years to come, Ms. Frost leaps to the conclusion that it was insurance industry standard or a “best practice” for insurance companies to maintain and retain insurance documents from 1982 through the present (and for many years to come). *Id.* at 122:21-126:6. Not only does Ms. Frost lack any experience in the insurance industry to support her opinion, but she points to no other support (treatise, publication, or other evidence) for her opinion.

Additionally, Ms. Frost does not suggest that she has some other experience that has allowed her to otherwise acquire specialized knowledge with respect to standards or best practices in the insurance industry for maintaining or retaining insurance documents. Ms. Frost’s credentials as a litigator are not in question. However, her curriculum vitae, reflecting a notable depth of experience as a litigator, contains no mention of any experience with insurance industry standards

and practices. As a result, Ms. Frost as an attorney experienced in litigating asbestos cases is not qualified as an expert in insurance industry standards and practices for maintaining and retaining documents.

Therefore, Ms. Frost is not qualified to offer expert opinions regarding the maintenance and retention of insurance documents by Penn National as an insurer for Covil, and her opinions in this regard are not reliable. Accordingly, this Court should exclude Ms. Frost's opinions regarding when and the period of time that Penn National should have maintained or retained insurance documents related to Covil.

II. Ms. Frost Should Be Precluded From Offering Opinions as to the "Verdict Risk" for Covil and Providing Her Summary and Characterization of Pleadings and Documents in the Asbestos Cases.

As with all evidence, expert testimony must be relevant to be admissible. Rule 402, SCRE. Additionally, expert witnesses are not permitted to "merely summarize[] the evidence of record, without providing any specialized analysis" *Kennedy v. Joy Techs., Inc.*, 269 Fed. App'x 302, 312 (4th Cir. 2008); *see also In re Rezulin Prods. Liab. Litig.*, 309 F. Supp. 2d 531, 551 (S.D.N.Y. 2004) (excluding expert testimony that was "merely a narrative of the case which a juror is equally capable of constructing" and noting that [s]uch material, to the extent it is admissible, is properly presented through percipient witnesses and documentary evidence.") (internal quotations omitted). Thus, "an expert witness may not simply summarize the out-of- court statements of others as his testimony." *U.S. v. Brownlee*, 744 F.3d 479, 482 (7th Cir. 2014); *see also Newman ex rel. Newman v. McNeil Consumer Healthcare*, No. 10-cv-1541, 2013 WL 9936293, at *6 (N.D. Ill. Mar. 29, 2013) ("An expert cannot be presented ... solely for the purpose of constructing a factual narrative based upon record evidence.") (internal quotations omitted); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (observing that courts should not admit an expert opinion supported only

by “the *ipse dixit* of the expert”); *Warner*, 430 S.C. at 87, 842 S.E.2d at 366 (endorsing the *ipse dixit* rule set forth in the *Joiner* case).

Contrary to these authorities, Ms. Frost apparently intends to offer voluminous testimony consisting of her own summary of evidence from record excerpts in this and other actions with her own subjective characterizations peppered in. For example, during her deposition, Ms. Frost testified as to the Archer asbestos case:

- A. ... Covil’s defense counsel in its pretrial report lists a series of Bates documents to establish that Covil was at the site in 1968 and again in 1971 and that that included pipe insulation and asbestos cement.

Mr. Archer was working as a pipefitter at that facility. So if the materials were in place when he arrived at the facility, pipefitters, based on my experience in litigation, would have needed to access the pipes -- consequently, the name -- and that ordinarily required them to infiltrate in-place product.

So if Covil had in fact installed asbestos-containing thermal insulation and he was required to intrude on that as part of his work as a pipefitter, then that would have been an exposure that I think would have coincided with his work at the facility.

Given that the records show that Covil was there in 1968 and again in 1971, if they were providing insulation materials, those would have, by definition, been asbestos containing because it was prior to the elimination of asbestos in thermal insulation products.

(Ex. 3, Frost Depo., 74:25–75:23)

Similarly, in the Ashworth asbestos case, Ms. Frost testified:

A. Yes. That is a wrongful death lung cancer case. Mr. Ashworth was a laborer, pipefitter, welder and carpenter from ‘68 to 2006, including the Bowater paper mill, which we know from looking at this whole collection of cases, is a location where Covil was providing services. And it appears that they were also providing thermal insulation products, depending on the time period. So that he was working at places that Covil was located.

Mr. Ashworth had already passed away, so his stepson, I believe it is -- yes, stepson, Mr. Rollins, was the primary product identification witness, and

he provided testimony that -- connect between Mr. Ashworth and Covil at various work sites.

That connects Mr. Ashworth and Covil at work sites. And if you look in the second column on that particular one you'll note that I have some additional notes that says Rollins deposition, quote, Corval, closed quote.

When you read the Rollins deposition he talks about the identity of the insulation companies that were on site and doing work. And when you pair that with the materials that are referenced in the Cornwell deposition, which is another coworker, then it is clear that one can make the connection between Mr. Ashworth and Covil.

So this is a case, again, that I do not believe would be successful in obtaining a motion for summary judgment under South Carolina law.

Mr. Ashworth was working from 1968 onward on a variety of work assignments that would have involved asbestos exposure. I particularly noted that he was a carpenter. And in my experience from prior cases I know that carpenters in these sorts of industrial work sites often were the ones who constructed the -- you know, what do they call it? The scaffolding that was used by the other types of job classifications, particularly the insulators.

So it -- his exposure is of a type that would be consistent with exposure to thermal insulation products. And the other materials provide a connection between Covil and its work on site and production presentation of asbestos-containing products.

So when you combine the two of those sorts of categories, this obviously presents a verdict risk for Covil and was appropriate for resolution.

Id. at 77:15–79:21.

Ms. Frost provided similar narrative testimony regarding the remaining asbestos actions that she reviewed. *Id.* at 80:5–82:1, 85:1–100:1, 101:11–110:12.

Ms. Frost offers this narrative testimony under the guise of providing opinions regarding whether there was a “verdict risk” for a certain case. However, whether there was a “verdict risk” as to these asbestos cases is not relevant to the issues currently before the Court (i.e. the question of whether Penn National spoliated evidence and the scope of coverage afforded under the Penn National policies). In fact, such opinions regarding any “verdict risk” that Covil

may have faced in the Asbestos Cases is particularly irrelevant in this matter given that all of the Asbestos Cases reviewed by Ms. Frost have been settled with contributions by Penn National. (Ex. 3, Frost Deposition, p. 67:2–67:16) Accordingly, such opinions and narrative testimony and *ipse dixit* assertions are not relevant to this action.

Furthermore, the narrative summary of evidence from the other asbestos actions offer no true expert analysis based on any relevant expertise of Ms. Frost. They are, instead, simply her characterizations and summations of documents from the other asbestos cases involving Covil based upon her after-the-fact review of documents and testimony in the guise of expert opinions that have no legitimate basis for this or any trial. While an expert may rely on hearsay in forming expert opinions, an expert may not be used as a mouthpiece for admitting otherwise inadmissible hearsay, as Ms. Frost apparently intends to do here. *See Jones v. Doe*, 372 S.C. 53, 63, 640 S.E.2d 514, 519 (Ct. App. 2006) (hearsay relied upon by an expert cannot be admitted for its truth); *Allegro, Inc. v. Scully*, 400 S.C. 33, 46-47, 733 S.E.2d 114, 122 (Ct. App. 2012) (“Rule 703 does not allow the admission of hearsay evidence simply because an expert used it in forming his opinion; the rule only provides the expert can give an opinion based on facts or data that were not admitted into evidence”). *See also Jones*, 372 S.C. at 62–63, 640 S.E.2d at 519 (Rule 703, SCRE, “does not allow for the unqualified admission of hearsay evidence merely because an expert has used it in forming an opinion”).

Accordingly, this Court should exclude Ms. Frost’s opinions regarding “verdict risk” in the Asbestos Cases and her accompanying testimony that provides her summary and characterization of documents from the Asbestos Cases.

CONCLUSION

For the reasons set forth above, this Court should prohibit the Receiver's expert witness, Ms. Frost, from providing opinion testimony regarding the period of time or when an insurer, such as Penn National, should have maintained insurance policy documents for an insured, such as Covil, and related testimony. Additionally, this Court should preclude Ms. Frost from offering opinions regarding whether there was a "verdict risk" for Covil in the Asbestos Cases as well as testimony consisting of her own summary and characterization of pleadings and documents from the Asbestos Cases.

Respectfully submitted, this the 30th day of November, 2022.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II

S.C. State Bar # 101951

Email: dharris@goldbergsegalla.com

Brady A. Yntema (admitted *pro hac vice*)

N.C. State Bar #: 25771

Email: byntema@goldbergsegalla.com

Alexander E. Davis

S.C. Bar # 100061

Email: aedavis@goldbergsegalla.com

701 Green Valley Road, Suite 310

Greensboro, NC 27408

Phone: 336.419.4900

Fax: 336.419.4950

Attorneys for Defendant Penn National

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Covil Corporation, by and through its duly
appointed Receiver Peter D. Protopapas,

Plaintiff,

Case Number: 2020-CP-40-02098

Vs.

**RECEIVER FOR COVIL
CORPORATION'S AMENDED FACT
AND EXPERT DISCLOSURES**

Pennsylvania National Mutual Casualty
Insurance Co.; Sam J. Crain & Co., Inc.; and
South Carolina Property and Casualty
Insurance Guaranty Association,

Defendants.

TO: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE CO., THROUGH
ITS COUNSEL OF RECORD

COMES NOW Peter Protopapas, as Court Appointed Receiver for Covil Corporation (the
"Receiver"), by and through his counsel of record, and serves his initial fact and expert witness
designations pursuant to the South Carolina Master Discovery/Scheduling Order for the
Coordinated Asbestos Litigation Docket and hereby supplements his November 12, 2021 response
to Penn National's Interrogatory Number 7.

The Receiver hereby incorporates into this listing, as if fully reproduced herein, any and
all expert and/or lay witnesses who may be listed by any other party. The Receiver further reserves
the right to supplement this witness list and to call any witness necessary to authenticate documents
or exhibits and/or for rebuttal. The Receiver further reserves the right to use any depositions
noticed in this case in accordance with the provisions governing the use of depositions contained
in the South Carolina Rules of Civil Procedure and the applicable rules of evidence. The Receiver
reserves the right to call as a witness any person deposed in the above-captioned case. The Receiver

reserves the right to name additional witnesses, based upon further evaluation of the information gathered through the discovery process.

FACT WITNESSES:

1. **Peter D. Protopapas, Receiver for Covil Corporation**
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204

Peter D. Protopapas is the Court-appointed receiver of Covil Corporation and can testify as to Penn National's handling of claims for coverage asserted by Covil. Covil is in possession of an affidavit from Mr. Protopapas. Mr. Protopapas's deposition was taken in *Zurich v. Covil* (Case Number 1-18-cv-932), in the USDC Middle District, North Carolina, and in *Finch et al. v. USFG et al.* (Case Number 2019-CP-42-3003), in Richland County, South Carolina.

2. **Brian Flatley**
Ellis & Winters LLP
4131 Parklake Avenue, Suite 400
Raleigh, NC 27612

Brian Flatley is Litigation Support Manager at Ellis & Winters. He consults with firm attorneys and clients on the proper methods of data preservation, collection, processing, production, and review. Mr. Flatley can testify as to Ellis & Winters' court-ordered investigation into the existence and storage of Penn National's legacy liability policy documents and the options provided to the court for additional document review.

Upon information and belief, no written or recorded statements have been taken from this witness to date.

3. **Brett Reifsnyder**
Penn National

Brett Reifsnyder, Penn National's Director of Administrative Services, can testify as to the search of Penn National's records for insurance policies that were issued to or that otherwise cover Covil, the Company's document retention policy and application thereof, and Penn National's destruction of legacy insurance policies.

Mr. Reifsnyder has given testimony in the instant matter.

**4. Boyd Wright
Penn National**

Boyd Wright, Penn National's Senior Home Office Claim Examiner, can testify as to the search of Penn National's records for insurance policies that were issued to or that otherwise cover Covil, Penn National's handling of claims for coverage asserted by Covil, and Penn National's interpretation of the insurance policies it issued to or that otherwise cover Covil.

Mr. Wright has given testimony in the instant matter.

**5. Scott Maier
Penn National**

Scott Maier, Penn National's Senior Corporate Counsel, can testify as to Penn National's litigation hold policies and his issuance of a litigation hold related to Covil Corporation in December 2021.

Upon information and belief, no written or recorded statements have been taken from this witness to date.

EXPERT WITNESSES:

**1. Sharla Frost
Sharla J. Frost
6336 Rutgers Avenue
Houston, TX 77005**

Sharla Frost is a seasoned asbestos trial lawyer, with over three decades of trial practice. In the asbestos context, she has successfully defended a succession of manufacturers of asbestos containing products in numerous cases since 1989, including having obtained nine defense verdicts in asbestos personal injury cases in Texas, Kentucky, Georgia and California between 2001 and 2017, including three cases involving living mesothelioma claimants. Her clients have ranged from insulation manufacturing defendants such as Johns-Manville and Turner & Newell to small property owners such as a Ford dealership in Washington State. She has extensive experience in all aspects of asbestos case management, including verdict analysis, case strategy, settlement negotiations, trial strategy, trial presentation, post-trial analysis, and docket oversight. She has served as National Coordinating Counsel for a major defendant in asbestos litigation; has participated as a member of the National Trial Team for several defendants; and has evaluated both trial prospects and verdict risks for asbestos lawsuits on behalf of defendants in venues throughout the United States.

Ms. Frost will testify as to the development and evolution of the asbestos litigation over the course of its history; the standard for analysis and management of asbestos litigation in

the historical context of the litigation; the knowledge of asbestos defendants and potential asbestos defendants, as well as their insurers and other indemnitors, with regard to the scope of the litigation and the requirement to maintain historical records for policyholders; the importance of maintenance of historical records for a defendant in asbestos personal injury litigation; and an evaluation of the asbestos personal injury claims against Covil for which Penn National contributed to settlements.

**2. Charles Miller
Insurance Law Center
1442A Walnut St. #55
Berkeley, CA 94709**

Charles Miller, an expert in insurance industry standards and practices, was employed by Fireman's Fund Insurance Company for eighteen years in insurance claims. Mr. Miller has held several insurance claims positions, including senior adjuster, branch office general adjuster and claims manager. Mr. Miller also managed an asbestos claims facility and a nationwide major claims unit. Mr. Miller has practiced insurance law since 1990. He has extensive experience with the interpretation and application of third party insurance policy forms. Mr. Miller will testify regarding insurance industry claims practices and standards and insurance industry standards for the interpretation and application of insurance policies. Mr. Miller will testify regarding the history, derivation, intent, and purpose of the general liability and products/completed operations provisions of commercial general liability policies and the distinctions between general liability coverage and products/completed operations coverage. Mr. Miller will also testify regarding insurance industry standards for the timely and thorough search for insurance policies.

In addition, the Receiver for Covil Corporation reserves the right to call any of the following individuals and/or entities:

- 1. Penn National through its corporate representative(s) in this matter.**
- 2. Penn National through its corporate representative(s) in prior deposition testimony offered in other matters.**
- 3. All witnesses listed by Penn National.**
- 4. All witnesses listed in the Receiver's Answers to Interrogatories and any and all supplements or amendments thereto.**
- 5. All witnesses deposed in this case.**
- 6. All witnesses identified in any deposition taken in this case.**

7. Any and all records custodians, or other witnesses necessary to authenticate any document the Receiver seeks to admit at trial, live or by deposition upon written questions.

8. Any witness necessary for rebuttal.

Dated: November 7, 2022

Respectfully submitted,

s/ Jescelyn T. Spitz
Jescelyn T. Spitz
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.
Columbia, SC 29204
803.978.6111
bb@rplegalgroup.com

AND

G. Murrell Smith, Jr. (S.C. Bar No. 66263)
Jonathan M. Robinson (S.C. Bar No. 68285)
Smith Robinson
2530 Devine Street, 3rd Floor
Columbia, SC 29205
Phone: (803) 254-5445

Counsel for the Receiver

From: sharlafrost@me.com
Sent: Monday, November 07, 2022 12:49 PM
To: McCulloch Semlinger, Lauren A.
Cc: Nes, W. Brad; Patterson, Nancy L.
Subject: CV
Attachments: Sharla J. Frost -- CV (November 7 2022).docx

[EXTERNAL EMAIL]

Here is my latest updated CV to reflect last week's presentation.

Sharla

Sharla J. Frost

**3230 E. 2105 Road
Hugo, Ok 74743**

Born: November 26, 1961, Paris, Texas

Education: *Southeastern Oklahoma State University*, Durant, Oklahoma, B.A. with honors (double major English/Speech Communication) (1980-1984) (Full Academic Scholarship)

Baylor School of Law, Waco, Texas (1984-1987) (Jaworski Full Academic Scholarship)

Legal Employment: *Sharla J. Frost, Attorney at Law, P.C.* Houston, Texas (July 2020-present); Strategic and Litigation Consultant, Expert Witness, Mediator, Settlement Negotiator.
Tucker Ellis, LLP, Houston, Texas: Partner (May 2015-June 2020); Litigation practice, Settlement Negotiator, Mediation.
Wilson Elser Moskowitz Edelman & Dicker, LLP, Houston, Texas: Regional Managing Partner (2013-April 2015); Litigation practice.
Powers & Frost, Houston, Texas: Managing Partner and Co-founder of the firm (1994-2012); Litigation practice, Expert Witness, Mediator.
Roberts, Markel, Folger & Powers, Houston, Texas: Associate (1993-1994); General Litigation, Toxic Tort Section.
Holtzman & Urquhart, Houston, Texas: Associate (1989-1993); Products Liability Section.
Fulbright & Jaworski, Houston, Texas: Associate (1987-1989); Commercial Litigation; Summer Associate (1986).
Strasburger & Price, Dallas, Texas: Summer Associate (1986).
Burlington Northern Railroad Company (Now Burlington Northern Santa Fe Railroad Company), Fort Worth, Texas: Summer Associate (1985).

Licenses and Admissions:

Texas State Bar, Admitted 1987
Oklahoma State Bar, Admitted 2001
Colorado State Bar, Admitted 2002; Inactive status as of May 2020
West Virginia State Bar, Admitted 2002; Inactive status as of May 2020
Mississippi State Bar, Admitted 2005; Inactive status as of May 2020
United States Courts for the Eastern District of Texas, Admitted 1990
United States Courts for the Western District of Texas, Admitted 1989
United States Courts for the Southern District of Texas, Admitted 1988
United States Courts for the Northern Districts of Texas, Admitted 1990

United States District Court for the Western District of Oklahoma,
Admitted 1989
United States District Court for the Southern District of West Virginia,
Admitted 2002
United States Court of Appeals for the Fifth Circuit, Admitted 1997.
United States District Court for the Northern District of Mississippi,
Admitted 2010
United States District Court for the Southern District of Mississippi,
Admitted 2010
Supreme Court of Mississippi, Admitted 2010; Inactive status as of May
2020
Supreme Court of the United States, Admitted 2012

Ms. Frost has represented clients in trial by pro hac vice admission in the following states: Alabama, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Missouri, New York, New Jersey, Nevada, Ohio, Oregon, Rhode Island, South Carolina, and Washington.

Ms. Frost served as first chair trial counsel for a contested bankruptcy confirmation matter in the Southern District of New York. She has represented both American and European clients in commercial and products liability litigation throughout the United States.

During more than three decades of trial practice, Ms. Frost served as first chair in many mass trials, including the largest ever all-issues asbestos trial, which was tried in Houston state court in 1989. Ms. Frost was selected as an arbitration counsel for the Fibreboard Corporation during the early stages of its bankruptcy and presented the Trust's position in numerous arbitrations from Georgia to California. She has served as a member of the national trial teams for American Optical, Dana, Georgia Pacific, Johnson & Johnson, Kelsey Hayes, and the Turner & Newell Trust. She previously has served as Pfizer Inc's national coordinating trial counsel for asbestos litigation and continues to serve as settlement negotiator for Pfizer in asbestos and talc litigation.

She successfully defended a succession of manufacturers of asbestos containing products in numerous cases since 1989, including having obtained nine defense verdicts in asbestos personal injury cases in Texas, Kentucky, Georgia and California between 2001 and 2017, including three cases involving living mesothelioma claimants. She also obtained a defense verdict in a silicosis death case in Port Gibson, Mississippi in 2013. In 2017, she served as first chair trial counsel for Johnson & Johnson in its successful defense of the first mesothelioma case alleging that cosmetic talc had caused the plaintiff's injury. The talc case was recognized as the most significant defense win in the United States for 2017 by Courtroom Video Network (CVN). She was chosen as The Best Lawyers in

America – 2018 Houston Lawyer of the Year (Products Liability Litigation-Defendants).

Ms. Frost represented an international pharmaceutical company in a series of cases involving allegations of injury associated with the use of prescription anti-coagulants. She served as a member of the trial team for a pharmaceutical company in the Hormone Therapy litigation. She served as the American trial counsel for a French based silicone breast implant manufacturer.

Ms. Frost currently serves as an expert witness in a variety of legal disputes. She also provides strategic settlement and litigation management advice to corporate defendants in high risk and repetitive litigation matters. She serves as a mediator in select toxic tort cases at the request of litigants.

Honors and Achievements:

Ms. Frost served as the 2010-2011 President of Litigation Counsel of America (“LCA”), an invitation-only trial lawyer honorary society that includes less than one-half of one percent of American lawyers. She was elected a member of the American Board of Trial Advocates (“ABOTA”), an organization devoted to the preservation of the American system of jury trials and has been active in the Houston area chapter of Women of ABOTA (WABOTA). Like LCA, ABOTA is an invitation-only organization. She was selected as a Texas SuperLawyer each year from 2004 to 2020.

She was repeatedly recognized by the Best Lawyers in America, including being named by the organization as 2018 Houston Lawyer of the Year – Product Liability Litigation/Defendants. Chambers USA recognized her achievements in Product Liability & Mass Torts (Nationwide) (2017, 2018, 2019, and 2020) and “Spotlight Table” in Product Liability: Mass Torts (Nationwide) (2017-2020).

She has been listed in various national registries regarding professional achievements, including Who’s Who Registry of Business Leaders; Who’s Who Among Rising Young Americans; The World Who’s Who of Women, and Sterling Who’s Who. She was recognized as a Distinguished Alumni by Southeastern Oklahoma State University in 2004.

Sharla is a recognized author and invited speaker on a wide-variety of legal issues, with a specific focus on the challenges faced by women lawyers. She has been a frequent contributor to the National Association of Women Lawyers on topics related to the business of law and how women lawyers can improve their business development skills.

Professional:

Houston Bar Association, member

Defense Research Institute, member
Texas State Bar, member
Oklahoma Bar Association, member
Colorado Bar Association, member (inactive)
West Virginia Bar Association, member (inactive)
Mississippi Bar Association, member (inactive)
International Association of Defense Counsel, elected to membership 2003
Houston Bar Foundation Fellow
Texas Association of Women Lawyers, member
Houston Volunteer Public Lawyers, Public Schools Committee, Member 1990
Women's Rainmakers Roundtable, 2002-2003
National Association of Women Lawyers, member 2005 to present
National Association of Women Lawyers, Subcommittee on the Evaluation of
Supreme Court Nominees, 2005 to 2020
Inns of Court, Houston Chapter, member
Texas Super Lawyer, 2004-2020
Mealey's Defense Toxic Tort Advisory Council, 2006
DRI Women in the Courtroom Committee, appointed member, August 2007-2010
Editor, Women in the Courtroom Committee Column for DRI For The Defense
(FTD) Magazine, 2007-2008
Litigation Counsel of America, elected to membership, 2008; Vice-President,
2009; President 2010-2011
American Board of Trial Advocates, elected to membership, 2008
DRI Europe Liaison Committee, Committee Vice-Chair, appointed 2009
DRI Women in the Law Committee, At-Large Member, appointed 2010
DRI R&D Committee, appointed member 2010
IADC International Committee, member, 2009 to present
IADC Trial Techniques and Tactics Committee, member, 2009 to present
IADC Diversity Committee, member, 2009 to present
Chambers USA, Product Liability & Mass Torts (Nationwide) 2017 - 2020 and
"Spotlight Table" in Product Liability: Mass Torts (Nationwide) 2017, 2018,
2019, and 2020.
The Best Lawyers in America – 2018 Houston Lawyer of the Year (Products
Liability Litigation-Defendants)

Community Activities:

British American Business Association (now British American Chamber of
Commerce), member 1990-1996; Board of Directors 1993-1996
Steering Committee, Southeastern Oklahoma State University Student Union
Project, 2004-2005
Alumni Association Board of Directors, Southeastern Oklahoma State University,
2006 to 2022
Southeastern Oklahoma State University Foundation Board, 2015 to present

Fort Towson Homecoming Committee, Fort Towson, Oklahoma, Publicity Director, 2008 to present
Fort Towson Alumni Association Scholarship Committee, Director, 2006 to 2010
ReCreate Fort Towson Foundation (501(c)(3), Board of Directors, 2018 to present
City Attorney, Town of Fort Towson, Oklahoma, October 15, 2020 to present
Friends of the Fort [Towson], Board of Directors, January 2021 to present
Fort Towson Chamber of Commerce, Board of Directors, June 2021 to present
Oklahoma SE (Regional Chamber of Commerce), member on behalf of Fort Towson, October 2020 to present; Vice-Chair 2021-2023; Chair elect for 2023-2025.

Law School Awards:

Jaworski Scholarship, 1984-1987 (Full Academic Scholarship)
Baylor Order of Barristers, Inducted Spring 1985
State Bar of Texas Moot Court Competition Team Member, Fall 1985
Baylor Law School Moot Court Competition, Best Brief, Spring 1986
First Place, Fall Moot Court Competition, Fall 1986
Best Oral Advocate, Fall Moot Court Competition, 1986
Harvey M. Richie Moot Court Society, member
Williams, Pattillo and Squires Outstanding Advocate Award, Spring 1987
Student Bar Association, Executive Secretary, 1986
Dawson Sodd Moot Court Award, Spring 1987
John W. Joyce Moot Court Award, Spring 1987
Phi Alpha Delta, member 1986
Who's Who Among American Law Students, 1986
Honors List: Fall 1984, Winter 1984, Spring 1985, Spring 1987
Teaching Assistant, Legal Methods I, 1985-1986
Grading Assistant, Legal Methods II, 1986-1987

Presentations:

Andrews Litigation Seminar, New Orleans, Louisiana. Presentation: *"Effective Techniques in Deposing Co-Workers: Pre-Trial Strategies for Keeping Your Clients Out of Trouble."* April 2003.
Defense Research Institute, Asbestos Medicine Seminar, Miami, Florida. Presentation and accompanying paper: *Jury Selection: Contemporary Issues and Techniques.* November 2003.
Texas Women Lawyers Association, El Paso, Texas. Presentation and accompanying paper: *"Rainmaking: Ending the Drought."* February 2004.
St. Paul Insurance Company Trial Seminar, Baltimore, Maryland. Presentation: *Expert Witnesses: Direct and Cross.* March 2004.
Andrews Litigation Seminar, New Orleans, Louisiana. Presentation and accompanying paper: *30 Minute Juries: How to Pick a Jury in a Ridiculously Short Period of Time.* April 2004.

Mealy's Welding Rod Litigation Conference, Presentation and accompanying paper: *Issues to Explore in Plaintiff and Co-worker Deposition*, March 15, 2005.

Andrews Litigation Seminar, New Orleans, Louisiana. Presentation: "*Stop, Look and Listen: Rules for Jury Selection.*" April 30, 2005.

DRI Preeminent Trial Lawyer Seminar, Presentation: Defendant's Opening Statement and associated paper: *Defendant's Opening Statement: Controlling Pandora's Box*; September 30-October 2, 2005.

Andrews Asbestos Litigation Seminar, Conference Co-Chair, San Antonio, Texas, April 2006.

Women in Products Liability Law, Invited Moderator, Las Vegas, Nevada, September, 14, 2006.

Mealey's Medicine for Lawyers Teleconference Series: Pulmonology, "*Pulmonology for Attorneys*", January 30, 2007.

The American Association of Nurse Attorney's 26th Annual Meeting & Educational Conference, speaker on the topic "*Client Development for Solo and Small Firm Practices*" and on a panel discussion entitled "*From the Trenches: Been There Done That.*" Newport, Rhode Island, November 1, 2007.

Rainmaking Lessons from a Top Woman Litigator, SageLaw Marketing.com, web seminar, November 7, 2007.

Baylor Law School, Women Law Student Seminar Luncheon, speaker "*Negotiating the Profession: Benefits and Burdens of a Women Lawyer*", February 20, 2008.

Mealey's Asbestos Medicine Seminar, invited panelist, Beverly Hills, California: "*Venue Issues Part I: The Phenomenon of the 'Selected Jurisdiction'*", March 3, 2008.

Southeastern Oklahoma State University Honor Program Spring Symposium, "*Connect the Dots: How Your Time at Southeastern Provides You the Basis for Lifetime Success*", March 6, 2008.

Illinois Association of Defense Trial Counsel: What Women Lawyers Want and Need – Seminar, Chicago, Speaker, "*As Good As It Gets*" [A template for a business development plan], April 4, 2008.

DRI panelist on the panel discussion entitled, "*Minority Recruiting: Laterals v. Home Grown Talent; Majority Law Schools v. HBCU's; Relevancy of Law School Rankings*", DRI Diversity Seminar, Chicago, June 12, 2008.

IADC Trial Academy, Faculty Member, January 23-24, 2009, South Texas College of Law, Houston, Texas.

Litigation Counsel of America Symposium participant, *One Big Happy: Multi-Firm, Multi-Counsel Trial Teams*, Chicago, Illinois, August 2009.

Texas Minority Counsel Program, *Pick me, Pick me! Marketing in a Difficult Financial Climate*, Discussion Panel participant, San Antonio, Texas, September 3, 2009.

ABA Chemical Subcommittee Regional Meeting, Panel Member, Chemical Products Liability Regional Workshop, Houston, Texas, September 11, 2009.

Texas Women Lawyers, Women Lawyers' CLE: *Artful Intelligence: Teaching Tools and Techniques for Best Lawyering*, Panel Member on "*The Art of Law Practice*," Houston, Texas, February 19, 2010.

DRI Sharing Success—A Seminar for Women Lawyers, Presentation “*Business ‘101’ for the Female Lawyers*,” Scottsdale, Arizona, March 25-26, 2010.

Houston Bar Association Law Practice Management, CLE session “Marketing Your Law Firm in a Difficult Economy,” Houston, Texas, September 16, 2010.

HB Litigation Conference, “*Trying An Asbestos Case – How to Get the ‘W’: ‘Defendant –New Client Intake,’*” Philadelphia, Pennsylvania, January 25, 2011.

Perrin National Asbestos Conference, Moderator, “*The Latest Advancement in Asbestos Medicine*,” San Francisco, California, September 18-21, 2011.

DRI Asbestos Medicine Seminar, Panel Member “*Where Has the Litigation Been? Verdicts and Appellate Rulings of 2011*,” Las Vegas, Nevada, November 10-11, 2011.

DRI Europe—The Changing Landscape of International Litigation: *Hot Topics*, Presentation “*Asset Freezing Orders*,” Barcelona, Spain, November 17-18, 2011.

ABA Products Liability, Mass Torts and Environmental Law Committees’ Joint CLE, Presentation “*You’re Only Young Once: Business Development for the Associate Lawyer*,” Hollywood, Florida, January 20, 2012.

DRI Rainmaking Seminar, Co-Panelist, “*Succeeding in the Rainmaking World: Strategic and Effective Use of Lawyer Associations*,” Las Vegas, Nevada, March 14-16, 2012.

Minority Corporate Counsel Association (MCCA) 11th Annual CLE Expo, Panelist, “*Seismic Shifts in Consumer Class Action Litigation: Clarity Begets Creativity*,” Chicago, Illinois, March 20-22, 2012.

Bank of America 2nd Annual Roundtable Summit, Panelist, Charlotte, NC, April 8, 2013.

Perrin Conference, Asbestos Litigation Conference – A National Overview & Outlook, “*Mock Trial Closing Statements*,” San Francisco, CA, September 17, 2013.

DRI Europe--Hot Topics in International Dispute Resolution, Panelist, Amsterdam, Netherlands, May 22-23, 2014.

The Defense Asbestos Litigation Seminar: A Practical Guide for Winning Lung Cancer Cases at Trial, Panelist, “*War Stories Verdicts & Witness*,” Las Vegas, Nevada, June 4-6, 2014.

DRI Asbestos Medicine Seminar, “*Mastering the Mass Tort Docket: How to Bring Order to Chaos—Management Models, Special Masters and Consolidated Dockets*,” San Francisco, California, November 6, 2014.

The Defense Asbestos Litigation Seminar: “*Cross Examination Tips and Materials to Use to Establish the Liability of the Plaintiff Employer*,” Las Vegas, Nevada, June 3-5, 2015.

DRI Asbestos Medicine Seminar: “*Considering Your Audience: How to Package Your Case to Persuade Your Jurors*,” Las Vegas, Nevada, November 2015.

21st Annual Litigators Forum, Women Lawyers Association of Los Angeles: “*If I Could Pass Along One Important Lesson*,” Los Angeles, California, April 2016.

Defense Asbestos Litigation Seminar 2018, Trial Lawyer Panelist, Nashville, Tennessee, June 2018.

National Court Reporters Association Convention & Expo: *"Trial Counsel: How They Depend on the Court Reporter from Deposition to Trial and Beyond,"* New Orleans, Louisiana, August 2018.

DRI's Defense Lawyers Asbestos Symposium, *"The Trial Lawyers Symposium,"* Austin, Texas, November 2018.

DRI's Women in the Law Seminar, *"Closing Arguments: Connecting with Your Audience,"* San Diego, California, January 2019.

DRI Asbestos Symposium, *"Litigation End Game: Women on the Trial Team,"* November 13, 2019.

Thought Talk, Positivity in Motion with C. Ray Collins, Episode 5, Podcast, Dallas, Texas, August 18, 2020.

California Women Lawyers and Women Lawyers Association of Los Angeles *"The Board Game: Pathways to the Corporate Boardroom for Women,"* Moderator, Zoom Webinar, August 27, 2020.

Marketing During COVID, Virtual presentation for *Exponent*, February 2, 2021.

"How Women Get Power at the Table: Guide to Gaining Clients and Control," New Orleans Lois A. Martinet Society and the New Orleans Association for Women Attorneys, Zoom Webinar, April 29, 2021.

Oklahoma Southeast, Business Roundtable Moderator, June 13, 2021.

DRI Asbestos Symposium, *"Power at the Table: Room for the Rest of Us,"* New Orleans, Louisiana, November 3, 2021.

DRI Asbestos Medicine Seminar, Panel Member, 50Th Asbestos History Program, November 4, 2021.

Oregon Association Defense Counsel Fall Seminar, digital panel presentation, *Networking in the Digital Age*, November 12, 2021.

Litigation Radio, Podcast, American Bar Association Litigation Counsel of America, *Taking Law Firm Business Development to the Next level: Strategies for Lawyers and Litigators*, April 5, 2022.

Brave Women at Work Podcast, *Power at the Table*, broadcast May 19, 2022.

Oklahoma Southeast, Business Roundtable Moderator, Lt. Governor's Turkey Hunt, Hugo Lake, April 29, 2022.

Oklahoma Southeast, Business Roundtable Moderator, 2022 Golf/Striper Event, Durant, Oklahoma, June 9, 2022.

KCIC Lunch and Learn, *Power at the Table*, June 22, 2022.

DRI Asbestos Medicine Seminar, *More Fish in the Sea*, presenter, San Diego, November 4, 2022.

Oregon Association of Defense Counsel, *Power at the Table* presentation, *scheduled December 8-9, 2022*

Publications:

Defense Research Institute, Asbestos Medicine Seminar, Miami, Florida.
Presentation and accompanying paper: *Jury Selection: Contemporary Issues and Techniques*. November 2003.

Texas Women Lawyers Association, El Paso, Texas. Presentation and accompanying paper: “*Rainmaking: Ending the Drought.*” February 2004.

St. Paul Insurance Company Trial Seminar, Baltimore, Maryland. Presentation: *Expert Witnesses: Direct and Cross*. March 2004.

Andrews Litigation Seminar, New Orleans, Louisiana. Presentation and accompanying paper: *30 Minute Juries: How to Pick a Jury in a Ridiculously Short Period of Time*. April 2004.

2004 ABA TOXICOLOGY MONOGRAPH – Chapter on Mississippi State Law.

Mealy’s Welding Rod Litigation Conference, Presentation and accompanying paper: *Issues to Explore in Plaintiff and Co-worker Deposition*, March 15, 2005.

Co-author – “*Welding Fumes: A Review of the History, Workplace Standards, Research, and Litigation from the 1920s to Present for Welding Fumes in General and Manganese Dust/Fumes,*” South Texas Law Review, Vol. 48, No.2, Winter 2006.

“Surviving the First Visit to the Bank”, NAWL Journal, Spring 2006 edition.

Lexis-Nexis Professional Development Series, Seminar Co-Chair, Toxic Tort Update: Texas, March 9-10, 2006.

“It’s Just Dinner: How to Handle the Marketing Dilemma of the Decade”, NAWL Journal, June 2006.

“Finding Friday: The Search for the Perfect Support Staff”, NAWL Journal, Winter 2007.

“Developing Your Business: Five Cardinal Rules”, WLJ (formerly NAWL Journal), Spring 2007.

“Working to Achieve Our Shared Goals”, Column, DRI-For The Defense, January 2008.

“The Myth of Work-Life Balance: The Professional and Personal Challenge”, NAWL Journal, Spring 2008.

“Certification as a Women Owned Law Firm: The Benefits and the Burdens”, ABA Women’s Advocate, Spring 2008.

Women Need Business: A Marketing Primer on Networking and Business Development, WBEA Educational Committee, Houston, Texas, November 21, 2008.

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

COVIL CORPORATION, BY AND THROUGH ITS DULY
APPOINTED RECEIVER PETER D. PROTOPAPAS,

Plaintiff,

vs.

Case No. 2020-CP-40-02098

PENNSYLVANIA NATIONAL MUTUAL CASUALTY
INSURANCE COMPANY, SAM J. CRAIN & CO.,
INC.; and SOUTH CAROLINA PROPERTY AND
CASUALTY INSURANCE GUARANTY ASSOCIATION,
Defendants.

VIDEOTAPED

DEPOSITION OF: SHARLA J. FROST
(Appearing via Zoom)

DATE: November 9, 2022

TIME: 10:04 AM (EST)

LOCATION: 3230 East 2105 Road
Hugo, OK

REPORTED BY: Sandra K. Bjerke, RDR, CRR, CBC
(Appearing via Zoom)

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 COVIL CORPORATION, BY AND THROUGH ITS
4 DULY APPOINTED RECEIVER PETER D.
5 PROTOPAPAS:

6 MORGAN LEWIS & BOCKIUS LLP

7 BY: NANCY PATTERSON

8 (Appearing via Zoom)

9 1000 Louisiana Street, Suite 4000

10 Houston, TX 77002

11 (713) 890-5000

12 nancy.patterson@morganlewis.com

13 SMITH ROBINSON - SC

14 BY: SHANON N. PEAKE

15 (Appearing via Zoom)

16 2530 Devine Street

17 Columbia, SC 29205

18 (803) 254-5445

19 shanonp@smithrobinsonlaw.com

20 ATTORNEYS FOR THE DEFENDANT

21 PENNSYLVANIA NATIONAL MUTUAL CASUALTY
22 INSURANCE COMPANY:

23 GOLDBERG SEGALLA LLP

24 BY: BRADY A. YNTEMA

25 (Appearing via Zoom)

701 Green Valley Road, Suite 310

Greensboro, NC 27408

(336) 419-4900

byntema@goldbergsegalla.com

ALSO PRESENT:

Vicki Bouplon (Appearing via Zoom)

Michael Kirby, Videographer

(Appearing via Zoom)

(INDEX AT REAR OF TRANSCRIPT)

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1 THE VIDEOGRAPHER: We're on the record
2 at 10:04 AM. This is the deposition of Sharla
3 Frost. This deposition is being held on November
4 9th, 2022. The court reporter is Sandra Bjerke.
5 The videographer is Michael Kirby.

6 Would counsel please introduce
7 themselves and whom they represent, beginning with
8 the plaintiff.

9 MS. PATTERSON: This is Nancy Patterson
10 representing the receiver.

11 MS. PEAKE: This is Shanon Peake, also
12 representing the receiver.

13 MR. YNTEMA: This is Brady Yntema
14 representing Penn National Insurance.

15 THE VIDEOGRAPHER: Court reporter,
16 please swear in the witness.

17 (Whereupon, the oath was administered
18 to the witness by the court reporter.)

19 MS. PATTERSON: Oh, I think you may be
20 on mute. I couldn't hear you. Sharla, can you --

21 THE VIDEOGRAPHER: I think it was just
22 a little overlap. If you'd just say I do again,
23 Ms. Frost.

24 THE WITNESS: I do.

25 MS. PATTERSON: Very good.

1 SHARLA J. FROST

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. YNTEMA:

5 Q. Ms. Frost, if you could state your name
6 for the court reporter, please.

7 A. Yes. Sharla Jo Frost.

8 MR. YNTEMA: And I hate to do this
9 early on, so early on in a deposition, but I think
10 I need to do something off the record. If we'll go
11 off the record just for a minute.

12 THE VIDEOGRAPHER: Sure. We are off
13 the record at 10:05 AM.

14 (Off the record from 10:05 until
15 10:06.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 10:06 AM.

18 BY MR. YNTEMA:

19 Q. Thank you, Ms. Frost, for your patience
20 for that short break. Ms. Frost, again, I think I
21 asked you to do this, but if again you could state
22 your name for the record.

23 A. Yes. My name is Sharla, middle
24 initial -- middle name Jo, Frost, F-R-O-S-T.

25 Q. And could you provide us with your

1 business address, Ms. Frost?

2 A. Yes. My business address is 6336
3 Rutgers Avenue, Houston, Texas 77005.

4 Q. And is that business address, is that a
5 law firm, or is that another private business that
6 you're involved with?

7 A. That's actually my home address, and I
8 work from home.

9 Q. Are you currently employed by a law
10 firm?

11 A. I am self-employed as the owner and
12 partner at Sharla J. Frost, Attorney at Law, PC.

13 Q. And as far as that business, what is
14 that business held out to do? Is it a law firm or
15 is it a consulting or is it both?

16 A. It is primarily a law firm. I also do
17 some consulting work, but I still represent clients
18 in settlement negotiations, strategy and some other
19 more traditional legal issues.

20 Q. And if you could just give me a general
21 percentage of what component of your business is
22 acting as a -- as an attorney and what percentage
23 of your business which I could say is acting as a
24 consultant or an expert.

25 A. Probably 10 percent as an expert, 90

1 percent as an attorney.

2 Q. And then currently as far as acting as
3 an attorney, is there any specialty of practice
4 that you have?

5 A. Yes. I continue to strategize and deal
6 with settlement negotiations in mass tort cases,
7 both talc and asbestos, primarily, but occasionally
8 some pharmaceutical and other types of work, all
9 civil litigation.

10 Q. And as far as the consulting/expert
11 side of your business, you said that it was about
12 10 percent. Is there any specialty as far as that
13 consulting/expert component?

14 A. All of my expert components to date
15 have been similar to the one here. I have been
16 retained by clients, including previously by the
17 receiver, to testify regarding issues related to
18 the history of asbestos litigation, analysis of
19 verdict risk types of cases and things of that
20 nature.

21 Q. Thank you, Ms. Frost. And we'll get a
22 little bit more into your background as we move
23 through the deposition today. I know that -- I'm
24 turning to your expert disclosure which we've --
25 actually, I would like to start by just putting up

1 Exhibit 1 which is your notice of deposition.

2 (EXHIBIT 1, Notice of Deposition and
3 Subpoena for Sharla Frost dated 10-28-22, marked
4 for identification.)

5 BY MR. YNTEMA:

6 Q. And, Ms. Frost, I'll just represent to
7 you that this is your notice of deposition.

8 MS. PATTERSON: If you could scroll
9 down and let Ms. Frost review it.

10 BY MR. YNTEMA:

11 Q. And so that's a notice of deposition,
12 and also there was a subpoena that was served.

13 A. Yes.

14 Q. And you recall receiving a -- the
15 notice of deposition and subpoena?

16 A. I was provided by both -- with both by
17 Morgan Lewis.

18 Q. Thank you. And you recall that the
19 subpoena asked for your complete file, including
20 any and all communications?

21 A. Yes.

22 Q. And you have -- our firm has been
23 provided with a file that contains certain
24 documents and certain communications. Are those
25 documents that were provided to us, to your

1 understanding, the documents or include the
2 documents that you provided to Morgan Louis?

3 A. Yes.

4 MS. PATTERSON: Did the court reporter
5 get that? I didn't hear the audible response.

6 BY MR. YNTEMA:

7 Q. Ma'am? Ms. Frost?

8 A. Yes, the email communications that you
9 were provided are the ones that are in my file.

10 Q. Okay. Thank you, ma'am. I think your
11 response kind of broke up on us. I'm next turning
12 to Exhibit 2.

13 (EXHIBIT 2, Receiver for Covil
14 Corporation's Fact and Expert Disclosures dated
15 9-12-22, marked for identification.)

16 BY MR. YNTEMA:

17 Q. So, ma'am, this is a receiver for Covil
18 Corporation's fact and expert disclosures. I'll
19 represent to you this was the initial disclosures
20 that were served in this case by the receiver.

21 MR. YNTEMA: And if we could go to page
22 3 where Ms. Frost's disclosure is. If you could
23 move it on up for...

24 MS. BOUPLON: Farther?

25 MR. YNTEMA: Yes.

1 BY MR. YNTEMA:

2 Q. Okay, ma'am. It's my understanding
3 that this disclosure has been amended, but I'll
4 just show you as far as what you've been disclosed
5 to testify to as far as the initial disclosure.
6 Ma'am, did you receive this initial disclosure and
7 review it?

8 A. I did receive a copy of it, yes.

9 Q. And when did you initially receive a
10 copy of it?

11 A. I would have received that as a
12 follow-up to one of the early telephone calls, and
13 that would be reflected in the emails that you
14 received.

15 Q. And, ma'am, just --

16 A. All of my -- all of my -- so you know,
17 all of my communications back and forth with Morgan
18 Lewis concerning this case have been via email, and
19 those are the ones that were provided to you in
20 connection with the production.

21 Q. And so I -- my understanding is that
22 the -- this initial disclosure was served on
23 September 12th, 2022. Did you review the initial
24 disclosure prior to its being served on September
25 12th, 2022?

1 A. I don't remember if I actually reviewed
2 it in written form or not.

3 Q. But at some point it did make it into
4 your file?

5 A. It should be in my file.

6 Q. Okay. And as far as the initial
7 disclosure that we're looking at here on page 3 as
8 far as your disclosure, if I may read what it says
9 that you're being disclosed to testify to as of the
10 date of this disclosure. If you see down near the
11 bottom it says:

12 Ms. Frost will testify as to the
13 standard for management of asbestos litigation in
14 the historical context of the litigation.

15 I'll stop there. If you could explain
16 to me what that means.

17 A. I did significant case management as
18 part of the litigation work that I did on asbestos
19 and talc cases. So I have opinions concerning the
20 management of cases and evaluation of those cases
21 for verdict risk and settlement purposes. That is
22 what that language is designed to identify.

23 I think as we worked through the
24 designation, if you'll notice from the most recent
25 one we revised that somewhat to make that a little

1 bit more explanatory, but in general, that's the
2 concept. I have experience and opinions concerning
3 how one manages litigation related to asbestos and
4 other types of fibrous exposure cases.

5 Q. So when it says in the historical
6 context of the litigation, does that mean as far as
7 fiber exposure-type litigation, meaning it's
8 typically -- they're typically legacy-type policies
9 that would cover those injuries and also those
10 injuries occur over a long exposure period? Is
11 that what the --

12 MS. PATTERSON: Objection.

13 BY MR. YNTEMA:

14 Q. -- historical context means?

15 MS. PATTERSON: Objection; form.

16 THE WITNESS: When I'm talking about
17 historical context what I'm talking about is the
18 history of the litigation. I have been doing
19 asbestos litigation since 1989 and have been
20 involved in a variety of different phases of
21 litigation, both from a development of cases to
22 management of cases, settlement of cases,
23 litigation and trials of the cases. So in my mind
24 that encompasses all of those areas as it relates
25 to the history of the litigation related to

1 asbestos and toxic exposure cases.

2 BY MR. YNTEMA:

3 Q. I see. Appreciate that. After the
4 semicolon you see:

5 The knowledge of insurance companies
6 with regard to the scope of the litigation and the
7 requirement to maintain --

8 MR. YNTEMA: If you could scroll down,
9 please.

10 BY MR. YNTEMA:

11 Q. -- historical records for
12 policyholders.

13 If you could explain what that means to
14 me.

15 A. Sure. If you go back and look at some
16 of the early litigation and particularly as it --
17 specifically as to asbestos, the Manville
18 corporation filed for bankruptcy in 1982 and came
19 out of as -- out of bankruptcy in 1986, starting
20 the Manville Trust operations in 1988.

21 Part of the controversy with the
22 Manville bankruptcy initially had to do with the
23 handling of the insurance proceeds that were
24 contributed to the bankruptcy estate for use by the
25 Manville Trust. That was done very early in the

1 litigation.

2 And from that point onward it was very
3 obvious that one was going to have a long-tail
4 litigation and there were going to be implications
5 for the insurance proceeds. And that's actually
6 laid out very nicely in the opinion that's included
7 in the file materials that were provided to you.

8 It's the one file -- one case opinion
9 that I put into my case file for this case, and it
10 does a nice job of going through the history of
11 that handling and how the policies were implicated
12 by the bankruptcy.

13 Q. Thank you, ma'am. And we do have a
14 copy of that case and we'll probably ask you some
15 more detailed questions about that and you can
16 explain it a little later as well, but I appreciate
17 that.

18 The next item that you were disclosed
19 initially to testify to was the importance of
20 maintenance of historical records for a defendant
21 in asbestos personal injury litigation.

22 If you could explain that in a little
23 more detail, if you can.

24 A. Sure. As early as 1989 when I began my
25 personal experience with asbestos litigation, my

1 clients had already undergone the task of
2 collecting documents and protecting them so that
3 they were available in the event that there was a
4 request for production or a need to produce those
5 in the context of a trial.

6 So I have experience in dealing with
7 the maintenance of those historic records and how
8 those can affect your ability to defend a case at
9 the time of trial or even how they can affect your
10 ability to resolve a case in the context of a
11 settlement.

12 Q. And the companies you're referring to,
13 are those insurance companies, or are they -- or
14 were they the companies that were actually being
15 sued for asbestos exposure?

16 A. The underlying litigation was all
17 focused on the documents maintained by companies --
18 for example, like Covil -- who had documents that
19 they needed to have and collect.

20 But it also included insurance policies
21 and insurance materials, because many of the early
22 requests for production in the cases I was
23 handling -- and certainly once they started to be
24 mass dockets -- requested copies of insurance
25 policies and anything that related to insurer

1 information.

2 So I wouldn't limit it just to
3 documents that were maintained by the underlying
4 insureds, but I believe that if you look at the
5 historic track there was a request for both those
6 underlying documents and for insurance policies and
7 materials that would help the courts and the
8 plaintiffs' counsel determine the extent of
9 coverage and potential recovery sources.

10 Q. Thank you. And with respect to those
11 historical records that you were asking for the
12 actual underlying asbestos defendant companies to
13 collect, they would also collect their own
14 insurance policy records that they would have
15 internally; correct?

16 A. Assuming that they had those within
17 their possession and control, those would
18 ordinarily be part of the universe of documents I
19 would expect them to collect and have available,
20 yes.

21 Q. And on occasion would they -- would
22 the -- I assume that your client would initially or
23 typically be the underlying asbestos defendant
24 company.

25 A. Yes, that is correct. I represented

Page 16

1 the companies that were being sued for exposures
2 related to asbestos or silica or talc or whatever.

3 Q. Thank you. And does that answer apply
4 to your entire history of consulting with -- with
5 respect to -- I'll ask it this way. I apologize.

6 Have you ever consulted an insurance
7 carrier with respect to documents that they should
8 retain as far as underlying asbestos claims or
9 lawsuits?

10 A. No, I have not done -- I have done very
11 little direct insurance representation, and I am
12 not an insurance coverage expert. So I -- I would
13 have dealings with carriers as it related to their
14 insureds and their insureds' cases. I was not the
15 lawyer who was hired to represent the insurance
16 company as it related to coverage or disputes or
17 anything of that nature.

18 Q. Thank you. So that kind of narrows my
19 understanding of your role. It was primarily
20 limited, if not solely limited, to representing
21 companies who were -- either had asbestos liability
22 exposure or were defendants in asbestos lawsuits.
23 Would I be accurate?

24 A. I'm not sure that's entirely correct.
25 That's a little bit narrower than I would view my

1 role, because depending on the state in which I was
2 doing the representation -- because my
3 representation wasn't just Texas based. Depending
4 on the state in which the representation was, I was
5 the lawyer in connection with the tort lawsuit, but
6 in some of those states I was considered counsel
7 for both the underlying insured and the insurer
8 because those are joint obligation states. So I
9 don't think as you articulated it that's entirely
10 correct.

11 Q. Yes, and that's a good point as far as
12 the joint states that you just referenced. I do
13 appreciate that, and I can understand your role in
14 those circumstances.

15 In representing companies that either
16 had liability exposure to asbestos claims or were
17 involved in lawsuits to asbestos claims, did the
18 companies -- have you ever had experience with
19 respect to companies who did not have their
20 complete insurance policies for the period of time
21 that they had exposure to asbestos claims?

22 MS. PATTERSON: Objection; form.

23 THE WITNESS: I don't know the answer
24 to that. I don't know whether they had complete
25 records or not. It was my experience that by and

1 large my clients had insurance coverage, and from
2 that I assume they had insurance policies.

3 My extensive experience on the
4 insurance policy side came in the Quigley
5 bankruptcy. I was the first-chair trial lawyer in
6 the bankruptcy confirmation case, and as part of
7 that I worked closely with the Gilbert firm which
8 was the firm tasked with the specific issues
9 arising from insurance, and that was a very
10 complicated, multicarrier, multidecade set of
11 coverages.

12 And I do know from that experience that
13 they had an extensive set of physical policies
14 along with information from which they could derive
15 conclusions regarding other time periods where
16 there was insurance involved.

17 BY MR. YNTEMA:

18 Q. When you say derive information in
19 which it may show that there was insurance
20 involved, would that be kind of secondary evidence
21 if they did not have -- of insurance coverage where
22 they didn't have the actual policy?

23 MS. PATTERSON: Objection; form.

24 THE WITNESS: It was my understanding
25 from the various coverage-in-place agreements that

1 there were records but not necessarily policies.
2 Beyond that I really can't answer.

3 BY MR. YNTEMA:

4 Q. Do you understand the term secondary
5 evidence of insurance policies?

6 MS. PATTERSON: Objection; form.

7 THE WITNESS: I believe I do, but why
8 don't you tell me what you mean by that to make
9 sure that we have the same understanding.

10 BY MR. YNTEMA:

11 Q. Sure. If a company does not have an
12 actual insurance policy to present to you or to the
13 insurance carrier, they will oftentimes either be
14 required or they will present to the insurance
15 carrier secondary evidence of -- that they had an
16 insurance policy with a particular carrier during a
17 specific period of time.

18 For example, they may have an insurance
19 broker and which they dealt with for a period of
20 time and they have broker documents that show that
21 they had policy -- insurance coverage through a
22 particular insured for a period of time, for one
23 example. That would be a secondary evidence.

24 A. Okay. That makes sense to me, and I
25 would anticipate that that is a type of occurrence

1 where someone would be able to identify coverage in
2 the absence of the physical policy.

3 Q. And if they don't have a -- another
4 form of secondary evidence might be that the
5 company and potential insured has a policy number
6 but does not have a policy -- does not have the
7 policy materials and they can present the insurance
8 policy number to the insurance carrier, and would
9 you agree that would also be secondary evidence to
10 the insurance policy?

11 A. Hypothetically, I would think that
12 that's just a variation of what you previously
13 described.

14 Q. Certainly. Just another form of
15 secondary evidence; correct?

16 A. Correct.

17 Q. And the secondary evidence, the type of
18 secondary evidence that we just described and
19 discussed, is that the type of documents or
20 information that you would imagine your client, a
21 corporate defendant or company that's exposed to
22 asbestos liability coverage, to go out and seek and
23 collect and present to an insurance carrier to
24 determine if they had coverage during a specific
25 period of time for asbestos claims?

1 MS. PATTERSON: Objection; form.

2 THE WITNESS: I think that would depend
3 on the circumstances and the time period. I don't
4 know that I could say absolutely yes or no in
5 response to that question.

6 BY MR. YNTEMA:

7 Q. If a corporate defendant that was
8 either exposed to asbestos liability or was a
9 defendant in a asbestos lawsuit did not have an
10 actual insurance policy or policies to cover them
11 for a particular period of time, would you expect
12 them to seek out secondary evidence of that policy
13 that they could present to an insurance carrier for
14 coverage?

15 MS. PATTERSON: Objection; form.

16 THE WITNESS: I'm not aware of any
17 legal obligation for them to do that. As I
18 understood your question, if they didn't have
19 coverage but were looking for coverage I would
20 anticipate that a company would seek all sources of
21 potential coverage and policies, including going to
22 their regular insurance company to obtain copies of
23 policy documents that might be in the files of the
24 company -- of the insurance company rather than
25 still in the files of the insured. It depends on

1 the time period, I'm sure, as well, how much time
2 has elapsed.

3 BY MR. YNTEMA:

4 Q. I appreciate that. Thank you for that,
5 Ms. Frost. I'm just looking again back to this
6 disclosure, and we might be able to move on.

7 MR. YNTEMA: Okay. If we could go to
8 the Exhibit 2A.

9 (EXHIBIT 2A, Receiver for Covil
10 Corporation's Amended Fact and Expert Disclosures
11 dated 11-7-22, marked for identification.)

12 BY MR. YNTEMA:

13 Q. And while this is being pulled up,
14 ma'am, do you have a printout of the exhibits that
15 we sent to the court reporter? Do you have a
16 printout there with you?

17 A. I do not. The only printout I have is
18 I -- the printout of the updated -- whatever
19 it's -- titled the amended disclosures, but I did
20 not receive the group of exhibits in time this
21 morning to be able to print those out, so I'll need
22 to look at those on the screen as we go through
23 them.

24 Q. I understand. That's why I asked. I
25 didn't know what you had handy there with you.

1 Thank you.

2 MR. YNTEMA: If we could, on Exhibit
3 2A, move to page 3 again.

4 BY MR. YNTEMA:

5 Q. And, Ms. Frost, I'll represent to you
6 that this is an amended fact and expert witness
7 disclosure that was served by Morgan Lewis on
8 behalf of the receiver which -- earlier this week.
9 And we appreciate Ms. Patterson bringing that to
10 our attention and since -- and that's the reason
11 we've submitted this as Exhibit 2A.

12 You'll see, Ms. Frost, that at the
13 bottom of page 3 it's a little different than the
14 initial disclosure that we just reviewed in that
15 the topics that you're expected to testify to is
16 kind of contained in a separate paragraph. Do you
17 see where that begins?

18 A. I do.

19 Q. And again, I -- with your patience I'll
20 read through this and then -- and stop and ask you
21 questions. It says:

22 Ms. Frost will testify as to the
23 development and evolution of the asbestos
24 litigation over the course of its history.

25 And my recollection is that may be a

1 little bit different than what the initial
2 disclosure -- as to how the initial disclosure
3 read. If you could tell me why that was changed.

4 A. That would be a question that you would
5 need to ask the attorneys. I believe that would be
6 attorney work product.

7 But in dealing with the review of the
8 materials and looking at some additional
9 information, including the specific case files, it
10 became clear that what I was able to give an
11 opinion on related more broadly to the development
12 and evolution of the litigation rather than just to
13 some of the document issues. So I presume that is
14 the reason why it was expanded, but I don't -- that
15 is an attorney decision, not mine.

16 Q. Sure. Did Morgan Lewis consult with
17 you prior to them serving the amended fact and
18 expert witness disclosure?

19 MS. PATTERSON: And I will object --
20 and I will object to that, Mr. Yntema, in terms of
21 seeking work product in the communications between
22 us and Ms. Frost.

23 BY MR. YNTEMA:

24 Q. Ms. Frost, did you see this amended
25 disclosure before it was served on November 7th,